

Complaint about investigation into alleged sexual offending by Detective Inspector Kevin Burke

INTRODUCTION

1. In April 2017, Ms X made allegations of historic sexual offending against Detective Inspector Kevin Burke (DI Burke). Police commenced criminal investigation called 'Operation Northern.' Police also investigated a complaint made by a second alleged victim, Ms Y.
2. As the Police investigation progressed, Ms X developed concerns about its thoroughness and integrity, and the conduct of the Police officers involved. Ms X's support person, Ms B, also raised concerns.
3. In February 2019, DI Burke stood trial in the Auckland High Court and was acquitted of all charges.
4. Police commenced an employment investigation that was put on hold until after the trial. DI Burke decided to retire from Police before it could be substantially progressed. He and Police entered into negotiations, reached an agreement and DI Burke left Police in August 2019.
5. The Independent Police Conduct Authority conducted an independent investigation into Ms X's and Ms B's concerns. The Authority also investigated Police's response to an anonymous letter which referred to DI Burke having had sex with a victim. This letter predated Ms X's and Ms Y's complaints to Police about sexual offending.
6. This report sets out the results of the investigation and the Authority's findings.

BACKGROUND

Summary of facts

7. It is relevant to the background to this complaint to note that Ms X has had previous interactions with Police, and, as a consequence, now has a certain level of mistrust in Police.
8. In 2014, Ms X contacted Ms B, an advocate, and alleged DI Burke had sexually assaulted her. However, Ms X decided that she did not wish to complain to Police at that time.
9. On about 3 November 2016, the Commissioner of Police received an anonymous letter, purportedly from a serving Police officer, expressing concerns about Police conduct and management of complaints in the Northland Police District. This letter was copied to Officer A, a senior officer from Northland Police District. It was not written by either Ms X or Ms B.
10. The letter outlined examples of alleged dysfunction in the District which the writer claimed Ms B knew about. One example involved *“Detective Inspector Kevin Burke having sex with a victim after being dispatched to a property.”*
11. Police decided that the oblique reference contained insufficient credible information to warrant an investigation.

Police investigation of Ms X’s complaint about DI Burke

12. On 7 April 2017, Ms X complained to the Authority about historic *“sexual harassment and molestation”* by DI Burke. Further enquiries established that the complaint amounted to allegations of serious sexual offending. On 22 April 2017, this information was forwarded to Police. At this time, DI Burke held a senior role in the Northland Police District.
13. On 23 April 2017, Police National Headquarters assigned the investigation file to Officer B, a detective inspector, based in the Canterbury Police District. Officer B was an experienced and certified Adult Sexual Assault investigator and supervisor. Officer B then appointed two appropriately qualified detective sergeants (Officers C and D) to the investigation team. Neither of these two officers, or the two additional detective sergeants who subsequently worked on this investigation, were relieved from their day-to-day roles. All worked in different office locations in the Canterbury Police district or in the Auckland area.
14. All investigation team members declared they had no conflict of interest with respect to DI Burke. An investigation structure was set up, including the investigation plan template, tasking system and victim contact register. Officer C was appointed as officer in charge of the investigation file.
15. On 26 April 2017 Officer C contacted Ms X and sought her agreement to be interviewed about her complaint. On the following day Officers C and D travelled overseas to meet her. Both officers were qualified specialist interviewers.

16. On 28 April 2017 the officers met with Ms X. Officer C recorded in a job-sheet that the officers explained:
- the investigation process;
 - the officers' roles;
 - that Ms X was entitled to access support services where she lived if she wished (she declined); and
 - the pitfalls around discussing the details of her complaint with media.¹
17. On 29 April 2017, Officer D formally interviewed Ms X. Ms X disclosed three incidents of alleged sexual offending by DI Burke in 2003.
18. After the interview, the officers again offered access to local support services, which Ms X said she did not need at that stage. She later told the Authority that Ms B was providing her with all the support she needed. Officer D suggested that Ms X might like to speak to Ms I, the National Sexual Violence Survivor Advocate, as a person who could provide support due to shared experiences.
19. The National Sexual Violence Survivor Advocate helps survivors of sexual violence navigate the court and social services systems, amongst other things. Her role is funded by the Ministry of Justice and ACC. Ms I is not employed by or contracted to New Zealand Police, and does not receive a salary or fee from Police for her services.
20. Ms X told the Authority that she wasn't completely clear who Ms I was but indicated that she was willing to be contacted by her.
21. Officer C recalled that she and Officer D spoke with Ms X who indicated that she wanted DI Burke held to account. Officer C also recalled that they had a conversation about investigation timeframes, and that this one might take "*significant time to coordinate*" because team members and witnesses were in different parts of New Zealand and overseas, but that Ms X would be "*kept updated.*"
22. Ms X told the Authority that she felt that the interview went well, and that the officers believed her account. Ms X said that she was not told who would be her main point of contact or what the frequency of contact would be, but she was asked what her preferred mode of contact would be (via email). She was told that Police would be in touch about the next phase, but not when that would be. Ms X recalled being told that they would be interviewing lots of people, including Police officers.
23. The investigation team reviewed Ms X's interview and determined that a full criminal investigation should commence, under the oversight of a detective superintendent, Officer E.

¹ Three articles about Ms X's complaint were published between 11 and 24 April 2017. On 26 April 2017 Ms X was interviewed on Radio New Zealand about her complaint.

The details of key witnesses identified by Ms X during her interview were recorded on the investigation file and assessed in terms of priority for contact.

24. In early May, Officer D exchanged a series of emails with Ms X, during which Ms X provided further details to her account of events. Ms X said she understood that Officer D was her main point of contact with the investigation team (although this had not been specified).
25. On 2 May 2017, Officer D contacted Ms I and explained Ms X's willingness to be contacted by her. Officer D said that she provided a very brief outline of the complaint: that it was historic, of a sexual nature and involved a serving police officer. On 3 May 2017, Officer D facilitated contact between Ms X and Ms I by sending a joint email, providing both with each other's email address and phone number. Ms I corroborated this account to the Authority.
26. At about this time, Officer C suffered a serious medical event and did not take any further substantive part in the investigation phase. Officer D took over the role of officer in charge of the investigation file.
27. On 6 May 2017, Officer B emailed Ms X to introduce himself as the investigation supervisor and provided her with an update of what had occurred during the previous week. Ms X recalled this exchange, and that Officer B had told her to contact him any time if she needed anything.
28. Ms I made contact with Ms X, explained her role and said she could provide support throughout the process, including any trial. Ms I said she didn't know that Ms B was supporting Ms X. Ms X said she was confused about Ms I's role with regards to her and the criminal investigation; and she was never asked by anyone (including Ms I) if Ms I "*could be my support person.*"
29. Over the course of May and June 2017, Officer D provided updates to Ms X, often in response to a prompt or question from Ms X about what was happening with specific aspects of the investigation. Officer B said that he spoke to Ms X on the phone several times a week.
30. On 21 May 2017, Officer B assumed responsibility for an unconnected homicide investigation. In June, Officer D was also required to focus on two trials. At this point, Officer B took over as the main contact because Officer D could not commit to providing Ms X with the frequency of contact she needed. The change of contact point was not explained to Ms X.
31. On 12 June 2017, Ms X told Officer B that another possible alleged victim of DI Burke (Ms Y) had made contact with Ms B, but was reluctant to speak to Police. On 13 June 2017, Ms X provided this person's name, email address and cell phone number to Officer D.
32. On 5 July 2017, Officer D updated Ms X, advising her that Officer B intended to contact Ms Y, and that they were intending for the investigation file to be sent to the Crown Solicitor's office on 14 July 2017. The Crown Solicitor would review the file and provide a recommendation about charging DI Burke.
33. In late July or early August, Officer F (a detective superintendent) assumed oversight of the investigation from Officer E. Officer F directed that more work should be completed on the

investigation, including additional interviews, before the investigation file could be submitted to the Crown Solicitor's office.

34. On 18 August 2017, Officer H (a detective sergeant) travelled overseas to re-interview Ms X. Officer B, and Officer H separately, contacted Ms X ahead of the interview to explain the purpose of the interview, which was to clarify certain points of Ms X's account. Later that day, Ms X emailed Officer H to express thanks for making her feel comfortable.
35. On 19 August 2017, Ms X emailed Officer B, Officer D, Ms I and the Authority expressing concern about the nature of the questions she was asked during her second interview. On the following day, Officer B rang Ms X to discuss her concerns and explain the reasons for the specific questions asked. Ms I also called Ms X (at Officer B's request) to explain the process and answer any questions Ms X might have.
36. On 12 September and 25 September 2017, Ms X requested updates about whether the investigation file had been sent to Crown, and each time was told that this was still one or two weeks away.
37. On 27 September 2017, Officer H was directed to email Ms X's mother, Ms J, at her work address. Ms J's manager was copied into the email. Police had unsuccessfully attempted to contact Ms J using a personal phone number provided by Ms X after her first interview (it was later established that the phone number had been incorrectly recorded). Police had also tried to contact Ms J through her workplace, but she was absent from work with an injury.
38. On the same day, Ms X emailed the Police investigation team, Ms I, the Authority, and two journalists expressing anger and concern about:
 - her mother's distress at being emailed at work when Police had her personal contact details, and the fact this was "*deliberate trouble-making*" on Police's part;
 - the fact that Police had taken so long to get in contact with her mother;
 - the continual delays in the delivery of the investigation file to the Crown Solicitor's office;
 - being "*probed*" and made to feel that she was the "*villain*" not the victim; and
 - her dissatisfaction with some of the lines of enquiry in the investigation.
39. On 2 October 2017, Officer D and Officer B communicated with Ms B about unsuccessful attempts to contact Ms Y, and asking for Ms B's assistance.
40. On 6 October 2017, Ms X was informed that the investigation file had been sent to the Crown Solicitor's office for review. Officer B stated that "*it should not be long*" before they received a response.
41. On 10 October 2017, Officer B contacted Ms X to ask for help in contacting Ms Y. Ms X again provided Ms Y's name, email address and cell phone number (see paragraph 31).

42. Officer D attempted to phone Ms Y, but was unable to leave a message. On 6 November 2017, Officer D contacted Ms Y and arranged a meeting.
43. On 14 November 2017, a media source published an article outlining the apparent failure of Police to contact Ms Y. The article referenced Ms X's concerns about the investigation.
44. On 24 November 2017, Officer B advised Ms X that due to the amount of detail to be analysed, the Crown Solicitor's decision would be a further week away. He also advised that: *"I have asked [Ms I] to talk to you about communication going forward."*
45. Ms I phoned Ms X. This conversation led to concerns on the part of Ms X and Ms B that Police wanted Ms X to stop communicating with Ms B about the investigation. Ms X was also concerned that Police were giving Ms I details about her case that she herself was unaware of. This left her feeling *"manipulated"* as Police were forcing her to use Ms I as her support person (rather than Ms B) so as to get information about the investigation. On 25 November 2017, Ms X expressed these concerns to the Authority. Ms B also wrote a letter of complaint to Police on 27 November 2017.
46. On 6 December 2017, Ms X elaborated on her concerns in a subsequent email to the Authority. She stated that she had told Police that she was *"happy"* to be contacted by Ms I, but was never asked whether she was happy for Ms I to be told about her case, or to receive updates from Police. Ms X felt that Ms I only contacted her when told to by Police and could not be her advocate if she was working for Police.
47. On 7 December 2017, Officer B advised Ms X that the Crown Solicitor's decision should be available in the next few days.
48. On 10 December 2017, an article criticising Ms I's role and independence was published in the mainstream media. The article included anonymised comments made by Ms X.
49. On 12 December 2017 Officer B and Officer D rang Ms X to tell her that the Crown Solicitor had recommended charging DI Burke. She was not told what the specific charges would be but was advised which specific incidents the charges would relate to. Officer B advised her to think about matters overnight and Officer D would call her the following day. He also advised her not to talk to the media.
50. A short time later, Police received a media enquiry requesting confirmation of the charges, prior to any official release. Police released a pre-prepared media statement which included what the charges would be, and that DI Burke's first appearance would be in January 2018.
51. Later that day, Ms X emailed Officer B expressing consternation that these specific details, which she did not know, had been made public.
52. On 13 December 2017 Ms X emailed Police to express her dissatisfaction and reiterate her concerns from the previous day, as well as her ongoing concerns about Ms I's role in the investigation, Police's treatment of Ms B and other aspects of the investigation. Ms X requested all future communication in writing.

53. Officer D emailed Ms X, asking Ms X to take a phone call from her if Officer D undertook to follow up with a written record of the conversation. Officer D outlined the charging process and explained that Police only released the media statement because it was apparent that media were already aware of the charging decision.² Later that evening, Ms X and Officer D spoke over the phone and Officer D sent an email summarising the conversation. Ms X thanked her for this.
54. On 14 December 2017, it was agreed that Officer D should take over from Officer B as the main point of contact with Ms X.
55. On 16 December 2017 and 19 December 2017 Officer D provided phone updates to Ms X and answered questions. Officer D undertook to update Ms X on future court dates. On 21 December 2017 Officer B advised Ms X about DI Burke's first court appearance date and answered some questions about the upcoming court process.
56. On 4 January 2018, Officer D spoke to Ms X and emailed a summary of the conversation. As with the earlier discussions, Officer D explained that the investigation team was unable to tell Ms X the outcome of their enquiries, as it was important that Ms X's evidence was limited to her own recollection.
57. On 23 January 2018, DI Burke appeared in the North Shore District Court. Officer D updated Ms X about the appearance and stated she would be in touch after the next scheduled appearance on 12 February 2018. Ms B attended both court appearances on Ms X's behalf. Officer D spoke to Ms X following the second court appearance, and again on 20 February 2018.
58. In mid-March 2018, a court date originally set for 11 April 2018 was changed to 27 March 2018. Ms X was only advised of this change on 26 March 2018. Ms B was told about the change by Officer D on the day of the rescheduled hearing.
59. On 18 April 2018 DI Burke appeared in the Auckland High Court and the trial date was set for 11 February 2019. DI Burke had previously appeared in the North Shore District Court.
60. Ms X and Ms B said that they were not advised that this appearance was taking place, or the change of location, and only became aware of the trial details after reading a media report. An email provided to the Authority shows that Officer D emailed Ms X at 8:55am that morning confirming the location and date of the trial.
61. Ms B made enquiries and was told that the decision to transfer the appearance to the High Court, and the time of this appearance, had been made on 11 April 2018 and that the Crown prosecutor had been made aware.
62. On 18 April 2018 Ms X emailed Officer D to advise that she was very upset that neither she nor Ms B had been informed about the appearance ahead of time, especially as Police knew that Ms B intended to attend all court appearances.

² Ms X was later told that the information had been given to media by a person unconnected with the investigation.

63. On 20 April 2018 Ms B wrote to the Commissioner of Police on Ms X's behalf to express dissatisfaction and concern that the investigation team were "*not acting in good faith and are not victim focused.*" Ms X would not communicate with Police until an officer with a "*strong victim focus*" was made available and a plan was put in place for "*moving forward.*"
64. The relationship between Ms X and Police deteriorated. Ms B met with Officer F to discuss how effective communication could be restored.
65. Ms X asked for a list of her concerns to be addressed before resuming contact with Police. Over the next few months Police provided a series of responses. Eventually, after considerable effort from Officer F and other officers, the relationship between Ms X, Ms B and Police was restored. In February 2019, Ms B wrote to the Commissioner of Police to acknowledge the work done to rebuild Ms X's trust and confidence in the investigation team and Police.

Complaints

66. Ms X raised five broad heads of complaint (set out below in paragraph 71), which the Authority agreed to investigate.³ Ms B also complained to Police about these matters.
67. Ms B made additional complaints which have formed part of the Authority's investigation (set out in paragraph 72 below).
68. Although not raised as a head of complaint by Ms X or Ms B, the Authority also decided to investigate the appropriateness of Police's initial response to the serious allegations made by Ms X against DI Burke.

THE AUTHORITY'S INVESTIGATION

69. The Authority has interviewed Ms X, Ms B, Ms I, Ms J, Ms Y, members of the Operation Northern investigation team and Officer A. In addition, the Authority has spoken to the National Manager of Adult Sexual Assault and Child Protection for the New Zealand Police with respect to the management of Adult Sexual Assault investigations.
70. The Authority has reviewed the Operation Northern investigation file.
71. Ms X's specific heads of complaint included:
- 1) Police communicated with Ms X poorly, providing her with unsatisfactory or conflicting updates about the progress of the investigation. Ms X did not believe that Police were taking the investigation seriously, and thought they were lying to her.
 - 2) Police disclosed information about Ms X's specific case, including details that Ms X was not aware of, to Ms I without Ms X's agreement. Ms X was unhappy that this happened and believed that Police should have talked to her about these matters directly.

³ The Authority wrote to Ms X on 20 November 2017 to establish her specific areas of dissatisfaction. On 22 November 2017, Ms X provided some clarifying details and agreed that the Authority would investigate five broad heads of complaint.

- 3) The nature of some of the questions Police asked Ms X during her second interview made her feel as though she *“was the one being investigated.”*
- 4) Police did not speak to another alleged victim of DI Burke (Ms Y) until November 2017, despite Ms X providing Police with this person’s contact details several months beforehand. Ms X considers that this delay was deliberate, and that Police were trying to protect DI Burke.
- 5) Police inappropriately emailed Ms X’s mother (Ms J) about this investigation using her work email address and copying in her manager, which has caused Ms J distress.

72. Ms B’s additional heads of complaint were that:

- 1) Police incorrectly asserted in writing that Ms B provided them with Ms Y’s contact details, breaching confidentiality.
- 2) Police instructed Ms I to persuade Ms X not to use Ms B as her support person.

THE AUTHORITY’S FINDINGS

73. The Authority identified and considered the following issues, based on Ms X’s and Ms B’s complaints:

- 1) Did Police respond appropriately to Ms X’s initial complaint?
- 2) Did Police respond to Ms X’s needs and was communication with her in line with Police policy and best practice?
- 3) Was the introduction and use of a specialist support person appropriate:
 - a. did the investigation team disclose personal information to Ms I without Ms X’s consent; and
 - b. did Police direct Ms I to persuade Ms X not to use Ms B as her support person?
- 4) Was the second interview with Ms X conducted in a professional manner, and were all questions relevant and necessary?
- 5) Did the investigation team respond appropriately after being told about another potential victim of DI Burke?
- 6) Did the investigation team cause unnecessary distress to Ms X’s mother (Ms J) when making contact with her?
- 7) Did Police respond appropriately to the allegation about DI Burke in the anonymous letter?

Issue 1: Did Police respond appropriately to Ms X’s initial complaint?

- 74. The early phase of the investigation is set out in paragraphs 12-23.
- 75. Within a day of Police receiving the full details of Ms X’s complaint, the matter had been assigned to an appropriately qualified and experienced Detective Inspector who was geographically removed from the districts where DI Burke had worked.
- 76. The sensitivity of the investigation was recognised from the outset and was conducted under the oversight of a Detective Superintendent.
- 77. None of the officers assigned to the investigation had a personal relationship or worked with DI Burke, and all signed conflict of interest documentation to that effect. A formal investigation structure was set up and the file was held separately and securely to maintain confidentiality.
- 78. The Authority is satisfied that Ms X was contacted directly and interviewed in person in a timely manner. Ms X was offered access to support in the country where she lived, which she declined. Officers C and D, both experienced in the investigation of adult sexual assault, took time to explain the process and answer questions.
- 79. The information gathered during this initial meeting with Ms X was appropriately assessed and lines of enquiry established, including witnesses to be contacted. Police initiated a full criminal investigation.

FINDING
The Police responded well to Ms X’s complaint against DI Burke, appointing suitably qualified officers to investigate her complaint in a timely manner.

Issue 2: Did Police respond to Ms X’s needs and was communication with her in line with Police policy and best practice?

- 80. Ms X has stated that Police communicated with her poorly during the investigation process, providing her with unsatisfactory or conflicting updates about the progress of the investigation and DI Burke’s court appearances. Ms X was concerned that Police did not take the investigation seriously and lied to her.
- 81. Ms X elaborated on her complaint during her interview with the Authority. She understood that Officer D was her main point of contact, but then Officer D “dropped off the radar” and Officer B took over as her main contact. This was confusing.
- 82. Ms X explained that the officers were not available to take her calls and would fail to call at pre-agreed times. They were often travelling or dealing with their own family matters, despite repeatedly telling her that she should contact them if she had any questions or concerns. When Ms X tried to follow-up she would be put off again. This added to her anxieties about the investigation and made her feel like she was “harassing” Police for information.

83. Ms X said she didn't know what to expect in terms of the Police investigation process. She thought that the investigation would move along relatively quickly, and Police would be able to get ample information and tell her about things straight away. However this was not the case.
84. Ms X also explained that she would discuss investigation progress and her interactions with Police with Ms B, who was a very dedicated support person and advocate. Ms B would explain to her whether or not certain things were happening correctly or tell her when she needed to ask Police for an update, or for more detailed information on a particular point.
85. There were several specific examples which Ms X raised with the Authority to illustrate her concerns about communication. Some of these are discussed in more detail in subsequent issues discussions. However, broadly:
- She was continually given revised deadlines for the criminal investigation file to go to the Crown Solicitor's office for review. Ms X was told in early July that it would go to Crown that month; it did not go to Crown until early October. The reasons for the continual delays were not explained to her.
 - She was not advised of the specific charges against DI Burke before this detail was released to the media (see paragraphs 49-53).
 - She did not receive timely updates about DI Burke's court appearances (see paragraphs 59-62).
86. The principles and rights set out in the Victims' Rights Act 2002 describe a level of service that Police should provide to victims.
87. In summary, Police should treat victims with courtesy and compassion, and respect their dignity and privacy. Police should also maintain regular contact with the victim during the investigation, updating them at every significant change in the case. The victim should be told about specific actions being taken against the accused person and specific information about the proceedings, unless there is a good reason for withholding this information.
88. Policy requires Police to:
- Provide information about the Police investigation process and realistic expectations about the likely timing of each stage, including court processes.
 - Give victims regular updates on the progress of the investigation, charges laid or the reasons for not laying charges and court proceedings. All these contacts must be recorded in the 'victim contacts' field within the Police database.
 - Have a discussion with the victim at an early stage about preferred communication arrangements and their expectations.
89. This investigation was complex and resource-intensive by nature. It was apparent from an early stage that the breadth of enquiries required would be significant, since the complaint was historic, and several witnesses (including the complainant) no longer lived in New Zealand.

90. The fact that the alleged offender was a senior Police officer added a layer of complexity to the relationship between the investigating officers and Ms X. Ms X had to come to terms with the fact that Police officers were investigating a Police officer, and trust that he would be investigated robustly and without favour. This, most understandably, was challenging for her.
91. The sensitive and distressing nature of the alleged offending, and the fact that Ms X was geographically separate from her investigation team and could not speak to them face to face, further complicated the development of rapport and trust between Ms X and the investigation team.
92. The investigation officers which the Authority spoke to were cognisant of these factors and were very keen from the outset that Ms X felt supported, informed and confident in the team. They invited Ms X to contact them whenever she needed to. However, by trying to be accommodating and promising to return phone calls out of hours, but failing to do so, they in fact exacerbated Ms X's anxieties.
93. The investigation team allowed Ms X to believe that they were able to provide her with a level of service that was unachievable. Because Ms X required frequent and detail-focussed updates from the investigation team to maintain her trust and confidence, their inability to meet expectations ultimately created dissatisfaction and mistrust.
94. The resources dedicated to this investigation were insufficient to accommodate Ms X's needs in addition to carrying out investigation work and their business-as-usual work. Officer B should have managed Ms X's expectations more effectively and assertively.
95. When Officer C became unavailable, Officer D and Officer B both served as a point of contact for Ms X over email and phone. However, different work commitments, work locations and styles of explaining information meant that communication did not always appear to be timely or consistent, which further added to Ms X's concerns.
96. Fundamental changes in investigation oversight caused expected investigation timelines to shift. Ms X was advised in early June that the investigation file would go to the Crown Solicitor's office for review. This did not occur until early October, and the reasons for this were not adequately explained to Ms X, and should have been.
97. Similarly, it would have been preferable for Officer B to have fully detailed the charges against DI Burke when he spoke to Ms X on 12 December 2017. It was regrettable that Ms X did not hear about these directly from the investigation team, however it was not Police's intention for the media to receive this information before Ms X.
98. Ms X's concerns about receiving timely court updates were valid, as it was important to her and her support person to know when these occurred, so Ms B could attend. The Authority understands Police themselves did not always receive timely information about changes to court schedules, which was partially the reason for the late updates.
99. The Authority is aware that Ms X relied considerably on Ms B for guidance and information about how Police and court processes worked, and what feedback and support she should expect from

the investigation team. Ms X also said Ms B prompted her to challenge Police when their actions did not meet her expectations.

100. Ms B's knowledge and input was undeniably helpful from Ms X's perspective. However, it also meant that Ms X became overly-critical of Police's efforts to keep her supported and informed at times and demanded a level of service that was unrealistic. When her expectations could not be met, Ms X lost trust and confidence in the investigation and the relationship with Police broke down.
101. To Police's credit, repeated attempts were made to recover and strengthen the relationship with Ms X and Ms B.
102. These attempts were later acknowledged by Ms B (see paragraph 65).

FINDINGS

The investigation team allowed Ms X to believe that they were able to provide her with a level of service that was unachievable.

The resources dedicated to this investigation were insufficient to meet Ms X's needs.

Changes in investigative timeframes were not adequately explained to Ms X.

It would have been preferable for Officer B to have fully detailed the charges against DI Burke when he spoke to Ms X on 12 December 2017.

It is to Police's credit that repeated attempts were made to recover and strengthen the relationship with Ms X and Ms B.

Issue 3: Was the introduction and use of a specialist support person appropriate?

103. This issue considers two specific questions:
 - a) did the investigation team disclose personal information to Ms I without Ms X's consent; and
 - b) did Police ask Ms I to persuade Ms X not to use Ms B as her support person?
104. Ms X states that she agreed to be contacted by Ms I but did not agree that Ms I could receive updates or information about her case. Following a phone call between them on 24 November 2017, Ms X said that Ms I told her information about her case that she herself did not know, including that "*shitloads*" of evidence had been obtained, and that the matter would go to court.
105. She said Ms I also spoke to her about the purpose of particular questions she was asked during her second interview, at Officer B's request; and that Ms Y had made a formal complaint and Ms X should not contact her. Ms X stated that she felt that Police were using Ms I to manipulate her into ceasing to use Ms B as her support person, and that Ms I told her directly: "*We need [Ms B] to back off.*"

106. Police policy states:

- Victims should be offered specialist sexual assault support and be encouraged to have specialist support throughout the investigation. Victims may also be supported by other people. They can have input into decisions about who provides support and when.
- Personal information must not be released to support agencies without the consent of the victims as to do so may breach the Privacy Act 1993.

107. The initial introduction between Ms X and Ms I was conducted appropriately, and with Ms X's consent. Police provided Ms I with the barest background detail, allowing Ms X to disclose whatever specific details she wished to.

108. Ms I said that, from this point, they exchanged several phone calls and emails. She did not know that Ms X was unhappy with the way the investigation was progressing, and did not know that Ms B was supporting Ms X.

109. Ms I said that she was never given specific information about the detail of the investigation from Police, nor was she asked to pass on investigation details or updates. She did not tell Ms X about what evidence had been collected or that the matter would proceed to trial, as Ms X alleges. She did not know anything about Ms Y making a formal complaint about DI Burke.

110. Officer B said that he spoke to Ms I approximately six times during the investigation, but only asked her to reinforce messages or explain process to Ms X. He did not ask Ms I to pass on new information about the investigation. Ms I recalled being told that the Crown Solicitor's assessment was taking a while, and Officer B said he asked Ms I to explain this process to Ms X.

111. Officer B said that Ms I was asked to ring Ms X to talk to her about the risks of disclosing details about her complaint to the media, and the detrimental effect it could have on her case. By November 2017, approximately eight articles about Ms X's complaint had been published, two of these on Ms B's website.

112. Officer B said that he had tried to explain this to Ms X and that he believed media attention was now *"in grave danger of derailing the case."* He also felt that Ms B was playing a role in releasing information to the media. He explained that, *"for the good of the case,"* he thought it was preferable for Ms B to cease to be involved, and he *"probably"* said to Ms I that it would be *"helpful to manage that relationship out."*

113. Ms I recalled that Officer B told her that he had concerns about Ms B's involvement, and she deduced that Ms B might be involved in releasing information to the media. While she had a conversation with Ms X in general terms about being careful who she spoke to, she did not tell Ms X to stop communicating with Ms B.

114. The Authority considers that the introduction of a specialist support person in this case was appropriate and consistent with policy. Police genuinely believed that Ms X had accepted Ms I as her support person. It was not immediately apparent to Police that Ms B was acting in that

capacity, although they were aware that Ms X and Ms B were in touch. Ms I did not know that Ms B was supporting Ms X.

115. Since Police put Ms I forward as a suitable specialist support person, they should have been clearer on the fact that they would also use Ms I to explain general matters of process or risks.
116. While the Authority is unable to determine if specific information was passed to Ms I before it was passed onto Ms X (such as whether the matter was to go to trial), Police did disclose broader matters pertinent to the progress of her case and should have sought Ms X's consent to do this.
117. Officer B should not have attempted to influence Ms X's decision about involving Ms B as her support person, despite his genuine concerns about the risks to Ms X's case. It is not clear whether Ms I specifically discussed Ms B's role with Ms X, however, it is clear that Ms X was given the impression that Police did not want Ms B to be involved any longer.

FINDINGS

The introduction of a specialist support person in this case was appropriate and consistent with policy. Police genuinely believed that Ms X had accepted Ms I as her support person. It was not immediately apparent to Police that Ms B was acting in that capacity.

Police should have clearly informed Ms X that they use Ms I to explain general matters of process or risks.

While the Authority is unable to determine if specific information was passed to Ms I before it was passed onto Ms X, Police did disclose broader matters pertinent to the progress of her case, and should have sought Ms X's consent to do this.

Officer B should not have attempted to influence Ms X's decision about involving Ms B as her support person.

Issue 4: Was the second interview with Ms X conducted in a professional manner, and were all questions relevant and necessary?

118. Ms X was concerned about the nature of some of the questions she was asked during her second, clarification interview on 18 August 2017. She complained that the nature of the questions made her feel like she was the *"one being investigated."*
119. Officer B rang Ms X beforehand to explain the purpose of the interview. Officer B later told the Authority that he anticipated that Ms X might not find it an easy experience, as the purpose of the interview was to clarify discrepancies. Some of the questions would be necessarily *"pointed."*
120. Officer H spoke with Ms X prior to the interview to make introductions and explain why Police needed to speak to her again.

121. Having reviewed the transcript of the interview conducted by Officer H, the job-sheet record of the interview and the explanations provided during the interview, the Authority is satisfied all questions were relevant, and the interview was conducted in a professional manner.
122. The questions pertained to issues that could undermine the prosecution. These issues needed to be explored with Ms X to manage their potential impact and allow for any further necessary investigation. This is a normal part of effective preparation of the Crown's case.
123. Having anticipated that Ms X might be upset by some of the lines of questioning, Police should have raised with Ms X that she might like to have a support person with her for this interview.

FINDINGS

The interview was conducted in a professional manner and the questions were relevant and necessary for the effective preparation of the case.

Police should have suggested that Ms X have a support person with her for the interview.

Issue 5: Did the investigation team respond appropriately after being told about another potential victim of DI Burke?

124. Ms X is concerned that for some considerable time Police deliberately failed to contact an alleged second victim of DI Burke (Ms Y) in an attempt to protect him from prosecution.
125. Ms Y made contact with Ms B on 12 June 2017. She did not want to complain to Police at that stage but did want to make contact with Ms X to offer support.
126. Also, on 12 June 2017, Ms X emailed Officer B and Officer D about a possible second victim who did not want to make a complaint. On 13 June 2017, Ms X provided Ms Y's name, cell phone number and email address to Officer D.
127. On 15 June 2017 Officer D asked Ms X to convey to Ms Y that she was happy to speak to her and explain the investigation process, and there was no obligation to make a formal complaint to Police.
128. Officer D told the Authority that she discussed contacting Ms Y with the investigation team. They decided to wait to do this, as the priority was progressing Ms X's investigation and current resources were stretched. Officer D was aware, through Ms X, that Ms Y would be overseas during June and July and decided that it would be better to try to speak to this person directly when she was back in the country, as she was uncertain exactly who Ms Y was and whether her complaint was credible. Officer B recorded contacting Ms Y as a formal 'task' assigned to Officer D.
129. At the end of July or early August, Officer B asked Officer D whether she had contacted Ms Y. Officer D told the Authority that she had rung the cellphone number but had neither made contact nor been able to leave a message (Ms Y confirmed to the Authority that she did not have

voicemail). Officer B then told Officer D that he would take over trying to make contact because Officer D was committed to other work.

130. Officer B did not recall that he had undertaken to do this and had either forgotten or been unaware that Police had Ms Y's name and contact details. At the end of September, he advised Officer F that Ms B was deliberately withholding this information from Police.
131. On 2 October 2017, Officer B emailed Ms B, stating that Officer D had been unable to contact Ms Y by email, and asking Ms B to provide contact details. During an ensuing email exchange, Officer B incorrectly asserted that Ms B had earlier provided Ms Y's contact details. In fact, Ms B had not provided any of Ms Y's details to Police; Ms X had done so (see paragraph 126).
132. Officer D was copied into this email exchange but did not correct Officer B's comments about the source of the contact details or the fact that attempts to make contact had been made by phone rather than email. This is likely to be the source of Ms X's and Ms B's belief that Police were 'lying' about attempts to contact Ms Y, as Ms Y had told them that she had not received any emails from Police.
133. As described in paragraph 41, Officer B contacted Ms X on 10 October 2017 and was provided with Ms Y's contact details.
134. Officer D again unsuccessfully tried to make contact by phone. On 6 November 2017, Officer D managed to contact Ms Y by email. Officer D later met Ms Y and apologised for the delay in making contact. Ms Y accepted this apology.
135. Having interviewed the officers, the Authority is satisfied that the delay in contacting Ms Y was not intentional or designed to protect DI Burke. However, the Authority acknowledges that the delay did exacerbate Ms X's growing concerns about the investigation and mistrust of the investigating officers' motivations
136. The Authority accepts that Officer D wanted to speak to Ms Y directly in the first instance, to explain why she was making contact, and to assess Ms Y's response. It was reasonable for Officer D to wait until Ms Y returned from overseas to do this. However, from August 2017 onwards, Police should have contacted Ms Y.
137. Police have acknowledged that a breakdown of communication occurred, which caused delays in contacting Ms Y from the end of July onwards. This was primarily the result of poor communication between Officer B and Officer D and a misunderstanding about what contact information was held by Police, and who was taking the lead in following it up.
138. The Authority considers that the considerable workload of Officer B and Officer D, and the fact that they worked in separate buildings, contributed to this breakdown of communication.

FINDINGS

Ms B did not provide Ms Y's name or personal details to Police.

Police failed to contact Ms Y in a timely manner, due to a regrettable breakdown of communication.

The failure to contact Ms Y was not a deliberate attempt to protect DI Burke.

Issue 6: Did the investigation team cause unnecessary distress to Ms X's mother (Ms J) when making contact with her?

139. Ms X raised concerns that Police contacted her mother for the purpose of interviewing her through her workplace and copied her mother's supervisor into the contact email. Ms X said that this was unnecessary as Police had Ms J's personal contact details. Police were aware that her mother was wary about this matter being brought into her workplace (a prison) and was distressed by Police's actions.
140. Ms X provided her mother's home phone number when she was interviewed by Police, however this number appears to have been incorrectly recorded on Officer C's job-sheet. Officer C did record that Ms J was *"reluctant to be involved."*
141. Officer D unsuccessfully tried to contact Ms J using the incorrect personal phone number during a week when she was trying to progress a range of enquiries. Ms J was not regarded as a *"priority"* enquiry within the overall scope of the investigation, however her statement was required.
142. Officer D later recorded in an email that she tried to find other personal contact details for Ms J but couldn't and therefore attempted to make contact through her work as a *"last resort."* She was aware that Ms J worked as a Corrections officer and established where she worked using the Police database. She attempted to phone Ms J at the prison. However, she was told by staff at reception that Ms J was absent from work but that she was due back shortly. Officer D asked for her contact details to be forwarded to Ms J with a request for her to make contact. Ms J stated that she never received this message.
143. The Authority asked Officer D whether she considered speaking to Ms X about contacting Ms J when contact using the original phone number provided was unsuccessful. Officer D explained: *"I never went back to [Ms X] to say, "Have you got a phone number for your mother?" because we just, I guess, you know, we kind of go about it and, we just go about it in another way..."*
144. Officer H was directed to contact Ms J several months later. Officer H recalled being told that Ms J could only be contacted through her work as all other avenues of contact had been exhausted. When Officer H tried to ring Ms J at the prison, the receptionist said that Ms J was not at work. Reception staff put Officer H through to Ms J's supervisor.

145. Officer H spoke to Ms J's supervisor, who provided Ms J's work email address. Officer H copied Ms J's supervisor into a bland email to Ms J requesting she make contact "*in relation to your assistance with a matter unrelated to work,*" while still on the phone to Ms J's supervisor.
146. Officer H said Ms J's supervisor was copied in deliberately to confirm that Officer H was a Police officer. Further, Officer H was careful to specify that this matter was not work-related to allay any concern that Ms J was being contacted in connection with a Police investigation into some prison staff that was happening at that time.
147. After sending the email, Officer H received a message stating that Ms J's inbox was full which made her unsure whether the email had been received. Ms J's supervisor sent a test email and also received this automated message.
148. Officer H finally made contact with Ms J using a cell phone number provided by Ms J's supervisor. Officer H apologised to Ms J for stress caused to her by making contact through work.
149. The Authority spoke to Ms J, who was particularly upset that her supervisor was copied into communication about a sensitive private matter. Her supervisor mentioned to her that Police had been trying to make contact, and Ms J felt that she needed to provide a fabricated explanation so as to protect her privacy. She stated that she couldn't understand why Police didn't contact her at home or ask her daughter for her phone number if they were having trouble. Further, she would have expected the prison to forward the officers' phone calls through to her at home (the Authority has not been able to establish if this is normal practice).
150. Both detectives explained that it is usual for Police to contact prison staff in the course of their duties, so they didn't consider that this line of enquiry would be problematic. They did not consider checking the phone number with Ms X, which in hindsight would have been preferable. On none of the occasions that they rang the prison did reception staff offer to transfer the phone call through to Ms J at home.
151. In general, attempting to contact a witness through their workplace is a reasonable investigative action, as long as it is done discreetly so that personal matters do not intrude into their workplace. Unfortunately, in this case, it did and Ms J was put in an awkward position where she felt it necessary to deflect her supervisor's questions.
152. The Authority accepts that Police made reasonable attempts to contact Ms J without involving a third party. These attempts were not successful because Ms J was not at work at the time both officers made contact and because contact via email was uncertain.
153. The Authority has viewed the email sent to Ms J. No specific details about the subject of Police's query were revealed in the email, however the reference to a non-work matter understandably raised questions in Ms J's supervisor's mind.
154. The Authority accepts that Ms J felt distressed and uncomfortable that her personal business could become the subject of gossip at work because her supervisor was included in the contact. This is regrettable and the result of incorrectly recording Ms J's personal phone number. Her

distress could potentially have been avoided if officers had double-checked Ms J's details with Ms X. Police have apologised for the distress caused.

FINDING

Although Police caused Ms J distress, their actions were well-motivated and not unreasonable in the circumstances.

Issue 7: Did Police respond appropriately to the allegation about DI Burke in the anonymous letter?

155. Officer A received a copy of the anonymous letter through the post on about 3 November 2016. The letter was five pages long and focused on issues in the Northland Police District.
156. The writer, purportedly a senior officer serving in the Northland Police District, stated that he had heard that Ms B knew about an incident involving *"Detective Inspector Kevin Burke having sex with a victim after being dispatched to a property."*
157. Police received this letter before Ms X and Ms Y made their complaints about DI Burke. In Police's view, this was an isolated reference, unconnected to any other known complaints or behaviours, and they did not take the accusation seriously.
158. The Authority interviewed Officer A about his assessment and response to the letter.
159. Officer A explained that he was suspicious about the authenticity of the letter. In his opinion, the language used was unusual and did not fit with that of a Police officer. There was no information about the identity of the writer.
160. The allegations against DI Burke did not strike him as credible, based on his knowledge of events in the District, and his knowledge of DI Burke's character and behaviour. The incident described was not criminal. The lack of specific details about the incident, such as timeframe, location or people involved, hindered his ability to effectively investigate.
161. Officer A did not tell DI Burke about the letter's contents and decided against questioning him because the accusation was so vague that his questions would be a *"fishing trip."*
162. The Authority asked Officer A whether he considered speaking to Ms B about the allegation, as the information supposedly originated from her.
163. He explained that he did consider this course of action but decided against it for several reasons.
164. Firstly, he did not think that Ms B would disclose relevant information to him before she (and any complainant she was working with) were ready to. Ms B had facilitated a number of complaints against the Northland Police District in her role as an advocate, and Officer A was familiar with her practices. He was confident that Ms B would make a complaint to Police if she was aware that an officer had taken advantage of a victim.

165. The contents of the letter also caused him to consider whether Ms B had written it. He was concerned that if he contacted Ms B about the letter this could lend credibility to its full contents, and Ms B might release the detail of their interaction to the media, undermining trust and confidence in the District's Police.
166. In the Authority's view, this was not a justifiable reason not to approach Ms B about the allegation. While not criminal, the allegation could amount to serious misconduct by a senior officer while on duty, and Officer A had an obligation to follow the line of enquiry.
167. Officer A had the option of approaching Ms B about the allegation without disclosing identifying details, such as DI Burke's name or rank. He could have said that Police had been advised, anonymously, that she had information about an officer who had had "*sex with a victim after being dispatched to a property,*" and asked whether she could tell him anything about this.
168. Any subsequent action would be partially dependent on Ms B's response. However, regardless of whether she was able or willing to provide further details, the Authority considers it would have been prudent for Officer A to put the allegation to DI Burke and allow him to respond.
169. Officer A's concern that Ms B would release details about the interaction with Police was speculative. However, if it did occur, Police would be able to state that an anonymous allegation had been brought to their attention and they were making enquiries. In the Authority's opinion, acknowledgment that Police were taking the matter seriously would reinforce public trust and confidence in Police and the District, rather than undermining it.

FINDINGS

After receiving the anonymous letter, Officer A should have approached Ms B, outlined the allegation without disclosing identifying details, and asked whether she had information to share. Officer A should have put the allegation to DI Burke and to allow him to respond.

CONCLUSIONS

170. The Authority has found that, despite Ms X's concerns, Police conducted a fair and thorough investigation into her complaint against DI Burke. Specifically, the Authority concluded that:
- 1) The Police responded well to Ms X's complaint against DI Burke, appointing suitably qualified officers to investigate her complaint in a timely manner.
 - 2) The investigation team allowed Ms X to believe that they were able to provide her with a level of service that was unachievable.
 - 3) The resources dedicated to this investigation were insufficient to meet Ms X's needs.
 - 4) Changes in investigative timeframes were not adequately explained to Ms X.
 - 5) It would have been preferable for Officer B to have fully detailed the charges against DI Burke when he spoke to Ms X on 12 December 2017.
 - 6) It is to Police's credit that repeated attempts were made to recover and strengthen the relationship with Ms X and Ms B.
 - 7) The introduction of a specialist support person in this case was appropriate and consistent with policy. Police genuinely believed that Ms X had accepted Ms I as her support person. It was not immediately apparent to Police that Ms B was acting in that capacity.
 - 8) Police should have clearly informed Ms X that they use Ms I to explain general matters of process or risks.
 - 9) While the Authority is unable to determine if specific information was passed to Ms I before it was passed onto Ms X, Police did disclose broader matters pertinent to the progress of her case and should have sought Ms X's consent to do this.
 - 10) Officer B should not have attempted to influence Ms X's decision about involving Ms B as her support person.
 - 11) The interview was conducted in a professional manner and the questions were relevant and necessary for the effective preparation of the case.
 - 12) Police should have suggested that Ms X have a support person with her for the interview.
 - 13) Ms B did not provide Ms Y's name or personal details to Police.
 - 14) Police failed to contact Ms Y in a timely manner, due to a regrettable breakdown of communication.
 - 15) The failure to contact Ms Y was not a deliberate attempt to protect DI Burke.

- 16) Although Police caused Ms J distress, their actions were well-motivated and not unreasonable in the circumstances.
- 17) After receiving the anonymous letter, Officer A (or his representative) should have approached Ms B, outlined the allegation without disclosing identifying details, and asked whether he had information to share.
- 18) Officer A should have put the allegation to DI Burke and allow him to respond.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

21 April 2020

IPCA: 16-2054, 17-1236, 17-1251

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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