

Use of Force on youth in Wellington justified

Summary of the Incident

1. On 4 September 2020 at about 10.40 pm, Mr X, a 14-year-old male, and his older brother, Mr Y, were outside a pub in Wellington asking patrons for cigarettes.
2. An employee of the pub phoned the local community patrol and complained that the young men were intoxicated and annoying patrons. Both Mr X and Mr Y admit they were intoxicated, and Mr X that he had smoked cannabis.
3. A community patrol car arrived and parked outside the pub.¹ Mr X says he had previous interactions with the community patrol and did not like the way they were looking at him. He approached them and told them to “fuck off”. At the same time, he gave the community patrol car a “little kick”. The community patrol members called for Police assistance and parked further down the road.
4. Both young men were walking in the middle of the road towards the community patrol car when Police arrived.
5. A Police dog handler assisted with the arrest of Mr X for public disorder. The youth resisted the arrest, and the officer took him to the ground to restrain him. The youth said the officer used inappropriate language when he spoke to him and forced his face into the ground. He sustained injuries to his face and knee and says Police did not offer him any medical assistance after the incident.
6. Mr X was taken to the Police station and then home to his mother. His mother said Police refused to tell her any detail of how he came to be injured, and so she approached his Oranga Tamariki social worker who complained to the Authority on their behalf.

¹ Community Patrols of New Zealand is a civil society organisation where local communities organise and operate their own community patrols.

Issues examined by the Authority

Issue 1: Was the use of force justified?

Issue 2: Did Police appropriately care for and deal with Mr X afterwards?

The Authority's Findings

7. The Authority found that Officer C was justified in taking Mr X to the ground.
8. We also found:
 - a) The technique used by Officer C was inappropriate, and any risk posed by Mr X could have been better managed by having Officer A assist in taking Mr X to the ground in a safer manner.
 - b) Officer C should have completed a tactical options report.
 - c) Police did not use inappropriate language when they dealt with Mr X.
 - d) Police offered appropriate medical treatment to Mr X.
 - e) Officer A adequately dealt with Ms Z and informed her of what happened when Mr X was arrested.

Analysis of the Issues

ISSUE 1: WAS THE USE OF FORCE JUSTIFIED?

The use of force

9. Officers A and B arrived independently in separate Police cars and stopped to speak with the brothers. Officer A dealt with Mr X and described him as verbally abusive and refusing to engage. Officer B dealt with Mr Y and described Mr X as, "*swearing-up a storm*".
10. Officer A suspected that Mr X was the person who had kicked the community patrol car but did not know at the time if the kick caused any damage to the car. Officer A arrested Mr X for disorderly behaviour.
11. Officer A decided to handcuff Mr X because of his aggressive behaviour. Mr X pulled away and resisted the attempt to handcuff him. Mr Y says his brother was resisting and he could hear him yelling at Officer A. Mr X also acknowledges that he was resisting but says this was because he did not like the way the officer was speaking to him.
12. Officer A managed to successfully handcuff Mr X and held him against the Police car.

13. Officer A noticed that his duty bag was still on the rear seat of the Police car and had to move it before Mr X could be put into the car.² Officer A believed that Mr X might run away if left unattended and called Officer C to assist in holding Mr X. Officer C is a dog handler who had turned up to this incident.
14. Officer A says he did not see Mr X being taken to the ground as he focussed on opening the Police car's door. He describes that his right hand was holding onto Mr X's shoulder, and he only felt Mr X going down to the ground in a slow and controlled manner.
15. Officer C says he took hold of Mr X's sleeve and he continued wriggling; he believed Mr X was trying to break away. His assessment of the situation was that:
 - Mr X was heavily intoxicated.
 - He was aggressive and showed he was willing to use violence because he earlier punched the community patrol car. (On the way to the incident, Police were informed by radio that a youth had punched the community patrol car, it was later found that the youth kicked the car.)
 - Notwithstanding being handcuffed, Mr X's fists were clenched, and his verbal behaviour indicated he may assault the officers.
 - Mr X was continually trying to break free.
16. Officer C believed that Mr X was actively resisting the attempt to arrest him and given his behaviour, he may assault the officers by kicking them or hitting them with his head.
17. Officer C says he took Mr X to the ground to prevent him from breaking away or assaulting them.
18. The law allows Police officers to use necessary force to overcome any resistance that prevents officers from carrying out an arrest process.³ Officer C believed that the arrest process was still ongoing and would only be completed once Mr X was controlled by Police.
19. Taking a person to the ground is an empty hand technique,⁴ which allows officers to control a resistant person until they can deal with them safely. Police policy allows officers to use empty hand tactics when a person is actively resistant.

The technique to take Mr X to the ground

20. Officer C explains that he used a technique that was taught as part of the training he received when he worked in the Wellington Policing Support Unit. This technique is not taught to officers as part of the Police Integrated Tactical Training (PITT) programme. Officer C could not remember the name of the technique but describes it as follow:

² A duty bag is a bag containing some of an officer's equipment and kit.

³ Section 39 of the Crimes Act, 1961.

⁴ 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person.

- The technique involves an officer facing a person, front on, and taking hold of the person's head by placing both hands behind the head.
 - The person's head is then pulled in, towards the officer's body, and supported on each side by the officer's forearms.
 - This allows the officer to support and control the head, as he goes down on his knees with the person's head, simultaneously moving face down towards the ground.
21. Officer C describes the movement as slow and says he had complete control of Mr X's head throughout the entire movement. From the kneeling position, Mr X was laid onto his stomach. Officer C insists that Mr X's head did not fall to the ground or sustain any injury during this technique.
 22. In his complaint, Mr X said that the dog handler wanted to search him, and he instinctively pulled away, and the officer became aggressive and threw him to the ground. When interviewed, he said he could not remember why he came to be taken to the ground. He describes the officer as having one hand on his back and the other behind his head, forcing him headfirst towards the ground.
 23. Mr Y says he saw Police officers lifting his brother off the ground and decided to look away, he then heard a thumping sound followed by Mr X uttering an 'uh' sound.

Injuries

24. Mr X sustained a graze-like injury to his right cheek and above his right eyebrow as well as an impact injury to his left knee.
25. Officer C explains that he had control of Mr X's head throughout the downward movement and says that Mr X's head was directed with his face looking straight to the ground. He believes that if he had lost control of Mr X, or forced Mr X's head into the ground, any injury would be located in the centre of the head or face rather than to the right side of the face.
26. Officer C says he does not know how Mr X sustained these injuries and he did not notice any injuries when he put Mr X into the Police car. While on the ground, Officer C says he held Mr X by the shoulder. He told him to calm down and stop resisting and denies that he used any force to Mr X's head while he was on the ground.
27. He describes Mr X as thrashing about when he was restrained on the ground and suspects he may have injured himself by doing so.

Was the use of force justified?

28. The law allows Police officers to use necessary force to overcome any resistance that prevents officers from carrying out an arrest process, but it also requires that any force should not be used, if there is a less violent, or less forceful manner of achieving the same objective.

29. There is a conflict in the accounts of Mr X, Mr Y and Police in how Mr X came to be taken to the ground.
30. On the one hand, Mr X says he was forced headfirst towards the ground, while Mr Y says his brother was lifted up and then forced to the ground. On the other hand, Officer C says he had complete control of Mr X's head and took him to the ground in a slow and controlled manner, denying that Mr X's head impacted with the ground.
31. Officer B, who saw the technique, confirms that Officer C took control of Mr X's head and took him to the ground, in a slow and controlled manner. Officer A, who had his hand on Mr X's shoulder, similarly describes feeling Mr X going down to the ground, in a slow and controlled manner.
32. A member of the community patrol supported the officer's account in saying, *"I would describe that as a fairly standard procedure... It didn't look over the top... I recall he was pushed not thrown to the ground and it was a guided push... He was guided down to his knees and then lay face-first on the ground"*.
33. We do not believe Mr X's and Mr Y's account can be relied on as an accurate record of what had happened, as they were intoxicated and offered different versions of how Mr X came to be restrained. As Mr X did not remember what happened just before he was taken to the ground, it is likely that his memory of how he came to be taken to the ground may equally be incomplete.
34. On the balance of the available evidence, we prefer the officers' accounts and accept that the technique was a slow and controlled manoeuvre and that Mr X's head did not impact the ground.
35. In assessing the technique used by Officer C, it appears that the momentum of Mr X's body-weight moving towards the ground, even in a controlled manner, would mean Mr X was going to brace the fall by falling on one or both of his knees. We believe this is likely how Mr X sustained (at least) the injury to his knee.
36. The Authority is concerned that the technique is dangerous, as the force of any downward movement by using a person's head as leverage would place strain on their neck. The risk of injury would be amplified in cases where a person is intoxicated and resisting by pulling and moving about in the downward movement. Other factors such as the degree of force and speed with which the manoeuvre is executed are also risk variables that could lead to serious injury. We do not think the technique is a safe way of taking a handcuffed person to the ground.
37. Police told us that they do not train taking someone to the ground by their head when handcuffed. The technique referred to by Officer C was likely an 'arrest drill from a skirmish line' where officers carry out arrests in mass public disorder events. This technique involves stabilising an offender's head, but it requires that at least two other officers be present to assist with the manoeuvre. It is the role of these two officers to control an individual's arms and upper body, limiting the potential of any injury to the neck or head.

38. Officer C believes that Officer A had control of Mr X's shoulder and he assisted him in controlling Mr X in the downward movement. Officer A's account does not support this. He said that he was turned away from Mr X, focussed on opening the patrol car and his hand was only resting on Mr X's shoulder when he felt him turning around. When Officer A turned around, Mr X was already going downward, although in a controlled manner. There was no communication from Officer C about what he intended to do or how Officer A should assist him.
39. This technique is not a safe way of taking a handcuffed person to the ground. The risk of a neck injury is amplified where an arrestee is intoxicated and actively resisting. A safer option open to Officer C was to ask Officer A to first help him to safely place Mr X on the ground, before moving his patrol bag.
40. We believe that Mr X was resisting the arrest and Officer C was justified in taking him to the ground. The technique used by Officer C was however inappropriate, and any risk posed by Mr X could have been better managed by having Officer A assist in taking Mr X to the ground in a safer manner.

Tactical options report should have been completed

41. Police "Use of Force" policy requires officers to report the use of force in circumstances that result in a person falling to the ground during arrest.
42. Although we accept that Mr X was taken to the ground in a controlled manner, the movement did cause Mr X to fall to his knee, sustaining an injury.
43. Officer C did not complete a tactical options report (TOR) following the incident.⁵ He said he did not see any visible injuries when he put Mr X into the Police car.
44. Both Officers A and D told us that they noticed Mr X had visible injuries when he was in the rear of the Police car, before being taken to the Police station. Officer D was the acting Sergeant and says he arrived after the arrest and spoke to Mr X while he was seated in the rear of the Police car.
45. Officer C says he assisted with putting Mr X into the Police car and secured his seat belt. Officer A drove off but had to stop after a short distance because Mr X managed to unbuckle his seatbelt. Officer C also stopped and assisted a second time with securing Mr X's seatbelt.
46. We believe it is unlikely that Officer C did not notice Mr X's facial injuries because two of his colleagues did notice these injuries while Mr X was seated in the back of the Police car and Officer C assisted twice in securing Mr X's seat belt.
47. Officer C should have completed a TOR.

⁵ An officer is 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.

The use of inappropriate language by Police

48. In his complaint, Mr X said that the dog handler called him a *“little shit”* and said to him, *“I’m not like the other Porirua Police, I will fuck you up before I return you home.”*
49. Mr Y says a Police officer approached his brother and said, *“oi you cheeky c**t”*.
50. When interviewed, Mr X told us that he does not remember what he said to the officers or what they said to him.
51. Both Officers A and C deny that they or any other officers swore at or used any inappropriate language in speaking to Mr X.
52. Given the different and material conflicts in the accounts of Mr X and Y and their level of intoxication, we cannot rely on their accounts as an accurate record of the events. We accept Officer A and C’s accounts that they did not swear at or use inappropriate language when they spoke to Mr X.

FINDINGS ON ISSUE 1

The Authority found that Officer C was justified in taking Mr X to the ground.

The technique used by Officer C was inappropriate, and any risk posed by Mr X could have been better managed by having Officer A assist in taking Mr X to the ground in a safer manner.

Officer C should have completed a tactical options report.

Police did not use inappropriate language when they dealt with Mr X.

ISSUE 2: DID POLICE APPROPRIATELY CARE FOR AND DEAL WITH MR X AFTERWARDS?

Medical assistance

53. After being put into the Police car, Mr X was still aggressive. Officer A decided to take him to the Police station where he could decide on how to best resolve the matter.
54. In his complaint, Mr X said that he told Police that he did not have a father to care for him, and upon saying this, one of the officers laughed at him.
55. Officer A says that Mr X had calmed down on the way to the Police station and told him about the difficulty he has in not having a father in his life. Officer A knows the whānau from dealing with them several times. Officer A says, he told Mr X that he understood because he also did not have a father when he grew up. Officer A told Mr X to focus on the amazing work his mother was doing in caring for him and his two brothers. Officer A denied laughing at Mr X as did the other officers.
56. At the station, Mr X was taken into the reception area of the custody unit but not detained in a cell.

57. Officer A learned that the community patrol car was not damaged and decided to make a youth aid referral and take Mr X home. Officer D, who has a good, ongoing relationship with Mr X decided to wait with him, while Officer A went to phone Mr X's mother.
58. In interview, Mr X said that he was not offered any medical care for his injuries.
59. Officer A says he has training and experience in paramedicine and assessed that Mr X's injuries were mostly skin injuries and not very serious. He offered medical assistance to Mr X who declined. This was confirmed by Officer D, who says after Mr X declined, he told Police that he liked the look of the blood and that he enjoyed looking at gore videos on the internet.
60. When interviewed, Mr X remembers telling Police he liked the look of the blood. We believe this substantiates what the officers said, and it is likely they offered Mr X medical treatment and he declined.
61. Police policy prescribes that all impact head injuries must be examined by a medical professional. We accept that Mr X was taken to the ground in a controlled manner and that his head did not impact the ground.

Police contact with Ms Z

62. Officer B says, after learning that Mr Y was not involved in any offending, he offered to give him a ride home. Mr Y agreed to this but did not want the officer to go up to the house and he asked to be dropped off near the house.
63. Mr Y told his mother, Ms Z, that Mr X had been arrested and was with Police.
64. Ms Z phoned the Police call centre and was told that an officer would call her back.
65. Officer A phoned Ms Z and says he told her what had happened, and that Mr X had been arrested. He says Ms Z was happy for Mr X to be brought home once he had calmed down. Ms Z denies saying this and wanted Mr X to be brought home, immediately.
66. Twenty-four minutes after the call, Officer A arrived at the family home with Mr X. Ms Z recognised Officer A from previous interactions and described him as a professional and kind officer to deal with.
67. Ms Z saw Mr X's injuries and asked Officer A how they came about. She wanted to know who did this to her son. She says the officer did not tell her what happened, but merely said he would not be charged. Ms Z says she got the impression that he was *"covering for the officer who did this"*.
68. Officer A says he spoke to Ms Z for about 5-10 minutes and told her what had happened. The officer says he did not think Ms Z wanted to make a formal complaint about what had happened to Mr X and he thought her disappointment was more about Mr X coming to Police's attention again.
69. Officer A says he got called away to another job and might have left a little abruptly.

70. Ms Z told us that Officer A invited Mr X to come to the Police station at any time to talk to him if he felt like he needed someone to talk to.
71. Although we found both Officer A and Ms Z credible witnesses, we prefer the view of Officer A. Officer A showed genuine concern for Mr X's wellbeing, and we do not think he had any reason to purposefully withhold information from Ms Z. In our view the difference between the accounts of the two of them is likely to have been a misunderstanding on the part of Ms Z as to exactly what was said.

FINDINGS ON ISSUE 2

Police offered appropriate medical treatment to Mr X.

Officer A adequately dealt with Ms Z and informed her of what happened when Mr X was arrested.



Judge Colin Doherty

Chair

Independent Police Conduct Authority

29 July 2021

IPCA: 20-4945

Appendix – Laws and Policies

USE OF FORCE

Law

72. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use “such force as may be necessary” to overcome any force used in resisting the law enforcement process unless the process “can be carried out by reasonable means in a less violent manner.”
73. Section 40 of the Act also states that Police may use “... such force as may be necessary to prevent the escape of [someone who] takes to flight to avoid arrest”.
74. Section 48 of the Act states: “Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances, as he or she believes them to be, it is reasonable to use.”

Police policy

75. 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), OC spray, batons, Police dogs, Tasers and firearms.
76. 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.
77. 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.
78. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.

79. 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)).
80. A key part of an officer's decision about 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.
81. 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 takes precedence, and every effort must be taken to minimise harm and maximise safety.
82. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

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.

We are not part of the Police – the law requires us 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 findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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. At significant points in the investigation itself and the preparation of the report, the Authority conducted audits of both process and content.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz

