

# Police use of force in Waharoa justified

## Summary of the Incident

1. On 11 September 2020, Police attended a family-harm incident after Mr Z struck a relative over the head with a glass bottle. Mr Z also broke windows at the relative's house by punching them with a bare fist.
2. Police knew who Mr Z was and went to his home to arrest him. Officers A and B went inside and found Mr Z on a bed underneath a pile of clothes. They noticed his hand was bleeding and believed this was caused when he punched the windows at the relative's house. Officers C and D waited outside at the back of the house.
3. Ms Y and Ms X are sisters; Ms X is married to Mr Z, but Ms Y was present when Police arrived. Ms X came soon after, during the arrest process. They say Officer A used inappropriate language and unjustified force on them.
4. Ms Y says Officer A was rude to her when he searched the house for Mr Z. She asked him for his name and police badge number, and he swore at and threatened her. She says Officer A tackled her to the ground, causing an injury to her right shoulder.
5. According to Ms X, Officer A also stopped her from speaking to her husband, Mr Z, after Police detained him. She says Officer A swore at her and slammed her to the ground, causing her to fall on her stomach. Ms X was pregnant and says that Officer A was on top of her when he restrained her. She suffered bleeding after the incident.
6. Ms X further says that when she was restrained on the ground, Mr Z became angry and got out of the Police car. He was then slammed into the ground by several officers and pepper-sprayed.<sup>1</sup> Ms X says Officer A walked over to Mr Z and struck him in the face.
7. Ms Y says the family suspects Police might also have pepper-sprayed a dog. When the children played with the dog the following day, they suffered secondary contamination.

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<sup>1</sup> Also known as oleoresin capsicum or OC spray.

## Issues examined by the Authority

- Issue 1:** Was the force used against Ms Y justified?
- Issue 2:** Was the force used to arrest Ms X justified?
- Issue 3:** Was the force used against Mr Z justified?
- Issue 4:** Did Police use inappropriate language towards Ms Y or Ms X?
- Issue 5:** Could Police lawfully search the house for Mr Z?

## The Authority's Findings

8. The force used against Ms Y and Ms X was justified.
9. The Authority also found that:
  - a) Mr Z was not tasered, pepper-sprayed or punched.
  - b) The use of force in taking Mr Z to the ground was justified.
  - c) The use of pepper spray to deter the dog was justified.
  - d) Police did not use inappropriate language towards either Ms X or Ms Y.
  - e) Police had the legal authority to search the house for Mr Z.

## Analysis of the Issues

### ISSUE 1: WAS THE FORCE USED AGAINST MS Y JUSTIFIED?

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10. After Mr Z was arrested, Officer A put him into the back of the Police car. Ms Y asked Officer A several times for his name and Police badge number. She says the officer told her, *"you better get out of my face before I slam you on the ground!"*
11. Ms Y, who leaned on the front passenger's side of the Police car, says that Officer A jumped out and *"full-on"* tackled her with his shoulder. According to Ms Y, they both fell to the ground and the officer got up and left, yelling, *"just fuck off, just get the fuck out of my face!"*
12. Ms Y had pain in her right shoulder. She visited a doctor who recorded that she suffered a right AC (Acromioclavicular) joint injury.
13. Ms Y does not know the name of the officer who tackled her. She describes him as the taller of the two male officers. Her sister identified him as Officer A. Officer A is the taller of the two male officers who responded to the incident.

14. Ms X says, when she arrived home, Officer A was yelling at her sister and giving her *“attitude”*. Ms X told him to *“shut up”* because her children were sleeping. She heard her sister asking Officer A for his badge number, and says he told her to *“fuck off, bitch”*.
15. Ms X says that she saw Officer A slamming her sister onto the floor. She explains that Officer A took hold of Ms Y’s arm and pulled her back, causing her to fall backwards and land on her shoulder and back. According to Ms X, this happened inside the house. She also says the other officers saw this and did nothing to intervene or stop it.
16. The versions offered by Ms Y and Ms X materially differ from each other. Ms Y told us she was tackled outside at the Police car while Ms X saw her forced onto the floor, inside the house. In her account, Ms Y explained that Ms X was not home when Police searched the house for Mr Z, and she only arrived later.
17. The officers similarly say Ms X only arrived later, when Mr Z was placed into the Police car. It was therefore impossible for Ms X to have seen what happened inside the house. Ms X does not say anything about Officer A tackling Ms Y outside at the Police car.
18. Officer A denies that he swore at or tackled Ms Y and says he does not know how her shoulder came to be injured. Officer B explains that Ms Y came to the police car when Mr Z was placed into it for a second time (see paragraph 61). According to Officer B, Ms Y held onto the top of the car’s door frame and refused to let it go, preventing him from closing the door. Officer B says he repeatedly asked her to let go of the door, but she refused to do so. He unhooked her hands from the door frame, and she fell backwards and landed on her buttocks.
19. All officers describe Ms Y as being somewhat intoxicated. After the incident, Ms Y phoned the police non-emergency number to report that a Police officer had tackled her. We listened to the recording of this call. Ms Y told the call taker that she had been drinking. From listening to the call, it appears Ms Y was likely intoxicated.
20. Officers A, B, C and D say they did not hear anyone swear at Ms Y, nor did they see anyone tackling her. Except for Officer B, the other officers present did not see Ms Y fall.
21. Given the contradictions in the versions of Ms Y and Ms X and because they identified the wrong officer as having used force against Ms Y, we cannot accept these versions as an accurate record of what happened. We believe they identified Officer A incorrectly (in paragraph 13 above), saying that the officer who used the force, was the taller of the two officers (this being Officer A). However, from the officers’ accounts, Officer B used force on Ms Y (he is the shorter of the two male officers) while Officer A used force to restrain Ms X.
22. The officers’ versions are generally consistent, and we accept their versions of the event as more likely.
23. Section 39, Crimes Act 1961 empowers Police to use *“such force as may be necessary”* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.

Did Officer B believe, on reasonable grounds, that Ms Y was using force to resist a lawful process?

24. Officer B explained that Ms Y was preventing him from closing the Police car's door and the force he used (i.e., unhooking her hands) was for the purpose of closing the door. The use of force under section 39 is not limited to overcoming resistance from a person who is being arrested but extends to the use of necessary force against others attempting to forcefully interfere with a lawful process or an arrest.
25. In objectively assessing the facts, we believe that the closing of the Police car's door, after Mr Z had been arrested and placed into the car, was a relevant process which formed part of his arrest. Ms Y was interfering with that lawful process when she held onto the Police car's door, preventing Officer B from closing it. For this reason, we accept that Officer B believed, on reasonable grounds, that Ms Y used force to resist a lawful process.

Was Officer B's use of force proportionate and reasonable in the circumstances?

26. Officer B says he did not intend or foresee that Ms Y would fall when he unhooked her hands. He merely wanted to loosen her grip so that he could close the door. He says she caused herself to fall because she pulled backwards and lost her balance and suspects this was because she was intoxicated.
27. Police policy requires officers to consider other tactical options such as communication before using physical force. Officer B says he asked Ms Y several times to let go of the door, but she refused to do so.
28. We accept that the only force Officer B used was to unhook Ms Y's hands. We believe that the force used was reasonable and proportionate to the resistance Ms Y was offering.

**FINDING ON ISSUE 1**

The force used against Ms Y was justified.

**ISSUE 2: WAS THE FORCE USED TO ARREST MS X JUSTIFIED?**

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29. Ms X is married to Mr Z and says that she asked Officer B if she could speak to Mr Z after Police arrested him.
30. Ms X says while walking towards Mr Z to speak to him, Officer A came between them and told her to leave. She refused to leave, and Officer A grabbed her and pushed her towards one of the Police cars. She pushed him away and told him not to touch her.
31. She walked towards Mr Z again and Officer A slammed her into the ground, causing her to fall on her stomach.
32. According to Ms X, Mr Z yelled at Officer A to get off her because she was pregnant. He paid no attention and only got off her when Ms Y also told him that she was pregnant.

33. Ms X was arrested for assaulting and obstructing Officer A and was later released on a formal warning.
34. Ms X says she suffered bleeding after the incident and was sent by her midwife for an ultrasound scan. We looked at Ms X's medical record and there was nothing to indicate that the bleeding directly resulted from abdominal trauma caused during the incident, or that any harm had occurred to the baby.
35. Ms Y, on the other hand, says she saw Ms X come running from the house. This was the first time she saw Ms X since Police arrived at the house. She did not know where Ms X came from. She says Ms X was *"all fired-up about Mr Z getting arrested"* and ran past her to the Police car where Mr Z was. She heard Ms X shouting at Police to let Mr Z go.
36. Ms Y (who believes Officer A had just tackled her) says she looked up and saw Ms X also getting tackled to the ground.
37. Ms X says that Officer A was the officer who forced her to the ground.
38. There is a conflict of accounts with both Ms Y and Ms X saying that Officer A forced each of them to the ground at about the same time.
39. Given Ms Y's version, it would be impossible for Officer A to be at two places at very near the same time in the chronology of these events. We believe that the Police version is more likely, where Officer B dealt with Ms Y and Officer A dealt with Ms X.
40. All of the officers say they did not know Ms X was pregnant until after she was restrained.
41. Officer A says Ms X was intoxicated and verbally abusive. He had arrested Mr Z several times before and believes this is why Ms X identified him. He told Ms X to go back inside, and she told him to *"fuck off"*. Officer D was present and said that Ms X told Officer A, *"I remember you! I fucking hate you!"* and pushed him hard in the middle of his chest, causing him to step backwards.
42. Officer A says even though Ms X assaulted him by pushing him, he did not want to arrest her. Police's objective was to arrest Mr Z and Officer A warned Ms X to stop her behaviour.
43. Ms X again swore at Officer A and again tried to push him out of the way; because verbal communication was unsuccessful, Officer A arrested her.
44. As outlined in paragraph 23, Police can use necessary force to overcome any force used in resisting a lawful process or an arrest.

*Did the officer believe on reasonable grounds that Mr X was using force to resist arrest?*

45. Officer A says he told Ms X that she was under arrest, and he placed a handcuff on one of her wrists. She forcefully ripped her other hand away and started to flay her free arm. She pulled away from him. Officer A believed Ms X was actively resisting his attempt to arrest her. Officer

A also says she refused to comply with the instructions he and Officer D gave her to stop resisting. Officer D assisted with the arrest and confirmed this.

46. We agree, Ms X was actively resisting Officer A's attempt to arrest her.

Was Officer A's use of force proportionate and reasonable in the circumstances?

47. Officer A believes it was necessary to take Ms X to the ground where she could be safely handcuffed. He held onto Ms X's handcuffed hand and says he tipped her over. He describes the move to the ground as slow and controlled, describing the force as trivial. According to Officer A, this is when Ms X first said she was pregnant.
48. Officer D says that Ms X went on her knees herself when Officer A moved her handcuffed arm behind her back. She was then tipped on her side and rolled onto her stomach. She similarly describes it as a controlled movement. Officer C, who saw the arrest, also describes Ms X going to her knees voluntarily. We accept what Officers A, C and D say about Ms X being taken to the ground in a slow and controlled manner.
49. The officers further say that Ms X was handcuffed without any other force and that she was not restrained by anyone sitting or kneeling on her.
50. Officer D took custody of Ms X and says she asked her twice if she was ok or if she wanted to see an ambulance. Ms X told her that she was fine and declined any medical assistance.
51. The evidence does not support the claim that Ms X was tackled or slammed to the ground. We are satisfied that the officers' versions of the event are accurate.

**FINDING ON ISSUE 2**

The force used to arrest Ms X was justified.

**ISSUE 3: WAS THE FORCE USED AGAINST MR Z JUSTIFIED?**

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52. Mr Z forced his way out of the Police car when Ms X was arrested.
53. Officer C was in the back of the Police car and say Mr Z shoved her with his upper body and swung his legs towards her, lightly contacting her with his knee. This contact caused her to exit the Police car in a kneeling position.
54. Mr Z exited the Police car and pushed past Officer C. Mr Z was making his way to where Officers A and D were restraining Ms X.
55. Ms X says the family dog ran towards Mr Z and he tripped and fell over it. Several of the officers then jumped onto Mr Z and slammed him to the ground. Ms X says that the officers pepper-sprayed Mr Z when he told them to get off her.
56. Ms X says that while Mr Z was handcuffed, Officer A walked to him and smacked or punched him in the face.

57. Officer C says she called to Officer B for help when Mr Z got out of the Police car. Officer B saw Mr Z making his way to Officers A and D, who were restraining Ms X on the ground. He was concerned that Mr Z might attack the officers by kicking or stomping them.
58. Officer B took hold of Mr Z's shoulder, and foot tripped him to take him to the ground. Officer B says he held onto Mr Z and guided him down in a controlled manner. All officers described this as a controlled movement and said that Mr Z did not fall to the ground with any force.
59. Officer B explained the force used was trifling. He did not consider filing a tactical options report for taking Mr Z to the ground. Police policy requires officers to report any force used where a person falls to the ground. Officer B says that Mr Z did not fall to the ground. He guided Mr Z to the ground in a slow and controlled manner.
60. All officers denied that Mr Z was pepper-sprayed or that Officer A slapped or punched him at any stage.
61. Mr Z was lifted and placed back into the rear of the Police car without further incident.
62. This is when Ms Y came to the door of the Police car and prevented Officer B from closing it. Ms Y did not say that Police pepper-sprayed, smacked, or punched Mr Z.
63. We requested an interview with Mr Z to consider his account of what had happened. He has not responded to our request. We can therefore only rely on the available versions of events in forming our view.
64. Police spoke to Mr Z in prison. He told Police that he was tasered and pepper-sprayed before being punched in the face by an unknown officer. Mr Z said that he received a bruised left eye and face from being beaten. Mr Z, however, refused to make a statement or sign any documents to confirm the truth of what he was saying.
65. A Police investigation found that none of the officers' tasers were fired during the incident. A photograph taken of Mr Z after his arrest showed no marks or bruising to his eye or face.
66. We are satisfied that the officers' versions of the event are accurate.
67. In assessing the use of force by Officer B in restraining Mr Z, it appears that there are elements which suggests that the force might be justified under both sections 39 (which allows for force used to overcome resistance to a lawful process or arrest) as well as section 40 (allowing for force used to prevent escape by someone who flees after an arrest). Although we considered these, on the facts available to us, we assessed the force used by Officer B was in defence of Officers A and D. The legal test for self-defence is subjective, based on the officer's view of the circumstances and their purpose in using the force; and objective about whether the force was reasonable in the circumstances, as the officer believed them to be.

*What were the circumstances as the officer believed them to be?*

68. Officer B outlined his risk assessment of the situation as follows:

- He described Mr Z as a “big-big man” with a propensity to use violence, placing his colleagues at risk.
- He believed, even though Mr Z was handcuffed, he could still stomp on, or kick his colleagues who were on the ground, in front of Mr Z, busy restraining Ms X (his wife).
- He says Mr Z was extremely agitated and angry when he got out of the Police car and as he made his way to where Ms X was restrained, he shouted, “you can't fucking touch my partner”.
- Officer B believed that it was necessary to control Mr Z quickly to prevent him from possibly causing harm to his colleagues by assaulting them.

69. We accept Officer B believed that Mr Z presented an imminent risk of harm to his colleagues.

Was the officer's use of force against Mr X to defend himself or another?

70. Officer B says he decided to take Mr Z to the ground to prevent him from harming Officers A and D who were busy restraining Ms X. Given Mr Z's conduct, we accept that Officer B used the force he did in defence of his colleagues.

Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be?

71. We accept that Mr Z was taken to the ground in a slow and controlled manner with little force. We think that the force used was proportionate to the level of threat Mr Z posed and accept that reasonably, there were no other less forceful options available to Officer B in that unfolding and fast-moving moment. We agree the force used was reasonable and proportionate in the circumstances as the officer believed them to be.

**Was Police justified in using pepper spray on the dog?**

72. When Officer B took Mr Z to the ground and held him down, the family dog charged at him.
73. Officer B instructed Officer C to use her pepper spray to avert an attack by the dog. Police policy allows officers to use pepper-spray to deter attacking animals.
74. Officer C deployed a single burst of pepper-spray, after which the dog retreated. She completed an animal tactical options report after the incident.
75. Officer C says she did not inform the family that the dog was sprayed because they saw her spraying it.
76. Ms X told us that she saw her dog being pepper-sprayed.

**FINDINGS ON ISSUE 3**

Mr Z was not tasered, pepper-sprayed or punched.

The use of force in taking Mr Z to the ground was justified.



The use of pepper spray to deter the dog was justified.

#### ISSUE 4: DID POLICE USE INAPPROPRIATE LANGUAGE TOWARDS MS Y OR MS X?

##### Inappropriate language towards Y

77. Ms Y says one of the male officers, whom she describes as the taller of the two male officers (this being Officer A), was disrespectful to her and raised his voice when he spoke to her. She asked him for his name and police badge number, but the officer refused to give these to her.
78. Ms Y says the officer told her to “*fuck off*” or he would “*knock her out*”. She says the officer also told her that she should not be looking after children in her state, referring to her intoxication.
79. Officers A and B say the conversation with Ms Y was uneventful and denied that anyone spoke to her in a raised voice. Officer C, who waited outside the house, says she could hear some conversation inside the house but did not hear anyone speaking with a raised voice or yelling. Officer D, who was waiting at the rear of the house, says she could not hear what was going on inside the house and did not hear any raised voices.
80. Ms Y says she told the officer that she would make a complaint against him, but he merely laughed at her and said, “*good on you.*” All of the officers deny that this happened.

##### Inappropriate language towards X

81. Ms X says she knows Officer A from previous encounters and told us that he does not like her nor “*a lot of Māoris in Waharoa*”.
82. She said when Officer A stopped her, he told her, “*oh just fuck off. I'm sick of your shit, bitch!*” so she told him to “*shut up*” and carried on walking.
83. Ms Y, who was outside at the time, did not say anything about Police swearing at Ms X.
84. Officer A denied that he swore at or said this to Ms X. None of the other Police officers present heard this being said to Ms X.
85. Officer A does not accept Ms X’s claim that he does not like people of Māori ethnicity and says he is of Māori descent himself. All other officers said that Officer A has never said anything biased or untoward about Māori.
86. Ms X and Ms Y’s versions differ from those of the officers present. There are also significant material conflicts between the versions of Ms X and Ms Y that cannot be reconciled. On balance, we accept the versions of the four officers.

#### FINDING ON ISSUE 4

Police did not use inappropriate language towards either Ms X or Ms Y.

## ISSUE 5: DID POLICE HAVE LEGAL AUTHORITY TO SEARCH THE HOUSE FOR MR Z?

87. Ms X says she heard Ms Y telling Police not to enter the house and asked them if they had a search warrant. She says Officer A pushed past Ms Y, forcing his way into the house to look for Mr Z without a search warrant.
88. Police told us that they asked Ms Y if Mr Z was home and if they could come inside to look for him, this is also what Ms Y told us. She says she agreed to Police searching the house for Mr Z. According to both Police and Ms Y, Ms X was not present at that time. We accept this version as an accurate account of what happened.
89. The law allows Police, under certain circumstances, to search a property without a warrant if they have appropriate consent from a person able to give such permission. This was one of those occasions.

### FINDING ON ISSUE 5

Police had the legal authority to search the house for Mr Z.



**Judge Colin Doherty**

Chair

Independent Police Conduct Authority

**19 August 2021**

**IPCA: 20-4874**

## Appendix – Laws and Policies

### USE OF FORCE

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#### Law

90. Section 39 of the Crimes Act 1961 allows law enforcement officers to use reasonable force to execute 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."
91. Section 48 of the Act states: "Everyone is justified in using, in 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."

#### Policy

92. 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 control holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
93. 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.
94. 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.
95. 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.
96. 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).

97. A vital part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential acts 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.
98. 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.
99. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

## CONSENT SEARCHES

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### Law

100. Section 92 of the Search and Surveillance Act 2012 provides for Police officers to search without a warrant a place, vehicle, or other things in the control of a person, for a specified purpose if such a person consents to such a search.

### Policy

101. Police policy 'Part 4 – Consent searches' guides officers on when and how to conduct searches according to section 92 of the Search and Surveillance Act 2012. The policy outlines that officers must have a reason to justify asking for the person's consent to a search.
102. Officers may ask a person to consent to undergo a search, or a search is made of a place, vehicle, or other things in the person's control for one or more of these purposes:
  - to prevent the commission of an offence.
  - to protect life or property or to avoid injury or harm.
  - to investigate whether a crime has been committed.
  - any purpose in respect of which you could exercise a power of search conferred by an enactment if you held a particular belief or suspicion specified in the enactment.
103. A person who consents to a search of themselves or a place, vehicle or thing in their control may withdraw their consent at any time. In this situation, an officer should stop the search immediately unless a warrantless search power can be invoked to continue the search.

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which Judge Colin Doherty chairs.

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 law enforcement and related roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives 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 incident scene, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

Upon completing an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and the preparation of the report, the Authority conducted audits of both process and content.

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