



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Unjustified arrest for obstruction in Wellington

Summary of the Incident

1. In the early hours of 27 February 2021, Mr Z walked behind two Police officers in central Wellington. The officers were on their way to a 150-person fight involving gang members.
2. Mr Z was about two metres behind the officers and matched their pace for around 150m. The Police officers say that Mr Z was purposefully following them and was a threat to their safety. Mr Z was warned for obstruction but continued to walk behind them.
3. Both Officers A and B arrested Mr Z, who was taken to the ground. He was then escorted further up the road to be picked up by the custody van. The interaction between Mr Z and Police, as well as the arrest, was witnessed by Mr Y.
4. While waiting for the van to arrive, Mr Z was taken to the ground by Police a second time. Mr Z told us that Officer A made a racist comment to him during this time.
5. Mr Z was released from Wellington Central Station an hour after his arrest with a Formal Written Warning for obstruction.
6. That afternoon, Mr Z went to the hospital as he thought his head had impacted the concrete at some point during the arrest process. He was diagnosed with a head injury and took several weeks to recover.
7. Mr Z made a complaint to the Authority that he was arrested unlawfully, excessive force was used, and Officer A made a racist comment towards him.
8. Police investigated and determined that the arrest was lawful, the force used by Officers A and B was appropriate, and no racist comments were made by Officers A or B. The Authority conducted their own independent investigation into the matter.

Issues examined by the Authority

- Issue 1:** Was Mr Z obstructing Police?
- Issue 2:** Was the use of force against Mr Z appropriate?
- Issue 3:** Was Mr Z treated appropriately in Police custody?
- Issue 4:** Did Officer A make a racist comment towards Mr Z?

The Authority's Findings

9. The Authority found:

- 1) Mr Z was not obstructing Officers A and B and should not have been arrested or issued a Formal Written Warning for doing so;
- 2) the use of force was unjustified as the arrest of Mr Z was not lawful; and
- 3) we were unable to determine whether Officer A made a racist comment towards Mr Z.

10. We also found:

- 4) Mr Z was not resisting the unlawful arrest;
- 5) Officers A and B had less forceful options available when arresting Mr Z;
- 6) Officer B should have reported the visible head injury to transporting officers for Mr Z to receive appropriate medical care;
- 7) Officers A and B should have completed a Tactical Options Report;¹
- 8) we are satisfied that Officers D and E were unaware of the injury and therefore it was reasonable for them to take Mr Z to the custody unit;
- 9) Mr Z's rights were upheld while he was in custody; and
- 10) Officers F and G should have been able to see Mr Z's visible head injury and sought medical care accordingly.

¹ A Tactical Options Report (TOR) is a report that an officer is required to complete when he or she has used 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.

Analysis of the Issues

ISSUE 1: WAS MR Z OBSTRUCTING POLICE?

11. Mr Z told us that his involvement with Police started when he was talking to two officers on the footpath at a busy intersection on Courtney Place. He told us he was chatting to them when one of the officers told him to leave and stop wasting their time.
12. Officer C was one of the officers that Mr Z was speaking to. He was in a larger group that included Officers A and B. Officer C told Police that Mr Z approached and started asking him questions about Police professionalism and saying that he had a right to talk to Police as he was a taxpayer. The conversation lasted about five minutes and was witnessed (but not heard) by Officers A and B.
13. Officer C said that Mr Z was demanding his attention and that he could not do his job (maintaining public order) properly with him there. He warned him for obstruction and asked him to step away. Officer C said that Mr Z moved back about one metre and stared at him. Officer C was then called to another job and left. He did not see Mr Z again.
14. A short time later, Officers A and B were called to a large fight that had broken out further along Courtenay Place. They chose to walk to the job as it would be quicker than driving.
15. Mr Z said that he saw Officers A and B leave. He told us that he was on his way home for the evening and wanted to get food on the way, which was in the same direction as Officers A and B went.
16. He walked behind them and was filming himself using the front camera on his phone. He told us that he was doing this because he was nervous following the interaction he had just had with Police, given he was told off for talking to them.

How close was Mr Z walking?

17. Mr Z said that he was walking nine to ten metres behind the officers, however, Officers A and B say he was walking within arm's length.
18. CCTV captured parts of the incident and shows that (at least for the time depicted) Mr Z appeared to be walking about two metres behind Officers A and B.² Both Officers A and B say that Mr Z was warned by Officer B to not follow so close, and that the distance was concerning to them.
19. Police said that Mr Z was not credible due to his assessment of the distance being incorrect and his supposed level of intoxication. However, we found Mr Z was credible during our investigation, for the following reasons:

² The CCTV footage was captured on Wellington City Council CCTV cameras. These cameras are designed for city safety and work on a rotating basis. Only some sections of the incident were captured on these cameras and in low quality. This includes 15 seconds prior to the arrest, the arrest itself, and the ten seconds following.

- Mr Z tried to obtain the CCTV footage the following day to provide it with his complaint. He was unsuccessful in doing so but urged the Authority to request it. We believe it is unlikely Mr Z would have requested the CCTV footage be considered if he was purposefully being deceitful about his behaviour and the distance he was behind officers.
 - Although Mr Z's assessment of distance was incorrect, he was never inconsistent in his re-telling of the event.
 - Mr Z had been drinking; however, custody documents recorded Mr Z had "slight" levels of intoxication, CCTV does not show that he was overtly intoxicated, and Mr Y said that Mr Z was not drunk.
 - Mr Z's video recording captures the encounter between Mr Z and Officers A and B. On our review of the recording, Mr Z sounds coherent with no noticeable slurring of words or delay in his responses.
20. The event was witnessed by Mr Y from outside a bar on Courtenay Place. Mr Y is a bar manager and a friend of Mr Z's. He was not under the influence of alcohol or drugs at the time, and we accept he is a credible witness.
21. Mr Y told us that he was outside talking to a bouncer when he saw Mr Z walk past his bar on the opposite side of Courtenay Place. Mr Y told us that Mr Z was walking close enough to the officers that: *"they looked like they're going together somewhere"*.
22. Based on the CCTV and Mr Y's account, we believe that Mr Z was likely walking about two metres behind Officers A and B.
23. Officer B told us that he found the distance and pace Mr Z was following concerning, and not something that a member of the public would ordinarily do. He says that when he asked Mr Z to not follow so close, Mr Z: *"appeared quite intoxicated and quite agitated... he kept saying that we had no right to talk to him and no right to do this."*
24. We do believe it is possible Mr Z anticipated that Officers A and B may have found his behaviour annoying. This was evidenced by his interaction with Officer C, his decision to film himself, and following Officers A and B closely. However, we do not think Mr Z was trying to threaten or obstruct Police for the following reasons:
- he was not inciting violence or obstruction from any other members of the public;
 - he was not using threatening language;
 - based on CCTV footage and the video of Mr Z, he did not display threatening body language;
 - he had empty hands (besides his cell phone); and
 - he did not impede the path of Officers A or B.

25. Therefore, we do not believe that Mr Z would have reasonably anticipated that his actions could, or would, result in being arrested.

What occurred during the arrest process?

26. Officer A warned Mr Z once for obstruction before he was arrested. We know this because Mr Z's video captures the warning, but as it is 47 seconds long it does not capture the entire time he was behind the officers.
27. Mr Z's video shows that after about 120m of Mr Z walking behind the officers, Officer A said to Mr Z: *"if you continue to follow us, I'll arrest you"*.
28. Mr Z looked confused and replied to Officer A by asking *"what?"*. Officer A clarified by saying: *"do you understand what I'm saying? If you continue to follow us around town, I'll arrest you"*. Mr Z told the officers they had *"no right"* to arrest him.
29. Police do not have to warn an offender that they will be arrested. For obstruction, officers are taught it is best practice to try and warn someone of their behaviour so they have the opportunity to stop obstructing.³ However, this is not a requirement to arrest. From this video we know that Officer A followed best practice and warned Mr Z prior to arresting him for obstruction.
30. The video shows Mr Z suddenly stepped backwards. Mr Z told us that Police tried to grab for his phone. CCTV shows that Officers A and B appeared to push past Mr Z and walk back the way they had come from and in the opposite direction to the fight they were attending.
31. We showed Officers A and B the CCTV footage. When asked why they turned and walked in a different direction to where they were heading, Officer B could not recall. Officer A said he could not remember but it would have been one of three reasons:
- the event was called off;
 - to get their public disorder batons from their Police car; or
 - to test if Mr Z would follow them.
32. We believe that Officers A and B were most likely testing if Mr Z would follow them, given that both officers indicated that Mr Z was a distraction and their primary concern at the time. Records do not show the event being called off, and although Officers A and B did retrieve their batons from the vehicle after arresting Mr Z, neither told us of their intent to do this prior to Mr Z's arrest.
33. CCTV shows Mr Z turned and followed Officers A and B for ten seconds. During this time, Mr Z focused on his phone camera and said: *"look at this, this is what our taxpayer dollars go towards"*. Mr Z told us he made the *"somewhat cheeky remark"* because he was so taken back by Officer A grabbing at him.

³ This can only occur if there is enough time to safely warn the offender.

34. Mr Z was then arrested for obstruction. He told us that the warning recorded was the only warning given.
35. Officers A and B each told us that they warned Mr Z for obstruction no less than five times between them.
36. Mr Y told us that he saw Mr Z with Police immediately prior to the arrest. He says he saw Police arrest Mr Z, but did not see Police turn around to warn him:

“They were just rushing to somewhere so that’s why I thought they were taking him somewhere and then they just turned around, they just snap and he must have said something or I don’t know. Turn around and they snap at him and arrest him.”

37. We are unable to determine how many times Mr Z was warned for obstruction. However, the video footage confirms that Mr Z was warned at least once by Officer A, prior to being arrested.

Was Mr Z a threat to Officers A and B?

38. Officers A and B arrested Mr Z for obstruction. They justified the arrest based on Mr Z’s behaviour being threatening, and therefore distracting them from their primary duty.
39. Officer A said that Mr Z stopped him from achieving his duty as he was: *“following in a way that made me fear for mine and my colleagues safety, which then in turn pulls you away from doing the job you’re going to.”*
40. Officer B said he assessed the risk that Mr Z posed and also believed he was unable to do his job with Mr Z following him. When asked what he thought Mr Z might do, Officer B said: *“he was going to hurt, do something, that was going to either hurt myself or to [Officer A] and that might be [a] possible push, a shove from behind”*. This was based on Mr Z walking close to them and matching their pace, despite the warnings given prior. Officer B told us that it is uncommon for people to continue their actions once warned by Police multiple times, even when they are intoxicated.
41. Officers A and B are Police Support Unit (PSU) staff.⁴ They are trained to enter and control mass disorderly events that can often be highly volatile. Officer B had extensive experience in the PSU as both a secondary duty and full-time position. He said that in similar instances he had been taught to warn for obstruction. He told us that he believed *“if something did happen to us, [Officer A] and I would have been criticised by our superiors, I’m pretty sure we would’ve been told ‘why’d you let him get that close to you?’”*.
42. The fight that Officers A and B were attending was a potentially dangerous event. Police were on high alert as an out-of-town gang was in Wellington that evening and were believed to be at the fight. It involved about 150 people and the officers could reasonably have believed it would result in serious injuries.

⁴ PSU are considered as the primary response to large scale public order policing activities, riots, protests, and international peacekeeping. PSU staff are trained and dedicated to specifically maintaining public order.

43. However, we do not believe that either Mr Z was a credible threat (as outlined in paragraph 24) or that Officers A and B genuinely believed Mr Z was a credible threat for the following reasons:

- Officers A and B were specifically trained to deal with public disorder incidents;
- Officers A and B were together, while Mr Z was alone and not inciting others;
- Mr Z did not pose an immediate threat to their safety (as outlined in paragraph 24);
- Mr Z had not displayed physical or verbal signs of aggression to them; and
- although they believed Mr Z's behaviour was unusual as he had been non-compliant to their warnings, his behaviour (walking down the street) was not inherently threatening.

44. Therefore, we believe that arresting Mr Z was unwarranted.

Was Mr Z obstructing Officers A and B from their duty?

45. Obstruction is an offence under the Summary Offences Act 1981.⁵ To obstruct Police, Mr Z needed to intentionally hinder them from executing their duty. The duty Officers A and B were carrying out was walking down Courtenay Place to attend the fight.

46. Officer B told us that Mr Z never moved in front of them and remained behind them for the duration of the walk. During that time, Officers A and B stopped conducting their duty at the following times:

- to turn in the opposite direction and likely test if Mr Z would follow; and
- when they arrested Mr Z.

47. We acknowledge that Mr Z's conduct was possibly annoying to Officers A and B. However, Mr Z was lawfully entitled to walk down the street. He could only be obstructing Police if he was intentionally hindering their ability to do their duty, and Mr Z never obstructed Officers A and B from attending the fight (which was their duty at the time).

48. We believe that Officers A and B could reasonably have continued walking down Courtenay Place, even if Mr Z had continued to follow them. While Mr Z's presence may have been annoying to the officers, he was entitled to walk on the footpath and his behaviour, objectively assessed, did not make it more difficult for them to perform their duty.

49. Therefore, Officers A and B's reaction to Mr Z and the arrest of Mr Z (and subsequent formal written warning) for obstruction was unlawful. In our assessment of Mr Z's behaviour, given that there is no evidence that he intended to hinder Officers A and B in doing their duty, Officers A and B would not have had reasonable grounds to arrest Mr Z for any offence (including both obstruction and threatening behaviour).

⁵ Refer to paragraph 117 for law on Summary Offences Act 1981, Section 23.

FINDING ON ISSUE 1

Mr Z was not obstructing Officers A and B and should not have been arrested or issued a Formal Written Warning for doing so.

ISSUE 2: WAS THE USE OF FORCE AGAINST MR Z APPROPRIATE?

50. Because Mr Z's arrest was unlawful, all force used by Officers A and B to carry out that arrest pursuant to section 39 of the Crimes Act 1961 was also unlawful.⁶ However, because Mr Z complained about excessive force being used in the arrest and had an unexplained head injury, we deemed that further analysis was required.
51. Section 39 and Police 'Arrest and Detention' policy states that when arresting an offender, the force used must be reasonable and can only be used if it is in the least violent manner available.⁷
52. CCTV captured the initial arrest but is of low quality and at times obscured by pedestrians. The footage shows that Officers A and B arrested Mr Z by both pushing him against a wall, and then pulling him onto the pavement. Mr Z was put on the pavement lying on his side. He was held down by both officers and appeared to be lying on one arm.
53. One officer restrained Mr Z's lower body by sitting on his lower legs.⁸ The other officer manoeuvred his arms to handcuff him. Police rolled Mr Z onto his stomach, where both arms were free. They struggled momentarily to gain control of his arms, but he was successfully put into handcuffs and lifted to his feet.
54. CCTV captured Officers A and B walking with Mr Z back to the Westpac Bank, where the custody van was organised to collect him.⁹

Did Mr Z resist being arrested?

55. Both Officers A and B told us that Mr Z was resisting arrest and was not compliant when they arrested him. Officer A described Mr Z as putting up "*a hell of a fight*". He told us that because of Mr Z's resistance, they decided it was safer for both of them to arrest Mr Z. Officer A's description of Mr Z putting up a "*hell of a fight*" was not borne out by CCTV footage.
56. The CCTV footage shows Officers A and B pushed Mr Z against the wall. They said that because Mr Z was non-compliant, they took him to the ground. However, when we viewed the CCTV footage, Mr Z was pushed into the wall, and then pulled to the ground in one motion.
57. Mr Z told us that he was aware that if he actively resisted Police, they could use force. He says that he: "*was not at any point resisting arrest. I was not aggressive. I did not resist the cuffs or anything like that*".

⁶ Refer to paragraph 118 for law on Crimes Act 1961, Section 39.

⁷ Refer to paragraph 119 for policy on Arrest and Detention and paragraph 118 for law on Section 39.

⁸ Due to the quality of the footage, it is unclear which is Officer A and B during the arrest.

⁹ This branch of Westpac Bank is a common location for detainees to be collected. Westpac is closed during these hours.

58. The video Mr Z was recording of himself showed his immediate reaction to being told he was under arrest. Once Officers A and B put their hands on him, Mr Z said: *"I'm under arrest, here we go"*. His body then moved suddenly, and the video stopped as the camera hit the ground.
59. In response to the allegation that Mr Z was not resisting, Officer A told us: *"that's a lie... You can see in the video, there's an arm, even on the ground, I had to re-grab an arm."*
60. From our review of the CCTV footage, one of Mr Z's arms does come free of the officer's grip while he is being arrested. However, it is unclear why Mr Z was moving his arm (whether it was to put it behind his back to be arrested or to resist Police). At no point does Mr Z appear to actively resist Officers A and B or fight them; Mr Z was always controlled by Officers A and B and did not appear to move away from Police or use his body to resist.
61. Mr Y said that from his view, Mr Z appeared to be compliant when he was arrested but confused as to what was occurring. Mr Y told us that although Mr Z was not resisting, he was: *"obviously agitated 'cos he's just got thrown to the ground"*.
62. There is a conflict of accounts between Mr Z and Police regarding whether Mr Z resisted the arrest. However, based on the CCTV and video footage, we do not believe that Mr Z actively resisted Officers A and B.

Was Mr Z arrested in the least violent manner possible?

63. As stated above, because the arrest was unlawful, any force used in arresting Mr Z was excessive. As we have determined that Mr Z was not resisting officers, Officer A and B were not required to overcome Mr Z with force. However, given the officers' genuine belief that Mr Z was resisting a lawful arrest, we have considered whether there were less-violent options they could have used.
64. In some instances, taking an offender to the ground to execute an arrest is safer for both the offender and officers. However, from our perspective, Officers A and B had Mr Z against a wall and were in control. Because of this, we believe they could have used the following less-violent options prior to taking Mr Z to the ground:
 - tactical communication, such as asking Mr Z to place his hands behind his back;
 - telling Mr Z to lean against the wall so handcuffs could be placed on him; and
 - giving Mr Z time to comply with arrest instructions before pulling him to the ground.
65. We deem that less violent options were available to Officers A and B when arresting Mr Z and that these should have been used in the first instance.

What happened as Mr Z was walked to the custody van?

66. After Mr Z was arrested and handcuffed, he was walked by Officers A and B to the Westpac Bank for the custody van to collect him.

67. As they passed the bar that Mr Y was a manager at, Mr Z yelled for the bouncer to get Mr Y. At this time, Mr Y was aware of the situation and had witnessed the arrest but was not outside the bar as he had gone inside to tell his staff he would be absent for a short period.
68. Mr Z told us he did not know where Officers A and B were leading him, and he yelled for Mr Y as he was a: *“sober third party who could act as a witness”*.
69. Mr Z says that on the way to Westpac he told Officers A and B that he was in pain due to the way they were escorting him. He said the walking pace was increasing and at one point he tripped. He said that when he told Officers A and B about the pain, he was told they didn’t care.
70. Officer A says he does not recall Mr Z telling them that he was hurting on the walk to Westpac. However, he also says that Mr Z was: *“struggling the whole way and not making it easy for us”*. We asked Officer A what Mr Z was doing and he described Mr Z as tensing up in the handcuffs, not using his feet, and not voluntarily walking.
71. Officer B also does not recall Mr Z telling them he was in pain. He says Mr Z was verbally abusive towards them and used derogatory terms for Police. Officer B told us that sometimes pain compliance needs to be used with offenders, but in this instance, he did not hear Mr Z say he was in pain and *“would have backed off”* if he had known.
72. Again, there is a conflict of accounts between the recollection of Mr Z and that of Officers A and B. We have no reason to disbelieve either version of events and the parties’ perceptions of what happened and believe that both parties gave credible accounts of how the situation may have occurred. Because of this, we cannot determine whether Officers A and B ignored Mr Z’s comments that he was in pain.

Was force used when Mr Z was awaiting the custody van?

73. When Mr Z was taken to Westpac to be collected by the custody van, he ended up on the ground. There is no CCTV footage of this incident.
74. Both Officers A and B recall Mr Z was not being compliant outside Westpac. Officer B says that Mr Z was angry, agitated and kept trying to pull away from him.
75. Officer B says that he is unsure how it happened, but that Mr Z fell, and they both ended up on the ground. Officer B reported this in his initial documentation following the arrest and reiterated to us that it was accidental.
76. Mr Z was concerned that he was taken to the ground even though he was being compliant. He recalled the interaction outside of Westpac differently and told us that Police took him to the ground again using a *“a push and then a pull”* motion. Mr Z recalls that he was held on the ground but not that anyone fell on top of him.
77. Mr Y told us that he caught up to the group when Mr Z was seated outside of Westpac. He says that he told the officers that he saw the arrest and thought it was *“uncalled for and it was not justified”*. Officer B said Mr Y’s presence made Mr Z more *“amped up”*.

78. Mr Y was told by Officer A to leave, which he did. Both Mr Z and Mr Y said that Officer A told Mr Y that if did not leave, he could be arrested next. Officer A did not deny this but could not remember what he specifically said.¹⁰
79. Once again, there is a conflict of accounts between Mr Z and that of Police. Officer B was certain he had accidentally fallen on Mr Z. However, Mr Z did not remember that happening. We have no reason to disbelieve either party; it is possible that their recollection of the incident genuinely differs from one another as neither party would gain benefit from fabricating their portion of the story.
80. There is also a conflict as to whether Mr Z was compliant, which cannot be reconciled. However, as the arrest was unlawful, any use of force by Officers A or B following the arrest (including putting Mr Z on the ground outside Westpac) was also unlawful. We cannot clearly ascertain if Mr Z was compliant, however given the circumstances of being unlawfully arrested, it would have been reasonable for Mr Z to be confused and agitated.

How did Mr Z get a head injury?

81. As part of Mr Z's initial complaint, he sent us a photograph of his head injury and a medical certificate. The photograph shows fresh grazing and bruising to one side of his upper temple and scalp.
82. Mr Z sought medical treatment for his head injury at Wellington Hospital Emergency Department the same day as his arrest. The discharge form states that he had grazing and a contusion on the right side of his forehead and scalp, with symptoms of a significant head injury.
83. Mr Z recalled that his head had been pushed on the concrete, however he was unsure whether this occurred during the initial arrest or outside of Westpac.
84. Mr Y told us that he witnessed the initial arrest from roughly 20 metres away and saw Police with a hand on the back of Mr Z's head: "*pushing his head into the concrete*".
85. Both Officers A and B say they were unaware that Mr Z had sustained a head injury. However, Officer B had written in his initial documentation that he "*noticed that he had a graze on the side of his forehead*" but was unsure if this came from the initial arrest or the fall at Westpac.
86. Based on Mr Y's account, CCTV footage, and all accounts of the incident outside of Westpac, we believe it is most probable that the head injury occurred during the initial arrest. However, Officer B has told us that Mr Z's "*demeanour changed*" after he was on the ground outside Westpac. Therefore, we are unable to determine at which point the head injury occurred.
87. We have already said the arrest of Mr Z was unlawful and any force used against him was also unlawful. In addition, the force used on Mr Z resulted in him receiving a head injury.

¹⁰ Police can lawfully arrest an individual for obstruction if they are interfering with an arrest under section 23 of the Summary Offences Act 1981.

88. Police policy states that head injury symptoms vary from person to person and may not always be evident, which means: *“any potential head injury occurring as a result of NZ Police activities must be assessed by a medical practitioner”*.¹¹
89. Therefore, Officer B failed in his obligation to get Mr Z medical care once he noticed the graze on his forehead (regardless of whether he believed it may have been an accident). Officer B knew Mr Z had sustained an injury yet failed to call an ambulance. He then failed to tell the transporting officers of the injury when he handed Mr Z over to them. If he had done so, they would have had the opportunity to call an ambulance.

Did Officers A and B report the incident?

90. Police policy has a list of ‘reportable force’ usage that is required to be written in a Tactical Option Report (TOR) after it is used.¹² If force is ‘non-reportable’ but results in a detainee becoming injured or unwell, then the force must still be reported. Police must also report any use of force where a person falls to the ground. The timeframe of reporting the force used must be within 72 hours of the event occurring.
91. Neither Officers A nor B completed the report. Officer A told us he did not complete the report as he did not think he had to, given he deemed the arrest to be standard. He had not seen the grazing on Mr Z’s head and was unaware he had been injured.
92. Officer B said in his initial documentation after the event and during his interview, that he noticed grazing on Mr Z’s head while at Westpac. He told us that he had chosen not to write a TOR because he did not know which incident Mr Z got the grazing from (the initial arrest or outside of Westpac) and because the fall outside Westpac was an accident.
93. Officers A and B should have both completed a TOR as:
- Mr Z went to ground during their use of force; and
 - Officer B noticed that Mr Z sustained an injury while in their care, regardless of exactly when this occurred.

FINDINGS ON ISSUE 2

The use of force was unjustified as the arrest of Mr Z was not lawful.

Mr Z was not resisting the unlawful arrest.

Officers A and B had less violent options available when arresting Mr Z.

Officer B should have reported the visible head injury to transporting officers for Mr Z to receive appropriate medical care.

Officers A and B should have completed a Tactical Options Report.

¹¹ Refer to paragraph 122 – 125 for policy on head injuries.

¹² Refer to paragraphs 115 - 117 for policy on Use of Force.

ISSUE 3: WAS MR Z TREATED APPROPRIATELY IN POLICE CUSTODY?

Did transporting officers notice that Mr Z needed medical attention?

94. Officers D and E were tasked to transport people from their arrest location to the custody unit at Wellington Central Police Station. Police records show that Officers D and E were in the custody van that had been called to collect Mr Z.
95. Mr Z told us that when the transport officers arrived at Westpac, they got out of the van, and one said to him: *“Hey mate are you happy to come in the van?”*. Mr Z replied: *“I’m happy to just get away from these officers 'cos they’re scary as hell”*. He told us that the transport officer *“didn’t have to walk me to the van. He didn’t even have to touch me. He just walked behind me and I hopped in myself”*.
96. We individually asked Officers D and E about collecting Mr Z from Westpac, and they said the following:
- they could not recall any specific detainees they collected that evening. Officer D could recall it was a busy evening for them with the fight;
 - they could not recall anyone telling them the arresting officers were *“scary as hell”*, however Officer D said it is common for detainees to not speak kindly of their arresting officers when they collect them;
 - they could not recall Mr Z or his injury (even when shown a photo). However, both officers told us that visible grazes are an injury they see regularly for detainees, often from fighting or disorderly behaviour arrests;
 - they do not recall any officer telling them about a head injury, which would be expected in a handover; and
 - they had no recollection of passing any information to custody staff about a head injury and they did not make any entries in their notebooks to indicate they had done so.
97. We think it is likely Officers D and E did not see Mr Z’s injury for the following reasons:
- they had been given no information to suggest Mr Z had received a head injury;
 - Mr Z was not displaying behaviours typically attributed to a serious head injury and although he says he spoke to the transporting officers, he did not state he told them he was injured; and
 - Mr Z states that he got inside the custody van himself without any delay, and the officers walked behind him. Therefore, they may not have got close to Mr Z or had time to observe the grazing on his head.
98. We are satisfied that Officers D and E were unaware of the injury and therefore it was reasonable for them to take Mr Z to the custody unit.

Was Mr Z given his rights while in custody?

99. When Mr Z was received into the custody unit, he was processed and searched by Officers F and G.¹³ When we spoke to them, neither of them could specifically remember dealing with Mr Z. However, custody records showed what interaction Mr Z had with Officers F and G on the night, and what tasks they each completed.
100. As part of his initial complaint, Mr Z said that he was not read his rights, offered legal assistance, or allowed to have a support person while in custody.
101. Custody records show that Mr Z was processed when he arrived at the custody unit, where he was held for approximately 40 minutes before being issued a Formal Written Warning and released. On arrival, his rights under the New Zealand Bill of Rights Act 1990 were read to him. Officer B also states that Mr Z's rights were read to him outside of Westpac.
102. As Mr Z is over the age of 18, he was not entitled to a support person but had the same access to legal assistance as anyone else held in custody.
103. We are satisfied that Mr Z's rights were not impinged upon while he was in custody.

Did Police provide Mr Z with appropriate medical care?

104. Officers F and G both told us that Mr Z was asked a series of standardised questions about his physical health when he was processed into custody.¹⁴ This was confirmed by the custody records, which show no head injury or visible grazing was recorded by custody staff.
105. There are also no records of Officer B passing on information about Mr Z's head injury, or Mr Z declaring his head injury, to any custody staff. As records show Officer B did not pass on information to Officers D and E, custody staff had no way of knowing that Mr Z had been taken to the ground by Police during the arrest.
106. Both Officers F and G were shown a picture of Mr Z's injuries – neither recognised Mr Z or the injury as shown in the photo. They told us that they would have recorded the head injury within the custody records and sought medical care for Mr Z, had they seen the grazing or been told about it.
107. However, we believe that regardless of whether the information had been passed on to them, Officers F and G should have been able to see the head injury because:
 - their role in custody is to assess detainee health and wellbeing and document any risk factors;
 - Mr Z was in their care for 40 minutes and the graze was visible (as Officer B noticed it outside of Westpac); and

¹³ Both Officers F and G are Authorised Officers who worked full-time in the custody unit.

¹⁴ These questions included any details of historic or current head injuries, and whether he was in pain.

- the photo Mr Z took shows a clear graze to his head, which Mr Z told us was taken straight after he was released from custody.

108. Therefore, we believe that Officers F and G should have determined that Mr Z had potentially sustained a head injury and sought appropriate medical care.

FINDINGS ON ISSUE 3

We are satisfied that Officers D and E were unaware of the injury and therefore it was reasonable for them to take Mr Z to the custody unit.

Mr Z's rights were upheld while he was in custody.

Officers F and G should have been able to see Mr Z's visible head injury and sought medical care accordingly.

ISSUE 4: DID OFFICER A MAKE A RACIST COMMENT TOWARDS MR Z?

109. Part of Mr Z's complaint was allegations of inappropriate and racist conduct by Officer A. Mr Z told us that, while at Westpac awaiting the custody van, he was confused about his arrest. He told Officers A and B that he did not understand and said: *"I'm tangata whenua. I want to know like why this is happening"*.

110. Mr Z said that, in response, Officer A made a racist comment and said in a mocking manner: *"tangata whenua, we don't care mate, we don't care"* and something similar to, *"good luck getting a job after this"*. Mr Z told us that these comments were *"really burned in"* to his memory.

111. Mr Y told us that when he arrived at Westpac, he heard Mr Z mention his iwi. He told us that he thought *"one of the cops said: "I don't give a fuck about your, where you're from."* Although this account differs slightly from Mr Z, the sentiment is the same.

112. Both Officers A and B deny hearing Mr Z requesting specific support due to his ethnicity or knowing that Mr Z was Māori, and deny making any comments in response to Mr Z.

113. Officer B said he would *"never use any comments like that"* and that the allegation made him angry because he arrests people solely based on their conduct, not their ethnicity. Officer A denied saying or hearing the comment.

114. The account given to us by Mr Z gave us reason to believe that he may have experienced a comment that he deemed to be insensitive during his interaction with Officers A and B. We believe this because:

- he described the event as being *"burned in"* to his memory;
- the emotion he expressed when recalling the incident demonstrated that Mr Z had been (and still was) greatly affected by the experience; and
- Mr Y told us he heard a comment very similar to what Mr Z says was said.

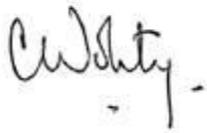
115. A conflict of accounts between Mr Z and Mr Y, and Officers A and B remains. While we accept that, on balance, something was most likely said to Mr Z that he found upsetting, we are unable to find exactly what was said and therefore unable to determine if it was racist.

FINDING ON ISSUE 4

We were unable to determine whether Officer A made a racist comment towards Mr Z.

Subsequent Police Action

116. In February 2022, Police removed Mr Z's Formal Written Warning for obstruction.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a small dash at the end.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

3 March 2022

IPCA: 21-6696

Appendix – Laws and Policies

LAW

Summary Offences Act, Section 23: Resisting Police, prison, or traffic order

117. Resisting Police, prison, or traffic officer: Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct,—

(a) any constable or any authorised officer, or any prison officer, or any traffic officer, acting in the execution of his duty; or (b) any other person acting in aid of any such constable, authorised officer, prison officer, or traffic officer; or (c) any Police dog working under the control of a Police dog handler.

Crimes Act 1961, Section 39: Force used in executing process or in arrest

118. Force used in executing process or in arrest: Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

POLICY

Arrest and Detention

119. Force used during an arrest must be reasonable and be used only when it is not reasonable to make the arrest in a less violent manner.

Use of Force

120. Other than touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground, uses of empty hand techniques must be fully reported in a TOR form.

121. If the force used is not reportable, no further action is required, unless the use of non-reportable force:

results in a subject's injury and/or health issue (this requires the completion of a POL258) a complaint or investigation is expected (these incidents must be reported to your supervisor, who will direct whether or not the incident must be reported in a POL258).

Head Injuries

122. Head injuries can result from a knock or punch to the head, the head hitting the ground or an object, being hit by an object, a fall or a vehicle accident. This may result in concussion, a blood clot or a bleed to the brain.
123. A head injury may not always be immediately evident and signs and symptoms can be delayed. For example, a person can be concussed without losing consciousness, and a concussed person may not remember what happened and be unaware they are concussed. Symptoms can differ from person to person.
124. Consequently any potential head injury occurring as a result of NZ Police activities must be assessed by a medical practitioner. This is applicable to any workers, visitors and people in NZ Police custody.
125. The potential head injured person must not transport themselves to get medical care — it is the responsibility of any other NZ Police worker present to arrange transport or an ambulance/paramedic to be called.

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 own 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 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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