

Excessive use of force and inadequate post-injury care in Counties Manukau Custody Unit

Summary of the Incident

1. On 27 June 2021, Ms X was a detainee in Counties Manukau Custody Unit ('the Custody Unit'). She became increasingly agitated and managed to slip out of her cell when her cell door was opened. Two Custody Unit staff quickly stopped Ms X, and Custody Officer A took her to the ground. Her left ankle was injured as she fell.
2. Ms X immediately complained of severe pain in her left ankle, and she was unable to stand on her left foot. The Custody Unit staff say that they phoned the duty doctor, who advised that the injury was not serious, and to give Panadol.
3. Ms X's ankle continued to be very painful overnight, and she asked to see a doctor. She says she was spoken to disrespectfully by Custody Unit staff and told that a doctor did not need to be called as her injury was not serious. Ms X's injury was not reassessed overnight by Custody Unit staff.
4. The next morning, the incoming Custody Unit staff called an ambulance because of Ms X's ankle injury. She was taken to hospital and diagnosed with a fractured ankle that required surgery.

Issues examined by the Authority

Issue 1: Was Custody Officer A justified in his use of force in restraining Ms X?

Issue 2: Did Custody Unit staff provide appropriate care to Ms X after her ankle was injured?

The Authority's Findings

5. Custody Officer A¹ used unnecessary and excessive force when he took Ms X to the ground.
6. The force used by Custody Officer A caused Ms X's ankle injury.
7. Custody Unit staff did not provide Ms X with appropriate care overnight, as they did not reassess her condition or call a doctor when Ms X continued to raise concerns.

Analysis of the Issues

ISSUE 1: WAS CUSTODY OFFICER A JUSTIFIED IN HIS USE OF FORCE AGAINST MS X?

8. On Saturday 26 June 2021, Ms X was arrested for breaching her bail conditions, and was to be held in the Custody Unit until she attended court the following Monday. She was identified as being potentially at risk of harming herself while in custody.
9. Over the evening of Sunday 27 June 2021, Ms X became increasingly agitated, kicking her cell door and hitting the wall of her cell with a book to get the attention of Custody Unit staff. Just before midnight, Officer B instructed Custody Officers A, C and D to enter the cell and take the book from Ms X.

What happened when Ms X was taken to the ground?

10. Custody Officers A and D entered the cell, with Custody Officer C a few steps behind. Ms X was able to slip out of the cell in the gap between Custody Officers D and C. Ms X ran a short distance down an adjacent corridor, but Custody Officer C managed to grab Ms X's right arm before Custody Officer A caught up with them. Although Ms X had left her cell, she could not leave the secure Custody Unit.
11. Custody Officer A immediately took Ms X to the ground. He said:

"I have managed to take control of Ms X's head with my left arm and I secured my right arm behind her head which allowed me to sweep Ms X to the floor having her land on my right arm."
12. Ms X said that she felt Custody Officer A's leg wrap round her left ankle as she was taken to the ground, and she felt a "crack" in her ankle. She described it as extremely painful.
13. By this stage, Custody Officer D had caught up with the group and, together with Custody Officer A, helped Ms X to her feet and took her back to a cell.
14. This incident was captured on CCTV from two angles. Ms X can be seen running from the cell and passing Custody Officer C, who then holds Ms X by the arm as she pulls away. Custody Officer

¹ Custody Officers (or 'Authorised Officers') are non-sworn Police employees who have responsibility for managing the health, safety and secure custody of detainees. Custody Officer A has left the NZ Police since this incident.

A quickly reaches them and grabs hold of Ms X. Custody Officer A then takes Ms X to the ground by sweeping her legs from under her. Ms X falls backwards, with her head narrowly missing the wall. Custody Officers A and D then help Ms X to stand.

15. After Ms X was helped to stand, she is seen on the CCTV footage taking no weight on her left leg. Custody Officers A and D escort Ms X down the corridor to a cell, with Ms X 'hopping' on her right leg the whole way.

What caused Ms X's ankle injury?

16. Officer B says that he believed Ms X had injured her ankle by kicking the door of the cell, and that, when he viewed the CCTV footage, Ms X had a limp as she ran from the cell.
17. While we agree that Ms X had been kicking her cell door, there is no evidence that she had injured her ankle prior to being taken to the ground. The CCTV footage shows that Ms X had no impediment to her gait as she ran from the cell.
18. Ms X states that she felt a "crack" in her ankle as she was taken to the ground, and she was in significant pain afterwards.
19. We are satisfied that the injury to Ms X's ankle occurred as a result of being taken to the ground by Custody Officer A, and there is no evidence that she had an ankle injury prior to that.

What are the justifications for Custody Officer A's use of force in these circumstances?

20. In his subsequent Tactical Options Report,² Custody Officer A said his use of force was justified by section 40 of the Crimes Act 1961.
21. The following relevant provisions of the Crimes Act 1961 provide legal justification for using force in certain circumstances:
 - a) Section 40(2) empowers Police to use "such force as may be necessary" to prevent the escape of or to recapture a prisoner.
 - b) Section 39 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.

Was Custody Officer A legally justified to use force against Ms X to prevent her escape under section 40(2)?

22. Section 40(2) empowers Police to use "such force as may be necessary" to prevent the escape of or to recapture a prisoner. Under section 40(2), the Authority must determine:
 - a) Was Ms X, in fact, attempting to escape. A mere belief on Custody Officer A's part that this was the case will not be sufficient, however reasonable it might be.

² An officer is required to complete a Tactical Options Report (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.

- b) If Ms X was attempting to escape, did Custody Officer A believe on reasonable grounds, that Ms X was attempting to escape; and if so
- c) Whether Custody Officer A's use of force to prevent the escape was reasonable and proportionate.

Was Ms X attempting to escape?

- 23. Ms X told us that she did not know what she would accomplish by running from her cell, *"but I still did it anyway"*.
- 24. Custody Officer A has not claimed that his actions were to prevent Ms X from escaping from custody. He told us that the reason he took Ms X to the ground was to prevent her from injuring someone, or simply to stop her *"running around"* and to return her to her cell.
- 25. Having left her cell, Ms X could not have escaped from the Custody Unit, and we are satisfied that she was not attempting to escape. In addition, we are satisfied that Custody Officer A did not believe Ms X was attempting to escape; his actions were intended to return her to the appropriate location within the Custody Unit, that is, her cell.
- 26. Accordingly, Custody Officer A's use of force was not justified under s40(2) of the Crimes Act 1961.

Was Custody Officer A justified in using force against Ms X to overcome any force used in resisting the execution of any process under section 39?

- 27. Section 39 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. 'Necessary' force in this context is generally accepted as meaning *"reasonable"* and *"proportionate to the degree of force being used to resist"*.
- 28. Ms X was already under arrest and, as part of the 'process' of her detention, she needed to be returned to her cell. Although Custody Officer A has not relied on this section of the Crimes Act 1961 as justification, it is the most relevant to this situation.
- 29. Under section 39, the Authority must determine:
 - a) whether the officer believed on reasonable grounds that the person was using force to resist execution of a process; and if so
 - b) whether the degree of force used to overcome that resistance was proportionate and reasonable in the circumstances as the officer reasonably believed them to be (that is, whether the officer could reasonably have overcome the resistance and affected execution of the process by using less force or some other method short of force such as tactical communications).

Did Custody Officer A believe on reasonable grounds that Ms X was using force to resist a process?

30. Custody Officer A saw Ms X run from her cell and dodge past another custody officer who had not fully blocked the cell door. Within a few steps, Ms X was being held by Custody Officer A and another custody officer as Ms X tried to back away from them, and she is seen on the CCTV footage to be resisting their attempts to return her to the cell by pulling away.
31. By running from the cell and attempting to pull away from the custody officers, we accept that it was reasonable for Custody Officer A to believe that Ms X was using force to resist a process, and therefore some force was appropriate to affect her return to the cell.

Was Custody Officer A's use of force reasonable and proportionate?

32. We accept that, while some force was required to restrain Ms X after she had left the cell, three custody officers were on immediate hand and three other Custody Unit staff arrived moments later. It is clear there were adequate staff present to safely restrain Ms X, and we do not believe it was necessary for Custody Officer A to take her to the ground as he did.
33. We also consider that the method Custody Officer A used was dangerous. By his own admission, he took hold of Ms X by her head and neck and took her to the floor having swept her legs from under her. On the CCTV, her head is seen to narrowly miss the wall, and there was a significant risk her head could have hit the concrete floor.
34. In summary, we do not believe it was necessary for Custody Officer A to use the level of force he did because he and a colleague both had a grip on Ms X, there was no possibility she could escape the Custody Unit, and she had shown no signs of aggression towards others that would indicate the need for such force. We believe that Custody Officer A's use of force was unreasonable in the circumstances.

FINDINGS ON ISSUE 1

Custody Officer A used unnecessary and excessive force when he took Ms X to the ground.

The force used by Custody Officer A caused Ms X's ankle injury.

ISSUE 2: DID CUSTODY UNIT STAFF PROVIDE APPROPRIATE CARE TO MS X AFTER HER ANKLE WAS INJURED?

What did Custody Unit staff do immediately after Ms X's injury?

35. After the incident, Ms X was assisted by Custody Officers A and D to a different cell and helped to sit on a chair. Custody Officer D is seen on CCTV examining Ms X's ankle.
36. Officers B and E came to Ms X's cell, and the former is seen to speak to her. The CCTV footage shows that neither officer physically examined Ms X's ankle, with both standing to Ms X's side. Officer B ordered the duty medical officer, Dr G, be called.

37. Custody Officer A told us that he telephoned Dr G, and says she answered almost immediately. He says he told Dr G that Ms X had been taken to the ground and was complaining her ankle was broken, but it was not swollen. Custody Officer A said that Dr G told him: *“give her some Panadol, and I don’t think her ankle will be broken”*.
38. Custody Officer F was on duty at the Custody Unit security desk watching the screens that monitor the cells. He had seen Ms X running from the cell and being taken to the ground. He says he was instructed to call Dr G, and he phoned her telling her what had happened. He cannot recall who instructed him nor exactly what he said to Dr G. Custody Officer F says that Dr G told him it sounded like a *“soft tissue injury”* and to give Panadol.³
39. The custody documentation completed by Custody Officer F at 12.08am records:
- “[At] 23:55 – hurt foot kicking door, bit swollen – called Dr [G], says to give Panadol – no serious injury.”*
40. The Police communications system records show that Dr G’s phone number was called at 12.03am from the phone by the desk used by Custody Officer F that night. The phone rang for 26 seconds, and the subsequent call lasted 1 minute and 30 seconds.
41. Contrary to the accounts of Custody Officers A and F, Dr G says she has no recollection of being contacted on the night of 27 June 2021 about an ankle injury. To support her belief, she told us:
- 41.1 She had assessed Ms X in person earlier that day, providing advice in relation to her diabetes. If she had been called about Ms X later that night, she would have recalled the name.
- 41.2 If she had been told that a detainee had been taken to the ground and was in severe pain and unable to weight bear, she would not have suggested Panadol. She says she would have recommended an ambulance be called to take the person to hospital.
42. Dr G does not have a personalised answerphone message, but we found that when her phone is called the call is diverted to a generic phone message after 25 seconds.
43. In the context where there are clear conflicts of accounts between Dr G, Custody Officer A, and Custody Officer F, it is not possible for us to reconcile who called Dr G, or whether she received the calls, although clearly there is evidence a call was made.

How did Custody Unit staff monitor Ms X overnight?

44. Ms X says that she was in severe pain overnight, which is confirmed by what we now know: she had two broken bones in her ankle.

³ The custody record does not document the administration of Panadol at this time, but the CCTV footage shows Ms X was given some tablets, and Ms X confirmed she was given two Panadol tablets soon after the incident.

45. Custody record entries completed overnight do not document any reference to further checks of Ms X's ankle, although she says she continued to raise concerns about the pain and asked to see a doctor.
46. At some stage during the night⁴, Officer B came to Ms X's cell and spoke to her because she was repeatedly pressing the intercom button.
47. CCTV footage shows Officer B standing in the cell doorway, about 2-3 metres from Ms X. She had her left lower leg exposed. The conversation lasted 36-38 seconds. Officer B did not examine Ms X's ankle during that short period of time, and a doctor was not called.
48. The People in Police Detention policy, states that custody staff must:

Call a health professional for advice if the detainee has been injured, or you think it necessary, or the detainee requests on reasonable grounds to be seen by a doctor.
49. We accept that Ms X would have been in severe pain because of her broken ankle, and that she continued to raise this with the Custody Unit staff overnight, asking to see a doctor. However, Custody Unit staff did not review Ms X's injury overnight: there is no documentation that supports any such monitoring or reassessment, and a doctor was not contacted after Ms X continued to complain of pain. Although Officer B briefly spoke with Ms X at some stage overnight, he did not examine Ms X's ankle and appeared to take no other action.
50. It was only when the following shift came on duty the next morning that Custody Unit staff responded to Ms X's injury. An ambulance was subsequently called, and she was transferred to hospital.

How did Custody Unit staff treat Ms X overnight?

51. Ms X alleged Officer B made disparaging comments when he spoke to her during the night: "stop being a baby", "it's just a bruise", and "we're not wasting \$600 on a doctor when you don't need one".
52. Officer B denies that he used the words alleged by Ms X. In relation to the comment about the cost of calling a doctor, Officer B told us:

"I would have said: 'It's not a money thing that the doctor is not coming because we don't pay for it, so the doctor will come'. So I would have said: 'Don't worry, it's not a money thing, the doctor will come, but they don't want to come for this', so that's where the money would have come from."
53. It is clear that Officer B did not believe that Ms X had an injury that needed to be monitored overnight, nor that she needed to be assessed in person by a doctor, or even that a further telephone call needed to be made to the doctor to update her when Ms X continued to complain of pain.

⁴ The CCTV footage provided to us does not include the time of the recording, nor does it record sound.

54. CCTV footage shows that at some time after Ms X's injury, there was a short conversation between Officer B and Ms X, during which he accepts he told her a doctor would not be called. After he left, Ms X appears visibly angered or frustrated by what he had said to her.
55. Although Officer B says he was acting on the basis of advice from Dr G, we accept that Ms X continued to complain of severe ankle pain overnight because she did in fact have a broken ankle, yet there is no evidence her concerns were taken seriously.
56. In summary, from the time of Ms X's injury to when the decision was made to send her to hospital the following morning (approximately 8 hours later), Custody Unit staff did not provide Ms X with appropriate care in relation to her ankle injury. In addition, we accept that Ms X's request to see a doctor was reasonable, and Custody Unit staff should have telephoned the duty doctor again during the night when Ms X continued to complain of pain.

FINDINGS ON ISSUE 2

Custody Unit staff did not provide Ms X with appropriate care overnight and did not call a doctor when Ms X continued to raise concerns.

Other comments

57. We are concerned that the failures in this case could indicate a wider systemic problem with the Custody Unit. This was not a single error made by one person – it took a team of people to fail to provide Ms X with the care she was so clearly needing.
58. We also note that Ms X identifies as a woman. However, in the responses from Police staff to this matter, while it is recognised that Ms X identifies as a woman she is frequently referred to as 'he' or 'him', or by the male name by which she was formerly known. This does raise concerns about the attitude of the Police staff towards Ms X, and possibly the culture of the Custody Unit.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

12 July 2022

IPCA: 21-8765

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. At significant points in the investigation itself and in 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
