

Concerns about officers' conduct and alcohol consumption while off-duty

Summary of the Incident

1. This report covers four separate incidents in 2019, when Police officers behaved inappropriately while off-duty and drinking alcohol. The officers were representing New Zealand Police in some capacity. All four matters raise issues of Police culture, peer pressure, and leadership.
2. In February 2019, we were notified in accordance with our Memorandum of Understanding (MoU) with Police about the behaviour of officers from Tāmaki Makaurau deployed to police the Waitangi commemorations, as part of 'Operation Waitangi'.¹ We investigated this incident in some detail. During Operation Waitangi there was a serious incident that resulted in an officer being prosecuted for sexual assault. The matter was dealt with by the Court with the officer being convicted of sexual violation by unlawful sexual connection and indecent assault and sentenced to six years imprisonment. This aspect does not form part of this investigation.
3. In March and September 2019, we were notified under the MoU about three separate incidents involving inappropriate behaviour and alcohol at Police sport tournaments.
4. All four incidents resulted in criminal investigations. In three of the cases, charges were laid as a direct result of the behaviour identified. We have delayed finalising and publishing this report until all criminal proceedings have been concluded.
5. Successive courts have carried through suppression orders in relation to the criminal offending during Operation Waitangi. These orders relate to details about the people involved and specific locations. Consequently, some details in this report have been anonymised more than would normally be the case in order to comply with these suppression orders.

¹ The MOU specifies Police will notify the Authority about "any matter involving criminal offending or serious misconduct by a Police employee where the matter is of such significance or public interest that it places or is likely to place Police reputation at risk." The Authority did not receive a specific complaint from the public or a Police member about the officers' off-duty behaviour.

6. The Authority's report teases out some inconsistencies in Police practice and approach prior to the incidents, and in how the behaviour was investigated and managed as well as identifying themes relating to off-duty behaviour.

Issues examined by the Authority

- Issue 1:** Did the off-duty behaviour of officers at their motel while deployed on Operation Waitangi 2019 breach the Police Code of Conduct?
- Issue 2:** Did Police undertake fair and appropriate investigations into their behaviour?
- Issue 3:** Are there any trends, themes or similarities relating to off-duty behaviour that can also be identified from the incidents in March and September 2019?

The Authority's Findings

7. The Authority concluded that:
 - 1) Officers had no on-call responsibilities but were still subject to the Police Code of Conduct and were aware they were required to adhere to it.
 - 2) Officers were off-duty and not prohibited from drinking alcohol between shifts. However, they were obliged to ensure they behaved consistently with the Code of Conduct and were fit to work when they came on-duty. It was not professional of the officers to stay up late drinking alcohol before an early start.
 - 3) Some officers' specific behaviour breached the Code of Conduct. These behaviours included:
 - a) binge drinking alcohol from a drinking vessel;
 - b) stripping to their underwear;
 - c) taking photographs of themselves drinking alcohol next to marked Police vehicles;
 - d) in the case of Senior Sergeant A, exposing his genitals;
 - e) in the case of Senior Sergeant A and Sergeant D, making offensive or derogatory comments.
 - 4) Police should have investigated all officers whose behaviour could have breached the Code of Conduct.
 - 5) There were unjustified inconsistencies between the way the sergeants were investigated and treated.

- 6) Northland District leadership should have better communicated what was appropriate during off-duty hours while on deployment. The boundaries of what was appropriate were left ambiguous and were badly misinterpreted by sergeants and officers.
- 7) Inspector E showed poor leadership by making unprofessional comments at the briefing regarding off-duty behaviour expectations.
- 8) The sergeants and Senior Sergeant A showed poor leadership by participating in or appearing to endorse the behaviour. However, they also felt they had no mechanism or mandate to stop it.
- 9) There is a general reluctance to speak out against superior officers and colleagues because of the personal and professional consequences.
- 10) There was a lack of confidence in Speak Up process.
- 11) While each of these incidents include abuse of alcohol, it would be inappropriate to extrapolate general trends from such a small sample.
- 12) Police need to establish clear supervision expectations for supervisors if they are expected to manage officers' behaviour while off-duty.

Analysis of the Issues

ISSUE 1: DID THE OFF-DUTY BEHAVIOUR OF OFFICERS AT THEIR MOTEL WHILE DEPLOYED ON OPERATION WAITANGI 2019 BREACH THE POLICE CODE OF CONDUCT?

Operation Waitangi 2019

8. Operation Waitangi is the annual Police deployment to police the Waitangi commemorations. Operation orders focus on ensuring the safety of those attending the Waitangi events and preventing opportunities for crime and victimisation.
9. Three teams of six officers and their sergeants from Tāmaki Makaurau went as part of a group of reserve officers. The three teams and sergeants were assigned to be on-duty at varying times between Monday 4th and Wednesday 6th of February 2019. While on-duty, they were required to maintain a constant state of preparedness so they could immediately respond to any incident as directed by Operation Waitangi command.
10. The three teams and their sergeants were under the command of a senior sergeant, Senior Sergeant A. The senior sergeant did not normally work with the officers or their sergeants but was experienced in public order policing.
11. This report will refer to the sergeant leading Team 1 as Sergeant B, the sergeant leading Team 2 as Sergeant C, and the sergeant leading Team 3 as Sergeant D.

Operation orders and pre-deployment training

12. Operation orders describe the purpose of the operation, the command structure and the roles of various Police resources.
13. The operation orders were prepared by Northland District Police and sent to Senior Sergeant A and the three sergeants a few days before the start of the operation.
14. The operation orders did not specify:
 - any expectations about consumption of alcohol between on-duty shifts; or
 - that officers and supervisors were on-call when not working a designated shift.
15. When an officer is on-call, they must be able to respond as required while off-duty. Specialist roles, such as dog handlers or search and rescue specialists often incorporate on-call responsibilities. Officers are paid an extra stand-by allowance to compensate for the significant limitations this status places on their personal time while off-duty.
16. The officers did not receive the stand-by allowance while deployed on Operation Waitangi.
17. Senior Sergeant A held a one-day public order training session with the three Tāmaki Makaurau teams a week prior to the deployment. Senior Sergeant A did not cover off-duty arrangements or expectations during the training session.
18. Officers we interviewed say there was no discussion at the training about off-duty expectations.
19. Team 3 received a briefing from an Inspector that included expected standards of behaviour during the operation.

Operation briefing

20. The officers, sergeants and senior sergeant travelled to Waitangi on 4 February 2019. They attended a briefing in Waitangi led by Inspector E (a senior commander and second in command for the operation).
21. The briefing covered key principles of the deployment, including the mission and how the Northland District Commander wished officers to police and engage with people gathered at Waitangi.
22. During our investigation, officers suggested that the tone of the briefing reinforced the already widely held belief that socialising and having a few drinks between shifts during the operation was the usual and acceptable practice.
23. Inspector E started by introducing senior District staff in charge of various aspects of the operation. Two of the senior Northland District officers present said that, upon introducing the officer in charge of logistics to the group, Inspector E said: *“If you need anything, alcohol, drugs, women, see him.”*

24. Senior Sergeant A recalls Inspector E saying: *"If you want a good time, you want beers and girls, go see the logistics guy."*
25. A number of officers also recall the comment made by Inspector E and say while it was inappropriate and not something they would expect to hear at a briefing, it was taken as a tongue-in-cheek comment, and several officers present laughed.
26. Inspector E denies making any comments about women and says he *"lightened"* the end of the briefing by saying: *"Look after yourselves tonight, don't drink too much, whatever you do look after each other, if you've got a problem ring me, if you need anything ring the logistics officer."*
27. After Inspector E had spoken, Inspector F discussed the culture of Waitangi Day and the off-duty expectations. He explained to the group how policing at Waitangi had changed significantly, and a community engagement style is adopted, in partnership with iwi. He says he explained that it was appropriate to *"have a beer or two and enjoy yourself"* but it was important that Police minded their behaviour off-duty as they were under public scrutiny. He reminded them of Waitangi deployments 15 years prior where officers got into trouble for off-duty behaviour.
28. Following this, the officers from the three Tāmaki Makaurau teams went off-duty. Before leaving the briefing, Sergeant B says he asked Inspector E if the officers had any on-call responsibilities prior to commencing work again the following day and was advised they did not. Senior Sergeant A corroborates this conversation.
29. Senior Sergeant A says in his opinion, the briefing re-affirmed the accepted culture of having *"a good time ... on the beers"* at Waitangi. He says that the culture has existed since he first attended the Waitangi deployment in 2007, and while the comment was a throwaway comment, it was said at a formal briefing.
30. The sergeants say they left the briefing with the understanding that they were off-duty with no on-call responsibilities, and it was fine to have some fun and a few drinks, but they should avoid getting into trouble.
31. The three Tāmaki Makaurau teams drove to a motel complex that had been booked by Police exclusively for the Police operation. Previously, all Police staff deployed on Operation Waitangi have been housed at one location with operation commanders and other senior officers. In 2019, the usual accommodation was not available to Police and the Police groups were spread over a number of different locations. The three Tāmaki Makaurau teams were located in a motel with one other team of officers from Whangārei.
32. Senior Sergeant A was the highest ranked officer at the motel.
33. The Teams 2 and 3 were rostered to start work at 8am the following day and Team 1 was rostered to start later, at 1pm.

What happened on the evening of 4 February 2019?

34. All officers arrived at the motel by 3pm. They parked three marked Police vans and a marked Police car in the courtyard area outside their rooms. The courtyard was visible to passing members of the public. All activity in the courtyard was captured by CCTV, and we have viewed the footage.
35. On arrival and throughout the afternoon and early evening members from the three Tāmaki Makaurau teams made several trips to buy alcohol and food and brought it back to the motel. It is clear that each of the teams arrived at the motel intending to socialise between shifts to varying degrees. One officer did not drink any alcohol and not all officers involved themselves in all the activities that evening. No officers were in Police uniform at any time after arriving at the motel.
36. The team of officers from Whangārei stayed in their motel rooms for the entire evening except when they left the motel for dinner. They did not socialise with the Tāmaki Makaurau teams.
37. Officers from Team 1 brought a drinking vessel with them for the purpose of engaging in a timed drinking game. The drinking vessel was fashioned to look like a long Police PR24 baton. It was crafted from hollow tubing and able to hold four cans of beer (330 millilitres cans). The drinking vessel is referred to by the officers as the PR1200, reflecting the approximate number of millilitres of liquid the vessel can hold.
38. By 3.40pm, the officers from Teams 1 and 2 were assembled in separate rooms at the motel and Team 3 had congregated in the courtyard.
39. The officers from Team 1 and Sergeant B were in a room playing cards and drinking. Officers told the Authority they were not playing drinking games.
40. The officers from Team 2 were also drinking and socialising. Some of the officers say that they did play a drinking game, but it only lasted for a short period of time and the drinking was not excessive. Sergeant C was not in the room with the team for most of this time.
41. CCTV footage shows the officers from Team 3 and Sergeant D sitting in a circle outside one of the motel rooms talking and drinking but not playing drinking games.
42. Several officers from Team 3 say that they believed the other teams were holding a ‘jug session.’ A jug session is the Police practice of officers recording misdemeanours or mistakes occurring over time then holding a social event with consequences for an individual officer for any recorded misdemeanour. The consequence usually, but not always, involves binge drinking alcohol.
43. Officer G told Police the other teams had jug sessions, but Team 3 were *“just having drinks...we were the only ones outside...afterwards we found out they were having a jug session.”*
44. An officer from Team 3 told Police: *“The other teams were inside the rooms, I believe having jug sessions. They came out and were telling us about their jug sessions after it all happened.”*
45. The officer says the team held one jug session during the previous five months and not everyone drank alcohol. Further, Team 3 did not have a jug session at the motel because *“we were all*

getting up super early and we'd had one not too long ago, so we decided to give it a miss and wait till we get back home and do it then."

46. Conversely, Sergeant B told us: *"We don't do jug sessions anymore because [our] District Commander has [been] quite adamant that jug sessions are effectively banned."*
47. The CCTV footage shows an officer leaving the motel room where Team 1 had congregated at 4.15pm and returning to the room a short while later with Officer H, who is carrying the drinking vessel shaped as a Police baton.
48. Between 4.30pm and 5.10pm the officers from Team 1 use the drinking vessel in a timed drinking game in the courtyard. Each member of the team participates, with Sergeant B drinking first.
49. All Team 1 officers say they had agreed as a team to bring the drinking vessel to Waitangi and there was no pressure to take part. They say they were aware that the motel was occupied exclusively by Police officers and believed the activity would not be seen by members of the public walking past the motel because they were standing behind stairs shielding them from view. They drank in the courtyard to avoid making a mess in the motel room.
50. While the Team 1 officers took part in the drinking game, the Team 3 officers can be seen on the footage sitting in a circle on the opposite side of the courtyard. Sergeant D spends time moving between the two groups. The rest of the group does not show any interest in the Team 1 officers or the drinking game. By 5pm, all three teams are starting to socialise together and at various times congregate in and around the courtyard. Senior Sergeant A moves between his room and the various teams, having returned from a run.
51. At 6.30pm, members of Team 3 are at the rear of the motel eating dinner they have just purchased. Teams 1 and 2 are in the courtyard area directly outside adjacent rooms. Senior Sergeant A is sitting with Team 1.
52. An officer from Team 1 brings the drinking vessel into the courtyard area again. Team 1 join Team 2 and, together with Senior Sergeant A, watch Officer I drink from the vessel. Officer I is the junior officer in Team 2.
53. Soon afterwards, three officers walk across the courtyard and stand next to a marked patrol vehicle. They take photographs of themselves with the marked vehicle while drinking alcohol and acting up for the camera. Different officers do the same thing later in the evening.
54. At about 6.55pm, the group, which now includes Sergeant D from Team 3, watch Officer J drink from the vessel. Officer J is the junior officer in Team 3.
55. A few minutes later Sergeant D leaves the group, walks to his team who are still at the rear of the motel and returns with Officer K, the female officer in his team, and other officers from his team. Within a couple of minutes of Officer K arriving, Senior Sergeant A collects the vessel from beside a chair, hands it to another officer then follows him into a motel room where the vessel is filled.

56. Between 7pm and 7.30pm female officers from each team drink from the vessel in front of the other officers. By now the group has spread into the main courtyard area next to a marked Police van and would have been clearly visible to passing members of the public.
57. The female and junior officer from Teams 3 and 2 were the only officers from those teams to drink from the vessel. All other officers, including Sergeants C and D declined to take part.
58. Sergeants C and D both say they clearly told their teams that there was no expectation on them to drink from the vessel, and that they themselves would not be doing it. They say they spoke specifically to the female officers to reinforce that they did not have to participate, and when it was clear the female officers wanted to, they ensured that the alcohol content was watered down. Other officers have confirmed the sergeants' account of their actions.
59. At 8pm, the CCTV footage shows Senior Sergeant A drinking from the vessel in the courtyard. Officers cheer him on and congratulate him afterwards. This occurred in the middle of the courtyard, close to the marked Police vans and in an area clearly visible to any passing member of the public.
60. Teams 2 and 3 played a game of touch rugby on a nearby field until approximately 9pm. Some of the officers from Team 1 were also present.
61. Between 9pm and 11.30pm, officers either continued to drink socially or retired for the night. Some officers left the motel to purchase food or more alcohol. At 11pm, a small group of officers briefly swam in the motel pool.
62. By 11.30pm, footage shows 10 officers (including Senior Sergeant A, Sergeants B and C and a female officer) seated in a circle in the courtyard, approximately 40 metres from the road entrance. The courtyard is dimly lit by ambient light. Senior Sergeant A stands up unexpectedly, removes his shorts and exposes his genitals to the group for 15 seconds, then pulled his shorts up. The officers laugh.
63. The group (later joined by Sergeant D and another female officer) continue to socialise. By midnight, the group comprises all officers from Team 2 including Sergeant C, Senior Sergeant A, Sergeant D and one officer from Team 3 and Sergeant B. Shortly after midnight the officers remove their tops sequentially around the circle, then sequentially remove their shorts (retaining their underwear). Senior Sergeant A again stands, removes his shorts, sits back down, spreads his legs and exposes his genitals for approximately 90 seconds. Sergeant C briefly covers him with a t-shirt. The officers put their clothes back on. Soon afterwards, the group tidy the area, return chairs, and put empty cans in rubbish bins.
64. Most officers went to bed by 1am. A small group left the motel to try and buy food. Sergeant D and another officer stayed up talking and went to bed at 2am. With the exception of Sergeant B, the officers were rostered for work at 8am.

What did the officers believe about their status and obligations?

65. The Authority interviewed the majority of officers involved in this incident, including members of the three Tāmaki Makaurau teams and members of the Northland Police District leadership team.
66. The officers from Tāmaki Makaurau all said they understood they were off-duty that evening, in the same manner in which they are off-duty between shifts when at home.
67. All were aware that the Police Code of Conduct (outlined in paragraphs 169-175) still applied while they were off-duty, and compliance is part of the discipline required of being a Police officer.
68. Officers interviewed were all aware they had no on-call responsibilities and all officers knew they were not receiving a Stand-by Allowance to compensate for the restrictions imposed on an officer in his or her off-duty time in order to maintain a constant state of readiness.
69. Police have no direct policy guiding staff around the consumption of alcohol when off-duty but on deployment.

Was any of the behaviour in breach of the Police Code of Conduct?

70. The Police Code of Conduct emphasises maintaining the public's trust and confidence in Police, as well as good judgment, professionalism and self-responsibility at all times.
71. While the motel complex was booked exclusively for Police, the group activity took place in the courtyard which was visible from the street. It also took place in and around three large, marked Police vans and a marked Police car. It would be obvious to anyone witnessing the group activity that participants were likely to be a group of Police officers and part of the annual Waitangi commemoration deployment. As such, the officers represented New Zealand Police and their behaviour reflected on Police's reputation.
72. We accept that, at the time, officers were cognisant of the fact that there were no members of the public staying at the motel and we also accept that for a period of time some officers tried to shield their activities from public view by remaining behind some stairs (see paragraph 49).
73. However, by the time the female officers and Senior Sergeant A drank from the vessel the activity occurred in an area clearly visible from the street. The CCTV footage does not provide any evidence that anyone was mindful of what could be heard and witnessed by anyone passing by or in the immediate vicinity at this point.

Binge drinking

74. Team 1 brought the drinking vessel with them. It had been used before at private social team gatherings.
75. Sergeant B says he was with his team when they made a group decision to bring the vessel to Waitangi. He participated in the discussion and had condoned it and approved it. He says at the time he thought it would be *"ok under the circumstances I envisaged it, like using it inside the*

motel room, using it out of sight, using it once and putting it away, under those controlled measures I thought it was ok and acceptable.”

76. Sergeant B says that in hindsight he now thinks: *“It was absolutely the wrong decision ... it should not have been around Police and Police vehicles and the Operation, it was a bad call on my part.”*
77. Senior Sergeant A acknowledges his involvement in the binge drinking that occurred and says that while it was, with the benefit of hindsight, ‘definitely wrong’, at the time it was considered acceptable. He says he was happy that the officers had decided to stay at the motel and not go out drinking meaning they were in a safe environment, and he could relax because no-one was going to go out and get into trouble.
78. All Team 1 team members including Sergeant B competed to drink the full contents of the vessel. Two officers from Teams 2 and 3 also competed in the drinking game.
79. The officers from Team 1 are all adamant they were willing participants. Other officers have given varying accounts of the degree of pressure applied by others to participate.
80. Given that the female and junior officers from each team participated, it is likely that their involvement was discussed by the wider group and a degree of group peer pressure was applied for those particular officers to participate.
81. That said, all the other officers who did not participate, including the sergeants, told us although they were approached by different officers at various times and asked to drink from the vessel, they simply said no.
82. All the officers who engaged in the drinking game breached the Police Code of Conduct because of the public environment they were in, their clear association with Police and the consequent public perception that their behaviour was unprofessional and damaging to trust and confidence in Police.

Consumption of alcohol

83. It is difficult to establish how much alcohol each officer drank. Officers we spoke to told us the alcohol purchased that night was for two nights. CCTV footage confirms not all the alcohol purchased was drunk that night.
84. Most officers say the amount they drank on the night was consistent with what they would drink at a normal social function. They believe this level of drinking was acceptable in the circumstances as they were off-duty.
85. As a group, the officers believed they were generally well-behaved and drank moderately, apart from the drinking vessel session, which occurred early in the evening. During the evening they went for dinner, played a game of touch rugby and the alcohol consumption slowed considerably as the evening progressed. CCTV footage shows officers were mindful throughout the evening to keep the environment tidy. At 1am officers were sufficiently self-aware to return chairs to the appropriate place, pick up rubbish and tidy up generally before retiring for the night. Officers had

also earlier hosed down the courtyard immediately after an officer vomited after drinking from the vessel.

86. It is not the Authority's role to prescribe how much alcohol officers should be allowed to drink when off-duty but on deployment. In general, off-duty officers should not drink to the extent that they:
- can no longer behave in a manner consistent with the Code of Conduct; or
 - are not fit to work when they return to duty.
87. CCTV footage from the motel does not show any of the officers displaying physical signs of gross intoxication.
88. However, the consumption of alcohol clearly led to a general lack of professionalism and respect for the public-facing environment and the context of the deployment. There were several examples of unprofessional and inappropriate language and behaviour that evening, which negatively affected Police's reputation. This is discussed in more detail below.

Fitness to work

89. Apart from Sergeant B (from Team 1), the officers who stayed up until and beyond 1am were rostered to be on-duty at 8am the following morning.
90. By contrast, most of Team 1 were rostered to start work at 1pm the next day and were in bed by 10.30pm.
91. In February 2019, a policy about alcohol and drug testing at work was not in place. There were no specific restrictions about consumption of alcohol off-duty.
92. However, clearly officers would need to be well within the legal blood alcohol limit to operate safely and legally when on-duty. This would include being able to drive to Waitangi early in the morning to be ready to start work at 8am.
93. The Authority cannot say that any of the officers were intoxicated or unfit to work the following day. As such, there is no clear breach of the Code of Conduct. However, the Authority notes that the officers were required to present the following day able to police at a large and sometimes unpredictable gathering in a professional manner and under intense scrutiny. Drinking copious amounts of alcohol for an extended time the night before and staying up into the early hours of the morning, as some of the officers did, was not professional.

Removal of clothing

94. Some officers, including the three sergeants and senior sergeant removed clothing in an area of the courtyard accessible and potentially visible (despite low light levels) to passing members of the public and in front of each other.
95. Senior Sergeant A exposed his genitals to various members of the three teams, on two occasions during the evening. The exposure was more than fleeting and lasted for a prolonged period. He

was the only person in the group to expose himself in that way. He admitted to the Authority this was his *“party trick since I was 20, everybody knows I do stupid things like that ... I shouldn’t have done it ... in my brain I wasn’t their boss at the time ... it was jesting among friends at a party.”*

96. Senior Sergeant A accepts his behaviour was inappropriate. He says his decision-making was impaired by alcohol, due to a range of factors, including dehydration and stress. We interviewed him and accept he is contrite about his actions.
97. All the officers who engaged in the removal of clothing breached the Police Code of Conduct because of the public environment they were in, the clear association with Police and because if viewed by the public the behaviour would be regarded as unprofessional and damaging to public trust and confidence.

Derogatory and offensive comments

98. At approximately 12.30am, CCTV footage and audio picked up a series of derogatory comments made by Sergeant D in reference to a male officer’s interactions with a female officer. Senior Sergeant A also made an offensive comment during this exchange, directed towards the male officer.
99. Senior Sergeant A accepted making this comment but said: *“It was just a ‘go away’ type of comment.”*
100. We asked Sergeant D directly if he made these comments. He denied doing so saying: *“I’d never use the [word] ‘bud’ ever... it’s just not terminology that I use.”* Several months later, having also previously denied it when interviewed by Police, he admitted that he did make the comments. He says that he did not intend to mislead either Police or the Authority at the time, rather he did not recall making the comments until he had listened to the audio recordings repeatedly after being interviewed.
101. Both Senior Sergeant A’s and Sergeant D’s comments were inappropriate and offensive. Sergeant D’s comments were disrespectful to the female officer specifically, and to her female colleagues generally. All the comments were contrary to the Code of Conduct.
102. Sergeant D’s actions have been subject to a further separate employment investigation.

Other behaviour

103. CCTV footage shows some officers deliberately standing next to a marked police vehicle for the specific purpose of photographing themselves while holding alcohol and acting up for the camera.
104. These actions had the potential to bring Police into disrepute and were therefore contrary to the Code of Conduct.

FINDINGS ON ISSUE 1

Officers had no on-call responsibilities but were still subject to the Police Code of Conduct and were aware they were required to adhere to it.

Officers were off-duty and not prohibited from drinking alcohol between shifts. However, they were obliged to ensure they behaved consistently with the Code of Conduct and were fit to work when they came on-duty. It was not professional of the officers to stay up late drinking alcohol before an early start.

Some officers' specific behaviour breached the Code of Conduct. These behaviours included:

- binge drinking alcohol from a drinking vessel;
- stripping to their underwear;
- taking photographs of themselves drinking alcohol next to marked Police vehicles;
- in the case of Senior Sergeant A, exposing his genitals;
- in the case of Senior Sergeant A and Sergeant D, making offensive or derogatory comments.

ISSUE 2: DID POLICE UNDERTAKE FAIR AND APPROPRIATE INVESTIGATIONS INTO THE BEHAVIOUR?

105. After viewing the motel CCTV footage in connection with the allegation of sexual offending, Police Professional Conduct decided to investigate the general behaviour. Police decided at an early stage only to investigate behaviour of Senior Sergeant A, and Sergeants B, C and D. Police advised the constables that they would only be interviewed as witnesses.

106. One sergeant commented that the behaviour that evening did not warrant the level of scrutiny and sanction it received. The investigation into the behaviour only occurred because of the serious incident that occurred in the early hours of the following day.

107. In our view, how the behaviour came to Police attention is immaterial. Police had a legitimate concern about the conduct of officers, and this required investigation.

Was it appropriate for the investigation to be limited to the supervisors' actions?

108. The three sergeants were interviewed by Police Professional Conduct and later by the Authority. Senior Sergeant A resigned before he was interviewed by Police. However, he was interviewed by the Authority.

109. In order to 'fast-track' the employment investigation, the sergeants agreed to a set of facts about what happened, which was then assessed by a panel of senior officers and corporate staff. The panel included District Commanders from Tāmaki Makaurau and Northland Police Districts.

110. The investigation resulted in outcomes for the three sergeants:

- Sergeants B, C and D were criticised for failing to show leadership during a work deployment. They failed to take sufficient steps to mitigate or stop unprofessional behaviour that could be damaging to Police's reputation. This included Senior Sergeant A's behaviour.
- Sergeant B was further criticised for taking part in the drinking game in a public space.

111. Senior Sergeant A and Sergeants B, C and D all accept that some of the behaviour that evening was unacceptable and unprofessional. However, they also feel they are taking the full blame for the situation on behalf of their teams, which is unfair. They say the constables also behaved badly, and it is not fair that they as supervisors should receive a formal disciplinary outcome when everyone was off-duty, they were effectively peers and not supervising, and the constables are not being held accountable. Some of the constables we interviewed also expressed the same view.
112. The Authority agrees that the narrow approach Police took to the investigation was unfair. The Code of Conduct emphasises self-responsibility and accountability. The disciplinary approach adopted by Police undermines this. The constables who attended the Waitangi deployment were experienced and well aware of general professional expectations.
113. It would make more sense if all officers who participated in the behaviour were investigated and disciplined where they fell short of the requirements and obligations associated with their role. This acknowledges that all four supervisors had obligations to model responsible behaviour.

Were the supervisors treated consistently during the investigation?

114. The three sergeants were not treated consistently while the investigation took place.
115. Sergeant D said he was immediately reassigned from his position to work in an administrative role (well known to be a role for officers under investigation). This happened as soon as he returned from Waitangi, before the employment investigation started. He was also suspended from his role on a specialist squad. He was told that this would remain the case for the foreseeable future.
116. Sergeant C retained his role but says he had felt he had been “*cast out*” by management. He describes his career as “*destroyed*.”
117. Conversely, Sergeant B undertook an acting senior sergeant role and remained on his specialist squad.
118. Police commented that the investigation process used for all three sergeants was in fact consistent, but that the outcomes were determined by their respective District Commanders, who make decisions about how to mitigate risks within their own Districts. Consequently, the outcomes varied.
119. While this may be the case, there ought to have been some coordination between the Districts because of the perception of unequal and unfair treatment.
120. The approach led to inconsistencies between the relative seriousness of the behaviour being investigated, and the outcome prescribed. Sergeant B was the only sergeant who participated in the drinking vessel challenge and was the supervisor of the team which brought the vessel to Waitangi, yet he appears to have been granted temporary promotion during the investigation period. The other sergeants appear to have suffered to varying degrees. At the time these decisions were made, Police were unaware that Sergeant D had lied about some of his behaviour.

121. Senior Sergeant A was suspended. While he accepts his behaviour was inappropriate and deserving of some form of censure, he feels his treatment is inconsistent with and lacks parity with how the sergeants were treated.

122. We consider that the Police decision to suspend Senior Sergeant A for exposing himself in front of the other officers was appropriate. A criminal investigation into his behaviour was not completed, but we accept that, if it had been, it would have been unlikely to result in a charge of indecent exposure.² However, if he had remained in Police employment, we would have expected this behaviour to have attracted an employment sanction.

What do the supervisors say about their behaviour and performance as leaders?

123. Sergeants B, C and D say that they felt the behaviour had been exaggerated in seriousness and unfairly connected to the serious criminal incident that happened later that night (see paragraph 2).

124. Further, the outcome of the investigation implies that there is no “*off-duty*” for a sergeant, which was not made clear to them.

125. The sergeants were criticised for not showing leadership and mitigating the behaviour. However, they point to examples where they did act to manage the situation, before and during the deployment:

- Sergeants C and D say they spoke to their teams about behaviour expectations before leaving for Waitangi. Sergeant B said he spoke to his officers while they were gathered together after the formal briefing.
- Sergeant D ensured the motel manager had his phone number if she had any complaints about noise or behaviour, and organised rubbish bins for empty bottles and cans.
- Sergeants C and D abstained from drinking from the vessel and made it clear that constables did not have to partake.
- Sergeants C and D checked that the female officers knew they did not have to drink from the vessel and ensured that the volume of alcohol was reduced.
- Sergeant C commented to his team that they did not need to drink any more alcohol after the game of touch rugby due to work obligations the following day.
- Both sergeants say they stopped any further clothing removal after Senior Sergeant A exposed himself the second time.

126. Senior Sergeant A says in his opinion the three sergeants were “*doing a good job making sure none of them were in bad situations*”. He observed the sergeants take their staff out for dinner,

² Section 27 of the Summary Offences Act 1981 is set out in paragraph 168.

play sport and ensure they pick up the rubbish. He says: *“What are they supposed to do, they’re adults?”*

127. Sergeants B, C and D were also criticised for not raising concerns about the behaviour at the time, and not taking actions to stop it. The Code of Conduct requires officers to protect Police’s reputation and integrity by speaking up about inappropriate behaviour.
128. Senior Sergeant A admits he didn’t have the insight at the time to think critically about the behaviour, due to his inebriated state.
129. Sergeant B says he wasn’t overly concerned about the behaviour at the time. A lot of it was innocent and based on competition between *“alpha”* males and females; for example, the clothing removal was to compare muscles.
130. However, Sergeants C and D say it was not feasible to stop the behaviour.
131. It was unclear to Sergeant D what authority he had to *“tell adults what to do”* when they were off-duty on deployment, in what he believed was a safe and private environment. He did not believe he had the authority to tell people to stop drinking or to go to bed when *“off-duty and outside of work.”* He says there needs to be more communication and guidance for supervisors in this position. Sergeant C also expressed these views.
132. Sergeant D says that on reflection he acknowledges he should have taken action to stop some activity and wishes he had, but also says he was not comfortable raising concerns with Senior Sergeant A and Sergeant B (particularly as Sergeant B was his supervisor on a specialist squad) about their behaviour. He was a junior sergeant in comparison.
133. Both Sergeants C and D say there are consequences for officers who question or criticise superior officers. You gain a reputation for being difficult and are likely to be managed out of your role. It is also not possible to raise issues anonymously, despite ostensibly anonymous pathways, such as the ‘Speak Up’ process.³ These views were echoed by other officers spoken to, both junior and senior.

Was there adequate leadership?

134. The Waitangi commemorations have great importance and significance to New Zealanders. The commemorations also have a history of disorder requiring a Police response.
135. Police in Northland have worked hard to build a partnership with iwi and promote a welcoming and family-friendly atmosphere at the commemorations. However, they are also aware that the policing operation is sensitive and potentially volatile. Police are under constant scrutiny and continual work is required to maintain the goodwill and cooperation of all participants.
136. The Authority appreciates that the Northland Police District leadership are very disappointed with the behaviour of the visiting officers and are concerned about the impact on the trust and

³ The ‘Speak Up’ process was an anonymous way for Police employees to report bad behaviour confidentially. It has now been replaced by a new process called ‘Kia Tū.’

confidence they have cultivated within their community. Northland Police rightly observe that the public do not differentiate between officers from different Police districts, so the actions of all officers involved in Operation Waitangi reflect on the Northland Police District and impact on local community relationships.

137. However, in recognising this we also think that the Northland Police District leadership contributed to the situation that developed.
138. Adherence to the Code of Conduct at all times is a reasonable expectation of all off-duty officers. However, it is also reasonable for officers to wish to socialise and drink alcohol when not working. The operation orders were silent about what was appropriate during off-duty hours while on deployment. Consequently, what was 'acceptable behaviour' was largely left open to the officers' interpretation.
139. The Northland District leadership believe that an attitude of restraint should have been self-evident to the visiting officers. A drink with dinner was appropriate, but more spirited socialising and drinking should have been reserved for the end of the operation. Yet Inspector E's comments at the operation briefing implied that socialising and drinking alcohol was expected and encouraged.
140. Police advised us that the comments made by Inspector E had been the subject of a performance conversation. When we asked Inspector E if he said: *"If you need anything like alcohol, drugs or women see the logistics officer"*, he told the Authority he was very sure he did not make the comments and had merely told staff to look after each other and not drink too much.
141. When asked if the comments had been the subject of a performance conversation, he said he had had a conversation with the District Commander about the nature of the briefing, but he had not been advised of the exact nature of the complaint, but accepts he made some 'flippant' remarks.
142. Regardless of his intention, the comment made by Inspector E tended to reaffirm the culture of socialising during the operation.
143. Further, in the case of these officers there were known risk factors that made unchecked drinking more likely and increased the chance that any poor behaviour would impact negatively on New Zealand Police. The officers were in accommodation in a separate location from other officers (including senior officers) deployed on the operation. The presence of marked vehicles parked in the courtyard made them easily identifiable as Police officers.
144. The Northland District leadership are not responsible for the officers' unprofessional behaviour, but equally could have communicated clearer expectations and taken steps to mitigate foreseeable risks. The boundaries of what was appropriate were left ambiguous and were badly misinterpreted by sergeants and officers. As a result, a reasonable desire to socialise while off-duty deteriorated to behaviour by some officers deserving censure.
145. By participating in or appearing to endorse some of the behaviour, such as drinking from the vessel, the sergeants and Senior Sergeant reinforced those activities were acceptable that evening. This in itself was poor leadership.

146. Sergeants C and D say they became uncomfortable and tried to moderate some of the behaviour, but felt they had no mechanism or mandate to do so.
147. To some extent it seems unfair to criticise these officers for failing to speak out about behaviour at the time or afterwards if Police do not provide an effective and safe procedure.
148. In summary, a series of leadership failures contributed to this incident.
149. The supervisors and constables lacked insight into their actions and failed to set good examples for each other. They knew their behaviour needed to conform to Code of Conduct expectations, and they failed to meet this obligation. However, the Northland District leadership should have been more alert to the operational risks surrounding a high-profile national event, where off-duty officers are known to socialise. They could have pre-empted misbehaviour through clearer messaging.

FINDINGS ON ISSUE 2

Police should have investigated all officers whose behaviour could have breached the Code of Conduct. There were unjustified inconsistencies between the way the sergeants were investigated and treated. Northland District leadership should have better communicated what was appropriate during off-duty hours while on deployment. The boundaries of what was appropriate were left ambiguous and were badly misinterpreted by sergeants and officers.

Inspector E showed poor leadership by making unprofessional comments at the briefing regarding off-duty behaviour expectations

The sergeants and Senior Sergeant A showed poor leadership by participating in or appearing to endorse the behaviour. However, they also felt they had no mechanism or mandate to stop it.

There is a general reluctance to speak out against superior officers and colleagues because of the personal and professional consequences.

There was a lack of confidence in Speak Up process.

ISSUE 3: ARE THERE ANY TRENDS, THEMES OR SIMILARITIES RELATING TO OFF-DUTY BEHAVIOUR THAT CAN ALSO BE IDENTIFIED FROM THE INCIDENTS IN MARCH AND SEPTEMBER 2019?

150. In addition to the incident discussed above, we have been advised of three further incidents involving alcohol that took place at two Police-sponsored sports events in March and September 2019. The officers were off-duty, travelled to the event in private or in un-marked Police vehicles and paid for their own accommodation. The Code of Conduct applied.
151. In March 2019, the Counties Manukau Police basketball team were in Hamilton participating in a tournament. At their motel, four members of the team took part in an initiation activity, 'Counties Colours,' which involved drinking six shots of alcohol in quick succession then "sculling" another drink. This took place in a private motel room and was not visible to the public.

152. A senior sergeant and sergeant had come to watch the tournament (but were not managing or part of the basketball team). They were in the same room as the officers who undertook the drinking game. They did not participate, but also did not stop it.
153. Later that evening a female officer who took part in the initiation was asked to leave a nightclub because she was severely intoxicated. She was escorted back to the motel by another officer. An incident occurred and a sexual assault investigation took place, however no charges were laid.
154. In this case, Police investigated whether the two supervisors present introduced or promoted the drinking game at the motel. There was insufficient evidence to prove that this was the case so no further action was taken. One of the supervisors spoke to the Authority and denied pressuring or promoting the drinking game.
155. Two separate incidents occurred at the Police Winter Games in September 2019.
156. In one case, one off-duty officer (Officer X) organised a jug session on the last evening of the tournament for teammates. The jug session took place in a motel room and was described as “*tame*” by several witnesses. We have viewed footage and agree none of the participants became intoxicated and there were no issues with behaviour.
157. Afterwards, the officers continued eating, drinking and socialising. At 9pm, some of the officers went into town. At 3.30am, Police were called to deal with Officer X who had passed out in a toilet cubicle. Once roused, Officer X abused and punched the bar owners. Officer X was arrested and taken to the Police station.
158. Officer X was stood down and later pleaded guilty to assault under the section 9 of the Summary Offences Act 1981. Officer X has since resigned.
159. In the second case, two off-duty officers in a domestic relationship attending the Police games had a physical fight in a bar. They had both been drinking. One of the officers was charged with assault under the Crimes Act 1961. The charge was withdrawn after the officer participated in the Police Prosecution Diversion Scheme.
160. All officers attending the Police Winter Games were required to sign a behaviour bond prepared by the Police Sports organisation. This document clearly set out behavioural expectations and personal responsibility. Officer X did not sign the behaviour bond.

Our assessment

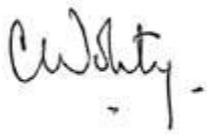
161. The incidents described above illustrate that public trust and confidence in Police is vulnerable in different instances when Police officers are off-duty but still represent Police in some way.
162. The three incidents above were all linked to a Police-sponsored sporting event, but, unlike Operation Waitangi, the officers involved were not on a work deployment and did not have any work commitments at the time. They were involved in private activities, within the context of their profession as Police officers.

163. Specific behaviour which was questionable under the Code of Conduct, such as the Counties Colours drinking game and the jug session took place away from public view. As such the link between the officers, their behaviour and Police's reputation was tenuous, although a risk existed.
164. In the absence of evidence linking supervisors with inciting the behaviour, the Authority agrees that the outcomes of the Police investigations were appropriate. Serious behaviour, such as alleged assault, was dealt with appropriately as a criminal matter.
165. In conclusion, while each of these four incidents include abuse of alcohol, it would be inappropriate to extrapolate general trends from such a small sample.
166. In general, we are satisfied that there are appropriate courses to deal with potential breaches of the Code of Conduct, either by the internal employment processes or under the criminal law.
167. However, there is a clear area of risk that needs to be properly managed. In principle, off-duty officers are entitled to socialise and drink alcohol, as long as this is done responsibly and in accordance with the Code of Conduct. This being the case, Police need to establish general behaviour and supervision expectations for when officers are deployed in an operation but are off-duty between shifts. As described in this report, there are a range of circumstances where the line between private activities and public scrutiny is blurred. The uncertainty about expectations and responsibilities, and how to manage staff when things go awry currently places unclear expectations on sergeants and senior sergeants. It also puts Police's reputation at risk.

FINDINGS ON ISSUE 3

While each of these incidents include abuse of alcohol, it would be inappropriate to extrapolate general trends from such a small sample.

Police need to establish clear supervision expectations for supervisors if they are expected to manage officers' behaviour while off-duty



Judge Colin Doherty

Chair
Independent Police Conduct Authority

1 September 2022

IPCA: 18-1794

Appendix – Laws and Policies

LAW

168. Section 27 of the Summary Offences Act 1981 provides:

“(1) Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, in or within view of any public place, intentionally and obscenely exposes any part of his or her genitals.

(2) It is a defence in a prosecution under this section if the defendant proves that he or she had reasonable grounds for believing that he or she would not be observed.”

POLICE CODE OF CONDUCT

169. The Police Code of Conduct sets out principles and values that all those employed or engaged by New Zealand Police employees are expected to model, regardless of the position or rank held.

170. This Code also applies to behaviour outside of working hours, where actions may bring Police into disrepute, or damage the trust and confidence relationship between employees and Police.

171. The Code provides general guidance and minimum expectations of the behaviour. Employees are expected to model Police values, common sense and self-respect.⁴ Employees are told to apply the SELF test when making decisions about how to act:

- SCRUTINY: would your decision or behaviour withstand scrutiny and be seen as appropriate by others?
- ENSURE COMPLIANCE: does your decision or behaviour comply with the Code and other Police policy, general instructions and procedural expectations?
- LAWFUL: is your decision or behaviour lawful?
- FAIR: is your decision or behaviour fair and reasonable?

172. The Code specifically provides:

- *“We act professionally, exercise good judgement and are accountable for our behaviour. We must not do anything that may bring Police into disrepute. We consider the impact of our behaviour on Police at all times, including online or in social media, and outside of work.*
- *We protect Police’s integrity and reputation by speaking up about any inappropriate behaviour we see and hear.*

⁴ Police values include: professionalism; respect; integrity; commitment to Māori and the Treaty, empathy, valuing diversity.

- *Regardless of our role, we all have responsibility for promoting and maintaining a safe working environment. This includes ensuring we are fit and not impaired (for example by alcohol or other drugs) to safely perform our roles. We keep ourselves, each other and the public safe, by appropriately managing and reporting any safety issues as soon as we are aware of them.*
- *We treat all people respectfully, with empathy and dignity. We do so whether they are members of the public, colleagues, victims or offenders and regardless of the circumstances.*
- *We ensure a healthy work environment that does not tolerate discrimination, harassment, bullying, victimisation or any other unacceptable or offensive behaviour.... We are all responsible for ensuring this type of behaviour does not occur.”*

173. Police will investigate behaviour and decision-making thought to fall short of the required standards. This may lead to disciplinary action or dismissal.

174. Misconduct: Behaviour that breaches the Code or other Police policies and may result in formal disciplinary action.

175. Serious misconduct: Behaviour or actions that breaches the Code or other Police policies and employment agreements and seriously undermine or damage the trust and confidence Police has in the employee, calling into question if the employment relationship can continue. It may justify dismissal.

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.



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