

# Head kick to man during Christchurch arrest unjustified

## Summary of the Incident

1. On 4 March 2021, Police notified the Authority that an officer in Christchurch kicked a man (Mr X) in the head while he was lying handcuffed on the ground. Mr X was intoxicated and had just kicked two officers arresting him.
2. The incident was recorded by a private security camera and the footage was subsequently uploaded onto social media. We also received a complaint from a member of the public who had seen the security camera footage of Mr X's arrest.
3. On 2 March 2021 at about 2.20pm, Mr X's immediate neighbours (and others nearby) called Police to his house because he was yelling abuse, punching the wall, gesturing rudely at passers-by, and throwing things.
4. Officers A and B went to Mr X's house and asked him to stop his behaviour. Ten minutes later, Police received four calls advising Mr X's behaviour had worsened, and his immediate neighbours felt threatened.
5. Officers A and B returned to Mr X's house, arrested him for disorderly behaviour and handcuffed him. Officer A went back inside to secure the house, and Mr X kicked and broke the glass in the door, causing his bare foot to bleed. Officer A came back out and challenged Mr X. Mr X lunged towards Officer A, and Officer B used a tripping technique to take him to the ground face-down.
6. The officers dragged Mr X away from the area of broken glass, and Officer B sat him up. Mr X abused Officer B, then kicked her head and upper leg with his bare, injured foot.
7. Officer A warned Mr X not to kick him and attempted to control Mr X's knee with his hand. Mr X then kicked Officer A's head. Immediately, Officer A kicked the right side of Mr X's head with his booted heel. Mr X lay unresponsive for approximately 30 seconds.
8. Mr X was assessed by a paramedic and taken to the Christchurch Custody Suite. The custody sergeant was not told that Mr X had lost consciousness as a result of the kick to his head.

9. Mr X was charged with assaulting Police, resisting arrest and disorderly behaviour, and pleaded guilty to all charges. He does not remember the incident and is remorseful for his behaviour.
10. We originally oversaw a Police investigation into the officers' actions. However, we disagreed with Police's analysis and decision not to charge Officer A in relation to the kick he gave to Mr X's head. On this basis, we decided to conduct an independent investigation.

## The Authority's Findings

### **Issue 1: Was Mr X's arrest justified?**

We cannot make a finding on whether Mr X's arrest for disorderly behaviour was justified.

### **Issue 2: Did the officers act reasonably and lawfully prior to Officer A kicking Mr X?**

Officer B was justified in taking Mr X to the ground.

Officer A's comments to Mr X were unnecessary and unprofessional.

### **Issue 3: Was Officer A justified in kicking Mr X?**

Officer A was not justified in kicking Mr X in the head.

### **Issue 4: Did Police provide adequate care to Mr X?**

Officer C should have called a doctor to see Mr X immediately when he observed Mr X had a visible head wound.

Officers A and B should have advised Officer C that Mr X had been kicked in the head and may have lost consciousness.

Officer A deliberately underplayed the situation when Officer C asked him directly if Mr X had lost consciousness, in order to cover his actions.

# Analysis of the Issues

## ISSUE 1: WAS MR X'S ARREST JUSTIFIED?

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11. At about 2.25pm the Southern Emergency Communications Centre (SouthComms) sent Officers A and B to a two-storey townhouse on Madras Street, Christchurch after receiving two calls about a man's behaviour. One of the calls was from the man's immediate neighbour who said the man was yelling and swearing, looking over the partition wall between their balconies and pulling the fingers at the neighbour's partner, and screaming at people in the street.
12. The dispatcher advised the officers that an unidentified man was either having a *"bad trip or a mental health episode."* Further:
  - he was possibly intoxicated;
  - he was punching, swearing, and yelling out obscenities; and
  - his behaviour was escalating.
13. At about 2.40pm the officers arrived and spoke to the man, Mr X. Officer B checked his details in the Police database and established that Mr X had alerts for acting aggressively towards Police, intoxication, and mental health issues. The officers say it was clear to them that Mr X was intoxicated rather than suffering from a mental health crisis. They asked Mr X to turn the music down and warned him if he did not stop disturbing his neighbours he could be arrested. Mr X said he understood, and the officers left.
14. Within a few minutes, Police received four more calls about Mr X's worsening behaviour. These calls were made by next-door neighbours and witnesses living in nearby properties, and across the road. Essentially, Mr X's behaviour was observed by several witnesses from their private homes. They told Police he was on his balcony yelling abuse and *"pulling the fingers"* at people in other properties and on the street and had thrown a bottle onto the driveway. He had attempted to climb over onto his neighbours' balcony and was taunting them, causing them to feel threatened.
15. SouthComms sent the officers back to Mr X's address. The dispatcher advised the officers that Mr X was *"throwing glass in the house and from the balcony"* and was yelling at people.
16. At about 3pm, the officers returned and spoke to Mr Z who was one of the witnesses who had called them. Mr Z lived in a block of townhouses opposite Mr X's property. Both properties are private premises. The officers watched videos Mr Z had taken of Mr X, showing Mr X's attempt to climb onto his neighbours' balcony.
17. From the street, the officers could see Mr X sitting in an upstairs room watching TV, listening to loud music, and yelling *"fuck"* loudly.
18. The officers called Mr X to the front door and Officer B arrested him for disorderly behaviour under section 3 of the Summary Offences Act 1981.

19. After Mr X's arrest, the officers took statements from Mr X's immediate neighbours, and from Mr Z. Mr Z stated that Mr X had pulled the fingers and shouted at him and his sister while they were walking in the street, causing them to feel unsafe.

### Was Mr X's arrest for disorderly behaviour justified?

20. Police can arrest any person who they have good cause to suspect has committed an offence under the Summary Offences Act 1981.<sup>1</sup>
21. Section 3 of the Summary Offences Act provides that a person commits the offence of disorderly behaviour if, "*in or within view of any public place, that person behaves or incites or encourages any person to behave in a riotous, offensive, threatening or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.*"
22. When the officers went to arrest Mr X, they heard him swearing over loud music while they were in the street outside his townhouse. The swearing that the officers heard from the street was not specifically directed at any one person or collection of people, and therefore was not likely to provoke a violent response from a passer-by.
23. When asked why they thought Mr X was behaving in a disorderly manner, the officers said that they believed his actions towards his neighbours, (which included throwing glass onto the driveway, yelling abuse, and attempting to climb onto his neighbour's balcony) risked a violent response.
24. We do not agree that the behaviour of Mr X towards his neighbours would legally amount to disorderly behaviour. This is because, apart from the loud music and swearing, the actions reported by the people who observed them occurred while they were within their private properties, and not in or within view of a public place, as the law requires.
25. It is true that some 111 callers told SouthComms that they saw Mr X yelling abuse and pulling the fingers at people walking in the street (a public place), but this specific detail was not communicated by SouthComms to the officers. Neither did the officers refer to this as a reason for why they thought Mr X was behaving in a disorderly manner.
26. Police also spoke to Mr Z who showed them his video footage of Mr X's behaviour. In interview, the officers did not say that Mr Z advised them that Mr X had called out to his family while they were walking in the street before they arrested him. This evidence appears to have been gathered later when Mr Z gave his statement to Police (on 25 March 2021).
27. In view of the available evidence, we do not think the officers had "*good cause to suspect*" that Mr X had committed the offence of disorderly behaviour when they arrested him. Without evidence, they had no reason to think it likely that he had acted in a way that risked public order (the essence of the offence), as opposed to his neighbours' private safety.

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<sup>1</sup> Pursuant to section 39 of the Summary Offences Act 1981 (see appendix, paragraph 105).

28. In response to this, the officers say that they were aware that Mr X had also "*pulled the fingers*" at people in the street, and that his behaviour was therefore visible from a public place. The officers explain that the full details of the job were accessible to them from their Police cell phones via the 'Police Mobile Responder' application.
29. The application essentially reflects all the information captured when Police receive a call about an incident. All the information about an incident is not always transmitted over the Police radio. This is to reduce radio traffic and make more time available for other transmissions. Officers are encouraged to use the 'Police Mobile Responder' application to get all the information about jobs they are attending.
30. We asked Police if it was possible to see if the officers accessed the job information in the 'Police Mobile Responder' application on the day they attended the incident. Police told us that the application does not have an audit function, so it is not possible to verify whether the officers accessed the job information.
31. We think it is crucial to know what information officers have available to them, and what they access, when they make critical decisions in the field. We recommend that Police develop an audit capability for the 'Police Mobile Responder' application to enable this.
32. Without knowing what information the officers relied on when they arrested Mr X, we cannot make a finding on the justification for Mr X's arrest for disorderly behaviour.

#### FINDING ON ISSUE 1

We cannot make a finding on whether Mr X's arrest for disorderly behaviour was justified.

#### ISSUE 2: DID THE OFFICERS ACT REASONABLY AND LAWFULLY WHILE ARRESTING MR X PRIOR TO OFFICER A KICKING MR X?

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33. The officers say their arrest planning accounted for Mr X's volatile behaviour and historical aggression towards Police. They decided it would be safer to speak to Mr X outside his house, so the officers called to Mr X to come to the front door. Officer B says she held her pepper spray ready in her hand, and Officer A switched his Taser on, but kept it holstered.
34. After several minutes, Mr X came downstairs but indicated he needed to find the door key. The officers heard him rummaging in a kitchen drawer and were concerned he could be arming himself so Officer B radioed SouthComms requesting another single-crewed unit to come and assist.
35. Mr X approached the front door and punched the glass panel and yelled abuse at Officer B. He then opened the door and walked out towards Officer B with his hands clenched in front of him, telling her to arrest him. Officer B told Mr X he was under arrest, and he complied with her instructions to put his hands behind his back while she handcuffed him. Officer A advised SouthComms that Mr X had been arrested so another unit was no longer needed.

36. Part of the officers' interaction with Mr X was recorded on the neighbour's security camera, which has an audio component. We have viewed and listened to the recording.
37. At this point, Officer A told Mr X that he was going into the house to secure the back door so that his property was safe. Officer A does not recall Mr X disagreeing with this. However, Officer B recalls that Mr X "*appeared annoyed*" that Officer A had entered his house. The footage shows Mr X kicking and smashing the glass panel of the front door, cutting his bare foot while Officer B tries to keep control of him.
38. Officer A, alerted by the noise, came back outside and saw the damage. He tells Mr X: "*You're an idiot, what did you just do that for? Do you own this house, because that's wilful damage as well.*" Officer A is standing a short distance away from Mr X.
39. While Officer A is speaking, Mr X lunges towards him. Officer B says she tried to hold him back, but Mr X is a large man and he strained against her with his full bodyweight. She says she could not safely control him, so she used a trained tripping technique to take him to the ground, maintaining her hold on Mr X's arms as he went down. Officer A grabbed Mr X's head as he fell forward, but let go as Mr X twisted his body to the left to prevent himself being pulled down on top of Mr X. Mr X landed on the tarmac near his front door, on top of the broken glass. A photograph taken immediately after the take-down shows a bleeding cut on Mr X's forehead.
40. Officer B says she acted primarily to prevent Mr X from breaking free and headbutting or kicking Officer A. Despite being handcuffed, Mr X was becoming more aggressive and was "*rushing towards*" Officer A to the point where she could not hold him back.
41. Any person, including a Police officer, is legally justified in using reasonable force to defend themselves or someone else.<sup>2</sup> The reasonableness of the force used is assessed in the light of the circumstances as the officer believed them to be.
42. We accept that Officer B believed that she needed to act to prevent Mr X attacking Officer A, and that Mr X was motivated and capable of doing so despite being handcuffed. The footage clearly shows Mr X lunging towards Officer A in an aggressive manner. Mr X has just punched and kicked a glass door, demonstrating his aggressive state of mind.
43. In the circumstances, it was reasonable for Officer B to take Mr X to the ground. Officer B had to act quickly, and she had no feasible alternative other than to use Mr X's momentum as part of the take-down so that he fell in an area of broken glass. Officer B was not strong enough to hold him up or manoeuvre the direction of his fall.
44. We accept that the take-down was necessary and justified. However, we consider that Officer A's response (outlined in paragraph 38) was unnecessary and partially responsible for escalating the situation. Officer A knew that Mr X was volatile and intoxicated, and his comments were unprofessional.

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<sup>2</sup> Pursuant to section 48 of the Crimes Act 1961 (see appendix, paragraph 107).

45. At this point, the officers dragged Mr X away from the door and broken glass towards the middle of the driveway. They say this was because it was not safe for him to remain lying on glass, and they could not lift him because he was too heavy.
46. In the CCTV footage Officer B can be seen taking Mr X by the arm and lifting some of his weight off the ground, while Officer A lifted his legs as they moved him away from the broken door. We accept that there was a risk of Mr X injuring himself and that he had to be moved.

## FINDINGS ON ISSUE 2

Officer B was justified in taking Mr X to the ground.

Officer A's comments to Mr X were unnecessary and unprofessional.

## ISSUE 3: WAS OFFICER A JUSTIFIED IN KICKING MR X?

47. The officers intended to stand Mr X up and escort him to the Police car.
48. The footage shows Mr X lying face down on the driveway with Officer B standing near his head. Officer A goes inside the house briefly and then locks the front door, before turning back towards Mr X. He tells Mr X to *"roll onto your bum, good job,"* as Officer B rolls Mr X onto his back, then attempts to pull him into a sitting position, resting against her leg.
49. Both officers say they assessed Mr X was 'actively resistant' that is, they believed he intended to use physical actions to resist Police, for example pulling, pushing, or running away. Officer B says Mr X tensed his body to resist her attempt to stand him up.
50. The footage corroborates this. Mr X twists his body, so he is lying on his back. He looks up at Officer B and kicks her hard on the side of her head with his bare right foot, then on her upper leg while yelling abuse. Officer B stumbles to her left and moves around behind Officer A so she is standing slightly behind his left shoulder.
51. Immediately after kicking Officer B, Mr X swivels around and looks up at Officer A on his right. Officer A steps towards Mr X and puts his right hand on Mr X's bent knee, saying: *"Don't kick me or you could get hurt, do you understand?"*
52. Still lying on his back, Mr X kicks out with his left foot and connects with the left side of Officer A's head. Officer A says this was a *"proper blow."* Immediately, Officer A brings his right leg backwards (behind his left leg). Officer A leans his body weight onto his left leg and kicks his right leg forward, striking the right side of Mr X's head with the heel part of his booted foot's sole. The audio captures the *"smack"* of Mr X's head hitting the tarmac driveway.
53. Mr X is still lying on his back and appears limp and unresponsive. Officer A rolls him over on his side and pulls him up into a sitting position. Officer B stands behind Mr X, helping to support him. Mr X's head is hanging down, so his chin is on his chest. Officer A says: *"Stand up man."* Mr X does not respond.

54. Officer A again tells Mr X to stand up, while holding Mr X's head up and looking at his face. He says: *"Come on dude, stand up. You're alright. I asked you not to kick me, but you did it anyway."* Mr X is still limp, and unable to hold himself up without assistance. The security footage ends at this point.

**Was Officer A legally justified in using force against Mr X to defend himself or another?**

55. Officer A told the Authority he kicked Mr X in defence of himself and Officer B.
56. To rely on that defence at law, Officer A's actions must be assessed by answering three questions:
- a) What were the circumstances as Officer A believed them to be? (a subjective test)
  - b) Did Officer A act for the purpose of defending himself or another? (a subjective test)
  - c) Was Officer A's action reasonable in the circumstances as he believed them to be? (an objective test)

*What did Officer A believe the circumstances to be?*

57. Officer A says he saw Mr X kick Officer B twice and believed Mr X might kick her again. Mr X was drunk and aggressive, and capable of kicking out again by swivelling on the ground. He says he was not sure where Officer B was or what state she was in after she had been kicked as he could not see her.
58. He says he stepped towards Mr X to intervene. Mr X raised his left leg, and Officer A says he tried to prevent Mr X from kicking him by putting his hand on Mr X's leg. His instruction, *"don't kick me or you could get hurt..."* was intended to quickly and directly alert Mr X that if he kicked out again Officer A might have to use force against him, which could hurt.
59. Mr X then kicked him in the head, hard. Although he did not appreciate it at the time, Officer A now believes he might have been slightly concussed at this point.
60. Officer A says he needed to act because he believed he was going to be kicked in the head again and would continue to be at risk of assault. He was positioned close to Mr X so was within range of a second kick. Mr X was looking directly at him which caused him to think a second kick was likely.
61. We accept Officer A perceived he was at risk of being kicked again and that this blow could have some force behind it, as the first did.
62. Officer A says he did not know where Officer B was and whether or not she was incapacitated. Footage shows Officer B move behind and around Officer A, while Officer A is focused on Mr X. Consequently, it is feasible that he was not clear where she was in relation to Mr X.



*Was the officer's use of force against Mr X for the purpose of defending himself or another?*

63. Officer A says he kicked out at Mr X to:
- distract and reposition him and stop Mr X from kicking him again; and
  - protect Officer B from further assault as he was unsure where she was and whether or not she had been incapacitated.
64. Officer A says he quickly considered his options and, from experience, knew that he could not use pepper spray because he or Officer B could also be affected, putting them at risk. Mr X had not responded to tactical communication. He could not justify using his Taser because Mr X was handcuffed. He did not consider stepping away from Mr X.
65. He says he aimed the kick at Mr X's upper shoulder as a distraction, so he could then roll Mr X onto his side to prevent him from kicking them, however his kick missed the correct target. The kick was not premeditated, nor did he intend to kick Mr X in the head.
66. It is difficult to accept that Officer A went through a considered threat and response assessment within the second it took him to respond, having just been kicked in the head.
67. When asked about the speed of his assessment, Officer A explained that the assessment process becomes like "*muscle memory*" based on experience and regular tactical training. Further, there are certain tactical options that can automatically be ruled out in certain circumstances, such as pepper spray when you are too close to the person.
68. It is possible that Officer A conducted the assessment as he says, although, given the immediacy of the kick, it would have been cursory. This view is supported by the fact he did not properly consider the option to step away from Mr X, which was the obvious response.
69. In addition, we find it difficult to accept that Officer A did not intend to kick Mr X in the head, in light of what can be seen in the footage, and doubt that he is telling the truth. Although he denies it, we consider Officer A acted out of anger and in retaliation for being kicked himself.
70. The footage is compelling. Officer A's kick was delivered with considerable force, within a second of being kicked himself. It was a direct response in the heat of the moment. Officer A's words to Mr X afterwards: "*I asked you not to kick me but you did it anyway,*" imply the act was punitive.
71. We conclude Officer A did not act for the purpose of defending himself or Officer B.

*Was Officer A's action reasonable in the circumstances as he believed them to be?*

72. As we have found that Officer A was not acting for the purpose of self-defence, the kick cannot be legally justified.
73. However, if we are wrong in our conclusion, we will assess whether the kick was reasonable based on what Officer A says he believed the circumstances were at the time.

74. Officer A only needed to deal with what was immediately in front of him, preventing Mr X from kicking him again and ensuring Officer B was not at imminent risk of harm.
75. Both of these goals could have been easily achieved by Officer A stepping away from Mr X so he was out of range of a second kick, and by looking around him to assess Officer B's position and status. Mr X was handcuffed and on the ground. He was at all times in front of Officer A and although Officer A may not have been able to see Officer B who was behind him, it would have been obvious to him she was not in proximity so as to be immediately susceptible to any force applied by Mr X. Although he had proved himself nimble and motivated to kick out at Police, he would not have been able to reach Officer B or Officer A had he stepped back.
76. Officer A accepts that, in hindsight, stepping away from Mr X would have been the best course of action.
77. Because there was a less forceful way for Officer A to avoid himself and Officer B being kicked or otherwise assaulted, he was not justified in kicking Mr X.

#### Was there any other legal justification for Officer A's actions?

78. Police are empowered to use "*such force as may be necessary*" to overcome any force used in resisting an arrest unless the arrest can be made by reasonable means in a less violent manner.<sup>3</sup> "*Necessary*" force in this context is generally accepted as meaning "*reasonable*" and "*proportionate to the degree of force being used to resist.*"
79. We accept that the officers were still engaged in the process of arresting Mr X while he was handcuffed, but on the ground kicking out, as he was not securely in Police custody. Mr X was clearly using force to resist the officers completing the arrest.
80. However, Officer A was still required to use reasonable and proportionate force to overcome Mr X's actions. Objectively, the most reasonable option for Officer A remained to step away from Mr X and reassess the situation. There was no need to use any level of force to overcome Mr X's actions in that moment.
81. This is not to say that some level of force may have been required to secure Mr X in the immediate future given his demeanour and behaviour, but such force would need to be proportionate and reasonable.
82. We conclude that the kick was an intentional action, and that Officer A did not act in self-defence, nor was the kick reasonable or justified under section 39. Officer A's force was excessive.

### FINDING ON ISSUE 3

Officer A was not justified in kicking Mr X.

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<sup>3</sup> Pursuant to section 39 of the Crimes Act 1961 (see appendix, paragraph 106).

#### ISSUE 4: DID POLICE PROVIDE MR X WITH ADEQUATE CARE WHILE IN CUSTODY?

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83. After Officer A kicked Mr X, the officers moved Mr X to sit against a tree. They say Mr X became more alert and his demeanour cycled between remorseful and aggressive.
84. The officers called an ambulance to assess Mr X. One of the attending paramedics noted in her Police statement that Officer B had advised that Mr X had a cut on his foot and a possible head injury. He had resisted arrest resulting in him *“hitting his head on the concrete and he had been unresponsive for a period of approximately 30 seconds.”*
85. It appears neither officer told the attending paramedics that Mr X had also been kicked in the head prior to hitting his head on the driveway. Neither officer can recall doing so.
86. Mr X was aggressive towards the paramedics and would not permit a thorough assessment of him. However, the paramedics were satisfied that Mr X had sufficient awareness and could be left in Police care.
87. At about 4pm, Officers A and B took Mr X to the Christchurch custody suite. He remained abusive and unpredictable and was taken directly into an observation cell, where his handcuffs were removed.
88. Officer C, the custody sergeant, overheard a comment from one of the staff escorting Mr X that he had lost consciousness. Officer C went to the cell and noticed Mr X had dried blood on his forehead and grazes on his limbs. He tried to start a conversation with Mr X and told him he would like a doctor to come and tend to his injuries, but Mr X told him to *“fuck off”* and refused to cooperate.
89. Officer C says he decided not to call the doctor at that time because Mr X was clearly not going to allow the doctor to examine him. Mr X’s injuries did not appear to be serious. He planned to call the doctor later when Mr X had calmed down. Mr X went to sleep in his cell.
90. Officer B, as the arresting officer, briefed Officer C. She told him that Mr X had kicked both herself and Officer A, and what the intended charges against him were. Officer C asked her about what he had overheard about Mr X losing consciousness. Officer B told him that he should speak to Officer A about that, and she had not seen what had happened clearly as it was in her peripheral vision. Officer B advised that they had called paramedics to assess Mr X, but his behaviour had prevented a proper assessment.
91. Officer C asked Officer A what had happened. Officer A said he had *“pushed Mr X’s head in the ground with his foot”* after Mr X kicked him in the head. Officer C asked Officer A twice if Mr X had been knocked out, and he confirmed that he had not. He said Mr X’s eyes were open and he was *“dazed.”*
92. Police have a duty of care towards people in their custody. Police policy requires that a doctor examine a person who comes into their custody with a head injury whether such an injury is visible or not.

93. Officer C noted that Mr X had blood on his forehead, which was a visible head injury. On this basis alone, he should have arranged for a doctor to see Mr X straight away. Officer C accepts this and takes responsibility for not doing so. Mr X was only assessed by a doctor at 11.20pm. The doctor concluded that Mr X sustained a superficial graze, and no serious injuries were noted.
94. What is more concerning is that neither Officer A or B told Officer C that Mr X had been kicked in the head and had lost consciousness. In failing to do so, Mr X was left with a potentially undiagnosed head injury. The custody staff were left to care for a person without knowing the extent of the medical risks they had to manage. In this case, they allowed him to go to sleep when he could easily have been concussed.
95. Officer B should have been clear with Officer C about what she knew had happened when Officer C asked her about it (having already briefed the paramedic that Mr X had lost consciousness).
96. Officer B explained to us that she did not want to speak to actions she had not carried out and that she only had a peripheral view of what had happened.
97. We do not accept these explanations. While Officer B's view might have been partially obscured by Officer A standing in front of her, the security footage shows that she was facing Officer A and Mr X when the kick occurred.
98. Irrespective, it was not acceptable for Officer B to refer Officer C to Officer A for this information. It was imperative that information about a potentially serious injury be passed to Officer C as soon as possible. Officer B should not have relied on Officer A to pass this information on. Moreover, Officer B was the arresting officer and had responsibility for Mr X's welfare until he was formally received by custody staff. The conversation Officer B had with Officer C was part of that handover process.
99. While interviewing Officer A, we challenged his statement that Mr X did not lose consciousness. We believe the footage clearly shows he did. Officer A says Mr X looked up at him and opened his eyes when he told him to stand up. However, Officer A conceded that it was possible that Mr X was unconscious at the time, despite his eyes being open.
100. This mere possibility warranted action and Officer A should have advised Officer C that Mr X could have lost consciousness, that Mr X had been kicked in the head and that he needed to be assessed by a doctor as soon as possible. Not doing so was a significant failing.
101. Additionally, we think that Officer A deliberately underplayed the situation when Officer C asked him directly if Mr X had lost consciousness. The disparity between what is seen on the footage, and his description of his actions and the impact on Mr X are too far apart to be credible.
102. Subsequent to this incident, Police have reminded all officers in the District that all people arrested or detained, who received a blow or strike to the head, should be assessed by a health professional.

## FINDINGS ON ISSUE 4


Officer C should have called a doctor to see Mr X immediately when he observed Mr X had a visible head wound.

Officers A and B should have advised Officer C that Mr X had been kicked in the head and may have lost consciousness.

Officer A deliberately underplayed the situation when Officer C asked him directly if Mr X had lost consciousness, in order to cover his actions.

## Recommendation

103. We recommend Police develop an audit capability which will be applied to the 'Mobile Responder' application.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

**13 September 2022**

**IPCA: 21-6753**

## Appendix – Laws and Policies

### LAW

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#### Offences against public order and breach of the peace

104. Section 3 of the Summary Offences Act 1981 provides that:

*“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, behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.”*

105. Section 39 of the Summary Offences Act 1981 provides that:

*“Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant any person whom he has good cause to suspect of having committed an offence against any of the provisions of this Act except sections 17 to 20, 25, and 32 to 38.”*

#### Use of force

106. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*

107. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances, as he or she believes them to be, it is reasonable to use.”*

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

The Authority's investigation may include visiting the 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

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

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Mana Whanonga Pirihimana Motuhake

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