

Summary Report

Police handling of a sexual assault allegation

INTRODUCTION

1. On 11 November 2012 a woman, Ms Y, told Police that she had been sexually assaulted by a security guard at a hospital in which she was a patient. At the time Police took very little action in relation to Ms Y's allegation.
2. Nine months later, in August 2013, the security guard was arrested for an unrelated sexual incident and charged with that matter and for sexually assaulting Ms Y. Police did not inform Ms Y that the security guard had been arrested and charged in relation to her complaint. She learnt of it when contacted by a member of the media following the security guard's court appearance.
3. On 5 September 2013, Ms Y wrote to the Authority complaining about the Police failure to act. She said that:
 - 1) Police had failed to investigate her sexual assault allegation in November 2012;
 - 2) A statement had not been taken from her at the time;
 - 3) Police failed to inform her, nine months later, that the security guard had been charged with sexual assault in relation to her complaint; and
 - 4) Police had discriminated against her because she suffers from a mental illness.
4. The Independent Police Conduct Authority conducted an independent investigation into the matters raised by Ms Y in her complaint. The Authority's investigation focused solely on the actions of Police. The Authority has no jurisdiction in relation to the actions of any other person or institution. This report sets out the results of that investigation and the Authority's findings.
5. The Authority completed its report in August 2014 but has delayed its publication until the completion of court proceedings involving the security guard.

BACKGROUND

Ms Y's sexual assault complaint to Police

6. Ms Y has a significant history of self-harm and is well known to mental health services, hospital staff and local Police. These three services have an emergency management plan that sets out the process for dealing with incidents in which Ms Y self-harms. Typically, Police become involved, at the request of the hospital, if Ms Y's behaviour becomes disruptive.
7. At the time of this incident on 10 November 2012, Ms Y's emergency management plan provided that she would be treated at hospital and then placed in a secluded observation room until it was appropriate for her to be discharged. Police would be called if Ms Y subsequently refused to leave the hospital.
8. At 7.30pm on 10 November 2012, Ms Y presented herself to the Accident and Emergency Department after taking an overdose of prescription medication. In accordance with her emergency management plan, she was placed in a secluded observation room following emergency treatment. She then fell asleep.
9. Ms Y states that she woke up a short time later to find a hospital security guard sexually assaulting her. Ms Y said she then lost consciousness. When Ms Y woke again she immediately told an accident and emergency nurse that she had been sexually assaulted. She then told the hospital charge nurse. After this Ms Y ran out of the observation room and emergency department and into the hospital grounds where she further self-harmed by cutting herself. She was located by hospital staff and brought back into the emergency department for treatment.
10. At 1.15am, due to Ms Y's behaviour during treatment she was trespassed from the hospital. In accordance with her emergency management plan, Police were called to help remove Ms Y when she refused to leave.
11. At about 1.20am Officers A and B arrived at the hospital. Both officers knew Ms Y and had prior knowledge of her history and the process established by her management plan. Prior to this incident Officer A had dealt with Ms Y on a number of occasions, including incidents in which she had self-harmed.
12. Officers A and B spoke to Ms Y and asked her to leave the hospital. When she refused, they escorted her from the emergency department and to their patrol car.
13. As soon as Ms Y was in the patrol car she told Officer A that she had been sexually assaulted. Officer A called his supervisor, Officer C, to ask how he should proceed with Ms Y's complaint. Officer C also had prior knowledge of Ms Y and the process set out in her emergency plan, having attended multiple incidents involving her in previous years.
14. Officer C told Officer A that he would call him back after conferring with senior Police staff. Officer A took this to mean that Officer C intended to speak with investigators from the Police Criminal Investigation Branch (CIB).

15. Officers A and C have provided inconsistent accounts of the nature of Police action that occurred after Officer C returned Officer A's phone call.
16. In interview with the Authority, Officer A said that Officer C called back and told him to get the details of all hospital staff that had dealt with Ms Y that evening. Officer A said that, following this instruction, he returned inside the hospital and recorded the details of the security guard, the security manager and the hospital duty charge nurse. He said that after returning to the patrol car he called Officer C and told him he had taken the details. Officer C told him to decide whether it was appropriate to charge Ms Y for trespass.
17. Conversely, Officer C said that he told Officer A to bring Ms Y to the Police station and then return to the hospital to speak to the security guard and hospital staff, and check whether CCTV footage was available. Officer C said that Officer A called him back after returning to the hospital, and told Officer C that he had spoken to the charge nurse and the security guard, and that there were no CCTV cameras in the seclusion room or nearby corridors.
18. Officer A did not ask Ms Y any more questions about her sexual assault allegation after he returned to the patrol car. He and Officer B decided to warn Ms Y for trespass and then drove her home. Officer A told Ms Y that someone from Police would be in contact with her about her complaint. In Police interview, Officer A said that he thought that contact would be made by a qualified investigator from the CIB or Adult Sexual Assault (ASA) team.
19. At 5.20am the same morning, 11 November 2012, Ms Y returned to the emergency department after she further self-harmed. She received treatment and was discharged. When Ms Y refused to leave, Police were called and Officers A and B returned to the hospital. They arrested Ms Y for trespassing after she failed to comply with their warning to leave. In accordance with her emergency management plan, the officers drove Ms Y to the Police station where she was detained in Police custody.
20. Officer A said that at about 7am he completed an incident report about Ms Y's complaint after being instructed to do so by Officer C. Officer A told the Authority that he attached the incident report to a photocopy of relevant pages from his Police notebook. He then gave these documents to Officer C.
21. Usual Police practice would have been for Officer C to then hand the incident report directly to staff from the CIB, or to the Police File Management Centre to be recorded and then forwarded to the CIB or ASA team to begin an investigation. However, there is no record of Officer A's incident report being received by either.
22. When asked about this by the Authority, Officer C said that he had instructed Officer A to put in a report about Ms Y's complaint. He stated that further Police investigation could only have taken place with additional evidence corroborating Ms Y's allegation. Officer C said a statement was not sought from Ms Y because she had lost credibility in the years Police had dealt with her and, *"If we were to do something every time she mentioned something like that, that's all we would be concentrating on."* In his job sheet, recorded nine months after Ms Y's complaint, Officer C similarly recorded that at the time he received Officer A's phone call from

the hospital, he *“firmly believed that [Ms Y] was in another one of her states where she makes unsubstantiated allegations.”*

23. Officer C later said to the Authority that these comments referred to the many instances he knew of in which Ms Y had made *“accusations of a sexual nature”* against Police and other emergency services personnel as they were dealing with her. For example, Ms Y sometimes made these accusations while officers were escorting her from property after she had been trespassed from a building.
24. However, Officer C acknowledged to the Authority that he was not in fact aware of any instances in which Ms Y had followed up these accusations by subsequently lodging a formal complaint, and accepted that the manner in which Ms Y had made the allegation in this instance was different from the previous occasions referred to by Officer C.
25. Officer C also accepted that it was his responsibility to ensure that further steps were taken to investigate Ms Y’s complaint. In particular, Officer C acknowledged that he should have ensured that a statement was taken from Ms Y and forwarded to the CIB. He could not explain why he did not take these steps.
26. A Police investigation into Ms Y’s complaint was not commenced. Ms Y was not contacted again by Police about her complaint until August 2013. This contact followed the events detailed in the following section.

Subsequent arrest of the security guard in August 2013

27. On 18 August 2013, over nine months after Ms Y’s original allegation, the security guard was arrested and charged with an unrelated incident at the same hospital. When Officer C began a nightshift that evening he was briefed about the arrest. He recognised that the circumstances were similar to Ms Y’s complaint and tasked Officer A to interview the security guard about Ms Y’s allegation. Following the interview the security guard was charged with sexually assaulting Ms Y.
28. Officer C said that he then spoke to the acting Detective Sergeant on duty in relation to interviewing Ms Y. They determined that Ms Y needed to be interviewed by an investigator, from either the CIB or ASA team, qualified to conduct interviews about sexual assault matters. Officer C directed Officer A to organise this with investigators from the Police CIB.
29. On 20 August 2013, Officer A filed a request with the Police CIB for assistance with Ms Y’s case and for a suitably qualified officer to interview Ms Y.
30. Officer A did not inform Ms Y that the security guard had been charged with sexually assaulting her. Consequently, Ms Y was unaware of the above developments. Three days later, on 23 August 2013, a member of the media obtained Ms Y’s details from the security guard’s initial court appearance and contacted her about the allegation.

31. In interview with the Authority, Officer A accepted that it was his responsibility, as the arresting and charging officer, to inform Ms Y that the security guard had been arrested and charged with sexual assault.
32. As Officer A's supervisor, Officer C had a responsibility to ensure that correct procedures were followed by Officer A. In interview with the Authority, Officer C said that he did not want Ms Y to be spoken to on the night of 19 August 2013 because he wanted an officer qualified in sexual assault matters to inform Ms Y that the security guard had been arrested and charged in relation to her complaint, and take a statement from her. He said that he expected that CIB would speak to Ms Y following Officer A's request for assistance. In interview with the Authority, Officer C accepted that he failed to check with Officer A as to whether Ms Y had been informed about the charge against the security guard.
33. On 29 August 2013, Police took a witness statement from Ms Y in relation to her complaint.

Police involved

34. At the time of Ms Y's original complaint Officer A had served four years with Police and Officer B had served five months. Officer C, a section Sergeant, was Officer A's and B's supervisor and had served almost 14 years.

Police investigation

35. Following Ms Y's complaint, Police conducted an employment investigation into the actions of Officer A and C.

LAWS AND POLICIES

Adult sexual assault investigation (ASAI) policy

36. The ASAI sets out twelve key process points that Police must follow when responding to and investigating complaints of adult sexual assault. The first four process points are relevant in this case:
 - 1) Initial actions on contact: Brief details of the complaint are obtained to determine what initial actions Police will be required to take. The ASAI provides that process points one and two must be undertaken by the first Police employee involved in a potential adult sexual assault allegation case. That officer's supervisor is responsible for ensuring all appropriate actions have been taken and that an adult sexual assault investigator is notified of the complaint.
 - 2) Case referral: an incident is to be referred as soon as possible to the Police Criminal Investigation Branch (CIB) and an adult sexual assault investigator.
 - 3) Providing specialist support: with the victim's consent, Police are required to arrange for a specialist sexual assault response person to provide support.

- 4) Preliminary interview: this interview must be conducted by a specially trained CIB member or adult sexual assault investigator.
37. The ASAI policy reinforces the obligations of Police under the Victims' Rights Act 2002 to provide victims of sexual assaults with regular updates on the progress of an investigation and all other information they are entitled to under the Act.
38. The Policy further provides that all sexual assault complaints will be investigated in a timely, fair and sensitive manner and by specially trained investigators and interviewers, unless there is a valid reason to not do so.

Victims' Rights Act 2002

39. The Victims' Rights Act 2002 contains provisions for the treatment and rights of victims of offences. Section 11 provides that a victim is entitled to be given, as soon as practicable after they come into contact with the Police, information about programmes, remedies, or services available to the victim through Police.
40. Section 12 of the Act requires Police to, as soon as is practicable, inform the victim of an offence about:
 - the progress of the investigation of the offence;
 - the charges laid and reasons for not laying charges, and all changes to laid charges;
 - the victim's role as a witness in the prosecution of the offence; and
 - the result of all proceedings relating to the offence, for instance any convictions entered and sentences imposed in relation to the offence.

THE AUTHORITY'S INVESTIGATION

41. The Authority's investigation of Ms Y's complaint considered the following issues:
 - 1) Did Police investigate Ms Y's sexual assault complaint following the guidelines provided in law and Police policy?
 - 2) Did Police discriminate against Ms Y because she suffers from a mental illness?

THE AUTHORITY'S FINDINGS

Did Police investigate Ms Y's sexual assault complaint following the guidelines in law and Police policy?

(i) Police action on the receipt of Ms Y's complaint in November 2012

42. Police ASAI policy requires officers to ensure that upon receipt of a complaint they obtain sufficient detail about the complaint to enable determination of what further action is required. A complaint must then be referred to the CIB or an ASA investigator.
43. When Officer A first received Ms Y's complaint on 11 November 2012 he immediately sought Officer C's advice on how to proceed. As discussed in paragraphs 14–16 above, there is a conflict between Officer A's and C's accounts of the instructions Officer C provided to Officer A. In forming its conclusions the Authority has preferred Officer A's account due to its consistency with other evidence, including the account provided by Officer B and notebook entries made by Officer A at the time.
44. On this basis, the Authority finds that Officer C instructed Officer A only to get the details of relevant hospital staff, and that Officer A did this. Officer A also said that he did not take a statement from Ms Y or ask her further questions about the allegation because he lacked the proper qualifications.
45. The Authority acknowledges that Officer A sought advice from Officer C and then followed his instructions. However, these instructions did not meet the standards referred to in the ASAI policy, which requires the first Police employee involved in a potential sexual assault matter to obtain brief details of the complaint in order to *"determine what immediate actions are required."*
46. The Authority considers that Officer A, as the first employee involved, should have identified and spoken with all the people who came into contact with Ms Y in respect of her allegation and taken more information from them than simply their contact details.
47. The Authority accepts that Officer A was not sufficiently qualified to further interview Ms Y and acted appropriately under the circumstances by not asking her further questions about her complaint.
48. Officer C did not comply with the ASAI guidelines when he failed to ensure that appropriate initial inquiries had been made by Officer A, and that the complaint was properly notified to CIB or an ASA investigator. Officer C lacked the authority to decide that further Police investigation could only have occurred with additional evidence corroborating Ms Y's allegation.

FINDINGS

Officer A did not comply with the Police ASAI policy when he failed to make appropriate enquiries with witnesses sufficient to determine what further action was required in relation to Ms Y's complaint.

Officer C failed to fulfil his responsibility under the Police ASAI policy to supervise and ensure the appropriate handling and investigation of Ms Y's complaint to the required standard.

(ii) Did Police fail to inform Ms Y about relevant proceedings regarding her original complaint?

49. The Victims' Rights Act 2002 required Police to notify Ms Y that the security guard had been arrested and charged in relation to her complaint. This statutory obligation is mirrored in the Police ASAI policy.
50. On 19 August 2013, the hospital security guard was charged in relation to Ms Y's allegation of sexual assault. On 23 August 2013, Ms Y was given this information when contacted about her allegation by a member of the media.
51. As the arresting and charging officer, Officer A was required to inform Ms Y of this development regarding her complaint. Officer C should have ensured that this took place. Both failed to take these steps.

FINDINGS

Officer A did not comply with law and policy when he failed to notify Ms Y about the proceedings against the security guard.

Officer C, in his role as Officer A's supervisor, should have ensured that Ms Y was informed about the proceedings against the security guard.

Did Police fail to act on Ms Y's complaint because Ms Y suffers from a mental illness?

52. In her complaint to the Authority, Ms Y said that she felt that Police had completely dismissed her allegation and discriminated against her because she suffers from a mental illness.
53. As a result of its investigation the Authority has found that the frequency and nature of Ms Y's contact with the Police prior to her allegation influenced the officers involved to place less weight on Ms Y's complaint than they should have. This finding is based on comments from the officers involved, for instance:
 - Officer A stated in interview with the Authority that Ms Y's complaint could not be taken further without corroborative evidence and that she had *"made complaints so often about Police officers, hospital staff that she had lost an amount of credibility."*

- Officer C stated that Ms Y had lost credibility with the Police in the years they had dealt with her and, *“If we were to do something every time she mentioned something like that, that’s all we would be concentrating on.”*
 - Officer C commented in his Police job sheet that when first told about Ms Y’s complaint he *“firmly believed that [Ms Y] was in another one of her states where she makes unsubstantiated allegations.”* In Police interview, Officer C similarly stated *“It is [Ms Y’s] behaviour and history over the years that has caused her to lose all credibility with the emergency services.”*
54. The Authority appreciates that Ms Y’s behaviour when unwell presents significant difficulties for the Police officers who deal with her. Nevertheless, both Officer A and Officer C have acknowledged that Ms Y has never made a false allegation of sexual assault of the kind in this incident.
55. The Authority considers that this evidence demonstrates that the officers had reached a predetermined view on Ms Y’s complaint. Both officers stated that Ms Y’s complaint could not be taken further without corroboration, but nevertheless had failed to take steps sufficient to determine whether or not further enquiry was needed. This inaction resulted in Ms Y’s complaint being mishandled and undermined some opportunity for further investigation of her complaint at the time. It also affected the provision of appropriate support services to Ms Y.

FINDINGS

Officer A and Officer C unfairly predetermined the outcome of Ms Y’s complaint based on their knowledge of the history and nature of her contact with Police.

This conduct led Ms Y to perceive that Police had discriminated against her.

CONCLUSIONS

56. Following its investigation into the matters raised by Ms Y in her complaint, the Authority has formed the following conclusions:

- 1) The failures by Officers A and C to ensure that appropriate initial inquiries were made in relation to Ms Y's complaint were contrary to Police policy and unjustified;
- 2) The failures by Officers A and C to ensure that Ms Y was informed of relevant proceedings against the security guard were contrary to law and Police policy and unfair to Ms Y; and
- 3) The manner in which Police predetermined Ms Y's complaint was unfair.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

12 February 2015

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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