

## Summary Report

# Complaint about mistreatment of a man arrested in Tauranga

## INTRODUCTION

1. On 22 September 2014, Mr X complained to Police that an officer had assaulted him in the back of a Police car following his arrest in Tauranga on 4 September 2014.
2. The Police notified the Independent Police Conduct Authority of the complaint, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

### Summary of events

3. On the evening of Thursday 4 September 2014, Mr X was drinking with a group of six people in a garage at an address in Gate Pa, Tauranga. Mr X later told Police that some of the people in the group were smoking synthetic cannabis, but he denied smoking any himself. He said that he drank three beers and was not drunk.
4. When interviewed by the Authority, Mr X mentioned that he thought the others might have spiked his drink, because he was "*a little bit wasted*" off three or four beers. He said: "*I still knew what was going on, but everything was getting pretty dodgy to me.*"
5. Mr X said he got the feeling that something bad was going to happen, and then he realised that someone had stolen his packet of tobacco. Mr X confronted one of the men in the group, tackled him to the ground and searched the man's pockets for the tobacco but could not find it. Three men then followed Mr X up the driveway towards the road and attacked him, punching him several times in the head. Mr X said he did not throw any punches and was just trying to defend himself.

6. At about 9.35pm Police, including Officers A, B, C and D, were dispatched to the address following a report of fighting in the street. Officers B and D arrived first at the scene about five minutes later, and Officers A and C arrived shortly afterwards.
7. Mr X and the officers have provided different accounts of what happened after Police arrived.

### Mr X's account of his arrest

8. In a Police statement Mr X said that *"a couple of seconds"* after the three men had started attacking him on the driveway of the Gate Pa address, Police came up behind him and tackled him to the ground. An officer (Officer A) then handcuffed him and, without giving him a chance to stand up and walk to the Police car, dragged him along the ground for at least 10 metres.
9. Mr X said that the officers did not use batons or oleoresin capsicum (OC) spray during the arrest (though Police have said that OC spray was used on Mr X, see paragraph 18 below).
10. When interviewed by the Authority, Mr X said that he would not stand up and resisted being taken to the Police car because he was trying to tell the officers he had been attacked and robbed, but they were not listening to him and were treating him like *"a bad guy"*.
11. Mr X said in his Police statement:

*"When I got to the Police car I was still trying to explain that I had been set up, had my property stolen, and the people at the address were trying to rob me. I stood up. By then there were at least 2 police officers there. I didn't want to get in the police car. They tried to push me in. They didn't really say anything that I can remember.*

*I tensed up so I wouldn't get put in the police car. This lasted for about 10 seconds. The rear car door was open and I was right beside it. I changed my mind and ended up getting in the car because I could tell I didn't have a choice."*

12. Mr X later told the Authority that Police had kicked him about five times when they were trying to get him into the car, and as a result he got in the car to avoid further injury. He denied trying to kick any of the officers himself and said, as far as he was aware, he did not get out of the Police car and run away after he had been put inside (for the officers' account, see paragraph 23).
13. Mr X said in his Police statement that he was sitting in the car with his hands handcuffed behind him, and he did not think the officers put a seatbelt on him. The officer sitting beside him in the back seat of the car (Officer A) told him to *"shut the fuck up"* and started to knee him in the right side of his stomach, winding him so much that he could not breathe. Mr X said that Officer A held the front of Mr X's jacket, twisted in his seat and kned Mr X hard about three times, twice in the stomach and once in the hip.
14. Mr X said that he lifted up his knees to defend himself and tried to push the officer away. His feet connected with the officer's chest and he kicked out about five times. He said: *"I might have connected with [the officer's] head accidentally. I was just trying to push him away and*

*protect myself.*” Officer A then “squashed” him into the corner of the Police car and put his forearm across Mr X’s throat, choking him.

15. Mr X said that the officer’s knees were pinning down his chest and his legs, and:

*“The only part of my body that I could move was my head. I know in the court papers that the officer says that I bit him. I don’t remember biting him but if I did then this would have been the only time that I could have done this. He took his forearm away from my throat and then continually punched me directly in my face at least twenty times. This was with both of his fists and lasted until I was knocked unconscious.”*

16. Mr X said that he was in the back of the Police car for two to five minutes before he lost consciousness and was “completely defenceless” while the officer was assaulting him. He stated: “I couldn’t move so I don’t know why he had to keep punching me like that.”

### The officers’ account of Mr X’s arrest

17. When Officers A and B each arrived at the Gate Pa address, they saw a group of four men fighting at the end of the driveway and went to break up the fight. Officers A and B later reported that they recognised Mr X from previous encounters and that all of the men involved appeared to be throwing punches.
18. Officer B approached the group and told the men to stop fighting or he would use OC spray on them. The men ignored Officer B’s command, so he used the OC spray on Mr X and one of the other men, Mr Y. Officer B then told Mr X to stay put while he handcuffed Mr Y and took him to the Police car. Meanwhile the other two men ran off down the driveway.
19. Officer A went up to Mr X to arrest him for disorderly behaviour. Officer A said that he found Mr X lying on the ground, either as a result of the OC spray or a punch during the fight, and handcuffed him.
20. Officer A noticed that Mr X was bleeding from the mouth and had blood around his left eye, as well as redness and swelling to his face and blood on the knuckles of his right hand. He said that Mr X was very agitated and his pupils were dilated, so he believed that Mr X was very likely affected by drugs.
21. According to Officers A and B, Mr X refused to walk up the driveway and they struggled to drag him over to a Police car. Mr X kicked out at them during this process, and continued to violently resist them as they tried to place him inside the Police car. Mr X was continually yelling about how he had been “rolled” for his tobacco.
22. Officer C, an acting sergeant, then assisted Officers A and B but it still took several minutes to get Mr X into the car, with Officers A and B pushing and Officer C pulling him into the back seat. Officer C recalled that Mr X was aggressive and was constantly yelling abuse at them.
23. Once Mr X was inside the car, he managed to escape through the opposite door and ran down the street before he was caught again by Officers A and B. He was then returned to the car,

where he again strongly resisted the officers' attempts to place him in the back seat. They eventually managed to put him inside the car.

24. Officer A said that he got in the back seat of the Police car beside Mr X, who was sitting behind the front passenger seat, in order to restrain him while they drove to the Tauranga Police Station. The driver, Officer B, reclined the front seat to restrict Mr X's movements, because he was still struggling violently. Mr X's behaviour prompted Officer B to drive at speed with the Police car's warning lights and siren activated so that they would reach the Police station more quickly.
25. During the car journey, Mr X undid his seatbelt and Officer A was unable to put it back on due to Mr X's continued resistance. Officer A said that he repeatedly told Mr X to calm down but Mr X was trying to head-butt and knee him. Consequently Officer A placed his forearm on the side of X's face, put his legs over Mr X's legs and used his own body weight to push Mr X against the passenger door in an attempt to restrain him. At that point Mr X bit him on the forearm, breaking the skin.
26. Officer A believed he needed to defend himself against Mr X's assaults, so he punched Mr X twice in the solar plexus. Mr X was winded and complained that he could not breathe, but then apologised and said he would calm down.
27. Officer A said in his Police statement:

*"Due to his struggling [Mr X] had somehow manoeuvred himself under the lower seat cushion of the back seat, and he stated he could not sit down. I assisted him by pushing the seat cushion under his legs and was telling him if [he] calmed down I wouldn't have to restrain him.*

*As I was pushing the seat cushion under his legs [Mr X] again became violent and suddenly positioned himself so his knees were in my chest. He pushed me up towards the roof of the patrol vehicle with his knees and managed to get his feet onto my chest.*

*He kicked out with his feet, which threw me across the back seat into the opposite door. [Mr X] immediately began kicking me in the face repeatedly with both feet in a 'pedalling' manner."*

28. Officer A estimated that Mr X kicked him at least five to six times in the face. The officer again decided that he needed to defend himself, so he pushed through Mr X's kicks and punched him three to four times in the face with a closed fist.
29. Due to his concerns for Officer A's safety Officer B stopped the car and helped Officer A to restrain Mr X. Officer A again held his forearm to the side of Mr X's face and used his own body weight to push Mr X against the passenger door. Officer B then drove the rest of the way to the station.
30. In their Police statements Officers A and B did not mention Mr X appearing to lose consciousness after being punched by Officer A (see paragraph 15 for Mr X's account).

### Arrival at the Police station

31. The Police car arrived at the Tauranga Police Station and parked at the sally port entry at about 9.56pm. Officers A and B got out of the car.
32. Recorded CCTV footage of the area shows that Officer B reached into the back seat of the car and dragged Mr X out horizontally. Mr X appeared motionless and unresponsive and was not providing any resistance at this point. Officer B then appeared to drop Mr X and he fell heavily to the ground, hitting his shoulder and head on the floor.
33. Officer B later told the Authority: *“I pulled [Mr X] out [of the car], I’ve tried to take the force or his weight and he’s been put on the ground.”* He also advised that:

*“[Mr X] was pulled horizontally out of the car as there was no way I was getting into close proximity with him given how violent and aggressive he had been. He had previously bitten and kicked another Police officer.*

*Due to the risk, I made a decision to not get too close to him and my only option was to drag him quickly to avoid being injured by him.”*

34. Mr X was lying motionless on his right side, with his hands still handcuffed behind his back. The CCTV footage shows that Officer B raised his right foot and nudged or ‘scuffed’ the back of Mr X’s left shoulder before stepping over him and walking away.
35. When interviewed by the Authority, Officer B denied deliberately kicking Mr X and said he was not concerned with the way Mr X was left on the ground.

### Mr X’s time in custody

36. The footage shows Mr X being dragged a short distance along the floor by two other officers and placed in a nearby CCTV-monitored holding cell. There are no signs that he is conscious or responsive, even when his head is banged against the side of the door as he is being dragged into the cell. These officers searched Mr X as he was lying on the ground, and removed a lanyard from his neck. They also removed his trousers, leaving him in his boxer shorts, socks, t-shirt and jacket. The officers left him sitting up on a bench and leaning against the wall of the cell, still handcuffed.
37. The CCTV footage shows that Mr X had blood on his face, appeared to be slipping in and out of consciousness and was very dazed and unsteady while the officers were dealing with him. He tried to sit up at one point, and sometimes talked to the officers. The CCTV footage does not include an audio recording so it is unclear what he was saying, however officers in the custody area reported that he was being verbally abusive towards them.
38. The CCTV footage of the holding cell was relayed to a screen behind the security desk in the custody area of the Police station. It is not clear whether any officers regularly monitored that screen.

39. After being left alone in the cell at about 9.58pm, Mr X leaned over and spat blood onto the floor. He stood up and walked over to the sally port door, agitated and yelling. He then took some unsteady steps away from the door, leaned against the wall, bent over and slid to the ground. He ended up lying on his right side and stomach, again appearing to be in an incapacitated and perhaps semi-conscious state.
40. Mr X slowly sat up, then regained his feet and staggered around the cell. He went to one corner of the holding cell and stayed there for about nine minutes, apparently yelling towards the officers in the custody area, until Officer B and his partner, Officer D, opened the door to the sally port at about 10.10pm.
41. Officer B said he had the task of providing Mr X with 'aftercare' because Mr X had earlier been sprayed with OC spray, but Mr X was aggressive and refused "no less than five times". The CCTV footage shows that Mr X was taken into the sally port area and was talking to the officers, apparently quite agitated. At one point, Mr X leaned forward and went to his knees, then fell onto his side from a kneeling position. The officers removed his handcuffs while he was lying on the ground.
42. While Officer B went to a basin in the sally port area and turned on the tap, Mr X slowly got up again and then walked back to the door of the holding cell. Officers B and D grabbed him and took him to the ground, and removed his jacket. Mr X then took off his t-shirt and threw it towards Officer D before returning to the holding cell at about 10.14pm.
43. Officer B told the Authority that he did not see any need to seek medical attention for Mr X. Officer D said Mr X needed to be seen by a medical professional, but was still quite aggressive and he did not think the custody staff were going to call anyone straight away:
- "... we're not going to send in someone to have a look at him if he's being highly aggressive and angry and yelling abuse, I mean we're just putting a person in danger."*
44. Mr X said in his Police statement that he could not remember getting out of the Police car but recalled being in a big garage at the Police station. There was a basin there and Police were trying to wash the blood off his face. He objected to this because he thought they were trying to cover up the fact that he was bleeding.
45. Meanwhile Officer A recorded on Mr X's custody documentation that, due to the cuts on Mr X's face and possible mental health concerns, Mr X may be at risk or in need of special care while in custody.
46. Officer E, the watchhouse keeper, told the Authority that when he came on duty at 10pm, the watchhouse keeper coming off duty advised him there was an aggressive male in the holding cell who could not be moved until he had calmed down. Officer E said he kept an eye on Mr X while he was in the holding cell, checking him every 15 minutes or so and providing him with water when he asked for it.

47. At 11.28pm Officer E entered Mr X into the Electronic Custody Module (ECM), a computer system which is used to manage the prisoners in the DCU, and noted that he required 'frequent monitoring' (at least five checks per hour at irregular intervals). Officer E completed a risk assessment for Mr X and noted that he was injured, appeared to be under the influence of alcohol, was agitated and aggressive, and had a history of depression. He assessed that Mr X was 'in need of care' and completed a Health and Safety Management Plan for him.
48. The CCTV footage shows that Mr X calmed down significantly by about 11.45pm. At 12.58am Officer E and the custody sergeant, Officer F, moved Mr X to an observation cell. This cell had a basin and Mr X washed the blood off his face.
49. Officer E advised the Authority that he and Officer F asked Mr X if he wanted medical attention at about 1.40am, but he refused. The CCTV footage of Mr X's cell at this time shows Mr X talking to someone and shaking his head. Officer E also stated that did not think Mr X needed urgent medical treatment because his facial cut was no longer bleeding and he was walking around and talking.
50. Police kept Mr X in custody overnight, and released him at about 6.45am after arranging for two officers to transport him to Tauranga Hospital for treatment of his facial injuries.

## Injuries

51. On the evening of the arrest, Officer A wrote in a Tactical Options Report that, on top of the facial injuries Mr X had already sustained as a result of the fight with the three men at the Gate Pa address, Mr X had suffered further facial injuries ("*cuts/swelling/bruising*") during their struggle in the car.
52. Officer A noted that he had suffered a minor bite to his left forearm and tenderness and redness to his face from being kicked by Mr X. He also injured his leg during the struggle with Mr X.
53. Mr X said in his Police statement:

*"As a result of being assaulted in the back of the police vehicle I received a cut below my right eye. This was glued shut at the hospital and they put some strips across it too. Both eyes were black and swollen shut. I also had a cut below my left eye and they glued that shut as well. I also received a cut right at the top of my left eyebrow. I had a swelling and a scrape in the area of my forehead above my left eyebrow. My nose was sore and so was my jaw. It hurt me to talk. I also had pain and bruising right on the joint of my right hip. I had some skin grazed off my left knee. I also had marks on both wrists from the handcuffs."*

## Charges

54. Mr X was charged with, and later pleaded guilty to, disorderly behaviour, resisting arrest and assaulting Police.

### Power to arrest

55. Section 32 of the Crimes Act 1961 provides that a constable is justified in arresting any person whom he believes, on reasonable grounds, to have committed an offence, whether or not the offence has been committed or the person committed it.

### Use of force by Police

#### *Legal provisions*

56. Section 39 of the Crimes Act 1961 provides for a Police officer 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.”*
57. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
58. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

#### *Police guidance on use of force*

59. The Police’s *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
60. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
61. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).

62. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
63. Police policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

### Duty of care

64. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times.
65. The *Managing Prisoners* policy provides that:
- “All people identified as in need of care because of their health, medical condition or the presence of any suicidal warning signs must be examined as soon as practical by a:*
- *Police medical officer, or*
  - *duly authorised officer, or*
  - *(CAT) -Community Assessment Team member.”*
66. The *Managing Prisoners* policy also states that Police must: *“Call a health professional (use Police medical officers where practical) for advice / assistance if the prisoner has been injured or says they are on any medication.”*
67. In respect of *“semi-conscious”* intoxicated or drug-affected prisoners, the policy instructs officers to: *“... arrange for an ambulance to take the person to hospital. If you expect a delay in the ambulance's arrival or the person's condition calls for immediate action, use a Police vehicle.”*

## THE AUTHORITY'S FINDINGS

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### Issue 1: Was Mr X's arrest justified in the circumstances?

68. Mr X said that he should not have been arrested as he was the victim of a robbery and was attacked by three men in the driveway of the Gate Pa address. He argued that he was just trying to defend himself and did not throw any punches. After the Police arrived he tried to explain to the officers that he had been robbed but they did not listen and instead arrested him for disorderly behaviour.
69. The officers who attended the incident said that all of the men involved in the fight appeared to be throwing punches, and they did not obey Officer B's command to stop fighting. The officers also reported that Mr X was agitated and aggressive towards them.
70. The Authority's view is that Police were justified in arresting Mr X, based on what they saw when they arrived at the scene. They believed that Mr X was an active participant in the fight and their decision to arrest Mr X was reasonable in the circumstances. Although Mr X was complaining about being robbed, the Police's immediate concern was to stop the fighting.

### FINDING

The arrest of Mr X was justified under the circumstances.

### Issue 2: Did Police use excessive force against Mr X: (a) at the time of the arrest?; or (b) while transporting him in the Police car?

#### *The arrest*

71. Mr X stated that, within seconds of the fight starting, Police tackled him to the ground from behind and handcuffed him. He did not recall Police using any OC spray, though Officer B said he did use it.
72. The officers said they arrived at the scene about five minutes after fighting in the street had first been reported to Police. Officer A found Mr X lying on the driveway and believed that he had either suffered a punch during the fight, or had been affected by the OC spray used by Officer B, and had fallen to the ground. Officer A decided to arrest Mr X for disorderly behaviour and handcuffed him while he was lying on the ground.
73. While the Authority finds the officers' account of the arrest to be more convincing than Mr X's, the Authority considers that Police would, in any event, have been justified in taking Mr X to the ground in order to break up the fight and carry out the arrest. The Authority also considers that Officer B's use of OC spray was justified in the circumstances.
74. Mr X later acknowledged that that he resisted the officers after he was handcuffed and refused to stand up and walk to the Police car. The officers then dragged him to the car and tried to put him inside.

75. Mr X said that the officers tried to push him into the back seat of the Police car and he tensed up and resisted “for about 10 seconds” before getting in the car. He also said that Police kicked him about five times. However Officers A, B and C reported that Mr X was aggressive and abusive, and it took them several minutes to get him inside the car. Mr X then attempted to escape and ran off down the street before they captured him again and, with difficulty, placed him back inside the vehicle.
76. The Authority is satisfied that Officers A, B and C used a reasonable level of force to take Mr X to the Police car and to place him inside despite his continued resistance.

#### *Transport to the Police station*

77. Mr X has said that, once in the Police car, Officer A told him to “shut the fuck up” and repeatedly kned him in the stomach and hip. He said that in response to this, he raised his knees up and kicked out at the officer’s chest about five times in order to push the officer away and protect himself. Officer A then “squashed” Mr X into the corner of the car and put his forearm across Mr X’s throat. Mr X said he could not move and the officer punched him the face with both fists at least 20 times.
78. Officers A and B said that Mr X continued to struggle violently when seated in the Police car and needed to be restrained. Consequently Officer A placed his forearm on the side of Mr X’s face and pushed him against the passenger door. Mr X then bit Officer A on the forearm, which prompted the officer to punch Mr X twice in the solar plexus in order to defend himself. Shortly afterwards Mr X managed to get his feet onto Officer A’s chest and kicked him at least five to six times in the face. In response Officer A punched Mr X in the face three to four times. Officer B had to stop the car due to concerns for Officer A’s safety.
79. The Authority considers that Officer A acted in self-defence and in response to Mr X’s own actions. This was justified in the circumstances. Given that Officer A was stuck in a confined space in the back of the moving Police car, and could not easily escape, the Authority finds that the officer used reasonable force to protect himself from Mr X and to subdue Mr X’s continued violent resistance to his arrest.

#### **FINDING**

The force Police used against Mr X during the arrest and while transporting him in the Police car was justified in the circumstances.

#### **Issue 3: Did Police fulfil their duty of care towards Mr X?**

80. Recorded CCTV footage shows that, upon arriving at the Police station, Officer B pulled Mr X out of the back seat of the Police car and appeared to drop him to the floor. Officer B then appeared to deliberately scuff the back of Mr X’s left shoulder with his foot. Officer B has subsequently denied that he intentionally dropped or kicked Mr X, and said that he pulled Mr X from the car quickly to avoid being assaulted.

81. While acknowledging the stressful and violent circumstances of the journey to the Police station, the Authority's view is that Officer B had a duty of care towards Mr X when removing him from the vehicle and should have taken more care. Mr X was clearly motionless and unresponsive and was not resisting or struggling at that time. Therefore it was not necessary or proportionate for Officer B to let Mr X fall to the floor and hit his shoulder and head, or to scuff Mr X's shoulder with his foot as Mr X was lying on the ground.
82. Mr X had obvious facial injuries and at various times was clearly unresponsive, incapacitated and perhaps semi-conscious. He was later assessed to be 'in need of care' due to his injuries, intoxication and history of depression. Police were aware that he had been fighting at the time of his arrest, and that force had been used against him in the Police car on the way to the station. Officer A also suspected that Mr X was very likely affected by drugs.
83. Police policy requires that an ambulance should be called for semi-conscious intoxicated prisoners, and that a prisoner assessed to be 'in need of care' must be examined by a health professional "*as soon as practical*". However Police did not call paramedics or a doctor to examine Mr X while he was in custody for a period of about nine hours. Instead they transported him to hospital after he had been released from custody.
84. The Authority considers that the officers dealing with Mr X were preoccupied by his verbally abusive behaviour once he arrived at the Police station and did not pay due attention to the risks to his health. The officers should have advised the watchhouse keeper and custody sergeant that Mr X required medical attention, and the custody staff should have realised that fact for themselves when they observed Mr X's condition. Mr X's behaviour was not sufficient reason to delay medical care for his obvious injuries.
85. The Authority also notes that there was a delay of about an hour and a half before Mr X was entered into the ECM and assessed to be in need of care and frequent monitoring. Consequently there was no formal monitoring schedule in place during that time (though Officer E has advised that he was checking on Mr X about every 15 minutes). While the Authority acknowledges that Mr X was agitated and difficult to deal with, it is important that the potential risks to a prisoner's health are formally assessed as soon as possible so that an appropriate monitoring regime can be applied. The failure to do so in this case was a breach of Police policy.

## FINDINGS

Officer B should not have removed Mr X from the Police vehicle in the manner that he did.

Given that Police failed to:

- a) seek medical attention for Mr X when he arrived at the Police station; and
- b) enter Mr X into the ECM and conduct a risk assessment as soon as possible,

Police did not fulfil their duty of care towards Mr X.

## CONCLUSIONS

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86. The Authority has determined that Police were justified in arresting Mr X, and used a reasonable level of force during the arrest and while transporting him to the Police station. However the Authority considers that Officer B should not have removed Mr X from the Police car in the manner that he did. Furthermore, Police did not fulfil their duty of care towards Mr X while he was in custody because they did not seek medical attention for him and did not conduct a formal risk assessment as soon as possible.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

24 September 2015



## ABOUT THE AUTHORITY

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### 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?

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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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.





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