

Complaint of excessive force during the detention of a mental health patient

INTRODUCTION

1. At about 4:30pm on 21 October 2014, Police were alerted that Mr X had run away from the secure mental health ward at Auckland Hospital (Te Whetu Tawera). Mr X was extremely agitated, and thought to be suicidal.
2. Police located Mr X on Lower Albert Street and detained him under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act). Mr X was restrained, sprayed with pepper spray¹ and hit in the mouth while Police attempted to subdue him.
3. Mr X complained to the Independent Police Conduct Authority about the force used against him by Police. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At about 4:30pm on Tuesday 21 October 2014, Police received an emergency call from a security guard at the Auckland Ferry Terminal about a highly agitated man (Mr X) who was attempting to board a ferry. Mr X's brother was also present at the ferry terminal with the security guard, and advised the Police call taker that Mr X:
 - had run away from the mental health ward at Auckland Hospital (Te Whetu Tawera);
 - was suicidal and had threatened to *"jump off the wharf"*;

¹ Pepper spray is also referred to as Oleoresin Capsicum or 'OC' spray.

- was extremely violent and strong when in an agitated state; and
 - needed to be taken back to hospital for assessment and treatment.
5. Police units were directed to urgently look for Mr X, who had last been seen running westwards along Quay Street. Mr X was described as being in his fifties, wearing blue track pants, a check shirt and carrying a white box.
 6. Officers A and B responded to the radio call in their marked Police car. While stationary in traffic at the intersection of Lower Albert Street and Quay Street, Officer B spotted a man fitting Mr X's description. Officer B got out of the front passenger seat and approached Mr X, who fled up Lower Albert Street. Officer B called out to Mr X to stop, but Mr X continued to run away.
 7. Mr X told the Authority that he left Te Whetu Tawera without telling medical staff that he intended to go home. However, he denied that he was suicidal, and believed that he had a hospital release form in his backpack.
 8. Mr X also said that he ran away from Police because he did not want to go back to hospital.
 9. When Officer B caught up with Mr X, he grabbed his backpack and said "*You're detained!*" Mr X struggled to get away, and Officer B pulled him down onto his hands and knees to bring him under control.
 10. By the time Officer A and two other officers arrived to assist, Mr X was lying on the pavement with his arms spread out to the side while Officer B held on to his legs. Mr X then drew his arms under his chest and tensed his muscles.
 11. Officer A said that he told Mr X to put his hands behind his back and stop resisting. The officers repeated this instruction several times, but Mr X would not comply. Mr X was very strong, and was kicking, thrashing and "*yelling wildly.*" The officers told the Authority that Mr X was in too agitated a state to be reasoned with or to cooperate with instructions.
 12. Mr X admitted struggling but said that the Police officers would not listen to him when he tried to explain that he had a hospital release form. He told the Authority that three Police officers sprayed "*metallic green cans*" of pepper spray directly in his face.
 13. Conversely, Officer A said he was the only Police officer to spray Mr X, and only did so after warning Mr X to follow instructions or he would be sprayed. Only one of the other officers present saw Officer A spray Mr X. This officer, Officer B and a third officer helping to restrain Mr X, all told the Authority that they did not spray Mr X themselves.
 14. Officer A said that he turned Mr X on his side, yelled "*Spray!*" to warn his colleagues and sprayed a "*quick burst of pepper spray*" on to Mr X's face. Officer A said that this did not appear to have any effect on Mr X.
 15. Mr X was eventually handcuffed behind his back using two sets of handcuffs because he would not allow the officers to bring his arms close enough together so they could be secured by a single set.

16. Mr X said he was then “*dragged*” to a Police car after he refused to walk, and was “*thrown*” into the back seat, face down. A Police officer then sat on the top half of his back, causing him to have trouble breathing. Mr X said he asked the officer to get off him because he felt that he was going to pass out, but the officer ignored him.
17. Mr X said the officer then removed a long black torch from his belt, raised it high above his head and brought it down on Mr X’s mouth. Mr X felt immense pain and realised that his mouth was bleeding and his teeth had shattered. The officer told him “*I think we’ll say it happened on the footpath,*” referring to Mr X’s mouth injuries.
18. Mr X said after he was hit with the torch he kicked out as a reflex, unintentionally breaking the rear passenger side window.
19. Officers A and B told the Authority that three officers had to carry Mr X to the Police car because he was still thrashing and resisting violently. After placing him on his side along the rear passenger seat, Officer A climbed into the back of the Police car and braced one foot in the footwell, using his other knee and his body weight to restrain Mr X.
20. Officers A and B said that Mr X continued to thrash and kick out, and it was at this point that Mr X kicked out the rear passenger window. Officer A said that Mr X’s violent actions gave him a fright, and he feared for his safety and that of Officer B, who was getting into the driver’s seat. Mr X then twisted his body around and started kicking the rear windscreen.
21. Officer B told the Authority that the sound of the window smashing caused him to turn around and he saw Mr X “*with his foot out the smashed rear passenger window.*” Mr X continued to struggle and kick out, with “*each kick getting closer to the back windscreen.*”
22. Officer A’s and B’s sergeant, who had also arrived to assist, saw Mr X’s foot kick through the rear passenger window as he got into a Police car that was parked behind Officer A’s and B’s car.
23. Officer A told the Authority that he considered other tactical options to control Mr X, but decided not to use his pepper spray again because it would have affected both himself and Officer B, who was driving the car. It had also appeared to have had minimal effect on Mr X earlier. Officer A decided that a punch was the least forceful option available to him to bring Mr X under control in the circumstances.
24. Without looking down, Officer A said he punched Mr X using the side of his closed fist in order to stun him. The punch landed on Mr X’s face and Mr X stopped thrashing. Officer A denied using a torch to hit Mr X, and cannot recall whether he was carrying a torch on the day of the incident. Officer A also denied telling Mr X that he would conceal how Mr X received his injuries.

25. Officer A then yelled “Go, go, go!” and Officer B activated his lights and sirens and started urgent duty driving² back to Auckland Central Police Station. Officer B told the Authority that he did not see Officer A hit or punch Mr X, or hear Officer A say anything to Mr X while they were travelling to the Police station. However, he did hear them “*struggling in the back of the patrol car the whole way.*” Officer A radioed the watchhouse to advise that they were bringing in a violent detainee.
26. At 4:46pm, Police received a call from a nurse at Te Whetu Tawera reporting Mr X’s disappearance. The nurse stated that Mr X was at high risk of suicide and self-harm, and needed to be located and returned to the hospital for compulsory treatment.
27. The Police call-taker informed the nurse that Mr X had been found by Police but that he was too agitated and aggressive to be safely returned to hospital straightaway.

Events at Auckland Central Police Station

28. CCTV footage shows the Police car carrying Mr X arrive at the sally port of the Police station, where it is met by several Police and custody officers, including the custody sergeant. Mr X is removed from the car and is walked bent-double between two officers into the cell block, while Officer A supports his head.
29. Mr X said when he arrived at the Police station he told the officers “*I give in, I’ll do what you say.*” Officer A does not recall hearing this.
30. Officer B recalled seeing some blood around Mr X’s mouth when he was removed from the Police car.
31. The custody sergeant assessed Mr X as being in need of care and constant monitoring³ because of concerns that he was suicidal. At 5:10pm, an officer at the custody suite contacted medical staff at Te Whetu Tawera to advise them that they had Mr X in custody. The hospital asked Police to bring Mr X back to the hospital.
32. The CCTV footage shows Mr X being laid on the floor of the bare cell, searched and stripped of his clothes by three officers. His handcuffs are removed and he is helped into a tear-resistant gown. After approximately five minutes, he is then taken to a sink to wash his face and given after-care spray to neutralise the pepper spray in his eyes. The custody officer assisting Mr X said that Mr X’s demeanour seemed “*calm, cooperative and helpful.*”
33. Officer A, who was standing beside Mr X at the sink, said that Mr X told him he had “*broken my teeth.*” Officer A said he apologised to Mr X, and said that wasn’t his intention. Officer A could see some blood coming from Mr X’s mouth, but he did not check Mr X’s teeth or inform anyone about Mr X’s concern about his teeth.

² Driving at speed with lights and sirens activated in response to a critical incident.

³ If a person in Police custody is assessed as in need of constant monitoring, must be watched or directly observed without interruption.

34. Mr X was given back his clothes and told to get dressed, and was lead through the Police station to a Police car by Officer A. CCTV footage shows that he walked of his own volition, had a calm demeanour and was not handcuffed.
35. Officer A and another officer drove Mr X back to Te Whetu Tawera, where he was given pain medication to treat discomfort caused by his damaged teeth. Mr X's hospital notes also record that Mr X had a bruise on his right cheek and red, irritated eyes.
36. In total, Mr X was in Police custody for 24 minutes⁴. Mr X confirmed that he didn't ask for any medical treatment for his mouth while in custody.

Mr X

37. On 21 October 2014 Mr X was a voluntary inpatient at Te Whetu Tawera, having completed a period of compulsory admission and treatment under the Mental Health Act. When Mr X ran away from the facility in a distressed state, it had already been decided that Mr X would be compulsorily re-admitted to Te Whetu Tawera due to concerns for his safety.
38. Three of Mr X's teeth were significantly damaged when he was hit in the mouth in the Police car, and he has required ongoing dental treatment.
39. Mr X reports that this incident has caused him significant and ongoing distress.

Police involved

40. At the time of this incident, Officers A and B had seven and three years of Police service respectively. The custody sergeant had 25 years' Police service, 11 of which were served in New Zealand. Officer A was certified to deploy pepper spray.
41. Officer B sustained a significant injury to his finger while restraining Mr X. This injury required medical treatment.

Complaint

42. On 27 May 2015, the Authority received correspondence from Mr X's mother outlining several heads of complaint in connection with this incident:
 - 42.1 Mr X was tackled and pepper sprayed by three Police officers;
 - 42.2 Mr X received bruising to his right cheek and eye, in which he has a lens implant.
 - 42.3 A Police officer sat on Mr X in the back of a Police car and hit him in the face with a torch, causing damage to his mouth and teeth; and
 - 42.4 The same officer told Mr X that he would lie about how Mr X's dental injuries occurred.

⁴ Mr X was received in the custody suite at 4:58pm and was released at 5:22pm.

Authority's investigation

43. The Authority interviewed the Police officers involved in Mr X's detention and his care while in custody.
44. The Authority also reviewed relevant Police documentation, listened to a recording of radio transmissions and emergency calls made in relation to this incident, and viewed CCTV footage of Mr X's time in custody.

THE AUTHORITY'S FINDINGS

Did Police have lawful justification to detain Mr X?

45. Section 109 of the Mental Health Act allows Police to take a person, found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, to a Police station, hospital or other appropriate place for examination.
46. On 21 October 2014 the Police officers that located Mr X reasonably believed that he was mentally unwell and at imminent risk of committing suicide, because this is what they had been told by Mr X's brother. This information was later confirmed by the nurse from Te Whetu Tawera (see paragraph 26).
47. Police were asked to detain Mr X because he was suicidal, prone to self-harm and could be violent towards others while in this state. Police were told that Mr X needed to be returned to hospital for assessment and treatment. This was irrespective of the fact that Mr X denied that he was suicidal at the time.
48. Based upon this information, Police were justified in locating and detaining Mr X before he could harm himself or others.

FINDING

Police were justified in detaining Mr X under section 109 of the Mental Health (Compulsory Assessment and Treatment Act) 1992.

Were Police justified in using force to secure Mr X?

49. Section 122B of the Mental Health Act permits Police to use *"such force as is reasonably necessary in the circumstances"* when detaining a person under section 109, if the Police officer *"is exercising the power in an emergency."*
50. The Police Use of Force policy provides a framework for officers to assess and respond to situations involving threat and risk to themselves and members of the public. Force used by an officer must be necessary and proportionate to the threat, and based on (amongst other factors) the information they know about the situation at the time, and the behaviour and potential actions of the person they are dealing with.
51. Police policy states that an officer may use pepper spray when an offender becomes *"actively resistant"* (for example pulling, pushing or running away), and the situation cannot be resolved by less forceful means. If practicable, the person should be warned that non-compliance with Police instructions will result in them being sprayed.
52. Mr X admits trying to run away from Police and struggling when he was taken to the ground by Officer B, but said that Police would not listen to him when he tried to explain that he believed he was permitted to leave the hospital (see paragraph 12).

53. However, as previously discussed, Police had a reasonable belief that Mr X was at imminent risk of harming himself and needed to be prevented from carrying out his intention. The officers told the Authority that Mr X was in too agitated a state to be reasoned with or to cooperate with their instructions. The Authority accepts that Mr X was in a highly agitated state, and was strongly and violently resisting the officers' efforts to seek his cooperation. He was unwilling to place his hands behind his back when repeatedly instructed to do so. Police had been warned by Mr X's brother that this would be the case.
54. It was imperative for the officers to restrain Mr X and take him to a place of safety before he could harm himself. In the circumstances, Police were justified in spraying Mr X in the face in order to bring him under control, because less forceful methods of seeking his compliance had failed. The officers' actions in taking Mr X to the ground to bring him under control, and forcefully placing handcuffs on him were also justified.
55. In interview with the Authority, Mr X was adamant that he was pepper sprayed by three different officers while being restrained on Lower Albert Street. Officer A said that he did pepper spray Mr X, but the other officers present told the Authority that they did not deploy their spray. Only one of these officers saw Officer A pepper spray Mr X (see paragraph 13). Officer A recorded his use of force against Mr X, including his use of pepper spray, in a Tactical Options Report⁵, as required by policy.
56. The Authority has found no evidence to support Mr X's account that he was pepper sprayed by three Police officers. There were no independent witnesses who saw Police using pepper spray against Mr X. On the balance of probabilities, the Authority accepts that only Officer A sprayed Mr X, and that he warned Mr X before deploying his pepper spray.

FINDINGS

Police were justified in using force, including pepper spray, to secure Mr X under section 122B of the Mental Health (Compulsory Assessment and Treatment Act) 1992.

Mr X was only pepper sprayed by one Police officer, Officer A, while Police were attempting to handcuff him.

Did Officer A use excessive force against Mr X in the back of the Police car?

57. Mr X has complained that Officer A sat on him in the back of the Police car, causing him to have difficulty breathing; hit him in his mouth with a torch; and told him that he would say that Mr X's resulting injuries occurred while he was being restrained on the footpath.
58. Mr X admits kicking out the rear passenger window of the Police car, but said this was "*a reflex*" that occurred after he was hit with a torch.

⁵ A Tactical Options Report records the circumstances in which a Police officer decided to use force, the type of force used and the outcome.

59. Officer A states that he sat on Mr X in the back of the Police car, but said that he had to do so in order to control Mr X, who was violently thrashing and kicking out. Officer A denies hitting Mr X with a torch but confirms that he punched Mr X in the face after he kicked out the rear passenger window, in order to stun him and prevent him from also kicking out the rear windscreen. At the time, he feared for his personal safety and that of Officer B. Officer A states that he did not tell Mr X that he would lie about the cause of Mr X's facial injuries.
60. Officer B, who was getting into the driver's seat at the time, states that he did not see Mr X kick out the window but heard the sound of glass breaking. When he turned around he saw Mr X's foot sticking out of the broken rear passenger window, and Mr X then attempting to kick out the rear windscreen. At this point he turned back around and started driving the Police car. He did not see Officer A hit or punch Mr X, but heard them continue to struggle in the back seat.
61. As part of their investigation into Mr X's complaints, Police analysed Officer A's torch, but did not find any traces of blood on it.
62. In the absence of any independent evidence, on the balance of probabilities, the Authority accepts Officer A's version of events, and finds that the punch was in response to Mr X's action in kicking out the window.
63. The Authority also accepts that Officer A was justified in punching Mr X to prevent him from struggling. He was losing control of Mr X, and both officers were in a vulnerable position, confined with a violent person in a Police car.
64. Officer A appropriately considered other, less forceful tactical options before punching Mr X, but decided that they were unlikely to be effective.

FINDINGS

Officer A did not hit Mr X with a torch or tell him he would lie about the cause of Mr X's injuries. Officer A was justified in punching Mr X in order to bring him under control because it was the only reasonable tactical option available to him in the circumstances.

Was it reasonable for Mr X to be initially detained at Auckland Central Police station?

65. Mr X was detained by Police for his own protection under the Mental Health Act. Since he was not under arrest, Police could have decided to return him directly to Te Whetu Tawera.
66. However, it was reasonable for Officers A and B to take Mr X to the Police station in the first instance because his behaviour was too violent for it to be safe to immediately return him to hospital.
67. The custody sergeant told the Authority that Mr X "*calmed down reasonably quickly*" after being taken to a cell. He no longer needed to be restrained and was able to be taken to a sink to wash his eyes. A custody officer assisting Mr X also stated that Mr X was calm and cooperative when receiving aftercare.

68. Mr X left Police custody after 24 minutes, in a calm state, having received sufficient aftercare. He was then driven back to hospital by Police for assessment and treatment.

FINDINGS

It was reasonable for Mr X to be detained Auckland Central Police station in the first instance due to his violent behaviour.

Mr X was returned to hospital as soon as was reasonably practicable.

Did Police treat Mr X in a manner consistent with Police policy at the Police station?

69. Police are responsible for the care, safety and security of everyone in their custody. Police must take all practical and reasonable steps to prevent the suicide of people in custody.
70. Upon arrival at the Police station, the custody sergeant assessed Mr X as being in need of care and constant monitoring due to his highly agitated state and concerns that he was suicidal.
71. Policy requires that people in custody who are at risk of suicide be placed in a suicide-resistant cell if one is available. The person's clothes should be removed if there is a risk they could be used to cause self-harm. Tear-resistant gowns should be issued to the person in such circumstances.
72. There were genuine concerns that Mr X was suicidal. Police acted consistently with policy by placing him in a tear resistant gown and a bare cell, and ensuring that he did not have access to any items with which he could harm himself. CCTV footage indicates that Mr X was constantly supervised by an officer while he was in custody.
73. Mr X told the Authority that he sustained bruising to his face as well as the injuries to his mouth while being taken into Police custody. He says that he told Officer A that his teeth had been "*smashed*" when Mr X was washing his face at the sink, but did not request medical treatment.
74. Both Officers A and B noted some bleeding around Mr X's mouth at the Police station (see paragraphs 30 and 33), but did not mention this to the custody sergeant. Officer A recalled Mr X telling him that he had "broken his teeth," but Officer A did not check Mr X's teeth. The custody sergeant did not notice any injuries to Mr X while overseeing his time in custody. Mr X's injuries were not recorded on the custody documentation (as is required by policy).
75. In the ordinary course of events, the officers should have informed the custody sergeant that Mr X was injured, at which point arrangements could have been made for Mr X to be examined by a Police medical officer.

76. However, Mr X was only in police custody for a very short time (24 minutes), and it was known by Officers A and B that Mr X would be returned to hospital where he could receive medical treatment. During the time Mr X was in custody, the priority was to calm him, and then provide him with appropriate aftercare because his face was stinging from the effects of OC spray.
77. In the circumstances, Officers A and B cannot be criticised for failing to record Mr X's injuries.

FINDING

Mr X was generally treated in a manner consistent with Police policy while in custody at the Police station.

CONCLUSIONS

78. The Authority has concluded on the balance of probabilities that:

- 1) Police were justified in detaining Mr X under section 109 of the Mental Health (Compulsory Assessment and Treatment Act) 1992.
- 2) Police were justified in using force, including pepper spray, to secure Mr X under section 122B of the Mental Health (Compulsory Assessment and Treatment Act) 1992.
- 3) Mr X was only pepper sprayed by one Police officer, Officer A, while Police were attempting to handcuff him.
- 4) Officer A did not hit Mr X with a torch or tell him he would lie about the cause of Mr X's injuries.
- 5) Officer A was justified in punching Mr X in order to bring him under control because it was the only reasonable tactical option available to him in the circumstances.
- 6) It was reasonable for Mr X to be detained Auckland Central Police station in the first instance due to his violent behaviour.
- 7) Mr X was returned to hospital as soon as was reasonably practicable.
- 8) Mr X was generally treated in a manner consistent with Police policy while in custody at the Police station.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

15 March 2016

IPCA: 14-2265

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



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
