

# Complaint of excessive force following arrest in Upper Hutt

## INTRODUCTION

1. At 12.40am on Wednesday 4 February 2015, Police arrested Mr X, who had failed to stop, following a pursuit in Upper Hutt. During the arrest, Mr X's glasses were broken and he received an injury to his face.
2. On 9 February 2015, Mr X made a complaint to the Authority stating that during his arrest an officer punched him repeatedly in the face and head. Mr X also complained that his keys and car were damaged, he did not receive adequate medical treatment and Police failed to take his complaint about how he was treated.
3. The Authority notified Police of the complaint and advised that the matter would be investigated by the Authority pursuant to section 17(1)(a) of the Independent Police Conduct Authority Act 1988. This report sets out the results of that investigation and the Authority's findings.
4. The Authority concluded its investigation in January 2016, but delayed the release of its public report due to ongoing court proceedings.

## BACKGROUND

5. At about 12.30am on Wednesday 4 February 2015, Mr X was at his home in central Upper Hutt when he received a phone call from a work colleague advising that their work car had been broken into at an address in Pinehaven, Upper Hutt. Mr X immediately got into his personal car, a 1992 Honda Civic, and drove, at speed, towards Pinehaven.
6. Mr X's work colleague also phoned Police about the break in and Officer A was dispatched to attend the job. As Officer A drove along Alexander Road with his red and blue lights flashing, he became aware of a car travelling away from him in the distance. Officer A, who was driving at 110kph in an 80kph area, noticed that he was not gaining on the car and activated his siren to signal the car to stop. When Mr X, the driver of the car, failed to stop Officer A commenced a pursuit. He advised the Police Central Communication Centre (CentComms)

*“fleeing driver”* and broadcast the car model and direction of travel as required by Police policy.

7. Officer A pursued Mr X at high speeds for just over two minutes. As he drove along McLean Street in Central Upper Hutt, Mr X’s car started to smoke and he slowed to a stop. Officer A pulled alongside Mr X’s car and parked on an angle, creating a small wedge-shape gap between the two cars.
8. Officer A immediately got out of his Police car and approached Mr X, who had remained seated in his car. As Officer A reached Mr X, Officer B arrived and parked his car approximately four metres behind Mr X’s car.
9. Mr X and Police have different views of the force used during Mr X’s arrest on McLean Street and during his processing at the Lower Hutt Police station. Both versions are set out below.

## Use of force on McLean Street

### *Mr X’s version of events*

10. Mr X told the Authority that he stopped his car because he *“came to [his] senses”*. He immediately removed his car keys from the ignition, held his arms and the keys out the driver’s window and said, *“I’m sorry, I’m going to co-operate”*. Mr X said he did this to show the officer that he had *“pulled over and surrendered”*.
11. Officer A immediately ran over to him yelling *“stay there, don’t move”*. Officer A then grabbed Mr X’s right wrist and removed his car keys from his hands. Mr X told the Authority that he was not sure where Officer A put his keys, but he believes that Officer A put them on either the road or the roof of the car.
12. Mr X said that using a closed fist Officer A then *“... punched [him] in the side and back of the head five or six times.”* After the second punch, the left lens of Mr X’s glasses popped out and the right side of his nose split, causing it to bleed. Mr X later found his left lens in the gap between the left passenger’s seat and the door.
13. As he was being punched, Mr X repeatedly told Officer A *“I’m sorry, I’m going to co-operate”*. When Officer A continued to punch him, Mr X tucked his head down and received a *“few blows to the back of [his] head”*. When the punches stopped, Mr X looked up and saw another officer, Officer B, standing on the bonnet of his car.
14. Officer A then yelled at him to *“get out of the car”*. Mr X said he tried to open the driver’s door but Officer A was still holding his right wrist and he was unable to unlock the door with his left hand.
15. At that point, Officer B jumped off the bonnet towards the passenger side of Mr X’s car and told Mr X to open the front left passenger door. Mr X said he tried to lean across the centre console to unlock the door, but Officer A began to pull on his right arm and told him to climb out through the driver’s window.

16. Mr X said that as he started to climb out the window, Officer A continued to pull hard on his right arm until he fell to his knees on the ground. Officer A then pulled Mr X to the rear of his car and put him face first on the road surface.
17. Officer A held Mr X on the ground until Officer B came over and handcuffed him with his hands behind his back. The officers then picked Mr X up by his arms and sat him on the kerb between Officer B's Police car and Mr X's car.
18. Mr X told the Authority that after this incident he found his car keys broken and boot impressions on the bonnet, roof and windscreen of his car. He also complained that the bumper on his car was damaged as he could see stress marks and the outline of a number plate pressed into the metal. Although Mr X does not recall feeling the Police car collide with his car, he believes that it may have occurred when he was being punched. Mr X took photos of the boot impressions and stress marks on his car and provided them to the Authority.

#### *Officer A's version of events*

19. Officer A told the Authority that taking Mr X into custody was a high priority due to Mr X's behaviour in attempting to flee Police at high speeds. Officer A considered Mr X to be an "extreme risk" because Mr X had put members of the public in danger due to his driving, he did not know who Mr X was, and he did not know if Mr X had any weapons in his car. Furthermore, Officer A believed that Mr X only stopped his car due to the amount of smoke coming from the engine.
20. With this in mind, Officer A immediately ran to the driver's door where he could see that the window was down. Through the open window, Officer A told Mr X that he was under arrest for failing to stop and asked him to get out of the car. Instead, he said that Mr X remained seated, with both hands on the steering wheel.
21. Officer A told the Authority that there was "no possibility that [Mr X] was reaching out the window with the keys" as Mr X alleged, because the car engine was still running at the time, and he recalls being concerned that Mr X would drive off.
22. Officer A continued to yell at Mr X to get out of the car and said he reached through the window with his right arm to grab Mr X's wrist in order to gain control. However, as he went to grab Mr X, Mr X moved his arms out of Officer A's reach. Officer A said he then tried to open the door handle with his left hand but the door was locked.
23. As Officer A reached for Mr X a second time, Mr X moved his arms towards his face and Officer A said that he "unintentionally [struck Mr X's] right side of his face with his wrist forearm area." Officer A told the Authority, that although he committed to grabbing Mr X's hand with force and speed, he did not punch Mr X in the face.
24. Officer A then grabbed Mr X's right forearm and told him to get out of the car. When Mr X did not comply, Officer A began to pull Mr X towards the open window.

25. Officer A said that Mr X was not complying with his directions and that Mr X was trying to resist arrest by pulling back on his arm. As a result, Officer A said it required “*some force*” to pull Mr X out through the window. Officer A believed that during this struggle, it was possible that Mr X hit the hard surface of the window frame and hurt himself.
26. When Mr X was halfway through the window, he began to assist Officer A by climbing out. At this point, Officer A noticed Officer B on the bonnet of Mr X’s car.
27. Although Mr X was now complying with his directions to get out of the car, Officer A was still concerned about his behaviour, and he immediately placed Mr X in a “*controlled position*”, face down on the ground. Officer B, who had jumped off Mr X’s bonnet, assisted Officer A with handcuffing Mr X’s hands behind his back.
28. Once handcuffed, the officers sat Mr X upright against the right rear wheel of his car. In this position, Officer A could see that Mr X had blood around his nose and face. Officer A told the Authority:

*“I don’t know when [Mr X] got the little cut on his nose. It could have been from my hand, it could have been from ... when he was getting pulled out [of the window] and it could have been from when he ended up face down on the ground ... I assumed at the time [the injury was from putting Mr X on the ground].”*
29. Immediately after handcuffing Mr X, Officer A radioed CentComms and advised that Mr X was in custody.
30. It took Officer A 28 seconds to take control of Mr X from the time Mr X was pulled over until the time Officer A notified CentComms of his arrest.

#### *Officer B’s version of events*

31. Officer B told the Authority that he arrived on McLean Street as Officer A was approaching the driver’s door of Mr X’s car. He immediately parked his Police car behind Mr X’s car, leaving a gap of “*at least three to four metres between the two cars*”. Officer B said that at no stage was there any contact between his car and Mr X’s car as that would have put Officer A in danger.
32. Officer B got out of his car and ran towards the passenger side of Mr X’s car. While he was running, he could hear Officer A telling Mr X to get out of the car.
33. Officer B said he did not talk to Mr X at this stage because Officer A was talking to him and “*there was no need for two voices to start yelling*”. Officer B then tried to open Mr X’s front passenger door but found that it was locked. Officer B told the Authority that the only time he touched Mr X’s car on the passenger side was when he tried to open the door.
34. Due to the way in which Officer A’s Police car and Mr X’s car were parked, there was not enough room between the gap at the front of the two cars for Officer B to get to Officer A to assist him. As a result, Officer B said he had to come across the middle of Mr X’s bonnet.

35. While he was on the bonnet, Officer B saw Mr X seated in his car, and although his view was restricted, he *“did not see any particular struggle”* between Mr X and Officer A. Officer B said he told Mr X to *“get out of your car”* and almost simultaneously, Officer A began to pull Mr X through the driver’s window.
36. Officer B said he was on the bonnet for *“no more than a few seconds, only enough time to run across it and jump down into the gap”*. During that time, Officer B said it was possible that he put his boot on Mr X’s windscreen as he was getting off, but he did not kick the windscreen or climb onto the roof.
37. By the time Officer B jumped down into the gap between the two cars, Officer A had removed Mr X, via the driver’s window, and was partially dragging him to the rear of his car. At this stage, Mr X was compliant, and Officer B was able to handcuff him with his hands behind his back.

#### *Independent witness’s version of events*

38. Ms Y was at her home on McLean Street when she saw, from a bedroom window, two Police cars drive at speed, with their lights and sirens on, down McLean Street. Ms Y said she heard a bang and assumed that something had been hit.
39. Ms Y moved to another room to get a better view of the street, and saw Mr X’s car parked outside, with smoke coming from the engine. From this angle, Ms Y could not see Mr X in the driver’s seat, but she could see a Police officer moving up the passenger side of Mr X’s car, kicking and hitting the door.
40. Ms Y said she then saw another Police officer on the bonnet of Mr X’s car trying to kick in the windscreen.
41. Ms Y said she left her position for about ten seconds and when she came back, she saw a Police officer push Mr X up against his car door. A short time later, one of the Police cars left.

#### **Events post arrest**

42. Shortly after Mr X was handcuffed, Officer C arrived and approached Mr X and the officers where they were waiting at the back of Mr X’s car.
43. Officer A told Officer C that Mr X was the driver and he had been arrested for failing to stop. Officer C then took control of Mr X and Officer A left McLean Street and continued to the job in Pinehaven.
44. When Officer A left, Officer B and Officer C moved Mr X to the side of the road and sat him on the kerb in between his car and Officer B’s Police car. Once there, Officer C spoke to Mr X and advised him that he was under arrest for dangerous driving and for failing to stop. After reading Mr X his rights, Officer C requested that Officer D and Officer E attend the scene and transport Mr X to the Lower Hutt Police station.
45. Officer C told the Authority that during this time he did not notice any injuries or blood on Mr X and that his impression of Mr X was that he was *“feeling pretty sorry for himself”*.

46. A few minutes later, Officer D and Officer E arrived at McLean Street. Officer C spoke with Officer D and advised her that he had arrested Mr X and read him his rights.
47. Officer D approached Mr X, who remained seated with his head down, and obtained his personal details. While Officer D was talking to Mr X, he looked up and Officer D saw that he had dried blood on the right side of his nose and cheek.
48. Officer D told the Authority that when she saw the blood on Mr X's face she thought:  
  
*"... obviously somethings gone on. I don't know what it is. I asked him "is he ok," he said yes and we've carried on getting details from him."*
49. Shortly after, Officer D and Officer E walked Mr X to their Police car and placed him in the back left passenger seat. As Officer E was driving them to the Lower Hutt Police station, Officer C, who had remained with Mr X's car, radioed Officer E to ask if there was a certain way to get Mr X's car to start. After talking with Mr X, Officer E told Officer C that the car had an alarm and immobiliser and he would need to use the remote to deactivate it. Officer A heard the transmission and radioed, *"I think the remote is on the ground near the driver's door."*
50. Officer A told the Authority that he only noticed Mr X's remote, which was attached to the car keys, after Mr X was handcuffed. He could not recall if the keys or remote were broken. He said he did not handle the car keys at any stage because he was focused on controlling Mr X and he did not know how they got on the ground by the driver's door.

#### **Aftercare and failure to take Mr X's complaint**

51. When the officers and Mr X arrived at Lower Hutt Police station, Officer D took Mr X to a processing room where a Custody Officer processed him.
52. Once in the light of the Police station, Officer D noticed that one of the lenses in Mr X's glasses was broken and that there was blood on the nose pad. By this stage, the blood on Mr X's face had dried and Officer D saw that he had a small cut to the right side of his nose.
53. Mr X said that when he was at the Police station he talked to Officer D about his facial injury and told her that his chest was hurting. He said his face was covered in blood, but despite this, he did not receive any medical treatment, only a wet wipe to clean his face.
54. In contrast, the Custody Officer said that when Mr X arrived at the Police station he asked Mr X if he required any medical attention and advised him that he would call a doctor if his injury needed to be looked at. Mr X said that his injuries were not major and although he had some chest pain and minor grazes on his knees, he would not require a doctor.
55. The Custody Officer said he offered Mr X an antiseptic wipe so he could wipe away the dried blood and they could see how deep the cut was, but Mr X declined to use it. The Custody Officer recorded in the Police custody records that Mr X had complained of *"chest pain but*

*not in major pain*”, and had a *“cut on his nose and minor grazes to his knees and elbows”*, but would not require specific care.

56. At this stage Officer D, who had remained in the processing room, asked Mr X if he had any complaints with how she had dealt with him. Mr X said that he did not have a complaint about her but that he did have a complaint about what happened to his face. Officer D then asked Mr X if he would like to speak to a supervising officer to make a complaint.
57. Mr X told the Authority that sometime later Officer F came to the room and spoke to him about what happened. Officer F asked Mr X to explain what the problem was and Mr X told him that he had been assaulted. Officer F told Mr X that Officer A was *“just doing his job, and that he had to be prepared for anything.”* When Mr X told him that he had been compliant, Officer F replied that Officer A was *“just doing what he’s supposed to”*.
58. Mr X said that they only had a verbal conversation and Officer F did not take his complaint and instead just *“brushed it off”*.
59. In contrast, Officer F said that Mr X *“didn’t say he wanted to make a complaint”* and instead said that he was unhappy and asked *“if it was right that he should be taken out of his car in that manner”*. Mr X also told him that he had been punched in the head and face and did not understand why it happened. Officer F said that he explained to Mr X that due to the risk Police officers faced during pursuits, Police needed to detain a fleeing driver before they could cause further harm to the public.
60. Officer F told the Authority that, in the event that Mr X later decided that he was not happy with Officer F’s explanation, he arranged for Officer D to photograph Mr X and to document in her notebook everything that he said.
61. Officer F said that Mr X came across as an *“arrogant young fellow who had stuffed his car”* and if he genuinely thought that Mr X had been treated wrongly or assaulted, then he would have raised the issue with his supervisor. In this instance, Officer F did not believe that Mr X had been punched in the head or face because he *“couldn’t visibly see any injuries other than the small cut ... to the nose”*. Given Mr X’s pale complexion, if he had been punched, Officer F said that he would have expected to see bruising or swelling.
62. However, in interview with the Authority Officer F acknowledged that in hindsight, he should have taken the complaint on the night and if a situation like this happened again, he would take the complainant’s statement and elevate it to a supervisor.

## Mr X

63. At 4.30am on 4 February 2015, Mr X went to the Lower Hutt Hospital where the cut to his nose was cleaned. Mr X’s medical notes show that he received a *“laceration [to his] right nostril [and a] contusion to the right side of head.”* A steri-strip was applied and Mr X was then discharged home.

64. During their investigation, Police sought a medical opinion on the severity and the probable cause of the injury to Mr X's face. The doctor consulted did not personally examine Mr X. Using Mr X's medical notes and the photographs taken on the night, the doctor concluded that:

*"It appears [Mr X] has received relatively minor soft tissue injuries consistent with those caused by a blow to the right side of the head hitting the arm of his glasses causing them to cut his nose.*

*It would be consistent with a single blow of only moderate force and more in keeping with the statement of [Officer A].*

*He does not appear to have injuries consistent with multiple deliberate punches to the side of the head as alleged by [Mr X]."*

65. On 15 March 2016, following a defended hearing in the Hutt Valley District Court, Mr X was convicted of failing to stop for red and blue flashing lights and driving in a dangerous manner.

### Use of Force by Police

66. 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. 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.”*
67. 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.
68. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in 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.”*
69. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

### General Guidelines on use of force

70. The Police 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.
71. 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.
72. 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).
73. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, 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.

74. The 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

75. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times.

76. 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.”*

77. 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.”*

### Receiving a complaint

78. The Police Investigations of Complaints and Notifiable Incidents policy states that if a complaint is made orally, the Police employee receiving the complaint must: *“summarise it in writing or ask the complainant to do so, and get the complainant to sign it as soon as practical.”*

79. The Police employee must then refer it as soon as possible to their supervisor.

## THE AUTHORITY’S FINDINGS

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### Was the force used by Officer A when arresting Mr X reasonable and justified in the circumstances?

80. The law provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of force is necessary to overcome any force used in resisting. However, Police are criminally responsible for any excessive force.

81. Mr X said that when he pulled over, he tried to show Officer A that he had surrendered by immediately holding his arms and car keys out the car window and saying “*I’m sorry, I’m going to co-operate*”. He said Officer A grabbed his right wrist and punched him multiple times to the side and back of his head causing his nose to split and his glasses to break, before pulling him out the car window.
82. Officer A considered Mr X to be an extreme risk to the public and Police because of his behaviour in attempting to flee at high speeds. Officer A was also aware that he did not know Mr X’s identity or if he was armed, and he believed that Mr X only stopped his car due to mechanical failure.
83. Officer A said that when he approached the car, Mr X was not holding his hands and the keys out the car window as he claimed, but was instead holding the steering wheel. Officer A said that the car engine was still running and he was concerned that Mr X would drive off again.
84. Officer A said that his arm “*unintentionally*” struck Mr X on the right side of his face when he tried to grab him. Officer A acknowledged that the contact between his arm and Mr X’s face could have caused the injury to Mr X’s face and the damage to his glasses.
85. Officer A said that he was required to use some force to pull Mr X out of the car due to him resisting and it was only after Mr X had been handcuffed that Officer A noticed Mr X’s nose was bleeding. Officer B, who had a restricted view, did not see any force inside the car, but did see Officer A pull Mr X out of the window.
86. The independent witness did not see any interaction between Officer A and Mr X inside the car.
87. Mr X’s medical notes show that he received a small laceration to the right side of his nose that was closed with a steri-strip. A Police medical opinion suggests that the injury Mr X sustained to his nose was consistent with a single blow of only moderate force.
88. Mr X and the Police have conflicting versions of the force used by Officer A. However, after considering all the available evidence, the Authority prefers the version of events provided by Officer A. Given the location of Mr X’s left glasses lens and the Police doctor’s opinion, the Authority considers that Mr X was most likely injured when Officer A went to grab Mr X’s right arm while he was sitting in his car. The Authority is satisfied, on the balance of probabilities, that Mr X resisted arrest and that Officer A’s hand connected with Mr X’s face most probably breaking his glasses. The Authority finds that Officer A used force to control Mr X and remove him from his car but that this force did not include Mr X being punched multiple times in the head and face. In the circumstances, the force used by Officer A was reasonable and justified.

## FINDING

The force used by Officer A against Mr X was reasonable and justified in the circumstances.

## Did the officers intentionally damage Mr X's property?

### Car

89. Mr X told the Authority that when he collected his car after it had been impounded, he noticed boot prints on the bonnet, windscreen and roof of his car. Mr X also complained that there were scratches down the passenger rear window and stress marks on the back bumper, which included an outline of a number plate in the middle of the bumper.
90. Although Mr X never felt a collision, Mr X believes that Officer B hit the back of his car when Officer A was punching him.
91. Officer B told the Authority that he did not collide with Mr X's car. He said that if he had done so, Officer A would have been put in danger. He said he parked his car approximately three to four metres behind Mr X's car.
92. Officer B denies that he scratched the rear passenger window and said that the only time he touched the passenger side of Mr X's car was when he tried to open the front door. Officer B accepts that he was on the bonnet of Mr X's car, but said that he was only on the bonnet for a few seconds. He said that he did not kick the windscreen or climb onto the roof although it was possible that he put his boot on Mr X's windscreen as he was getting off the bonnet.
93. Ms Y said she heard a bang and when she looked through her window could see a Police officer on the bonnet of Mr X's car trying to kick in the windscreen.
94. Although Ms Y said that she heard a bang, she did not see the cause of it. Mr X acknowledges that he did not feel a collision and Officer B denies that there was any contact. There is therefore no credible evidence to suggest that Officer B collided with Mr X's car. In addition while the photographs Mr X supplied of his car show a scrape along the bumper there is no evidence to show that this scrape happened during his arrest and there is no visible number plate indentation as alleged by Mr X. Further Mr X's car is 23 year old Honda Civic with numerous marks on it and there is no evidence to establish that the damage to the passenger window and back bumper occurred when Mr X claimed.
95. The photographs also show the outline of boot prints on the bonnet and roof of Mr X's car. However, it is evident from the images that the boot prints on the bonnet and roof came from two different styles of boots. The boot tread on the bonnet matches the boots worn by Officer B. This is consistent with Officer B's statement that he only climbed onto the bonnet to access the space between the two cars. The Authority is satisfied that Officer B was on the bonnet of Mr X's car and not the roof.
96. There are also conflicting statements regarding Officer B's contact with Mr X's windscreen. The photographs supplied by Mr X show an outline of a boot print on the windscreen but it does not show any significant damage. Officer B accepts that he could have had some contact with the windscreen as he was getting off the bonnet. The Authority finds that the image of the boot print is consistent with Officer B's statement.

## Keys

97. Mr X also complained that his key ring was bent, the hooks holding his keys onto the key ring was broken and that there were scratches and gauges on his house and car keys.
98. Mr X said that when he pulled over, he held his car keys out the driver's window and Officer A then grabbed them and put them on either the road or the roof of the car.
99. Officer A said that there was *"no possibility that [Mr X] was reaching out the window with the keys"* because the engine was still running. Although Officer A later recalled seeing the keys on the ground by the driver's door after Mr X was handcuffed, he says that he did not handle the keys and does not know how they got on the ground.
100. After weighing up all the evidence, the Authority is of the view that Mr X's car keys were likely damaged when they fell out of the car as Mr X was dragged through the driver's window. Given the keys location on the ground, it is also likely that they were stood on during the struggle. However, there is no evidence to suggest that any damage was done intentionally.

### FINDING

Police did not intentionally damage Mr X's property.

## Was appropriate medical care given to Mr X in custody?

101. Mr X said he had blood on his face when he spoke to Officer D at the Lower Hutt Police station and told her that his chest was hurting. However, Mr X said his concerns about his injuries were not addressed and he only received a wet wipe to clean himself up.
102. The Custody Officer said he asked Mr X if he required a doctor to look at his injuries and Mr X replied that he did not need one, as they were not major. The Custody Officer said he then offered Mr X an antiseptic wipe to clean his face so that they could assess the cut, but Mr X declined to use it.
103. The custody records show that Mr X advised that he had chest pain but that he was *"not in major pain"* and that he had a cut on his nose and minor grazes on his knees and elbows. Mr X was assessed as not needing specific care.
104. The Authority is satisfied that Mr X was offered medical treatment by the Custody Officer. However, given that he declined to see a doctor, an antiseptic wipe was also offered so that the Custody Officer and Officer D could see how deep the cut was. Mr X also declined this.

### FINDING

The Authority is satisfied Mr X was given appropriate medical care while in Police custody.

### Should Officer F have taken your complaint at the Police station?

105. Police policy states that every complaint received by Police must be dealt with promptly, and the complainant advised of the procedure to take their complaint forward. A Police employee who receives a complaint at a Police station must record the complaint in writing. They must not ask the complainant to return, or attempt to have them dealt with by another Police employee.
106. Officer F acknowledged that he did not take Mr X's complaint. He stated that this was because Mr X did not say that he wanted to make a complaint and because he did not genuinely believe that Mr X had been treated wrongly or assaulted. However, Officer F has acknowledged to the Authority that in hindsight, he should have taken Mr X's complaint and if a similar situation occurred, he would take the complainant's statement and elevate it to a supervisor.

#### FINDING

Officer F should have taken Mr X's complaint in accordance with Police policy.

#### CONCLUSIONS

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107. The Authority has reached the following conclusions on the balance of probabilities:
- 107.1 The force used by Officer A against Mr X was reasonable and justified in the circumstances.
  - 107.2 Police did not intentionally damage Mr X's property.
  - 107.3 Mr X was given appropriate medical care while in Police custody.
  - 107.4 Officer F should have taken Mr X's complaint in accordance with Police policy.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

24 March 2016

IPCA: 14-1481

## 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.



Whaia te pono, kia puawai ko te tika

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