

Complaint of excessive force during arrest in Hamilton

INTRODUCTION

1. At about 2:45am on Friday 17 April 2015, Police arrested Mr X outside a nightclub on Victoria Street, Hamilton. Mr X suffered serious injuries to his left index finger and thumb when they became caught between the cell door and a metal seat of the Police prisoner van.
2. Mr X complained to the Authority about the serious injuries he had received, and said that his arrest was unjustified, and that Police used excessive force in the course of his arrest. Further, he complained that the sergeant who served him with a court summons several weeks after the incident made an offensive joke about the injury he received while in Police custody.
3. The Police notified the Independent Police Conduct Authority about the injury to Mr X's hand. The Authority conducted an independent investigation into the cause of the injury, and about Mr X's other complaints. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Arrest of Mr X

4. During the evening of Thursday 16 April 2015, Mr X and his friend (Mr Y) were socialising at their friend's home in Dinsdale, Hamilton. During the course of the evening Mr X recalls drinking four beers. At about 11:30pm, they were driven into town by a sober friend to continue socialising at the bars in Victoria Street. This friend did not consider that Mr X was drunk at this stage of the evening. It was planned that she would pick them up later.
5. Mr X and Mr Y went to 'the Hood' bar where they had two drinks, and then moved on to 'Stiletto's' nightclub, where they stayed for approximately two hours and had one further drink.
6. At 2:45am Mr X and Mr Y decided to leave Stiletto's to meet the friend who was to pick them up. They were both affected by alcohol.

7. Meanwhile, four Police officers and their sergeant from the Police Support Unit (PSU) were driving slowly northwards along Victoria Street in a marked Police prisoner van (Police van). The van contains two separate prisoner cells in the rear compartment.
8. The officers were conducting a routine patrol of the bar area in order to prevent alcohol-related offending and disorder. They were aware that the bars were due to close at 3am, at which time the patrons would come out onto Victoria Street.
9. Mr X and Police have different versions of what happened next.

Mr X's version of events

10. Mr X told the Authority that as he was waiting on the pavement for his friend, he noticed a Police van driving slowly along the road in front of him. Mr X looked up and recognised the male Police officer who was sitting in the front passenger seat, with the window down.
11. Mr X told the Authority that the Police officer looked at him and said something like *"Oh, you're back in town you little nigger."* Mr X *"gave him the finger"*, and said *"Fuck off, leave me alone, I'm going home."*
12. Mr X heard the Police officer say to his colleagues *"Let's get him!"* Six or seven Police officers then got out of the van. A female officer walked over to the side of the pavement, but the remaining male officers approached him from behind and encircled him.
13. Mr X felt something on his shoulder which gave him a fright, causing him to grab at the vest of the officer in front of him to retain his balance.
14. Mr X said that two seconds later the male officers started hitting him, causing him to fall to the pavement. He told the Authority that he was hit on his cheek and stomach. Mr Y told the Authority that he saw Police officers tackle Mr X.
15. An officer yelled *"give me your fucking hands!"* However, Mr X said he was unwilling to do so because he was using his arms to protect himself. He later said that, had he been told that he was under arrest, he would have co-operated. Mr X does not recall ever being told that he was under arrest.
16. Mr X said he was handcuffed and manhandled to the van between two Police officers, with his feet dragging on the ground. Mr Y told the Authority that he saw Mr X being dragged to the Police van on his stomach and on his back.
17. Mr X said he felt dizzy and traumatised as they roughly *"chucked"* him in. He doesn't remember falling out of the van at any point.
18. The Police van's rear door was then slammed shut, and shortly afterwards Mr X said he lost feeling in his hand. He started yelling for help, although, at this point, he didn't realise what was wrong with his hand.

19. After approximately four minutes, the Police van stopped at the Police station. Mr X said that a Police officer opened the van door, looked at him and said *"Oh fuck!"* before closing the door again and driving straight to Waikato Hospital.
20. Once they arrived at the hospital, Mr X said that he didn't want anyone to come near him. He felt dizzy, shaken-up and unsure about where he was. When the rear van doors were opened again he felt *"really angry."* However, he didn't lash out at the officers.
21. Mr X said that the officers dragged him roughly out of the van and *"manhandled"* him into the hospital. They didn't tell him what had happened to his hand. The officers took him through to the emergency department, un-cuffed him and then left him at the hospital where he was treated for his injuries:
 - a partially severed left index finger (which required surgical amputation);
 - a fractured left thumb;
 - significant bruising to his stomach; and
 - bruising to his upper cheek (Mr X doesn't specify which side of his face was bruised).
22. Mr X has found his injuries, particularly those to his hand, very distressing.

Police officers' version of events

23. At approximately 2:45am, Officer A was driving the Police van slowly along Victoria Street towards Stilletto's nightclub.
24. The unit's sergeant was seated in the front passenger seat of the Police van, with her window half-down in order to assess the behaviour of the patrons on the street. Officer B was seated directly behind the driver. Officers C and D were also seated in the rear of the van. The rear windows of the van were tinted and could not be opened.
25. All five officers were wearing SRBA stab-resistant vests, with high-visibility vests over the top.
26. Officer A said that this was a relatively busy time of night. Officer B said that he could recall a couple of people standing around, but *"it wasn't like it was a huge crowd on the footpath."* The PSU team had been in Stilletto's nightclub earlier that evening, and Officer B said that the balcony which overlooks Victoria Street *"was quite full"* at that time.
27. A witness told the Authority that around the time of the incident involving Mr X, the Stilletto's balcony was emptying out.
28. Officer B said he looked to his right and noticed Mr X walking towards a van belonging to another nightclub which was parked directly outside Stilletto's.

29. Officer B then said he saw Mr X raise both his arms above his head and finger signal towards the van, shouting something that he could not make out. Officer A and the sergeant also noticed Mr X. The sergeant saw Mr X “puff up” aggressively, gesture towards the van and heard him yell “Fuck you cunts!”
30. Both the sergeant and Officer B called for the Police van to be stopped so that Mr X could be spoken to about his behaviour. Officer B thought it likely that Mr X was under the influence of alcohol or drugs. None of the officers in the van recognised Mr X.
31. In a report prepared shortly after this event, Officer B explained that his intention was to speak to Mr X in order to prevent Mr X’s behaviour from escalating, endangering the public around him or inciting others to behave in an aggressive or disorderly manner. He was also mindful that Mr X might become a victim himself if others were offended by his actions.
32. Officer B got out of the Police van, followed by Officers C and D, and started to walk towards Mr X. Officer B stated:
- “As soon as the male saw me approaching he began to back away from me, his body was tensed and his hands were clenched into fists.*
- He continued to back away and I believed he was preparing to run away from me. I continued to approach the male and told him he was under arrest.*
- Once I did this the male stopped walking allowing me to get into range to attempt to handcuff him.”*
33. Officer B said that he intended to arrest Mr X for disorderly behaviour likely to cause violence¹.
34. The sergeant, who had also got out of the van but had not approached Mr X, saw Officer B reach out and take hold of Mr X’s right shoulder. She told the Authority that she could tell from Mr X’s body language that he was not going to be cooperative.
35. Before Officer B could put handcuffs on Mr X, Officer B recalls that he “grabbed the top of my SRBA around my neck with his right hand and would not let go when I instructed him to.” Officer B said that Mr X started to pull on his SRBA, and he feared that he was about to be assaulted.
36. In order to get Mr X to release his grip, Officer B grabbed Mr X’s right forearm and pulled it downwards. Mr X struggled and tried to break free. Officer C then grabbed Mr X’s left hand and together they pulled Mr X down onto his stomach in order to restrain him.
37. Mr X released his hold on Officer B’s SRBA, but freed his arms from the officers’ grip and tucked them under his body to prevent the officers from applying handcuffs. Officer B said he instructed Mr X several times to release his arms, which he ignored. Officer B tried to pull Mr X’s right arm out from under his body, but Mr X tensed his arms and resisted. Officer C estimated that this struggle lasted for approximately 20-30 seconds. The officers deny kicking or hitting Mr X, or applying any direct pressure to his back.

¹ Section 3 of the Summary Offences Act 1981.

38. Officer A watched Officers B and C attempt to bring Mr X under control from the driver's seat of the Police van. Mr X was "*violently struggling*" with the officers, so he decided to go over and assist. After informing Mr X to stop resisting, Officer A told the Authority that he pressed his right thumb into a pressure point on the left-hand side of Mr X's neck, to the rear of and below the ear, which caused Mr X to immediately release his arms. Officer A described this technique to the Authority as a "*mandibular angle*."
39. Mr X was handcuffed behind his back, however he refused to follow instructions to get to his feet. Officers B and C lifted him off the ground and started walking him to the Police van. Officer B recalls that Mr X struggled and tried to pull away, and they had difficulty keeping him under control. Officer A said that he tried to calm Mr Y by talking to him, but this did not work.
40. Officer A opened the rear door of the Police van, and then the door of the right-hand cell. There were three steps of different height leading up to the cell floor. The edge of this level was painted yellow to indicate a trip hazard.
41. Mr X was instructed to step up into the cell. He ignored these instructions, and shouted abuse at the officers.
42. Meanwhile, Mr Y approached the sergeant beside the entrance to Stiletto's. The sergeant recalls that Mr Y appeared intoxicated, but in good spirits. She explained to Mr Y why his friend had been arrested, and what would happen next.
43. Officers A, B and C decided to physically lift Mr X up into the van. This took several attempts due to Mr X's height and heavy build. Once Mr X was positioned at the entrance of the cell, Officers B and C tried to push him forward into the cell, while Officer A held Mr X's head to protect it from hitting the metal plate at the top of the cell entrance. However, Mr X braced himself against the edges of the door and refused to go in.
44. Finally, Mr X was pushed towards the back of the cell, and Officer B went to shut the cell door. However, Officer B said that Mr X then "*pushed back against the door with his back, preventing it from closing*." Officers A and B caught Mr X so that he was lying on his back, half hanging out of the cell.
45. Mr X ignored the officers' instructions to get back on his feet, and would not cooperate with the officers when they tried to push him back up. Officer A said that he warned Mr X that he would be pepper sprayed if he continued to resist, which calmed him briefly. Mr X repeatedly yelled "*Listen to me!*", but he would not say anything further.
46. Officers A and B squatted below Mr X's back and pushed him up onto his feet and "*all the way to the back [of the cell]*." Fearing that Mr X would again try to push his way back out, the officers quickly shut the cell door. Officer B then flicked the two locks closed and shut the van door.

47. At this point, Officer B said that he could hear bar patrons standing on the Stiletto's balcony above them yelling *"fuck the Police!"* He told the Authority that he thought *"we needed to get out of there. Us being there was causing more of a problem."* The officers got back into the van, and continued driving north along Victoria Street, with the intention of driving back to Hamilton Police Station.
48. As they started driving, Officer B heard Mr X yell: *"Help, my hands are stuck!"* He saw Mr X's panicked face through the perspex cell window, but none of the officers could see what was wrong. Officer B called for the Police van to be stopped. Officer A conducted a U-turn, and pulled in outside the Keystone Bar on Victoria Street. Officers A and B went round to the rear of the van, and opened the rear van door, and then the door to Mr X's cell. Officer B could see blood at the edge of the metal seat which sits almost flush the cell door when closed. A deep laceration was visible on Mr X's left index finger.
49. The sergeant assessed the situation and decided that it would be quickest for Mr X to be transported to Waikato Hospital in the Police van, rather than waiting for an ambulance. Officer B told Mr X that they were going to take him to hospital and shut the van doors.
50. Officers A, B and D drove Mr X the short distance to hospital with emergency lights and sirens activated, while the sergeant and Officer C remained in town.
51. The officers said that Mr X had been agitated during the trip, yelling out that he would *"get [them] for what they did."* The Police van pulled up in the ambulance bay. Before Officer B opened the door to the cell, he informed Mr X where they were, and asked him to say calm.
52. Officer B said he then reached up to assist Mr X down from the cell, but Mr X kicked out at him and yelled abuse. Officer B stepped back and tried to calm him, but Mr X continued to yell abuse and threats.
53. As Mr X stepped down from the cell, Officer B said Mr X attempted to head-butt him.
54. Mr X was pulled out of the van by his arms and restrained by Officers B and D. He was walked quickly into the hospital, but he continued to struggle and shout abuse, threatening that he would *"hunt the Police down"* for what they had done and *"chop their heads off."* Officer B pushed Mr X forward so he was bent at the hips and easier to control. He also put his right arm around Mr X's jawline in order to better control his head.
55. Still struggling, they took Mr X through to a resuscitation room in the emergency department, where security officers met them. Officer A said that Mr X looked directly at him and said *"You big Pommy cunt. I'm going to fuckin chop your head off."* The officers decided that they would step out of the room to avoid further antagonising Mr X. However, they stayed close by in case they were needed.
56. Approximately 10 minutes later, a nurse advised that Mr X was sufficiently calm for his handcuffs to be removed. Officer B did this without directly engaging with Mr X.

57. Officer B then rang the sergeant and advised her of Mr X's injuries, and the fact that he would need to stay in hospital to receive treatment. The sergeant decided that Mr X should be un-arrested so that he could receive necessary treatment. She advised Officer B that Mr X could be summonsed to appear in court later in relation to any relevant charges. Officer B informed the hospital staff about this decision, but did not advise Mr X directly because Officer B was concerned that it was *"just going to kick everything else off and they had him calm at that stage."*

Service of summons on 1 May 2015

58. Police decided to charge Mr X in respect to his actions on 17 April 2015.
59. On 1 May 2015, the sergeant and Officer B drove to the Mr X's sister's house, where Mr X was residing, in order to serve the court summons. The sergeant decided that she would serve the summons on Mr X by herself to try to avoid a tense situation, because she did not think that he would recognise her from the incident. However, she told the Authority she was nervous as she walked up to the front door. Although he was parked at a distance, she had told Officer B to keep an eye on the interaction in case she required assistance.
60. When Mr X's sister answered the door, the sergeant explained why she was there, and was about to serve the summons on her to give to Mr X, when Mr X appeared at the door. He had just got out of the shower, and he was angry to overhear that he was to be charged in relation to the incident, given that he considered that the serious injuries he had suffered arose from Police actions. Mr X denied any wrongdoing.
61. The sergeant said that Mr X was aggressive, and told an exaggerated story of what Police had done to him that night. He then calmed down, and started laughing and joking with her, cajoling her to drop the charges given his injuries. The sergeant stated that Mr X told her that it was a fair swap to drop the charges in return for the loss of his finger. The sergeant replied jovially:

"It's not very fair is it [Mr X], we can't fingerprint you in the future."

62. Mr X told the Authority that he found this remark offensive and insensitive.

CCTV Footage

63. CCTV cameras mounted above Victoria Street captured parts of the interaction between Police and Mr X.

Victoria Street - Camera One

64. The first footage is from a camera filming southwards on Victoria Street. At 2:45:09am the camera operator zooms onto the road and pavement outside Stiletto's. A small group of pedestrians have gathered and the Police van can be seen parked in the middle of the northbound lane, with the front passenger door open.

65. Two Police officers are seen pulling Mr X to his feet and then walking him between them towards the Police van, with one officer in front and one officer behind. Mr X is bent over at the hips and does not appear to be resisting. A small group of pedestrians has gathered and are calmly watching the arrest.
66. A fifth officer (the sergeant) can be seen standing on the pavement at the entrance to a building, watching the arrest and talking to Mr Y, a security guard and another man. This sergeant and Mr Y then walk towards the Police van. The camera then zooms out.

Victoria Street - Camera Two

67. Footage from a second camera filming northwards on Victoria Street zooms in on the pavement outside Stiletto's. The camera focus shifts consistently throughout the first 45 seconds of the footage, but fleeting glimpses are seen of officers standing at the rear of the Police van, and the sergeant and Mr Y moving over to stand beside the Police van.
68. Between 2:46:36am and 2:46:49am three officers can be seen struggling to lift Mr X up into the cell at the rear of the Police van, while a fourth stands off to the side. The sergeant is standing to the left of the van talking to Mr Y and another person. Mr X, handcuffed at his back, is finally heaved into the van and pushed forward into the cell. He appears to fall to his right before the cell door is shut forcefully at 2:46:49am. The officers then get into the van.

Waikato Hospital

69. CCTV footage shows the Police van arriving outside Waikato Hospital emergency department at approximately 2:53am. The open van door obscures the view of Mr X exiting the van. However, Mr X can be seen struggling violently against two Police officers who are attempting to restrain him while waiting for the hospital doors to be unlocked.
70. Footage of a hospital corridor shows Mr X being supported between two Police officers as he is walked towards a resuscitation room.

Mr X

71. Mr X received serious injuries to his left hand. As a result, the top of his left index finger required surgical amputation.
72. Mr X also had significant bruising to his stomach when he arrived at Waikato Hospital. Photographs of the injuries to his hand and stomach were taken prior to his treatment.
73. Mr X was charged with disorderly behaviour likely to cause violence, assaulting Police and resisting Police. He appeared in the Hamilton District Court on 15 May 2015 and pleaded not guilty. He was remanded on bail. He appeared again on 16 November 2015 and was found guilty on all three charges. He was convicted and discharged.

Police involved

74. At the time of this incident, the sergeant had 16 years' Police service. Officer A had five years' experience in the New Zealand Police, having joined from the Metropolitan Police in London. Officers B, C and D had approximately 3 and a half, two and one years' experience respectively.
75. The officers were current in their certifications at the time of this incident.

Complaint

76. On 11 May 2015, the Authority received the following heads of complaint from Mr X in connection with this incident:
 - 76.1 His arrest was unjustified because he was deliberately provoked by one of the Police officers;
 - 76.2 Police officers used excessive force when arresting him and putting him in the Police van, causing significant injuries to his left hand, stomach and cheek;
 - 76.3 The sergeant made an inappropriate joke about his amputated finger when serving the summons on 1 May 2015.

LAWS AND POLICIES

Law relating to disorderly behaviour

77. Section 3 of the Summary Offences Act 1981 states:

Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, in or within view of any public place, behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.

Police policy on disorderly behaviour

78. The policy outlines the procedure for officers dealing with alleged disorderly behaviour.
79. Officers can decide whether to warn, report for summons or arrest the offender. Considerations relevant to this decision are whether a breach of the peace is imminent, and if the offender's conduct is likely to be repeated.
80. If the offence is minor, officers are guided to warn the suspect. If he or she is co-operative, no further action may be necessary.
81. If the offender is to be reported for summons, the suspect should be informed.

82. If the offender is to be arrested, he or she should be cautioned and given their rights under the New Zealand Bill of Rights Act 1990. Consideration should be given, in conjunction with the Custody Supervisor, to issuing the offender with a pre-charge warning if relevant criteria are met.

Pre-charge warning

83. A pre-charge warning is a lawful alternative to prosecution for some minor offences. The process takes place in the custody suite and is issued at the discretion of a permanent Custody Supervisor or a substantive sergeant or senior sergeant if certain criteria are met:

- The offender is at least 17 years old;
- The offence must carry 6 months imprisonment or less; and
- The offence must not have arisen out of a family violence incident or involve the possession of methamphetamine.

84. In addition, the Custody Supervisor must be satisfied that the offender has been lawfully arrested, and there is an objectively reasonable prospect of a conviction on the evidence available (evidential sufficiency).

85. Where force has been used, particularly when additional offences have been committed such as 'resists Police,' then careful consideration should be given to whether it is in the public interest to prosecute the offender. The Custody Supervisor or substantive sergeant or senior sergeant will remain accountable for their decision to issue a pre-charge warning in all cases.

86. Previous criminal history or pre-charge warnings are taken into account when making a final decision regarding a pre-charge warning, but these do not automatically exclude a prisoner from receiving a second or subsequent pre-charge warning.

Hamilton CBD Tactical Plan

87. This plan, dated July 2014, formalises district policy which was in place in April 2014 to *"prevent alcohol related offending, disorder and victimisation in Hamilton CBD."*

88. Relevant aspects of this plan include:

- *“Early Intervention:*
 - *Identify situation with potential to result in harm and act immediately to resolve them.*
 - *Intervene using communication and legislation available to remove from CBD, or modify behaviour of, those who will victimise others or become victims themselves.*
- *Rapid Response:*

- *Where offending has occurred respond with urgency and take all action necessary to stop [the] situation, hold offenders to account and restore the peace.”*

Use of force policy

89. 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.
90. 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.
91. 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)).
92. 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.
93. 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.

THE AUTHORITY'S FINDINGS

Were Police justified in approaching Mr X and arresting him?

94. In the early hours of 17 April 2015, the PSU team were monitoring the behaviour of members of the public prior to the bars closing at 3am.
95. It is local policy to intervene early and speak to anyone who is seen misbehaving or committing an offence, such as disorderly behaviour (see paragraphs 87-88). Depending on the circumstances, the person may be told to go home, receive a formal verbal warning, or be placed under arrest (see paragraphs 78-82).
96. Officer B told the Authority that he got out of the Police van in order to speak to Mr X about his behaviour. It was standard practice for all the officers to get out of the Police van when one of them had cause to speak to a member of the public in order to provide timely support if it was required. As described in paragraph 31, Officer B wanted to talk to Mr X about his behaviour in the hope that it would calm him down and avoid him inciting others leaving the pubs and clubs.
97. The Authority accepts the officers' version of events regarding Mr X's behaviour. There is no independent evidence supporting Mr X's account that a male officer spoke to him from the Police van in a provocative way. The front passenger seat of the Police van was occupied by a female officer, not the male officer that Mr X believes spoke to him (see paragraph 11). Mr X would not have been able to see the male officer sitting behind her due to the Police van's tinted windows.
98. The Authority finds that Officer B was justified in getting out of the Police van and approaching Mr X in order to speak to him about his behaviour. This practice was consistent with local policy, and was designed to prevent the escalation of alcohol-related violence. Police saw that Mr X was behaving in a way that indicated that he was intoxicated and his judgment was impaired. He needed to be spoken to and his demeanour assessed.
99. Given the environment and time of night, it was reasonable for other officers to get out of the van to support Officer B if required.
100. As described in paragraph 73, Mr X was found guilty of disorderly behaviour likely to cause violence, assaulting Police and resisting Police as a result of his behaviour on 17 April 2015. The Police were justified in arresting him because they reasonably suspected that he committed the disorderly behaviour offence.

FINDING

Police were justified in stopping to talk to Mr X. It was reasonable for Officer B to approach Mr X, and for the other officers to get out of the van so they were available for back-up if required. Police were justified in arresting Mr X.

Did Police use excessive force against Mr X during his arrest?

101. There are certain situations where the use of force by Police is permitted by law:

- Section 39 of the Crimes Act 1961 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 resistance.
- Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

102. 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 offender. This is explained in paragraphs 89-93.

103. When Officer B approached Mr X, he perceived that Mr X had an aggressive demeanour (tensed with hands clenched into fists) and was unwilling to cooperate with Officer B’s attempt to speak to him. For whatever reason, Mr X then grabbed at Officer B’s SRBA vest, which from Officer B’s perception showed increased aggression. Officer B was justified in taking Mr X to the ground in order to defend himself (section 48) and in order to bring Mr X under control and arrest him (section 39).

104. Mr X accepts that he struggled against Police’s attempts to restrain him from this point onwards. However, he said that he did so to defend himself against being hit and kicked by Police. This is discussed in more detail below.

Did Police hit Mr X while attempting to handcuff him?

105. Mr X has complained that he was hit by Police officers when he was taken to the ground by Officers B and C (see paragraph 14). Mr X has provided the Authority with photographs that show significant dark purple bruising on his stomach as evidence of this assault. These photographs were taken at Waikato Hospital on 17 April 2015.

106. The Police officers present during the incident all deny hitting Mr X at any point during his arrest. Officers B and C are clear that they tried to pull Mr X’s arms out from under his body when he resisted being handcuffed, and when this did not work, Officer A used a pressure point technique to facilitate this.

107. The Authority has spoken to other independent witnesses, including Mr Y, and none of them recalls seeing Police officers hit Mr X. In addition, the CCTV footage described in paragraphs 64-66 does not provide any evidence to support Mr X’s complaint.

108. The Authority spoke to a doctor that examined Mr X at Waikato Hospital about the possible cause of the stomach bruising, but the doctor felt she was not qualified to comment.

109. The Authority is satisfied on the balance of probabilities that Mr X was not hit by Police. It is unclear how he received the bruising to his stomach.
110. The Authority accepts that it was reasonable for the officers to use force to overcome Mr X's resistance to arrest. However, Officer A should not have used a pressure point technique on Mr X.
111. Officer A told the Authority that he performed a 'mandibular angle' technique on Mr X. This technique involves putting pressure on the lower jaw bone where it starts to angle down towards the chin. The technique has not been approved or taught by New Zealand Police. This description is not consistent with Officer A's description of his actions in paragraph 38.
112. Officer A's description of what he did is consistent with the 'mastoid thumb pressure' technique, where pressure is applied behind the ear lobe, in the cavity between the mastoid process² and the jawbone. This technique was taught by New Zealand Police over ten years ago, but is no longer taught. It was approved to be used to encourage protestors with linked arms to release the link.
113. In his submission to the Authority, Officer A did not distinguish between the 'mandibular angle' and 'mastoid thumb pressure' technique. He also states that the 'mastoid thumb pressure' technique is still approved for use by Police.
114. The Authority does not agree with Officer A's assertions. The 'mandibular angle' and 'mastoid thumb pressure' techniques are not the same. The 'mastoid thumb pressure' technique is no longer an approved tactic, and was never approved to be used to subdue an offender who was resisting arrest in the manner Mr X was.

FINDINGS

The Authority is satisfied that Mr X was not hit by Police during his arrest. It is unclear how he received the bruising to his stomach.

Officers A, B and C were justified in using force against Mr X to arrest him.

Officer A performed the 'mastoid thumb pressure' technique on Mr X, not the 'mandibular angle' technique.

Officer A should not have used the 'mastoid thumb pressure' technique to subdue Mr X.

Was excessive force used when taking Mr X to the Police van?

115. Mr X said that he was taken roughly to the Police van. Mr Y told the Authority that he saw Mr X being dragged to the Police van on his stomach and on his back.

² A large, bony prominence on the base of the skull behind the ear, containing air spaces that connect with the middle ear cavity.

116. Conversely, the CCTV footage shows Mr X being walked to the Police van between two officers (see paragraph 65). The officers are supporting Mr X under his arms and he is handcuffed to his back.

117. The Authority is satisfied that Mr X was not taken to the Police van with excessive force.

FINDING

The Authority is satisfied that Mr X was not taken to the Police van with excessive force.

Were the injuries to Mr X's hand caused by Police when he was put in the Police van?

118. Mr X remembers being “chucked” into the Police van and that the cell door was slammed shut. He does not recall falling out of the van.

119. CCTV footage shows three Police officers heaving Mr X up into the cell (see paragraph 68), and supports the Police officers’ accounts that they had difficulty getting Mr X into the cell at the rear of the Police van. Before the cell door is quickly shut, Mr X is seen to overbalance and fall towards his right.

120. Because Mr X was handcuffed to the rear, as he fell his left forefinger and thumb were caught in a small gap between a metal seat and the closed cell door. This resulted in the injuries to his hand. The officers could not reasonably have foreseen this occurring.

121. Upon hearing Mr X’s calls for help and realising the serious nature of his injuries, Police responded in a timely and appropriate manner by stopping the Police van quickly, and then taking Mr X directly to hospital.

122. While this was an unfortunate accident, the design of the Police van, and its common use as a transport for offenders arrested by the PSU team, made it more likely that an accident of this kind would occur.

123. The entrance to the Police van’s cell is small and narrow. The entrance is also raised 615mm from the ground, and a prisoner is required to negotiate three steps to enter the cell. If the prisoner is unwilling or unable to enter the cell, Police need to lift the prisoner up and forward into the cell.

124. Mr X was typical of the prisoners loaded into the rear cells: intoxicated, aggressive, resistant, of large physical build and with compromised balance when handcuffed to his back.

125. Police will often have to resort to force to load this kind of offender. This puts the offender at risk of falling from the cell cage or tripping and overbalancing into the cell, and banging into the metal sides or roof of the cell cage. Police are also at risk of injury when trying to manhandle the offender upwards and into the cell.

126. The Authority has raised these concerns with New Zealand Police, and they have reviewed the design of the prisoner transport van. This is discussed in more detail in paragraphs 130-133.

FINDING

Police accidentally injured Mr X's hand when they put him into the Police van.

Did Police appropriately consider whether to give Mr X a pre-charge warning?

127. A pre-charge warning is an alternative option to prosecution which Police may choose to pursue if the offence in question is minor, and certain criteria are met. The warning is recorded against the offender's name on the Police national database.

128. The sergeant explained to the Authority that she believed that Mr X's history of similar offending made him ineligible to receive a pre-charge warning.

129. Under policy set out in paragraphs 83-86, prior offending and the use of force against Police does not automatically exclude a person from receiving a pre-charge warning, as long as the criteria listed in paragraph 83 are met. In Mr X's case, these criteria were met.

130. The sergeant was mistaken in her conclusion that Mr X could not be considered for pre-charge warning due to his criminal history.

131. The sergeant submitted that a pre-charge warning was precluded because Mr X went directly to hospital, and never went to the Police station to be processed.

132. This view is understandable given the wording of the pre-charge warning policy. The policy states that "*a pre-charge warning is issued in writing at the Police station after a person has been arrested for a qualifying offence and meets the criteria for a pre-charge warning.*" However, the restriction that a pre-charge warning can only be issued at a Police station does not appear to make sense.

133. The Authority intends to address this issue in its current review of pre-charge warning policy.

FINDING

The sergeant was incorrect in her assumption that Mr X was not eligible for receiving a pre-charge warning.

The sergeant cannot be criticised for her belief that a pre-charge warning could only be issued at a Police station, due to the current wording of the policy.

Did the sergeant deal with Mr X in a professional manner on 1 May 2015?

134. Mr X complained that he was offended when the sergeant made a joke about his injured finger.

135. The sergeant has admitted making the comment, but believed that it would be taken in the context of the light-hearted banter which occurred between herself and Mr X towards the end of their conversation. She did not intend to offend Mr X.
136. The Authority accepts that the sergeant did not mean to cause offence, but finds that the comment was ill-judged in the circumstances, and lacked empathy.

FINDING

The sergeant did not act in a professional manner by making a joke about Mr X's injuries.

SUBSEQUENT ACTION

137. Police have reviewed the use, suitability and safety of this type of Police prisoner transport van. They note that the vehicle specifications were built using standards³ set by the Australian Centre for Policing Research as a guideline.
138. The review concluded that the vehicle is operational and fit for purpose. It is not possible to remove all risks, and Police officers should support and manage all prisoners while handcuffed and entering or exiting prisoner transport vehicles. If a prisoner is deemed to be unsuitable to be transported by the van, the officer must assess other options.
139. The review recommended that the door entry support plate at the top of the door frame be removed to reduce the risk that the prisoner might hit their head when entering the van.
140. Police have also issued a reminder to all staff to take care when moving prisoners into and out of prisoner transport vans, particularly when closing doors. Police will put 'crush hazard' warning signage in prisoner transport vans.

³ *National Specifications for a General Duty Prisoner Transport Vehicle and Module*, draft version 1, July 2003.

CONCLUSIONS

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

- 1) Police were justified in stopping to talk to Mr X. It was reasonable for Officer B to approach Mr X, and for the other officers to get out of the van so they were available for back-up if required.
- 2) Police were justified in arresting Mr X.
- 3) The Authority is satisfied that Mr X was not hit by Police during his arrest. It is unclear how he received the bruising to his stomach.
- 4) Officers A, B and C were justified in using force against Mr X to arrest him.
- 5) Officer A performed the 'mastoid thumb pressure' technique on Mr X, not the 'mandibular angle' technique.
- 6) Officer A should not have used the 'mastoid thumb pressure' technique to subdue Mr X.
- 7) Mr X was not taken to the Police van with excessive force.
- 8) Police accidentally injured Mr X's hand when they put him into the Police van.
- 9) The sergeant was incorrect in her assumption that Mr X was not eligible for receiving a pre-charge warning.
- 10) The sergeant cannot be criticised for her belief that a pre-charge warning could only be issued at a Police station, due to the current wording of the policy.
- 11) The sergeant did not act in a professional manner by making a joke about Mr X's injuries.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

5 May 2016

IPCA 14-2136

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.



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