

## Summary Report

# Complaint of excessive force on a vulnerable 14 year old boy

## INTRODUCTION

1. On 30 August 2013 two ambulance staff made a complaint to Police that they had witnessed a Police officer using excessive force on a vulnerable 14 year old boy while restraining him in Tauranga on 25 August 2013.
2. The Police notified the Independent Police Conduct Authority of the complaint and the Authority conducted an independent investigation into the incident. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

3. On 25 August 2013, X was a patient at Tauranga hospital. Earlier that day he had attempted suicide, causing injury to his wrist which was thickly bandaged. He was reportedly intoxicated and under the influence of drugs, and ran away from the hospital, still dressed in a hospital gown.
4. A hospital security guard tried to stop X leaving the hospital but X fended him off with a fire extinguisher.
5. About 6.30pm two Police officers (A and B) responded to a request from Tauranga hospital seeking assistance to deal with a mentally ill 14 year old boy (X) who was reportedly "*aggressive and disorderly*". The officers were advised that X had a fire extinguisher and was discharging it on the street.
6. Officers A and B found X close to the hospital and, without too much difficulty, returned him to hospital in the Police van, accompanied by the security guard.

7. On 23 August 2013, two days prior to this incident, Officer B had been called to another matter involving X. Due to the earlier incident, Officer B was aware of X's mental health history and his prior interaction with Police.
8. One hour later, at about 7.30pm, on 25 August 2013, the hospital telephoned Police reporting that X had run away from the hospital a second time. Officers A and B were again assigned to find X. Members of the public had also telephoned Police to advise that a youth was on the ground on Cameron Road, opposite Tauranga Girls College, acting in a manner that caused concern.
9. A short time later the two officers found X, collapsed on Cameron Road. Whilst they were suspicious that he was feigning unconsciousness, as a precaution, Officer A called an ambulance so that X could be assessed by paramedics before being returned to hospital.
10. At about 8pm Ambulance officers 1 and 2 arrived. Officers A and B accompanied X to the back of the ambulance for treatment. It is during this process that the ambulance officers allege that Officer A twisted X's arm behind his back and used force in a manner which choked him.
11. Officers A and B deny that excessive force was used by Officer A and say that the force used was reasonable in the circumstances.

#### Ambulance officers' version of events

12. Ambulance officer 1 said that at about 8pm she and Ambulance officer 2 were dispatched to a job on Cameron Road where they were to check out a young man (X) who had run away from hospital and had been located by Police. She told the Authority that once they had arrived at the scene she walked through the inside of the ambulance to the rear doors where she met X and the officers and that both parties "*seemed angry*".

#### Force used on X's Arm

13. Ambulance officer 1 told the Authority that Officer A was provoking X by using "*a lot of verbal*" which caused X to "*lash out and retaliate*". She adds that both parties were exchanging "*foul language*" and says that Officer A took hold of X's left arm and twisted his arm right up his back, as he was lying on the stretcher. Ambulance officer 1 said that she found this "*very concerning*" as she could see "*the head of the shoulder popping out*". She said that she was not sure why that had to be done.
14. Ambulance officer 2 confirmed that Officer A had twisted X's arm round his back and up extremely high. She said that his shoulder almost dislocated. She reported that it "*was quite severe*" and that she and Ambulance officer 1 jumped in and said, "*hey, hey, hey*".

### Force used on X's Neck

15. Ambulance officer 1 told the Authority that she said to Officer A, *"that's enough"*, but that Officer A did not respond. She added that when Officer A stopped twisting X's arm, *"he continued to...choke the boy"*. She told the Authority that Officer A used one hand to hold the boy up against the stretcher and the boy's face started to change colour. She said that X's face went from being *"well perfused, red and normal it started to become ashen, you know, poor perfusion, um, yeah the colour was changing"*. She said that Officer A held X's neck for about 10 seconds.
16. Ambulance officer 1 told the Authority that in her experience she had never witnessed anything like this before and was most concerned because it was a mentally ill boy and not an adult. She told the Authority, *"I don't feel it was necessary to have that excessive force. He was a small boy, he wasn't big by any means"*.
17. Ambulance officer 2 told the Authority that Officer A put his hand around X's throat and started to choke him. She said that the officer gripped the boy with his hand shaped in the letter 'C' around the boy's neck. She told the Authority that *"the boy's face changed colour and, yeah so he stopped that and the boy got up quite quickly"*. She said that Officer A and X were still yelling at each other and, it was all *"quite aggressive"*.

### Police officers' version of events

18. Officers A and B report that X was initially compliant. Officer B told the Authority that both he and Officer A escorted X to the back of the ambulance, as they did not want him running out on the road.
19. Officer A said that as X stepped up into the ambulance, he was *"starting to get angry"*, objecting to the officers holding his arms and threatening that his father would *"beat up"* the officers. Officer A said that he wanted to calm X down and let the ambulance officers take care of him.
20. Officer A said that X went into the ambulance and sat down on the stretcher before getting up again and throwing a punch at him. Officer A said that it *"was a glancing blow off [his] forehead or cheek, it wasn't a hard blow"*. In response, Officer A pushed X in the chest. Officer A said that despite having a bandaged arm, X wanted to fight and he *"had his fists up"*.
21. Officer A said that both he and Officer B had to *"wrestle"* with X in order to calm him down and control him on the stretcher. Officer B told the Authority that X's legs were *"kicking out"* so he got on top of his legs and used his body weight to try and control him.
22. Officer A denies twisting X's arm until his shoulder almost popped out. He said that, *"it never got that close"*. Officer A said he does not recall putting his arm up X's back and does not think that could have been possible as X was lying on his back on the stretcher.

23. Officer A also denies using a 'C grip' choke hold on X, as reported by the ambulance officers. He said that he used an 'arm bar', which involved placing his forearm across X's jawline, in order to restrain him as X's arms were flying around, his legs were coming up and he was "*swearing, abusive and assaultive*". Officer A said that he did not want to get bitten or spat on and said that he placed weight on X's chest but he never "*choked him out*". He said X was "*screaming and yelling*" throughout which he would not have been able to do if he was choking.
24. Officer A told the Authority that he did not recall X "*losing colour*" but said that he did go red and that it took about 30 seconds for X to calm down.
25. Officer A said that that he thought that the ambulance officer saying "*that's enough*" was directed at X rather than Police. Officer A said that he never thought that any hold on X "*put him in danger of being injured*".
26. Officer B confirms Officer A's account. He said that he does not recall seeing Officer A use a 'C grip' on X's throat as alleged but he was not watching him the whole time as he was trying to control X's flailing legs.
27. At Police interview Officer A said that in terms of his tactical options (see paragraph 46) he did not consider the back of the ambulance a suitable place to use OC spray or the Taser and the officers could not handcuff X, which would have been the best option, due to his thickly bandaged wrist.
28. Following this incident, Officer A submitted a Tactical Options Report covering his use of force, in particular his use of the arm bar restraint, as required by policy.

#### *Following events*

29. After X calmed down, he was returned to hospital in the ambulance, accompanied by Officer A. Officers A and B then returned to the Tauranga Police station.
30. About 40 minutes later Police received another telephone call from the hospital to say that X had bitten a security guard. Different Police officers attended and X was arrested for assault.

#### **X**

31. X is a 14 year old youth with a history of mental illness, suicide attempts, self-harming, substance and alcohol abuse.
32. X admits being intoxicated and punching Officer A. He says that Officer A punched him back.
33. Due to X's vulnerability he was interviewed by a specialist Police interviewer about the ambulance officers' complaint. X did not mention being choked or the officer putting his arm behind his back in this interview. He said that he felt out of breath when the officer lay on his chest to hold him down on the stretcher.

## Police Officers

- 34. Officer A is a senior constable with 26 years' experience.
- 35. Officer B was a probationary constable at the time of this incident, having graduated from Police College in 2012.

## Ambulance Officers

- 36. Ambulance officer 1 is a qualified paramedic with 23 years' experience at the time of the incident.
- 37. Ambulance officer 2 is a part-time volunteer in training to be a paramedic. On the night in question, she was the ambulance driver.

## LAWS

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### Power to detain persons suffering from mental illness

- 38. Section 109 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH (CA&T) Act 1992) empowers officers to detain any person they reasonably believe to be mentally disordered, and who has been found in a public place, in order for a medical practitioner to examine the person at a Police station or hospital. Officers may only exercise this power when they think it is in the interests of the person or public to do so. They may only detain the person for the time it takes the medical practitioner to examine the person, but not longer than six hours.

### Use of force by law enforcement officers

- 39. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process "*can be carried out by reasonable means in a less violent manner*".

### Use of force in self-defence or defence of others

- 40. 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.*"

### Excess force

- 41. Section 62 of the Crimes Act makes anyone who is authorised by law to use force criminally responsible for the use of any excessive force.

## POLICE POLICIES

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42. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of open hand tactics to use of batons, OC spray, Tasers and firearms.

### Manual of Best Practice

43. The Police Manual of Best Practice sets out the circumstances in which the use of force by Police is legally justified. These include executing a process (such as a search warrant) or arrest, preventing escape, preventing suicide or injury, preventing breach of the peace, taking fingerprints, self-defence and defence of others, and a range of other lawfully justified circumstances. The Manual notes that an officer who uses excessive force may be civilly or criminally liable.
44. It also notes that, except in the case of self-defence, 'reasonableness' must be assessed objectively, *"that is, by the standards of the person on the street, and not the person using the force"*.
45. The Manual advises staff to *"remember that physical action taken too early may precipitate an even more violent situation"*.

### Tactical Options Framework

46. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender. Officers may engage the offender (either immediately or later), or disengage, as appropriate in the circumstances.
47. If the offender is engaged, options range from communication to 'empty hand' tactics (such as escorting or distracting the offender, or kicking or punching) to 'intermediate options' (i.e. those unlikely to cause death or serious injury such as OC spray or baton) to use of lethal force (including firearms, baton strikes to head or neck, or empty hand strikes to the trachea, and intentional dislocations and breaks).
48. Which option is appropriate depends on whether the offender is:
- cooperative;
  - resisting passively (i.e. *"refuses, with little or no physical action, to cooperate with the officer's lawful direction"*);
  - resisting actively (for example, pulling away, pushing, or running);
  - 'assaultive' (defined as *"actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm"*

- examples include kicking, punching or aggressive body language signalling an intent to assault); or
  - Presents a threat of death or grievous bodily harm (i.e. exhibiting actions "*that the officer believes are intended to, or likely to, cause grievous bodily harm or death to any person*" - for example, assault with a knife, blunt instrument or firearm).
49. Disengagement may be appropriate when "*the consequences of continued Police intervention seriously increase the danger to anyone*".
50. The framework's guiding principles include: use of minimum force to reach an objective; and reduction of risk/maximising safety of Police staff.

## THE AUTHORITY'S FINDINGS

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### Issue 1: Were Officers A and B justified in apprehending and detaining X?

51. Officers A and B first had contact with X when they responded to a request from Tauranga hospital seeking assistance to deal with a mentally ill 14 year old boy who was reportedly "*aggressive and disorderly*". The officers were also advised that X had a fire extinguisher and was discharging it on the street. The hospital asked for Police assistance as they were concerned for X's welfare and needed assistance to return him to hospital.
52. One hour later, the hospital again telephoned Police reporting that X had run away from the hospital a second time. Members of the public had also telephoned Police to advise that a youth was acting in a manner that caused concern. Officers A and B were again assigned to find X and return him to hospital due to concerns for his welfare.
53. On both occasions, the officers relied on section 109 of the MH (CA&T) Act (see paragraph 38) to detain X as he was wandering around in public and acting in a manner indicating that he was mentally impaired.

#### FINDING

Officers A and B were justified under the MH (CA&T) Act in apprehending and detaining X and returning him to hospital.

### Issue 2: Did Officer A's conduct accord with good policing practice?

54. As stated in paragraph 13, Ambulance officer 1 told the Authority that Officer A was provoking X by using "*a lot of verbal*" which caused X to "*lash out and retaliate*". She adds that both parties were exchanging "*foul language*". Ambulance officer 2 confirms that both Officer A and X were yelling at each other throughout the incident and that the situation was "*quite aggressive*".
55. Officer A said that X threw a punch at him, inside the ambulance and that, in response, he pushed X in the chest (see paragraph 20).
56. It is clear to the Authority that Officer A, in speaking to X in the manner that he did, and pushing him in the chest, aggravated the situation. Officer A did not adopt a strategy to effectively deal with X and de-escalate the situation. Instead Officer A's actions escalated the situation and increased the likelihood that force would need to be used.

#### FINDING

Officer A's actions escalated an already volatile situation and did not accord with good policing practice.



### Issue 3: Was the force used by Officer A excessive?

- 57. X admits being intoxicated and punching Officer A outside the ambulance. He said that the officer punched him back. X did not mention to the Police investigating officer that he was choked or that the officer put his arm behind his back.
- 58. Ambulance officers 1 and 2 describe a clearly volatile situation which was escalated by Officer A's verbal attacks on X. They report seeing Officer A almost dislocate X's shoulder and grabbing X's throat in a 'C grip' until he changed colour.
- 59. Both Officers A and B say that the accounts given by Ambulance officers 1 and 2 are not accurate. Officer A said that he was concerned for X's welfare and that they wanted to get X back to hospital as soon as possible.
- 60. Officer A said that he used an arm bar on X to defend himself from X's punches and kicks when he was restraining X. Officer A relied on section 48 of the Crimes Act (see paragraph 40) and said that he only used enough force to overcome X's resistance to remaining on the stretcher.
- 61. Officer B said that Officer A had his forearm against X's jawline but does not recall seeing him use a 'C grip' on X's throat as alleged. However, he states that he was not watching the whole time as he was trying to control X from kicking out.
- 62. Officer A said that the only realistic tactic he could use to control X was 'empty hand' tactics. The officer said that he did not consider the back of the ambulance, a very confined space occupied by five people, to be a suitable place to use OC spray or the Taser and the officers could not handcuff X, which would have been the best option, due to his thickly bandaged arm. Officer A correctly submitted a Tactical Options Report as required by policy.
- 63. After considering the evidence, the Authority prefers the ambulance officers' version of events; that Officer A used a 'C grip' and choked X until he changed colour and started losing consciousness. The Authority notes that in reaching this conclusion it has considered how close the ambulance officers were to Officer A in order to make their observations.
- 64. The Authority has concluded that while Officer A's use of empty hand tactics was reasonable in the circumstances, the degree of force used was disproportionate and unjustified.

#### FINDINGS

Officer A was entitled to use reasonable force to restrain X or, in the circumstances as he believed them to be, to defend himself.

On the balance of probabilities Officer A's use of force, in putting X's arm up his back and choking him, was excessive and contrary to law

## SUBSEQUENT ACTION

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- 65. As a result of the Police investigation, Officer A has been subject to disciplinary proceedings and Police have advised that he has responded well to advice about de-escalating incidents.
- 66. Police did not prosecute Officer A as they found that due to conflicting evidence, the high threshold required for criminal prosecution was not met in this case.
- 67. The Authority accepts that, in the circumstances, it was reasonable for the Police not to prosecute Officer A.

## CONCLUSIONS

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- 68. The Authority has concluded on the balance of probabilities that:
  - Officers A and B were justified under the MH (CA&T) Act in apprehending and detaining X and returning him to hospital;
  - the strategy adopted by Officer A to deal with the incident was not in accordance with good policing practice and did not allow the situation to effectively de-escalate;
  - Officer A was entitled to use reasonable force to restrain X or, in the circumstances as he believed them to be, to defend himself; and
  - Officer A's use of force in choking X in the manner that he did was excessive and contrary to law.



**Judge Sir David Carruthers**

Chair

Independent Police Conduct Authority

11 December 2014

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



PO Box 25221, Wellington 6146  
Freephone 0800 503 728  
[www.ipca.govt.nz](http://www.ipca.govt.nz)

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