

Complaints relating to the closure of two parties in Hamilton

February 2016

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Introduction

1. On Friday 16 January and Saturday 17 January 2015, Police closed down parties at a house in Wellington Street, Hamilton. Subsequently the Authority received three complaints regarding Police actions while they were dealing with the two parties and clearing partygoers from the surrounding streets.
2. The Authority conducted an independent investigation into these complaints. This report sets out the results of that investigation and the Authority's findings.
3. The Authority has examined issues relating to whether Police:
 - were justified in closing down the parties;
 - carried out the closures appropriately;
 - used reasonable force when clearing the streets and conducting arrests;
 - were justified in arresting certain people; and
 - treated one of the complainants appropriately while she was in custody.
4. For further information regarding the issues Police face when closing down parties, please refer to the Authority's report on *"Police handling of 'out of control' parties"* which was released on 28 August 2014.

Index of officers

Field Staff	Roles/Comment
Officer A	Police Support Unit (PSU) – Acting Sergeant
Officer B	PSU - Constable
Officer C	PSU - Constable
Officer D	PSU – Constable
Officer E	PSU - Constable
Officer F	Acting Senior Sergeant
Officer G	Acting Senior Sergeant
Officer H	Constable
Officer I	Acting Sergeant
Officer J	Constable

Background

CLOSURE OF THE FRIDAY NIGHT PARTY

5. On Friday 16 January 2015, a party was held at a house in Wellington Street, Hamilton. One of the five occupiers of that address organised the party for his 19th birthday and invited a large number of people through Facebook. From 7pm to 10pm there were about 50 people at the party, but after that the number attending rose towards 250.
6. Police visited the address twice before 10pm and observed aggression from some partygoers, but did not consider it necessary to close down the party at that stage.
7. The Police Support Unit (PSU) came on duty at 10pm and went to the address to assess the situation. The PSU is specifically tasked with maintaining public order; its core roles include policing crowded places and events, and reducing alcohol-related harm. On this night and the following night the PSU comprised Officer A (an acting sergeant) and Officers B, C, D and E.
8. When the PSU arrived they saw a lot of drunken people on the street and around the property. Officer A initially spoke to the host of the party, who was very intoxicated and uncooperative. The officer then spoke to another occupier of the property, who told him there were 40-60 people at the party and it was due to finish at about 11.30pm. Officer A talked to him about his responsibilities when hosting a party, and advised him to keep the noise down and to keep everyone who was drinking inside the address. After that the PSU left the property.
9. Hamilton City Council Noise Control received a complaint at 10.15pm, and a noise control officer visited the property and served one of the occupiers with an abatement notice. At 10.50pm the noise control officer asked for Police to attend the address to help him seize the stereo equipment, because the party noise was still excessive and neighbours were complaining.¹
10. The PSU returned to the party, and as Officer A approached the property he noticed that the music stopped. The PSU initially went to the back garden, where 100-150 people were gathered, but realised that it was too crowded for them to move through safely.
11. The officers then entered the house through the front door but found that the stereo equipment had been locked away in a bedroom. After unsuccessfully trying to obtain the key to the room, Officer A had a discussion with the noise control officer and determined they would not break down the bedroom door because that might inflame the situation. They decided to leave the house without the stereo equipment because the partygoers were becoming increasingly hostile and aggressive.
12. While the PSU and the noise control officer were leaving, Officer C heard a “*commotion*” and suspected people were fighting in the back garden. However the PSU officers were vastly

¹ See paragraphs 201-202 for relevant law.

outnumbered by the partygoers and considered that it was too dangerous to go into the back garden and stop the fighting. Meanwhile Officer E arrested a young man for obstruction after he persisted in arguing with the noise control officer.

13. The PSU called for backup, and more officers arrived outside the address to assist if needed.² Two acting senior sergeants, Officers F and G, attended the scene and found the PSU standing outside the entrance to the property.³
14. Officer A briefed Officer F that fights were breaking out at the party and the number of people attending was increasing. Officers A and F spoke to two of the occupiers, who advised they had everything under control. Officer F warned them that Police would have to close down the party if it became “*uncontrollable*”.
15. The officers then went to stand on the opposite side of the road, and dealt with several people who were carrying open bottles of alcohol on the street in breach of the liquor ban. Neighbours approached Police to complain about the party, and some officers observed partygoers climbing fences into other properties.

Decision to close the party

16. At about 11.30pm the two occupiers of the property who had previously spoken to Officers A and F requested that Police close down the party (although another occupier did not want this to happen). They were worried about people causing damage inside the house. Officer A instructed them to try to end the party themselves, but after 10 minutes nobody had left.
17. Officers A and F were concerned that the situation was getting out of control and decided to close down the party, since two of the property’s occupiers had given them consent to do so.⁴ The plan was for the PSU and several other officers (the PSU team) to enter the address and clear partygoers from the garden area around the house, while the occupiers kept any people they wanted to stay inside the house. Officer A asked Officer G and a group of non-PSU officers to “*hold the street*” outside the address by forming a line across it.
18. The PSU team entered the property, voice appealed everyone they found in the garden area to leave (and not to take their alcoholic drinks with them), and herded them out onto the street. The officers did not enter the house. The PSU then formed a line across the street and began slowly marching the partygoers down the road to disperse them.
19. During this process, some partygoers began yelling abuse and throwing bottles at the officers. One of the bottles nearly hit Officer B. In response the PSU officers equipped themselves with

² A total of 17 officers (including the PSU) were involved in closing the Friday night party, and 15 were involved in closing down the Saturday night party.

³ Officers F and G were the officers in charge of the overlapping swing and night shifts.

⁴ The officers did not ask the occupiers to record their consent in writing, but Officer A told the Authority he now does this as a matter of good practice.

helmets and shields, but did not put on full Personal Protective Equipment due to the time it would take.⁵

20. Police directed the partygoers away from Galloway Street and west towards Steele Park. About 150-200 people in the crowd turned right, up Nixon Street, followed by the PSU line. The second line, containing Officers F, G and the other officers, continued west towards Steele Park via Coates Street, until the remaining crowd of 50-60 people dispersed.
21. Four people were arrested for offences including obstruction and disorderly behaviour. From about 11.55pm to 12.10am Police received 11 emergency calls from neighbours reporting yelling and fighting in the streets.

Complaint 1 - Ms V

22. The Authority received a complaint from Ms V on 8 March 2015, stating that her son, Mr W, had witnessed “*overzealous and abusive*” behaviour by Police towards young people when the party on Wellington Street was closed down. Mr W was one of the four people arrested that night. He did not lay a separate complaint with the Authority but was interviewed and described his concerns about the Police’s actions.

Mr W’s arrest

Mr W’s account

23. Mr W told the Authority he had not been at the Wellington Street party but was drinking with some friends at a house in Coates Street. He said he was drunk “*but not like completely hammered*”. He and his friends saw Police cars driving past and followed them to Wellington Street to see what was happening.
24. They witnessed Police closing down a party, and Mr W started recording the scene with his phone when he saw people being knocked over (although he no longer has the video footage because his phone broke). He said:

“I just was saying to myself this is the first time I’ve ever seen Police’s shields in Hamilton at a party and just saw some people being knocked over and there was like two officers on one small boy and I was thinking, ‘That’s sort of a bit too much.’ There’s other ways to deal with drunken people, drunken teenagers and you don’t have to lie on them and hold them down because I’m sure they’re not going to do anything back or anything.”

25. Mr W said one of the PSU officers (Officer B) knows him, and when she noticed him recording she came up and told him “*Don’t do anything*”. He told his friends that they should leave, but stayed and continued recording the Police because he believed he was within his rights to do so. He kept his distance when the Police line moved forward and returned to Coates Street.

⁵ Personal Protection Equipment includes foot protectors, shin/knee protectors, thigh protectors, forearm/elbow protectors, shoulder protectors and groin protectors. See paragraph 209 for policy.

26. Mr W stated that he was arrested after yelling at the Police officers:

"I should have stepped into a friend's property and just stayed there but I didn't. I actually walked past it. Near the end of [Coates Street], that's when the officer decided to, one of the sergeant people decided to send two guys after me and I don't know what I was doing. I was screaming, I was yelling out, you know, 'You people are abusive. You're a gang yourselves. You walk around like you're, you know, you can do whatever you want.' And I started running. I don't know why I was running, I knew I couldn't out, you know, couldn't outrun them but I guess at the moment I was heightened and stuff.

... I think I started running because I was on the road and I didn't want to be knocked over on the road so I ran to [Steele Park] and I was knocked over in the field, which was ... yeah, I think that's another thing. I remember thinking to myself, 'Oh no, I better go somewhere where if I get knocked over I won't get a head injury or something.'"

27. When asked whether he had done enough for Police to arrest him for disorderly behaviour, Mr W answered that he had not. He said he was just protesting:

"That's screaming, that's yelling and not abusively but that's showing a voice of opinion to the police at certain events and stuff. ... I don't know if it was just, if I wasn't drunk, if I didn't have alcohol in my system would then I be done under the same thing."

28. Mr W said the officers took him to the ground and twisted his hands, and the handcuffs left circles around his wrists. The officers told him to stop resisting, but he was not resisting.

29. Mr W stated that, in his experience, the officers patrolling Hamilton on Thursday, Friday and Saturday nights are "intimidating" and "think they are the law". He complained that the officers bully and abuse people, and are "too forceful" and "really violent to young people". He said:

"... there is no need to yell at people, drag them along the ground and stuff. And it's all the time.

... they need to find different ways of dealing with parties and functions and stuff that get out of hand. Not, they might need to go in with shields and stuff but they don't need to go around the whole community, the whole of Hamilton, with shields ... there were parties on every corner that night and it seemed like everyone that kept coming out of their houses that got caught in the mix were all done for something."

The officers' accounts

30. Officer F recalled speaking to Mr W on Wellington Street before the party was closed down. He said Mr W seemed like a "nice enough guy", but once the partygoers were ejected and Police began clearing the street "his demeanour just changed" and he became one of a small number of people in the crowd who played up and regarded the Police as "their entertainment for the evening".

31. Officer B said she saw Mr W approach the Police line while they were moving partygoers down Wellington Street, and he started recording them with his phone from about 20 metres away. He was saying something like *"I know my rights, cops can't do anything"*. Officer B told the Authority:

"... I said to him 'Mate you need to move. Move on, turn around, start walking home. Move in that direction.' And I said that several times, because I knew he had no intention of moving or doing anything."

32. Officer B and other nearby officers warned Mr W for obstruction several times, but he kept approaching the Police line. She saw him again with a group of people near the intersection of Nixon and Coates Street and he was encouraging the others to challenge Police, saying *"They can't do this."* Several PSU officers were told to clear the area, and they pushed the group further down Coates Street. They warned Mr W for obstruction again, and wanted to arrest him but were unable to do so because they did not have an 'arrest team' with them.
33. The PSU officers rejoined the line that was moving north up Nixon Street and the second line of officers went down Coates Street. Officers F and G saw Mr W recording the Police line with his phone and screaming that officers were beating him with batons. At the time Mr W was about five metres in front of the Police line, with no officers near him.
34. Further down Coates Street, Mr W began screaming abuse at the officers and Officer F considered that he was yelling loudly enough to wake people in the houses nearby. According to Officer F, *"it got to the point where well this is ridiculous, we can't let it go"*. Officer G also decided that something needed to be done, because Mr W was inciting others in the crowd to fight Police.
35. Officer G instructed two of his officers: *"Oh, he's got to go, go and get him"*, and they ran forward from the Police line to arrest Mr W for disorderly behaviour. Mr W ran into Steele Park, where Officer H tackled him and brought him to the ground and was able to handcuff him *"without much resistance"*. Officer G witnessed the arrest and did not think the force used to carry it out was excessive:

"They were only down several seconds for the handcuffing, up he comes. There was nothing, I didn't see anything that indicated to me he was the victim of any gratuitous violence, punching or kicking or anything like that."

Mr X's arrest

36. Ms V complained to the Authority about the Police's actions when they arrested another man (Mr X) that night.

Ms V's account

37. At about midnight, after Ms V had received some phone calls from Mr W, she decided to drive to Coates Street to look for her son. When she arrived at the traffic lights at the intersection of Peachgrove Road and Clyde Street, she noticed many young people walking away from the area.

38. Ms V turned right into Clyde Street and pulled over to speak to some young people. They told her the Police were “*everywhere*” and had closed down a party, so they were being moved on. As Ms V drove further down Clyde Street she noticed a Police cordon to her left across Nixon Street. She said Clyde Street was “*very quiet*”, and there were only two small groups of young people moving away from the cordon. She decided to pull into the driveway of a house near the intersection, though she did not know who lived there.
39. Mr X and his heavily pregnant partner, among other people, were at the house. Ms V asked if she could park in the driveway so she could walk down to the Police cordon in search of Mr W, who was no longer answering his phone. Mr X and his partner agreed and said they would go and look too.
40. Ms V told the Authority that when Mr X walked up to the cordon “... *for whatever reason, the Police squad decided to attack him.*” She noted that they used pepper spray (also known as oleoresin capsicum or ‘OC’ spray)⁶ on Mr X and that Officer B was the “*roughest*” on him. Mr X came back towards his house but officers from the cordon followed him, took him to the ground and arrested him. Ms V complained that, while Police did not arrest or use force on Mr X’s partner, they had no regard for the fact that she was hapū (pregnant).

Mr X’s account

41. In a Police statement, Mr X said he came out from his house after seeing 100-200 kids walking on Clyde Street heading towards town. He met Ms V and observed her talking to the “*riot squad*” (PSU) at the Nixon Street intersection, which is about 75 metres from his house. After the Police “*sent her packing*”, he went up to them and asked what was going on. An officer said “*fuck off, mind your own business*”, which upset him because he did not like the fact that Police were allowed to swear at him when in the past he had been in trouble for swearing at them.
42. According to Mr X, there was a “*little bit of an altercation ... just a bit of verbal words*” and then he turned away to look at a Police dog with its handler on the other side of the street. When he turned back to talk to the officers again there was a shield in his face. The officers began hitting him with their shields and he pushed the shields back “*forcefully*” because he did not want to get hit. He told the officers to “*fuck off*”, and one of them pepper sprayed the left side of his face. Officer B told the other officers to get their batons ready and Ms V began recording what was happening with her phone.
43. Mr X said he was “*a bit furious*” because the Police were battering him with shields, and he remembered challenging Officer B by saying “*What the fuck bitch, do you think you’re fucken tough, put your shield down. Come on just us.*” At this point his partner ran up to him and began pushing him down the street towards their house.
44. He then saw Ms V getting pushed by the officers, so he turned and said “*What the fuck’s going on, leave her alone she ain’t doing anything*” (the Police’s interaction with Ms V is discussed

⁶ See paragraphs 212-217 for Police policy on ‘Use of force’ and ‘OC spray’.

further below at paragraphs 61-71). He told the officers he was only 10 metres from his gate but they walked faster towards him and hit him with their shields a few more times. Two officers, including Officer B, grabbed his arms and put them behind his back *“quite forcefully”* so he could be handcuffed. His partner had to jump over a fence to get out of the officers’ way. While his hands were being held behind his back, another officer pepper sprayed him in the face though he was not resisting.

45. Mr X did not know why the officers used pepper spray on him but said *“it felt like they kind of got intimidated by my size ‘cause I’m quite a big fella.”* He also stated that he had not been drinking that evening, did not approach the officers in an angry manner and was *“quite polite”* until they swore at him. There were a few other people in the street at the time his altercation with the officers occurred, but not in the immediate area:

“There was kids up the street kicking bloody fences, and those officers should’ve double stepped it to them instead of double stepping it to me who was walking back to his property ready to go, you know, wash his face out ‘cause he’s been pepper sprayed, but yet they wouldn’t chase these kids up the street and they’re damaging other people’s property.”

46. Mr X thought this incident could have been avoided if he had not gone up to the officers to ask what was going on, but also if the officers had not sworn at him. He considered that the officers were more aggressive and forceful than they should have been and that he was pepper sprayed *“for nothing”*.
47. Despite his concerns set out above, Mr X has not made a complaint to Police or to the Authority regarding the force used during his arrest.

The officers’ accounts

48. Officer D said that while the PSU line was pushing the main group of partygoers along Wellington Street and up Nixon Street, some people came out of their houses and *“... we’ve just asked them to go back inside and they’ve done so happily.”* He also said:

“I remember on two occasions on that same night, I think it was the 16th, that people were saying, ‘We love your work, we like what you’re doing. Thank you.’ And we were sort of, ‘That’s no problem’, and moved on.”

49. According to Officer A, by the time the PSU progressed to the intersection of Nixon and Clyde Street, most of the partygoers had turned right towards the Peachgrove Road / Galloway Street intersection and were leaving the area. However two young men went straight ahead, into Kelvin Place, and stood in the middle of the road yelling abuse at the officers. They then went further up that street and began trying to damage a letterbox. The PSU decided to hold their line at the end of Nixon Street and asked for a different unit to deal with that offending.
50. A large man, Mr X, then approached the Police line and asked what Police were doing there. Officer B told the Authority she spoke to Mr X:

“I said, ‘Mate, it’s all good, we’ve just shut down a party. We’d advise you to get back inside your house.’ I said, ‘There’s been bottles thrown at us,

there's a reason why we have this kit on.' And he's just sort of pushing, you know, just asking questions. I said, 'Look, turn around, go back home, you don't need to be here.' And that's when he sort of just cocked up a little bit and he said, 'Oh I can do what I want, F you', sort of thing. And I thought, oh this guy's gonna be a problem."

51. The PSU officers told Mr X to move away "numerous times", but he refused to leave the area. Officer A did not know whether or not Mr X had been at the party on Wellington Street. He asked three officers to move Mr X on. They approached Mr X and again directed him to move away but he did not comply.
52. Officer C said he saw Mr X move towards Officers B and D "in an aggressive stance with his fists clenched" and heard him yelling and swearing at them. He recalled that Officers B and D used their shields to push Mr X away and yelled at him to "move back". Mr X became more aggressive and began to punch out and strike at the officers.
53. Officer A noticed Mr X being pushed by a shield, and went to see what was going on. He saw Mr X refusing to move and pushing back against the shields:

"... I've seen him be pushed again and he basically took up like what I'd call a fighting stance, you know he's clenched his fists and sort of in what I'd call a boxing stance. He's been again tried to be moved and again he's refused and pushed back and taken up that fighting stance with his fists raised."

54. Officer A said he believed that Mr X was "trying to assault the officers", so he approached and withdrew his pepper spray. He warned Mr X that if he did not move away he would be sprayed. Mr X continued holding up his fists and Officer A considered him to be "assaultive", so he attempted to spray Mr X in the face from about five metres away. The spray missed and went over Mr X's right shoulder, so Officer A re-aimed the spray and it "sort of got him around the chest area, the lower face, it didn't actually have any effect at the time."
55. Officer A asked more officers to come forward from Nixon Street and assist with arresting Mr X for obstruction. He then noticed Ms V approaching and yelling abuse (see paragraphs 61-71). Officer A said he saw about four or five people standing outside an address 50-100 metres away on Clyde Street, and believed Mr X and Ms V had come from that address. He assumed that Ms V knew Mr X, due to her reaction. He told the Authority:

"I did not know the intentions of the 4-5 people standing outside the address 50-100 metres [away], and I potentially thought they could also be a safety risk for police."

56. Mr X moved away down Clyde Street and officers with shields followed him. The officers were distracted by Ms V for a short time and then Mr X approached them again. Officer A told the Authority he believed Mr X was "the greater threat", so the officers turned their attention back to him. They surrounded Mr X and used their shields in an attempt to contain and arrest him.
57. Officer B found that using her shield to push Mr X was not effective, due to his size and strength. She and Officer E put their shields down and got their handcuffs out.

58. Meanwhile Officer C believed that Mr X would “once again” try to assault the other PSU officers. He heard Officer B tell Mr X he was under arrest, but he failed to comply with her instructions to turn around and place his hands behind his back. Officer C moved forward and repeated the instruction. He said:

“[Mr X] turned and looked at me, still with his fists clenched and in a very aggressive stance. Immediately and without warning I gave one short burst of my OC spray which struck [Mr X] in the left eye.”

59. This time the pepper spray had an immediate effect and Mr X began holding his eyes. Officer C explained that he did not warn Mr X beforehand because he believed that would have placed him and the other officers at risk. He also stated that he used the pepper spray to defend himself and his colleagues and to effect the arrest of Mr X.
60. Two officers then grabbed Mr X’s arms and placed them behind his back to apply handcuffs.

Use of force against Ms V

61. Ms V stated in her complaint that while Mr X was being arrested, Police “attacked” her for no reason.

Ms V’s account

62. Ms V told the Authority that Officer B pushed her repeatedly with a shield while she was standing on the footpath on Clyde Street. She said she was unwell with bone pain at the time and Officer B’s actions caused her discomfort, and traumatised and humiliated her.
63. Ms V said she was extremely concerned by the actions of the Police officers, especially Officer B. Ms V was simply standing on the footpath at the time Officer B pushed her and was not trying to enter the cordoned zone or obstruct anybody. She was worried about what was happening to Mr X, and stated that the Police did nothing to de-escalate the situation but “*in fact created the chaos*”.

Ms V’s video footage

64. Ms V provided a three-minute video to the Authority which shows the following events:
- a) Ms V is standing on a footpath on Clyde Street, about 20-30 metres from the intersection with Nixon Street. Five officers with shields are lined across the southern footpath and westbound lane of Clyde Street, about 5-10 metres away. The road is not closed and cars occasionally drive past. Ms V shouts: “*What are you ones up to?*”
 - b) Mr X walks from the middle of Clyde Street to join Ms V on the footpath (after his initial confrontation with Police). Mr X’s partner is with him. Ms V asks “*Can you please tell me what they did?*” and “*What are they up to?*” Mr X says (directed at the officers) “*Fuckin faggots, you fuckin think you’re tough eh bitch?*”, and suggests the Police put their shields down to see if they are tough.

- c) Ms V then slowly walks a few steps towards the line of officers and shouts: *"If my son is in there and you guys have done anything ... who do you think you are? There's a thing called the rule of law. There's processes of natural justice. What are you doing?"*
- d) About 30 seconds into the video, the line of officers advances towards Ms V (and Mr X). Ms V says: *"No one can, you can't attack the community like ... are you going to do that to me? Why?"* Meanwhile one of the officers is saying *"Please move forward ma'am, please move away from him ... please move!"* and Ms V says *"Why? No!"*
- e) Two officers start pushing Ms V with their shields. Ms V holds up a hand to fend them off and says *"Why? Don't do that!"* several times. An officer says *"Move! Keep moving!"* There is more yelling by Police but the words are unclear.
- f) Ms V appears to be partially surrounded by officers and then she retreats a short distance west on Clyde Street. Meanwhile an officer shouts (apparently to Mr X) *"You're under arrest, put your hands behind your back"* and Mr X can be heard groaning.
- g) Three officers line up across the footpath holding up their shields. Behind them more officers carry out the arrest of Mr X. Mr X's partner stands in the front garden of an adjacent property, having stepped over a short white picket fence. She screams at the officers, asking what they are doing to Mr X and saying he is *"doing nothing"*. Ms V continues to ask *"Why?"* and says *"All I want is my son!"*
- h) Ms V stands about 10 metres from the Police line for the next two minutes while Police arrest Mr X. She begins talking to someone from Mr X's address and comments *"This has been dreadful!"* When she says she has recorded the incident, the person tells her to *"put that all over the internet"* and questions the Police's right to *"just pepper spray someone"*. Ms V says that she was *"absolutely slammed"* by Officer B, and warns Mr X's partner not to approach the officers or *"she'll do what she did to me to you"*.
- i) The Police prisoner van drives up to where two officers are standing with Mr X in handcuffs, and they take him to the back of the van. The Police line remains stretched across the footpath and the westbound lane of Clyde Street.

The officers' accounts

- 65. Officer E recalled that Ms V was *"very agitated and seemed angry"* when she first approached the Police line (before Mr X became involved). Officers on the other end of the line told her to move on but she *"seemed to be arguing and refusing"* and was yelling at them. Officer D also remembered Ms V confronting Police and said she was *"obviously not happy with our behaviour"*.
- 66. Officer B told the Authority she recognised Ms V, who was holding up an iPad and recording the officers. Ms V said *"I know my rights. Where's my son?"* and Officer B replied that she did not know where her son was. Ms V then asked whether he had been arrested and Officer B said she did not know. Officer B told Ms V to *"turn around, start walking back to where you've come from ... get out of here."*

67. Meanwhile the officers were waiting for another unit to arrive and deal with the two young men who were kicking down fences and letter boxes nearby. Officer B told Officer A about Ms V and said that she had been given several warnings.
68. Mr X then approached the Police line and the officers were focused on dealing with him. Officer A told the Authority that after he had pepper sprayed Mr X, he noticed Ms V swearing and yelling abuse about Police brutality. She had her cellphone raised up to record the officers. Mr X moved away from the officers and stood behind Ms V. Ms V was told to move away but she refused and continued yelling *“abuse”*.
69. Officer B recalled Officer A saying *“Oh look, I’ll get three of you again to just go forward, tell her to start moving on”*. Officer B said she went forward to tell Ms V to turn around and start walking off, and *“... that’s when I’ve warned her for obstruction. She’s been warned for obstruction, oh, several times.”* Ms V was not walking away so Officer B placed her shield up against Ms V’s arms, pushed her back and told her she was under arrest for obstruction. When interviewed by the Authority Ms V denied that Officer B told her she was under arrest, and said she would have been *“absolutely horrified”* if that had happened.
70. Officer A told the Authority he advised the PSU officers to arrest Ms V for obstruction, but Mr X returned and Officer A believed he was the greater threat, so the officers focused on arresting him instead. Ms V walked away and Officer A said he did not have the numbers to arrest her safely.
71. Officer A said the force used against Ms V was justified because she was refusing to comply with instructions and was stopping Police from getting to Mr X when they were attempting to arrest him: *“She’s intentionally got in our way, [and was] very abusive and belligerent to us.”* Neither he nor Officer E thought the force was excessive; they considered that Ms V received a light push from the shield which forced her to step back but did not cause her to fall over. Officer B said: *“[Ms V] wasn’t making any attempt at all to move and I believe that a nudge ... was sufficient.”*
72. After Mr X’s arrest, the PSU officers were called back to Wellington Street to assist Officer G with a group of young people yelling abuse. They encountered Ms V again when they returned to the intersection of Clyde and Nixon Street. Officer A said *“this time she was not abusive or using inciting behaviour”*. He did not believe it was necessary to arrest Ms V at that stage because the rest of the group had dispersed.

Police actions following the arrests

Mr W’s and Mr X’s accounts

73. Mr X was placed into a prisoner van following his arrest. He said in his Police statement that he was screaming for water because his face was burning from the pepper spray. Police did not wash his face or provide him with any aftercare before putting him in the van.⁷

⁷ See paragraph 217 for relevant policy.

74. Mr W was also inside the prisoner van, having been arrested earlier that night. Mr W told the Authority that the Police turned off the air-conditioning in the van, and he could see that Mr X was struggling to breathe due to the pepper spray, so he banged on the walls of the van to get help but the officers just laughed at them.
75. They were driven around for about 30-40 minutes. In the meantime Mr X was transferred to another van by himself so he would have more room to breathe, but he was only given the opportunity to wash his face after they arrived at the Police station. Mr W and Mr X were placed in the cells and then released with pre-charge warnings at about 4.30am.

The officers' accounts

76. Officer C recalled that when Mr X was being handcuffed, he was yelling for water due to the pepper spray on his face.
77. Officer B told the Authority Police could not administer aftercare for the pepper spray at the scene. The officers were concerned because people were coming out of Mr X's address following his arrest and the officers felt they should leave the area quickly.
78. Mr X was restrained and brought back towards the Nixon Street intersection. Officer B advised Mr X that he was under arrest for obstruction, gave him a Bill of Rights caution and searched him. After initially placing Mr X in the prisoner van with Mr W and others, Police transferred Mr X to a different van within about 10 minutes because they were aware of the risk of cross-contamination from the pepper spray remaining on Mr X.
79. Officers B and C stated that they returned to the Hamilton Central Police station about 15-20 minutes after that. Officer B gave Mr X a hose to wash out his eyes. According to Officer C, Police monitored Mr X for 45 minutes after he was sprayed.
80. Officer B said that Mr X was taken to a 'detox' cell (because he was assessed to be intoxicated). When Officer B spoke to him again he was very apologetic, and said that he was in the wrong and should have listened to Police. She commented that *"he was actually quite pleasant to deal with"* at that point.
81. Police later spoke to Mr X while investigating Ms V's complaint and offered an apology for their delay in providing him with aftercare for the pepper spray, which he accepted.

CLOSURE OF THE SATURDAY NIGHT PARTY

82. The person who had arranged the Friday night party organised another party through Facebook at the same address in Wellington Street. The party was held the following night and was advertised as *"Round 2"*.
83. Early in the evening the Police received calls from neighbours complaining of excessive noise, intoxication and disorder. Police attended the property and gave warnings, but did not yet take action to close the party. Officers reported that there were fewer partygoers than the previous night, but they were generally more aggressive and hostile towards Police.

84. The PSU was again on duty and at about 10.10pm they were sent to the address because noise control officers needed help to seize the stereo equipment. When they arrived about 10 minutes later, they parked out of sight on Galloway Street and then approached and entered the house through the front door. They found the stereo equipment at the rear of the property.
85. After seizing the stereo equipment, the noise control officers and PSU officers began leaving the back yard of the property in single file. Officer B was at the back of the line when she encountered Mr Y.

Complaint 2 – Mr Y

Mr Y's arrest

86. On 30 January 2015, the Authority received a complaint from Mr Y stating that Officer B had assaulted and arrested him for no reason.

Mr Y's account

87. Mr Y said that the Police were instructing people to leave the party, so he began walking out behind the officers. Officer B turned around and asked if he had a problem, and he replied "No". He then asked her if there was a problem. The officer proceeded to punch him twice in the face and told him he was under arrest.
88. Mr Y told the Authority that when he was dragged out to the Police wagon he was verbally bullied by the officer and her male colleague *"as they were trying to make me angry and fire up."* Mr Y reported that the male officer called him a *"bitch"* and said that he was *"owned"* by a female but he replied that he does not hit ladies. When the officers failed to 'fire him up' they used more force against him.
89. In his complaint form, Mr Y said that he and his friends were sober on the night because they are athletes. He believed the Police's behaviour was unacceptable and he did not do anything to deserve that type of treatment: *"We are meant to have officers as role models, not assaulting a 16 year old (sober) following instructions."*
90. Mr Y, and his friends who witnessed the arrest, did not cooperate when the Authority attempted to arrange interviews with them.

The officers' accounts

91. Officer B told the Authority that she felt vulnerable at the back of the line of officers because there were people behind her and she had to watch her back. She was telling them to move on and *"Get out of here."*
92. One young man (Mr Y) was really close behind and seemed to be shadowing her. She could sense him touching the equipment on her belt and felt uneasy. She turned sideways so she could see what the people behind her were doing, and tried to usher them in front of her so she did not have to feel vulnerable.

93. Officer B said she told Mr Y to *"Get out of here, start moving"*, but:
- "... he turned around to me and he said, 'This is my house', sort of words to this effect, 'This is my house, I can do what I want, you can't tell me what to do.' So from then I thought this guy's got an attitude."*
94. Mr Y was walking beside Officer B but stopped and turned around to face her. Officer B also stopped and told him *"Look, get away, otherwise I'll arrest you for obstruction."* Mr Y said something like *"You can't tell me what to do"* and pushed towards her. Officer B used both hands to push him back and told him he was under arrest for obstruction. She took hold of Mr Y by his elbow and left wrist to escort him off the property, which caused him to *"fire up"*.
95. At this point Officer B realised that the other officers in the line had kept walking and she was separated from the group. Mr Y shrugged off her grip and clenched both his fists in *"a boxing stance"*. Mr Y's friends started to close in on Officer B and she thought she might in trouble.
96. Mr Y said something like *"Nah fuck off, I'm not under arrest, you're not taking me"* and raised his arms just above his head. Officer B believed he was going to hit her so she responded by striking him on the left side of his face with a closed right fist. This was closely followed by a closed left fist to the right side of his face. The punches did not knock him out but were enough to daze him.
97. Officer B said that the crowd closed in and were yelling and swearing at her, saying *"You can't arrest him"* and *"Leave him alone"*. Officer B started screaming for Officer E, who had been closest to her in the Police line. She hooked her arms around Mr Y's arms from behind so he was not able to strike her, and stood with her back to a fence for protection.
98. After about 20-30 seconds of Officer B yelling out Officer E's name, Officer C pushed his way through the crowd and, with assistance from the other PSU officers, helped her escort Mr Y out of the property. Officer C said Mr Y was *"tense"* and was resisting in that he was not complying with instructions, but was not doing anything that required *"major attention"* from them at that point.
99. Officer C recalled that, as they were walking out, Mr Y was quite aggressive towards Officer B and said that she was lucky he did not use his karate skills against her. Mr Y also said that he was going to make a complaint and she would lose her job.
100. When interviewed by Police, Officer B was asked whether Mr Y was called a *"bitch"* who was *"owned by a female"* (as Mr Y stated in his complaint) and she replied *"No, not that I recall, no."*
101. As they left the property some partygoers threw bottles in their direction but none hit them. Officers B and C took Mr Y to the nearby prisoner van, searched him and gave him a Bill of Rights caution.

Decision to close the party

102. After the stereo equipment was seized and Mr Y was arrested, all the PSU and noise control officers left the property and moved east towards the intersection with Galloway Street. A group of about 50 partygoers followed them out onto Wellington Street and began yelling abuse and throwing bottles at the Police.
103. Officer A had noticed a large number of empty bottles in the property which potentially could be used as a stockpile of weapons. He was also advised that some of the partygoers were arming themselves with fence palings.
104. When interviewed by the Authority, Officer A said the partygoers were “*highly agitated and aggressive*”, and were moving in and out of the property. He feared that if the Police left, more people would arrive at the party, the level of disorder would increase and the partygoers would have time to plan their response when the officers inevitably returned to the address. For those reasons he decided that Police needed to quickly enter the property, disperse the “*troublemakers*” and arrest any people who were committing offences.
105. Officer A recalled speaking to one of the occupiers who was very concerned about the “*volatility*” of the partygoers. Police later obtained statements from three of the occupiers confirming that they wanted Police to close down the party.
106. Although Officer A could not remember if the occupier he spoke to specifically asked him to close down the party, he believed he already had the power to do that under section 14 of the Search and Surveillance Act 2012, to stop the disorder that was occurring.⁸
107. Due to the danger posed by the bottle-throwing partygoers, Officer A called the inspector on duty and obtained permission for the PSU officers and two additional officers to wear full Personal Protective Equipment and carry riot shields. Officer F and seven other officers also arrived to assist with closing down the party.
108. The officers then repeated what they had done the previous night and cleared partygoers from around the property but did not enter the house. Most people had already left through the back of the property. The officers once again formed two lines to clear partygoers from the surrounding streets. Police arrested four people for disorderly behaviour, including Ms Z.

Complaint 3 – Ms Z

109. On 19 January 2015 the Authority received a complaint from Ms Z, aged 17, stating that she was assaulted and wrongfully arrested when Police were clearing the streets after closing down the party on Saturday night. She said she suffered “*abrasions, bruising and soreness*” to her hands, elbows, head and back.

Ms Z’s account

⁸ See paragraphs 203-209 for an explanation of relevant law and policy.

110. Ms Z told the Authority that she went to her friend's house on Wellington Street that Saturday night,⁹ and noticed Police about 50 metres further up the road. As she went to enter her friend's driveway an officer told her to move, and she said: *"Excuse me sir, my friends live here."* The officer approached and started swearing at her. She said *"Excuse me sir"* again, but he grabbed her and lifted her off the ground, then turned her around and pushed her in front of him.
111. Ms Z said she stumbled, but recovered her balance and walked towards Grey Street as the officer had instructed her. She called her friend to come and get her, and reported that she did not feel safe because she had just seen Police grab a 14 year old girl and throw her on the ground.
112. Ms Z's friend came and escorted her to her house. They stood outside and watched what was happening in Wellington Street. Police then came back down the street and told them to *"get the fuck inside"*. They were within the property's boundaries, and as Police drew level she asked which one had manhandled her and could she please have their badge number. She said *"Excuse me, I feel abused and hurt and would like your badge number please."*
113. Police continued to yell at them so she yelled back that they needed to listen to her. One officer said if she kept insisting, he would arrest her. She kept insisting and he grabbed her arm and said she was under arrest.
114. Ms Z told the Authority the next thing she knew, she was behind the Police van *"being held spread-eagled in the air by four or five police officers"*. They threw her to the ground and held her down, and she felt pain in her back, legs and right arm. She felt an officer on top of her and her shoes were ripped off her feet. Then she felt herself get flipped over and her head was pushed into the pavement. At this point an officer wrenched her phone from her hand and smashed it on the ground.
115. She was screaming that she could not breathe but the officers were pushing her into the ground. She was told to stop screaming if she could not breathe. Then they picked her up and threw her into the Police van.
116. At the Police station Ms Z was put in a cell. She repeatedly asked for a phone call to her grandmother but, though Police said she could have one, this never happened. She also asked for a blanket because she was cold, but was told *"that will teach you for being a little bitch."* Ms Z also said she was not given a Bill of Rights caution until a female officer came in and searched her, and made her sign a piece of paper which set out her rights as a young person.
117. Ms Z advised the Authority that this was a distressing incident that did not need to happen *"except for the pack mentality going on with those officers at the time."* She stated that she is small (45kgs) and to be treated in this manner by full grown men *"is an abomination of the laws they are sworn to uphold."*

⁹ Ms Z's friend's house is about 250 metres from the address where the party had been closed down.

118. After receiving her complaint, the Authority attempted to speak with Ms Z to get further information from her but she did not make herself available for an interview.

The officers' accounts

119. Officers F, I and J were among the officers who assisted with clearing the streets after the party was closed down on Saturday night. They recalled Ms Z approaching the Police line as they were moving about 50 partygoers down Wellington Street, and her being told to turn around and that she could not go that way. Officer I said Ms Z was initially "reasonable" when talking to the officers, but once she realised she was not going to get through the Police line she started swearing and being quite abusive.

120. Officer F said Ms Z responded by saying something like "Fuck off, I'm going that way." When she was again told that she could not go through the Police line:

"... she basically just flew into abuse and yeah, it was just, it was non-stop and it wasn't quiet, it was loud and I was two or three people away and I even yelled out, I said, 'Shut your mouth, you're in a public place, you know there are people sleeping they don't have to hear you,' and then it was, I think she said, 'fuck you pig' or 'fuck you cunt', was the comment to me."

121. According to Officer F, Ms Z tried to get past the line but an officer grabbed her by the arm and then turned her around and pushed her forward, telling her to move and go home. Ms Z again verbally abused the officer and threw her arms around, but then walked away in the direction the crowd was moving.

122. About 10-20 minutes later, after arresting two young people who had been throwing bottles at Police near Steele Park, the officers went back up Wellington Street. By this stage the vast majority of the crowd had been cleared. Officers F, I and J encountered Ms Z again and heard her swearing and abusing Police.

123. Officer F recalled that Ms Z was standing with a small group of people at the edge of a property, saying "Oh who's that fucking cunt who manhandled me, which cunt is it." When she saw the officer she thought had turned her around earlier that evening, she said something like "That's the fucking pig". Officer J remembered Ms Z saying "You know you can get a fine for going that slow, fucking pigs, you think you can manhandle me."

124. Officer F and a couple of other officers told Ms Z to "pull your head in" and go inside or she would be arrested for disorderly behaviour, but she carried on abusing them. She told the officers that they could not arrest her because she was on private property but Officer F explained that it did not matter because she was in view of a public place.¹⁰

125. Officer I said the abuse from Ms Z was "very loud ... offensive and clearly disorderly and could potentially incite further abuse towards Police from other members, partygoers that still could be around."

¹⁰ See paragraphs 210-211 for relevant law.

126. Officer F said that although the street was *“pretty quiet”* and there was no other disorder at that stage, Ms Z had been given several warnings and needed to be arrested for her ongoing behaviour because *“by walking away we may set a precedent that that’s what you can do in front of a Police officer”*.
127. Officer F gave Ms Z a final warning but she continued swearing at him, so Officer F told the officer beside him *“she’s got to go”*. The officer grabbed her arm and she dropped to the ground kicking and screaming. Officer F said he grabbed Ms Z’s other arm and they tried to lift her but *“she was like an eel, she was just squirmy and fighting and kicking ... she was fighting like it was her last day on earth.”*
128. Officer I saw Officer F grab Ms Z’s arm and tell her she was under arrest and was coming with them. Ms Z *“immediately sat down and started screaming and yelling saying ‘I’m not coming’.*” While Officer I spoke to the rest of Ms Z’s group and explained why she was being arrested, Officers F, J and one or two other officers tried to restrain Ms Z while she violently resisted. Officer I said they were constantly telling Ms Z to calm down.
129. The officers held Ms Z down on the driveway and tried to roll her over so they could control her more easily and put handcuffs on. Officer F advised that during the struggle, Ms Z had her phone in her hand and tried to hit an officer in the head with it but missed him, and the phone hit the ground a couple of times while Ms Z was thrashing about. Meanwhile Officer J, who was trying to hold on to Ms Z’s legs, was kicked in the head and chest.
130. Eventually the officers were able to turn Ms Z over and handcuff her. Officer F told the officer who was handcuffing Ms Z to make sure she was charged with resisting arrest and assaulting Police.¹¹ The officers dragged Ms Z towards the footpath, where she dropped herself to the ground again, so they had to pick her up and almost carry her to the prisoner van.
131. Officer J searched Ms Z beside the van and took away her phone which by this time was smashed and broken. Officer F was *“99 percent”* sure that Ms Z was given a Bill of Rights caution at this point.
132. Police later interviewed several people who witnessed the arrest. They confirmed that Ms Z was loudly screaming abuse, refused to calm down and was resisting the officers.
133. Ms Z was placed into the prisoner van with some difficulty, and taken to the Hamilton Police Station. Although Officer F was the arresting officer, he did not take responsibility for Ms Z’s arrest at the station. Instead Officer D offered to process her because he believed he had witnessed her acting in a disorderly manner on the street that night.
134. Ms Z was risk assessed and noted to be *“moderately intoxicated”*, and was placed in a cell at 11.18pm. The custody sergeant recalled that Ms Z was upset about being arrested and said she was tired and cold. He initially intended to give Ms Z a blanket, but was not expecting her to be

¹¹ Later that night Officer J was asked whether she wanted to charge Ms Z with assault, and she decided not to. She told the Authority that in hindsight she thinks she should have charged Ms Z, but she was new to Police at the time and considered that Ms Z was not necessarily trying to assault her but was just trying to get away.

in Police custody for very long and was busy processing other people in the cells, so he never got around to giving it to her.

CCTV footage of Ms Z in the cell

- 135. A female officer searched Ms Z in the cell at 11.53pm. The same officer returned a few minutes later and began filling out forms before leaving at 12.05am. The officer came back at 12.23am and left several minutes later after completing the paperwork.
- 136. Ms Z was wearing jeans and an open-back top. The CCTV footage of Ms Z in the cells confirms that she was not given a blanket and shows that at 1.32am she wrapped herself in toilet paper, apparently for warmth.
- 137. Ms Z remained in the cell until 2am, when she was released and given a pre-charge warning for disorderly behaviour.

The Authority's Investigation

THE AUTHORITY'S ROLE

138. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
139. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

140. After receiving complaints from Mr Y and Ms Z in January 2015, the Authority commenced an independent investigation into the Police's actions when closing down the Wellington Street party on Saturday 17 January 2015.
141. In March 2015 the Authority received Ms V's complaint, which related to the Police's closure of the Friday 16 January 2015 party, and included it within the existing investigation.
142. The Authority interviewed Ms V and Mr W, and attempted to arrange interviews with Mr X, Mr Y and Ms Z without success. Nine of the officers involved in closing down the parties were interviewed. The Authority also reviewed information collected during the Police's investigation into the complaints.

ISSUES CONSIDERED

143. The Authority's investigation considered the following issues:

Party closures

- 1) Were Police justified in closing down the parties at the Wellington Street property, and were the party closures and dispersal of partygoers generally carried out appropriately?

Complaint 1

- 2) Did Police use reasonable and proportionate force against Mr W and Mr X, and were their arrests justified in the circumstances?
- 3) Did Police use reasonable and proportionate force against Ms V?

Complaint 2

- 4) Did Police use reasonable and proportionate force against Mr Y and was his arrest justified in the circumstances?

Complaint 3

- 5) Did Police use reasonable and proportionate force against Ms Z and was her arrest justified in the circumstances?
- 6) Did Police treat Ms Z appropriately while she was in custody?

The Authority's Findings

PARTY CLOSURES

Issue 1: Were Police justified in closing down the parties at the Wellington Street property, and were the party closures and dispersal of partygoers generally carried out appropriately?

144. Police were called to both the Friday night and the Saturday night parties on Wellington Street following complaints of excessive noise, intoxication and disorder. On both nights Police initially entered the property to help noise control officers seize the stereo equipment.
145. The legislation which empowers Police to enter a property for the purposes of assisting a noise control officer does not also give them authority to close down a party by ejecting partygoers. For that, either Police need consent from an occupier of the property, or the level of disorder needs to be sufficiently high to justify action being taken under section 14 of the Search and Surveillance Act 2012. Section 14 applies when:¹²
- a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property; or
 - b) there is risk to the life or safety of any person that requires an emergency response.
146. On the Friday night, two of the occupiers requested that Police close down the party, after Police gave them an opportunity to try to end the party themselves. On the Saturday night Officer A considered that it was necessary to close down the party under section 14 of the Search and Surveillance Act, due to the higher level of disorder that was occurring (such as bottle-throwing from within the property). There is also evidence that most of the occupiers were happy for Police to close down the Saturday night party. On both nights Police only cleared partygoers from the outside areas of the property and did not enter the house.
147. It is clear that Police carefully considered their powers to enter the property and only took the action they believed was necessary to address the risks. Accordingly the Authority finds Police were justified in closing down the parties on both nights.
148. After partygoers are ejected from a property, the next step for Police is to disperse the crowd by moving it along the street until it breaks up into smaller, more manageable, groups. During this stage Police often encounter hostility, abuse and bottle-throwing from partygoers.
149. Mr W and Ms Z reported that when Police were dealing with the crowd they were “overzealous” and were knocking people over and throwing them to the ground. The Authority did not receive any further complaints about this aspect of the Police’s actions, and without specific evidence it is not possible for the Authority to form an opinion on whether those alleged uses of force occurred or were justified.

¹² See paragraphs 203-209 for relevant law and policy.

150. Police made several arrests for obstruction and disorderly behaviour on both nights, and received a large number of calls reporting fighting and disorder in the streets. In those volatile circumstances it is not unusual for Police to consider it necessary to use some force during an arrest or to keep the crowd moving with the aim of maintaining control and reducing the level of disorder.
151. The Authority notes that all the complainants took issue with the Police's 'overbearing' attitude and in some cases reported that they were sworn at by officers. However the evidence from the officers suggests that the people they were dealing with, particularly Mr X, Mr Y and Ms Z, were also swearing at Police. Police are routinely faced with such behaviour when closing down parties involving intoxicated young people.
152. The Authority is satisfied on the available evidence that the party closures were generally carried out appropriately.

FINDING

Police were justified in closing down the parties on both nights.

COMPLAINT 1

Issue 2: Did Police use reasonable and proportionate force against Mr W and Mr X, and were their arrests justified in the circumstances?

153. Neither Mr W nor Mr X made complaints about their arrests on 16 January 2015, but the Authority has considered them as part of its investigation into Ms V's complaint about the Police's actions that night.
154. These two arrests, and the Police's use of force against Ms V (which is discussed further below), highlight a wider issue around how far Police can go when clearing the streets after closing down a party, and in particular whether Police are justified in restricting the movements of, or using force against, people who were not involved in the party.
155. By forming into lines and forcing the crowd of partygoers to move down the streets and away from the property where the party was based, Police are working to break the crowd down into smaller groups, make the streets safe and end the disturbance caused by the party. When Police encounter people who want to go through the line of officers, they have to make a judgment call about whether or not they should allow it. This involves weighing up the safety risks of letting someone get behind them against the need to allow people to access their homes and go about their lawful business.
156. Police also regularly encounter people who come out of their houses to see what is going on in the street. According to the officers interviewed by the Authority, these people are asked to go back inside their properties, and the vast majority happily comply with that instruction and are

supportive of Police trying to end the disturbance caused by the party. However, occasionally some people see an opportunity to cause trouble and ‘take the Police on’.

157. In this case neither Mr W nor Mr X had attended the party at Wellington Street, but both ended up being arrested after they confronted Police who were in the process of clearing partygoers from the surrounding streets.

Mr W’s arrest

158. Mr W was arrested in Steele Park, about 500 metres from the Wellington Street property where the party was held. He was arrested for ‘disorderly behaviour’, which is behaving in public or within view of any public place *“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.”* It is also an offence to incite or encourage any person to behave in such a manner.¹³
159. Mr W acknowledged that he was yelling and screaming at Police but said he was legitimately protesting against the way the officers were treating the partygoers. He stated that he should have returned to his friend’s house on Coates Street but instead he walked past it.
160. Multiple officers told the Authority that Mr W was persistently being disorderly and inciting others to obstruct Police. He was warned repeatedly but continued yelling loudly in the street. Although they were over 400 metres from the site of the party by the time Mr W was arrested, Police were still clearing a crowd of partygoers from the street and Mr W’s actions had the potential to provoke a violent response.
161. An officer tackled Mr W to the ground and handcuffed him. The Authority considers that the force used was appropriate in the circumstances and was not excessive.
162. The Authority finds that Police were justified in arresting Mr W due to his ongoing confrontational and disruptive behaviour, and used reasonable force to carry out that arrest.

Mr X’s arrest

163. Mr X was arrested in Clyde Street, about 650 metres from the location of the party in Wellington Street. Police recorded the reason for his arrest as *“obstruction/detox”*. It is an offence under section 23(a) of the Summary Offences Act to intentionally obstruct or hinder Police in the execution of their duty.¹⁴
164. The arrest occurred after Mr X approached the Police line at the intersection of Nixon and Clyde Streets. Mr X said he asked the Police what was going on and was told to *“fuck off”*, which annoyed him because he had been in trouble for swearing at Police in the past.
165. The officers involved said that they told Mr X they had closed down a party and asked him to move on, but he refused and became aggressive. Three officers moved forward and tried to

¹³ See paragraph 210 for relevant law.

¹⁴ See paragraph 211 for relevant law.

use their shields to move him away, but he pushed them back. Officer C recalled that Mr X was yelling and swearing at the other officers and began to strike out at them.

166. Officer A saw Mr X in a “*fighting stance*” with his fists raised and thought he was trying to assault the officers. He decided that it was necessary to use pepper spray against Mr X and succeeded in spraying his lower face but did not think it had any effect. Mr X then retreated further down the road and ended up standing near Ms V. Ms V’s video footage shows that Mr X was abusive towards Police. Police followed him and again pushed him with shields, and Officer C used pepper spray which struck Mr X in the eye. The officers then managed to force Mr X’s hands behind his back and handcuff him.
167. Mr X has not made a complaint and the Authority has not had the opportunity to speak to him about what happened during his arrest.
168. At the time this arrest took place the PSU line had stopped at the end of Nixon Street and did not intend to go any further, because nearly all the partygoers had left the area. It is debatable whether it was necessary for Police to send officers from the line to deal with Mr X, since the threat of major disorder had dissolved by that point.
169. However, based on the available information, the Authority accepts that the arrest occurred as a result of Mr X repeatedly confronting the Police line and taking offence to being instructed to move on. The Authority’s view, on the balance of probabilities, is that the arrest was justified due to Mr X’s aggressive and abusive behaviour and the force used was an appropriate response to the threat posed by Mr X.
170. As described above in paragraphs 73-81, Police did not provide timely aftercare to Mr X after he was pepper sprayed, and have apologised.

FINDINGS

Police were justified in arresting Mr W and Mr X, and used reasonable force to carry out those arrests.

Issue 3: Did Police use reasonable and proportionate force against Ms V?

171. While Police were carrying out the arrest of Mr X, Officer B and another officer used their shields to push Ms V in an attempt to move her away from the area. Officers A and B said they would have arrested Ms V for obstruction but instead they had to turn their attention back to arresting Mr X.
172. Ms V was there looking for her son, Mr W, who had called her a number of times. He was apparently in distress. It appears she initially approached the Police line at the Clyde Street/Nixon Street intersection and was told to move on. Officer B said she told Ms V she did not know what had happened to her son.

173. Ms V walked away to stand on the footpath nearby and Mr X approached the Police line, as described above. Ms V began recording what was happening just after Mr X retreated from Police when he was pepper sprayed by Officer A. The video footage shows that Ms V was yelling loudly at the officers on and off for about 35 seconds, questioning what they were doing and protesting about their actions. However she was not swearing at or abusing the officers, or encouraging others to be violent.
174. The officers then advanced in a line and instructed Ms V to move away. She stayed where she was and was pushed back several times by at least two officers with their shields, over a period of about 20 seconds.
175. As noted above in paragraph 168, there were only a small number of people in the street at that time and it is debatable whether it was necessary for officers to be sent from the Police line to deal with Ms V. Furthermore, unlike Mr X, Ms V had not posed any physical threat to the officers and was not intentionally obstructing them in the execution of their duty.
176. It is possible that the primary reason the Police line advanced was to complete the arrest of Mr X, and that Ms V was in the way. However Officer B said she was sent forward, with two other officers, specifically to move Ms V on.
177. Officer B advised the Authority that the situation was still *“heightened”* from Police attempting to clear the streets of partygoers and *“[t]here was a small group dispersing in several directions and two males seen committing an offence in the near vicinity.”* Officer A also said that he was concerned about the group of four or five people standing outside Mr X’s address.
178. Nonetheless, on the face of it, Ms V simply questioning the Police’s actions (albeit loudly, in the street) does not provide Police with good reason to arrest or use any force against her. From the video footage it does not appear that Ms V deliberately got in the way of the officers arresting Mr X, and it is difficult to see how Police would have been justified in arresting her for obstruction.
179. The Authority accepts that Ms V was only pushed with shields, instead of hands, because it was impractical for the officers to drop their shields at the time. Although the officers considered that the force used only amounted to a *“light push”* or a *“nudge”*, the video footage shows that Officer B pushed Ms V with some force at least twice. The Authority finds that this use of force was unjustified in the circumstances.

FINDING

Police were not justified in using force against Ms V.

COMPLAINT 2

Issue 4: Did Police use reasonable and proportionate force against Mr Y, and was his arrest justified in the circumstances?

180. Mr Y complained that while he was leaving the Saturday night party at Wellington Street, Officer B punched him twice in the face and arrested him for no reason.
181. Officer B said she decided to arrest Mr Y for obstruction after he touched the equipment on her belt, deliberately stood in her way and refused to move as she was trying to leave the property. She then realised that the other PSU officers had gone ahead without her.
182. Officer B felt threatened by Mr Y's behaviour, and by the crowd closing in on her objecting to Mr Y's arrest. When Mr Y clenched his fists and raised his arms above his head, she believed he was about to strike her. In response she struck him on both sides of his face with closed fists.
183. None of the other PSU officers witnessed this incident, and Mr Y and his friends have not given the Authority the opportunity to question them about what happened.
184. On the available evidence, the Authority considers that the arrest was justified, and that the force Officer B used against Mr Y was reasonable in the circumstances she faced.

FINDING

Officer B was justified in arresting Mr Y, and used reasonable force against him.

COMPLAINT 3

Issue 5: Did Police use reasonable and proportionate force against Ms Z, and was her arrest justified in the circumstances?

185. Ms Z complained that Police unreasonably prevented her from entering her friend's property on Wellington Street, and used excessive force to push her away. She said that when she later protested at the way she had been treated and asked officers for their badge numbers, she was arrested and "*assaulted*" by four or five officers.
186. Police first encountered Ms Z when they were about 250 metres away from the property on Wellington Street where they had closed down a party. The Authority finds that it was reasonable for Police to turn Ms Z around at that stage, because they were still actively engaged in dispersing the crowd of partygoers (including some who had been throwing bottles at them) and it was not safe for the officers to allow people to get behind them by letting them through the Police line.

187. Police next saw Ms Z about 10-20 minutes later when they walked back up Wellington Street after most of the crowd had left the area. Ms Z had reached her friend's house and was standing outside with a small group of people.
188. According to the officers who were involved and people who witnessed the arrest, Ms Z was persistently and loudly abusive towards Police. She was repeatedly warned about her behaviour but continued nonetheless.
189. Officer F considered that her actions amounted to disorderly behaviour, because she was within view of a public place and was behaving *"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"*.¹⁵ Officer I also believed that Ms Z could potentially incite further abuse towards Police.
190. While the Authority notes that Police had already dispersed most people from the immediate area, and therefore the 'inciting' or provocative effect of Ms Z's behaviour would have been limited, it finds that the officers were justified in arresting Ms Z in the circumstances.
191. Upon being told she was under arrest, Ms Z put up a considerable level of resistance against the officers. The Authority finds that the bruising Ms Z suffered, and the damage to her phone, was caused by her violently struggling with the officers rather than by Police using excessive or unreasonable force against her.

FINDINGS

Police were justified in arresting Ms Z, and used reasonable force to carry out that arrest.

Issue 6: Did Police treat Ms Z appropriately while she was in custody?

192. Ms Z stated in her complaint that she was only given a Bill of Rights caution after she was placed in a cell. She also said she was denied a blanket and was never given the opportunity to make a phone call.
193. Officer F was "99 percent" certain that Ms Z was provided with a Bill of Rights caution before she was put inside the prisoner van and taken to the Police station. It is possible that Ms Z was so upset at the time that she did not hear it.
194. Ms Z was in a cell at the Police station for over two and a half hours. The custody sergeant recalled her saying that she was cold, and said that he intended to give her a blanket but never got around to it because the custody area was so busy. He also noted that he was not expecting her to be in custody for very long, which may explain why she never got a phone call.

¹⁵ See paragraph 210 for relevant law.

195. Although the Authority understands that the custody area does become very busy at times, especially on Saturday nights, it considers that Police should have arranged a blanket and a phone call for Ms Z, since she was ultimately detained in the cell for more than two hours.
196. Ms Z also complained that when she said she was cold and asked for a blanket, an officer told her *“that’s what you get for being a little bitch”*. The Authority has been unable to take this aspect of her complaint further, as Ms Z did not cooperate when the Authority sought to interview her.

FINDING

Police should have provided Ms Z with a blanket and a phone call while she was in custody.

Conclusions

197. In response to three separate complaints, the Authority investigated whether Police responded appropriately to two parties held at a property on Wellington Street in Hamilton on 16 and 17 January 2015.
198. The Authority found that Police were justified in closing down both parties, and in arresting Mr W, Mr X, Mr Y and Ms Z. Police used reasonable force to carry out those arrests.
199. However the Authority also determined that, in the circumstances, Police were not justified in using force against Ms V by pushing her with a shield. Furthermore, Police failed to provide Ms Z with a blanket and a phone call while she was being held in custody.
200. The Authority released a report on *“Police handling of ‘out of control’ parties”* in August 2014. Since that time the Police’s ‘Public Order Policing’ policy has changed. The Authority notes that in this case Police clearly considered their legal justification for closing down each party and, apart from the issues noted above, their actions were lawful and complied with policy.



Judge Sir David Carruthers

Chair

Independent Police Conduct Authority

18 February 2016

IPCA: 14-1332

Appendix: Laws and Policies

NOISE CONTROL

201. Under section 328 of the Resource Management Act 1991, every person who is given an excessive noise direction (abatement notice) by an enforcement officer must immediately comply with the direction. Police constables cannot serve abatement notices because they are not 'enforcement officers' under the Resource Management Act 1991.
202. A person served with an abatement notice is required to adopt the best practicable option to ensure noise levels are not unreasonable. If they fail to comply, legislation authorises Police to accompany an enforcement officer onto the property and to disable or remove the stereo equipment, but does not authorise them to eject all partygoers from a property.

LEGAL AUTHORITY TO CLOSE DOWN PARTIES

Consent

203. It has been routine practice for Police to enter private property and close a party down when they reach the view that the party is out of control, namely when violence or disorder has occurred or is likely to erupt in the area.
204. The most straightforward way in which the Police may lawfully enter the property and eject partygoers is to obtain the consent of the owner or occupier of the property.

Section 14 of the Search and Surveillance Act 2012

205. If the occupier of the property does not consent to Police closing down the party, Police may rely on section 14 of the Search and Surveillance Act 2012, which provides a warrantless power of entry onto private property if Police have reasonable grounds to suspect that:
- “(a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:
- (b) there is risk to the life or safety of any person that requires an emergency response.”
206. In either of the circumstances described above, an officer may “take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.” In the case of an ‘out of control’ party, this might include ejecting all partygoers from the property.

PUBLIC ORDER POLICING POLICY

207. The 'Public Order Policing' chapter of the Policing Manual has a section devoted to "Out of Control Gatherings", which are defined as:

"... any grouping of people, whether in a public place or private place that has exceeded its intended purpose or size and through excessive numbers and/or anti-social behaviour, or the committing of offences, causes or could cause alarm or danger to members of the public."

208. The policy clearly identifies the limitations of Police powers when dealing with a party on private property, and explains that: *"The policing of such events is largely done with the occupier's consent or relying upon a narrow scope of legislative authority."*
209. The policy describes several different options for the Police response to an out of control gathering, which are tailored to address the level of risk present. The highest level of response involves trained officers wearing Personal Protection Equipment 'moving' on a crowd in order to restore order. An inspector must authorise the use of Personal Protection Equipment, *"to ensure that the equipment is not routinely used in non-riotous/disorder situations"*.

RELEVANT OFFENCES

Disorderly behaviour

210. Section 3 of the Summary Offences Act 1981 makes it a summary offence, liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, for any person in or within view of any public place to behave, or to incite or encourage 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."*

Obstruction and resisting

211. Section 23(a) of the Summary Offences Act provides that:

"Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct,—

(a) any constable or any authorised officer, or any prison officer, or any traffic officer, acting in the execution of his duty;"

USE OF FORCE

212. The Police's *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include

communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.

213. 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.
214. 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)).
215. 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.
216. 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.

OC Spray

217. Police policy provides that, if officers use OC spray on a person, they must:
- *“Minimise any residual effects caused by the spray by providing proper decontamination and proper aftercare as in the ‘O C Spray Training Manual’*
 - *ensure the person's face is not covered and they are not left lying face down with their hands constrained behind their back. This may lead to positional asphyxia, where the position of the body interferes with breathing*
 - *accompany and monitor the person for at least 45 minutes or until the symptoms or effects are no longer apparent.”*

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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