

The Authority's Investigation

7. The Authority interviewed Ms Z and Officers A and B, as well as three officers involved in the investigation into Ms Z's sexual assault complaint, Officers C, D and E. It also reviewed the Police's investigation file.
8. The Authority identified and considered the following issues:
 - 1) Was Officer B involved in the investigation into Ms Z's sexual assault complaint?
 - 2) Was the Police's decision making in relation to Ms Z's sexual assault complaint sound?

The Authority's Findings

ISSUE 1: WAS OFFICER B INVOLVED IN THE INVESTIGATION INTO MS Z'S SEXUAL ASSAULT COMPLAINT?

9. Ms Z alerted Officer A to Officer B's conflict of interest in March 2017, when she went to the Police station to discuss her complaint against Mr Y.
10. Officer A told the Authority she spoke to Officer B later the same day, to explain that Ms Z was considering making a complaint and he could not be involved (due to his connection with Mr Y).
11. Officer B said the file never came to him and he had no reason to have anything to do with it. He commented that Officer A went out of her way to avoid any contact with him during the investigation.
12. Although Officer A had assured Ms Z that Officer B would have no involvement, Ms Z later discovered that Officer B's name was recorded as having "*checked*" a job sheet in the investigation file.
13. Officer C, who completed this job sheet, told the Authority that Officer B's name appeared on the form because Officer B was his supervisor. He was not aware of Officer B's conflict of interest at the time. However, Officer B did not actually check the job sheet. According to Officer C and others the Authority interviewed, supervisors hardly ever actually check job sheets and the noting of "*Checked by*" at the bottom of the form is largely meaningless.
14. Officer C was only involved in the early stages of the investigation into Mr Y, and said Officer B had no discussions with him about the file and "*no input into anything that I did in regards to this*".
15. Officer A and the detective inspectors who made the final decisions in respect of the investigation (Officers D and E) confirmed they were aware of Officer B's conflict of interest. They said Officer B was not involved at any stage and none of them discussed the case with him.

16. Therefore, the Authority finds that, although Officer B's name was recorded on the job sheet, he was not involved in the investigation into Mr Y and had no influence on the outcome.

FINDING ON ISSUE 1

Officer B was not involved in the investigation into Ms Z's sexual assault complaint.

ISSUE 2: WAS THE POLICE'S DECISION MAKING IN RELATION TO MS Z'S SEXUAL ASSAULT COMPLAINT SOUND?

17. In August 2017, once Police had completed their interviews, Officer A wrote a report stating she did not believe there was enough evidence to charge Mr Y. The detective sergeant and detective senior sergeant overseeing the investigation agreed. However, they noted that a detective inspector should also review the file and make the final decision regarding prosecution, given that Mr Y is "close friends" with Officer B. Presumably this was meant to counter any perception that they were treating Mr Y favourably due to that relationship.
18. The investigation file went to the Crime Services Manager, Officer D (a detective inspector), for review. Officer D concluded that Police should prosecute Mr Y. Police also sought a legal opinion, which was completed on 29 September 2017.
19. Officer D passed the file on to another detective inspector, Officer E, for his review. On 11 October 2017, Officer E wrote a memorandum stating that there was enough evidence to prosecute and "the investigation and prosecution should now be expedited". Subsequently Police further examined the evidence to prepare for prosecution.
20. However, by the end of February 2018, Police had decided not to prosecute Mr Y. Officer D's report cited the following reasons for this decision:
- a) a lack of corroboration from the other occupants of the van;
 - b) the "very complicated... history" between Mr Y and Ms Z; and
 - c) there was insufficient evidence to support a charge of indecent assault.
21. Police also considered the negative impact a court trial would likely have on Ms Z as a factor against prosecution.
22. Officer D's report concluded:
- "As a consequence of the evidential challenges I do not believe there is a reasonable prospect of this matter having a successful outcome as required by the Solicitor General's Guidelines and therefore do not believe it is appropriate or safe to lay a charge against [Mr Y]."*
23. Officers D and E told the Authority that they and the investigation team thoroughly discussed the available evidence and debated whether it was enough to prosecute Mr Y. Although they had formed an initial view that Police should prosecute, after further examining the evidence they ultimately decided it was not sufficient to lay any charges. They believed (from their

extensive experience with such cases) that a jury would be unlikely to convict Mr Y in the circumstances.

24. The Authority finds that the Police's decision not to prosecute was made after appropriate enquiries, and a robust discussion by experienced officers in respect of evidential sufficiency. The Authority has reviewed the evidence in this case and, while it is finely balanced, cannot conclude that Police came to the wrong decision.

25. The Police's 'Adult sexual assault investigation' policy states that Police must:¹

"Explain and discuss [with the victim] decisions not to proceed with an investigation or prosecution and assist the victim to understand the reasons for this. This should be formally followed up with a letter outlining the decisions and the reasons for that decision."

26. Officer A met with Ms Z on 10 March 2018 to advise that Police would not be prosecuting Mr Y and explain why they had reached that decision. They had a lengthy meeting and Ms Z told the Authority she was happy with how Officer A dealt with her. However, Police did not follow up this discussion with a letter to Ms Z. This may have contributed to Ms Z later making a complaint, as she did not have a written record of the Police's reasons for not prosecuting Mr Y.

FINDINGS ON ISSUE 2

The Police's decision making in relation to Ms Z's sexual assault complaint was sound.

Police should have sent Ms Z a letter explaining their decision not to prosecute Mr Y and the reasons for it, as required by Police policy.

¹ See the appendix for more information on this policy.

Conclusions

27. The Authority found that:

- 1) Officer B was not involved in the investigation into Ms Z's sexual assault complaint.
- 2) The Police's decision making in relation to Ms Z's sexual assault complaint was sound.
- 3) Police should have sent Ms Z a letter explaining their decision not to prosecute Mr Y and the reasons for it, as required by Police policy.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

27 February 2020

IPCA: 18-0349

Appendix – Laws and Policies

‘ADULT SEXUAL ASSAULT INVESTIGATION’ POLICY

Key principles

28. The Police’s ‘Adult sexual assault investigation’ policy states:

“Key points to note:

- *Sexual assault is a serious criminal act and offenders should be held accountable.*
- *The victim's well-being and safety is paramount.*
- *... Victims must be given regular updates on the progress of the investigation, charges laid or the reasons for not laying charges and court proceedings.*
- *... The decision as to whether there is sufficient evidence to prosecute is for Police and not the victim (or their family). If victims decide to withdraw their complaint, investigators must explain the reasons for continuing to investigate or prosecute....”*

Information to be provided to victims

29. The policy outlines the information Police should provide and obtain from adult sexual assault victims. This includes giving information about:

- access to specialist support services;
- the Police investigation process and *“realistic expectations about the likely timing of each stage”*;
- progress updates during the investigation;
- any criminal charges and proceedings; and
- decisions not to proceed with an investigation or prosecution.

30. In respect of the last point, the policy states:

“Explain and discuss decisions not to proceed with an investigation or prosecution and assist the victim to understand the reasons for this. This should be formally followed up with a letter outlining the decision and the reasons for that decision.”

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 Colin Doherty.

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.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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