

Police officer used excessive force after arrest

Outline of Events

1. At about 3.15pm on Friday 24 August 2018, Police received a 111 call about a man behaving in a disorderly way on Quay Street in Auckland city. Officer A, working alone, was sent to Quay Street to deal with the man.¹ When Officer A arrived, he recognised the man as Mr X. Knowing Mr X could be aggressive, Officer A asked for assistance.
2. Officers B and C arrived in a Police van equipped with cells for transporting prisoners.² Officer D arrived in an unmarked Police car.³ As soon as Officers B, C, and D arrived, Officer A moved forward to arrest Mr X, who punched Officer A in the face. A struggle followed, in which Officer A and Mr X went to the ground. Officers C and D helped Officer A restrain and handcuff Mr X.
3. Officer A unsuccessfully tried to pick Mr X up by pulling on his upper arm. Officer B assisted to avoid injury to either Officer A or Mr X. Officers A and B walked Mr X to the Police van. Officer B said Officer A forcefully pushed Mr X's head into the side of the van and kned him in the face. Officer A denied that this happened.
4. Once Mr X was in the back of the van, Officer B said Officer A climbed into the van and punched Mr X several times in the face. Officer A denied this, saying he was pushing Mr X into the van to make sure he stayed inside while the doors were being closed.
5. Officer B drove the van to the Auckland Custody Unit with Officer A. When they arrived at the custody unit, Officer A immediately got out of the front of the van and climbed into the cell in the back. Officer B said Officer A again punched Mr X several times inside the van. Officer A said

¹ At the time of this incident, Officer A had two year's Police experience.

² Officer B had about three years' experience, and Officer C had graduated from Police College in May 2018.

³ Officer D had about 12 years' experience in Police.

he thought Mr X was going to kick out at Police, so pushed him to the back of the van to prevent him from doing so. He denied punching Mr X.

6. When Mr X got out of the Police van, Officer A immediately placed Mr X into an escort hold and marched him to an area used for searching people. He shoved Mr X into the concrete block wall, causing Mr X to hit his head.
7. Officer A began searching Mr X. Officer B said Officer A told Mr X *“I will kill you next time.”* CCTV footage shows Officer A hitting Mr X with an uppercut punch to the face. Officer A said he only used force as needed and denied threatening or punching Mr X.
8. Officer B reported Officer A’s uses of force to a senior officer at the custody unit. Police investigated Officer A’s actions, and he was charged with four counts of common assault and one charge of threatening to kill. Before going to trial, Officer A pleaded guilty to two reduced charges of assault and the other charges were withdrawn. Police also carried out an employment investigation.

The Authority’s Investigation

9. Police notified the Authority and an independent investigation was carried out. As part of its investigation the Authority interviewed Mr X and Officers A, B, C, and D. The Authority also viewed CCTV footage from the custody unit.⁴
10. The Authority identified and considered the following issues:
 - 1) Were Police justified in using force to arrest Mr X?
 - 2) Were Officer A’s other uses of force justified?

The Authority’s findings

ISSUE 1: WERE POLICE JUSTIFIED IN USING FORCE TO ARREST MR X?

Deciding to arrest Mr X

11. At about 3.15pm on 24 August 2018, a member of the public called 111, telling Police:

“I saw a man shouting at a female who was walking past. He was yelling and shouting. It was really crazy yelling. ... He had scared a female who was walking past him, and it looked like he hit her on her bag she was carrying.”
12. Officer A, on patrol by himself, responded to the call. He recognised Mr X from other incidents in the past and considered him a *“violent offender”*. After speaking with Mr X, and considering the details from the 111 call, Officer A was satisfied Mr X had most likely assaulted the female

⁴ CCTV at the custody unit does not record sound.

and was still behaving in a way that was threatening to the public. Officer A decided to arrest Mr X for assault.

13. Mr X said he was drunk at the time of his arrest but was happy rather than disorderly. He said he recognised Officer A when he approached him on Quay Street, because *"I had a fight with him before, like, a few years ago."* He said Officer A *"sort of set me up to fight me and smash me because of what had happened in the past..."* Mr X thought Officer A had a *"personal issue"* with him *"... because every time I see him, he like, wants to arrest me..."*
14. In his interview with the Authority, Officer A described several earlier interactions with Mr X. However, he said he had only arrested Mr X once before and had never had to use force. Officer A said two of his colleagues had *"... a massive kind-of scrap with him"* during an incident he was not involved in, and this was the basis for his assessment of Mr X as violent.
15. Police can arrest a person without a warrant under section 315(2) of the Crimes Act when they have good cause to suspect that a person has committed an offence.⁵ The Authority is satisfied Officer A had authority to arrest Mr X for assaulting the female.
16. When Officers B, C, and D arrived, Officer A stepped forward to arrest Mr X, pushing him into the wall behind him. Mr X slapped Officer A's hand away and punched him in the side of the head. The other officers saw this. The Police were then justified in arresting Mr X for assaulting a Police officer.

Force used during arrest

17. After Mr X punched Officer A, they began wrestling, ending up on the ground. Officers D and C moved forward to help Officer A control Mr X. Officer C placed a handcuff on one of Mr X's arms but could not hold the other arm still to complete handcuffing him.
18. Officer C said *"[Mr X] continued to resist and violently struggle to stop handcuffs being placed on him. [Officer A] was shouting 'spray him'."* Officer D moved forward with his pepper spray in his hand.⁶ Mr X raised his hands to protect his face. The threat of being pepper sprayed caused Mr X to reduce his struggle, and Officer C was able to complete handcuffing Mr X.
19. Mr X told the Authority his head was *"smashed into the pavement"* a number of times during the arrest but acknowledged that he was drunk and only remembered parts of what happened. Although none of the officers recalled Mr X's head hitting the ground, it is possible that due to the struggle in the course of the arrest his head did so. However, there is insufficient evidence to enable the Authority to determine whether or not this happened.
20. Under section 39 of the Crimes Act 1961 Police are justified in using necessary force to overcome any force used in resisting Police during arrest.⁷ Police policy states that the use of any such

⁵ See paragraph 73 for the law in more detail.

⁶ Pepper spray is also known as oleoresin capsicum or OC spray.

⁷ see paragraphs 75 to 79 below for an explanation of relevant law and policy.

force must be considered, timely, proportionate, and appropriate given the circumstances known at the time.

21. Mr X is a large person and was vigorously resisting arrest. He had punched Officer A in the head, and all officers described a significant struggle before Mr X could be handcuffed. The Authority is satisfied the force used to arrest Mr X was justified and proportionate.

FINDING ON ISSUE 1

Police were justified in using force to arrest Mr X, and the force used was proportionate.

ISSUE 2: WERE OFFICER A'S OTHER USES OF FORCE JUSTIFIED?

22. Once Mr X was arrested and handcuffed, Officer A was alleged to have used force on seven further occasions before Mr X was received into custody. The Authority has considered each of these instances to establish whether the allegations are substantiated, and if so whether each alleged use of force was justified.

When force may be justified

23. Police officers are justified under the Crimes Act 1961 in using reasonable force in certain circumstances, including:
 - to overcome a person resisting an arrest or other process (section 39);
 - to prevent the escape or rescue of a person being arrested or under arrest (section 40); and
 - to defend themselves or another person (section 48).
24. In each of these cases the force must be proportionate to the resistance or threat. Excessive force can give rise to criminal liability, under section 62 of the Crimes Act.
25. Police policy states that the use of any force must be considered, timely, proportionate, and appropriate given the circumstances known at the time. Excessive force is never justified, and an officer may be criminally liable for using excessive force.⁸

Picking Mr X up from the ground

26. Once arrested, Mr X was lying on his front, with his hands cuffed behind him. Officer B said that once Mr X was handcuffed, he was *"pretty compliant"*, and Officer D said the *"fight was over."* Officers B, C, and D all stepped back to regroup before putting Mr X into the Police van. Officer B, mindful that Officer A had recently been punched in the head, told Officer A to take a breath.

⁸ The law and Police policy on use of force is explained in more detail in paragraphs 75 to 88 below.

27. However, Officer A said that he thought Mr X was still aggressive, so “... *had to be removed from the street as soon as possible before he breaks free and does a runner.*” Officer B said Officer A “*grabbed his bicep, kind of thing, then just wrenched him straight up*” in an aggressive way. Officer B thought Officer A would hurt himself or Mr X, so stepped in to help get Mr X off the ground.
28. Police are trained to help a handcuffed person from the ground by moving them to a sitting position then to standing. Lifting someone by their arm is not an approved technique for bringing a handcuffed person to their feet as it can cause injury to the officer or the person. In addition, Mr X is taller and much heavier than Officer A, so Officer A was not going to be able to lift Mr X this way.
29. Despite Officer A’s opinion that Mr X might do “*a runner*”, there was nothing to suggest Mr X was about to run from Police. It would have been difficult for Mr X to get to his feet to run away with his hands cuffed behind his back, particularly given his intoxication. Rather than reacting to any urgent need to get Mr X into the Police van, the Authority considers that Officer A was acting emotionally in response to having been punched by Mr X earlier.
30. Officer A acknowledged trying to lift Mr X to his feet by pulling on his arm. The Authority finds this use of force was inappropriate and unjustified.

Walking Mr X to the Police van

31. Officer B saw Officer A trying to lift Mr X and, concerned that either man could be injured, stepped forward and helped Officer A get Mr X into a standing position. Once Mr X was standing, Officer A took Mr X’s left arm and Officer B took his right arm. They hooked their arms through Mr X’s and bent him forward to walk him to the Police van. This is an approved Police escort hold called a double arm bar, which gives officers control over the direction of a person’s movement.
32. Officer B said Mr X was difficult to control. He was much larger than the officers and he was not complying. This meant the double arm bar was not effective and the men were “*swaying from side-to-side*” as they walked. He said:

“[Officer A] pretty much pulled him to the side of the van and then [Mr X]’s head connected with the side of the van. He didn’t seem too phased by it, but then [Officer A] like, put his knee into his face, so I kind of just grabbed [Mr X] and started directing him...”
33. Officer B said these were intentional acts. He heard Officer A say something like: “*Don’t you cheap shot me.*”
34. Officer A denied these allegations. He said that Mr X was struggling, so the walk to the van was “*not in a straight line*” but was without incident.
35. Mr X does not recall how he got to the Police van.

36. To resolve the conflicting accounts given by Officers A and B, the Authority considered the following matters:

- Immediately prior to this, Officer A had tried to lift Mr X up from the ground in a way that showed an emotional response and poor self-control. This allegation is consistent with a continuation of that behaviour.
- Although the officers said the double arm bar did not give them complete control over Mr X's movements, Officer A had some control over Mr X's movement, particularly if he used Mr X's forward momentum to push him into the side of the van. Given Mr X's weight comparative to the officers, it is possible that Officer B would not have had sufficient control over Mr X's movement to stop his head hitting the van.
- The behaviour described by Officer B is consistent with later behaviour displayed by Officer A at the custody unit, verified by CCTV footage. In particular, the manner in which Mr X was pushed into the concrete wall in the search area is consistent with these actions alleged by Officer B.
- Officer B spoke to a supervisor soon afterwards, made a formal written statement to Police, and was prepared to give evidence in Court, each time detailing how Officer A had pushed Mr X's head into the side of the van and kneed him in the face, telling him not to "*cheap shot*" him. Each time the allegation was recorded, Officer B was consistent in telling the main points but varied in the language he used. This indicates a greater likelihood that Officer B was recalling the incident rather than reciting an invented allegation.
- In his interview with the Authority, Officer A said he had no particular relationships with Officers B, C, or D, either positive or negative; then provided the Authority with a possible motivation for Officer B's complaint. He also said that he and Officer B had only worked one shift together. This was put to Officer B, who confirmed that prior to this incident, he and Officer A had worked one shift together, had no particular relationship, and that there was "*no bad blood*" between them. The Authority considers it is more likely that Officer A was trying to undermine Officer B's credibility.

37. Taking all of these matters into account, the Authority considers, on the balance of probabilities, Officer A did push Mr X's head into the van and knee him in the face. This use of force was inappropriate and unjustified.

Inside the Police van at the scene of the arrest

38. Officer B told Mr X to step up into the right-hand cell in the back of the Police van. Officer B said Mr X "*... just complied with me, hopped in, happy days, I was pretty much about to close the door and [Officer A] just jumped in the back of the van.*"

39. Officer A said that Mr X was resisting being put inside the van and was using his legs to prevent the door from being closed. He said he climbed into the van and used his open hands "*to push*

[Mr X] away from the door so he wouldn't be able to kick or hinder the door from being shut."
Both Officers B and C said there was no need for Officer A to get into the Police van.

40. Mr X said that Officer A climbed into the van and punched and kicked him a number of times. Officer C said she saw Officer A jump in the van *"...and start punching [Mr X] in the face ... two or three times, at least, that I counted."* Officer B also said he saw Officer A punch Mr X multiple times. Officer D could not see inside the van, but said he heard banging sounds coming from the van.
41. Officer B said he *"... grabbed [Officer A]'s duty belt and pulled him out, closed the door..."* Officer A said this did not happen. He said Officer B was too far away from him to reach inside the van and grab his belt.
42. When interviewed, Officer A acknowledged he could have stepped back from the van and there would have been no risk of Mr X being able to kick him. Two officers independently recalled Officer A punching Mr X repeatedly in the van. Officer A was initially charged with common assault for punching Mr X two or three times in the face in the van at the scene of the arrest. He later pleaded guilty to common assault based on an amended summary of facts, which described him hitting Mr X with open hands.
43. Neither Officers B nor C referred to Officer A kicking Mr X in the Police van. Mr X had earlier acknowledged that his memory of events was incomplete. The Authority is unable to establish whether or not Officer A kicked Mr X in the Police van.
44. The Authority considers Officer A was continuing to act in anger in response to being punched by Mr X and is satisfied that Officer A did repeatedly punch Mr X in the van. There was no justification for any use of force, let alone repeated punches.

Inside the Police van at the custody unit

45. Officer B drove the Police van to the custody unit. He said the drive took about 20 minutes. Officer A said Mr X was banging the cell walls and shouting during the drive, so he told Officer B his plan was to get Mr X out of the van quickly. Officer B said Officer A was *"agitated"* during the drive but did not mention Mr X making noise. Officer B said Officer A told him he would *"have another go"* at Mr X, which Officer A denies.
46. The van drove into the sally port at the custody unit. A sally port is a secure, controlled entryway to a Police station where officers bring detainees to be searched and received into Police custody.
47. CCTV footage shows the van arriving at about 3.59 pm. Officer A got out of the van as soon as it stopped. He went around to the back of the van, briefly looked through the window into the cell at the back of the van, then opened the door. Mr X could be seen seated, leaning forward as if getting ready to stand up. His hands were still cuffed behind his back. Officer A climbed into the cell in the back of the van. CCTV footage shows a flurry of movement by Officer A, with his arms being raised in a punching motion.

48. Officer A said that he opened the van door, and saw Mr X had his legs raised, ready to kick out. He said he feared Mr X might kick him or kick the van door into his head, so entered the van quickly to prevent Mr X from doing so. Officer A said that he got in the van and used open hands to push Mr X to the back of the cell so he could be turned around and removed safely. He said it took several attempts to move Mr X. Officer B walked around to the back of the van. He saw Officer A had climbed inside the van and moved forward, so he was right behind the back doors. He was standing on the floor, approximately one metre away from Officer A's back foot. He said Officer A was punching Mr X in the same way he had done at the scene of the arrest. Officer B heard Officer A tell Mr X, *"I will fucking kill you. I will kill you next time."* Officer A denied punching and threatening Mr X. Mr X had no recollection of anything that took place at the custody unit.
49. While the CCTV footage does not show the totality of what happened in the van's cell, it is consistent with Officer B's description that Officer A was punching Mr X. For example, the footage shows Officer A drawing his arm back as if to punch Mr X, rather than moving forward as if to push him.
50. About 40 seconds after Officer A entered the back of the van, he stepped back onto a step outside the back door. On the CCTV footage he appears to be aggressive and shouting at Mr X.
51. The Authority is satisfied that Officer A was punching Mr X inside the back of the police van at the custody unit. Because Officer A said he was using force against Mr X in self-defence, the Authority must consider whether the use of force was justified on this basis. This involves considering three questions:
- 1) What were the circumstances as the person believed them to be?
 - 2) Did the person use force for the purpose of defending himself or herself or another?
 - 3) Was the force used reasonable in those circumstances?

What were the circumstances as Officer A believed them to be?

52. Officer A described the circumstances leading to his use of force against Mr X in the Police van at the custody unit as follows:
- Officer A knew that Mr X had been behaving in a way that made the public fearful and believed Mr X had assaulted a member of the public.
 - Officer A knew Mr X had punched him in the face immediately prior to his arrest.
 - Officer A had experienced Mr X forcefully resisting arrest at the scene.
 - Officer A said he had heard Mr X shouting and banging during the drive to the custody unit. This made him think Mr X was still behaving aggressively.
 - Officer A had looked through the Police van back window and thought Mr X was getting ready to assault him again.

- Officer A said Mr X had his legs raised as if ready to kick out when the cell door was opened.
53. Officer A told the Authority this made him think Mr X posed a genuine threat of causing grievous bodily harm to him or another officer, by kicking the door open onto them or kicking out of the van directly.
54. In order to rely on a self-defence justification, Officer A must demonstrate his genuine belief that Mr X posed a threat that was real and imminent. Instead, Officer A described a potential threat of being kicked by Mr X based on a series of events occurring over a period of more than 30 minutes. When questioned by the Authority, Officer A acknowledged that there was no real and imminent threat and he had options to remove Mr X from the van without using force.
55. More generally, the Authority finds that Officer A's statement of the circumstances he believed lacks credibility. CCTV footage shows that Officer A only took a cursory glance through the van's back window before opening the door and climbing inside. Mr X's legs were not raised as described by Officer A. Rather, Mr X was leaning forward as if getting ready to get out of the van. The risk posed by Mr X before his arrest was quite different from the risk he posed when handcuffed and locked inside a cell in the Police van within the confines of the custody unit.
56. It is therefore clear to the Authority that Officer A was not acting in response to any perceived threat at all. Rather, he was responding to the fact that Mr X had punched him and was motivated by a desire to retaliate.

Did Officer A use force to defend himself or another person?

57. As noted above, the Authority is satisfied that Officer A knew that Mr X posed no real and imminent threat and that he was deliberately punching Mr X for the purposes of retribution. It is therefore clear that Officer A cannot have been using force to defend himself or another person.
58. Because Officer A was not using force in self-defence, there is no need to consider the third question.
59. The Authority therefore finds that Officer A was not justified in using any force in the back of the van at the custody unit, and that his actions constituted gratuitous violence for revenge.

During the search of Mr X

60. CCTV footage shows that Officer A climbed down from the van and stood back a few metres. He continued to talk to Mr X, but as CCTV in the custody unit does not record audio, the Authority does not know what was said. The footage shows Mr X move towards the door of the van, then tentatively step out without help.
61. Mr X began walking towards the search area in the corner of the secure entranceway to the custody unit. Officer A moved forward and aggressively placed Mr X into an arm bar, bending him over, and twisting Mr X's hands behind him, forcibly marching him to the search area a short

distance away from the van. Officer A said Mr X needed to be put in the arm bar so that he could not kick Officer A.

62. When they reached the search area, CCTV footage shows that Officer A pushed Mr X with force, causing him to hit his head on the concrete block wall. Photographs taken of Mr X in the custody unit show grazes and scratches on his head, but it is unclear when these were received. Officer A said he wanted to place Mr X against the wall but did not intend to make Mr X's head hit the wall. Having viewed the CCTV footage, the Authority does not accept Officer A's version of events.
63. While searching Mr X, Officer A used the handcuffs to force Mr X's arms into position using pain compliance tactics. CCTV shows that Mr X is not resisting or struggling. Officer A said Mr X was swearing at him and struggling. Officer B said: *"During the search, [Officer A] applied pain compliance which I believed was unnecessary as [Mr X] was compliant."*
64. Section 11 of the Search and Surveillance Act 2012 authorises an officer to search a person who is about to be locked in a cell. Under section 39 of the Crimes Act 1961, he or she may use force to do so where this is necessary to overcome any resistance and the search cannot be carried out "by reasonable means in a less violent manner."
65. The Authority is satisfied that the search could have been carried out in a much less violent manner. Mr X had stopped resisting Police before he arrived at the custody unit, and Officer A use of pain compliance techniques was unnecessary. Moreover, during the search, CCTV footage shows Officer A appearing to hit Mr X in the face with an uppercut punch. In interview Officer A said he did not punch Mr X, and when shown the CCTV footage by the Authority, said he didn't punch Mr X, but was searching his chest area. The CCTV footage clearly shows this not to be the case.
66. The Authority therefore finds that Officer A's further use of force during the search was merely a continuation of his violence against Mr X for the purposes of retribution.
67. When the search was completed, Mr X was walked to a holding cell. CCTV footage shows he is not resisting or struggling. Mr X was placed on the floor of a holding cell, on his stomach. A custody officer removed Mr X's handcuffs, while another held the cell door open, and both officers quickly stepped out of the cell, in a technique used for detainees who are aggressive. Mr X remained on the floor. Officer B said Mr X was *"wailing uncontrollably"*, a statement corroborated by the two custody officers.

FINDING ON ISSUE 2

The subsequent uses of force by Officer A were unjustified on each occasion and constituted repeated and gratuitous violence for the purposes of retribution.

Subsequent Police action

68. Police conducted a criminal investigation into Officer A's conduct. Prior to the Authority's investigation being undertaken, Officer A was charged with four counts of common assault and one charge of threatening to kill. Officer A was stood down awaiting trial.
69. Shortly before the trial date, Officer A pleaded guilty to two amended charges of common assault, and the other charges were withdrawn. In January 2020, Officer A was discharged without conviction and ordered to pay reparation to Mr X.
70. Police held a disciplinary meeting with Officer A, and the outcome was held in abeyance until his sentencing hearing. Officer A resigned from Police before his sentencing date.

Conclusions

71. The Authority finds that, while Police were justified in using force to arrest Mr X, subsequent uses of force by Officer A were unlawful on each occasion and constituted repeated and gratuitous violence for the purposes of retribution.
72. Officers B and C both saw Officer A assault Mr X. Officer B took steps to stop the assault at the scene by pulling Officer A out of the Police van. At the custody unit, Officer B reported Officer A's actions to the supervising sergeant as soon as he practically could. The Authority acknowledges that Officer A put these Officers B and C in a difficult position and commends them for reporting Officer A's actions.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

IPCA: 18-0016

Arrest without a warrant

73. Section 315(2) of the Crimes Act 1961 provides that a constable can arrest any person without a warrant if the officer has good cause to suspect that person has committed an offence punishable by imprisonment.
74. Section 32 of the Crimes Act 1961 provides that when Police have arrested a person without a warrant relying on statutory grounds, the arrest is justified when the officer believes, on reasonable and probable grounds, that the person has committed the offence, whether or not the offence was committed and whether or not the arrested person committed it.

Law on use of force

75. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
76. Section 40 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force to prevent escape or rescue of a person who is, or who is going to be, arrested. Officers may use *“such force as may be necessary”* to prevent escape or rescue unless the escape or rescue *“can be prevented by reasonable means in a less violent manner.”*
77. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. ‘Legal justification’ in this sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force.
78. In order to rely on this defence, a person’s actions must be assessed on a subjective and objective basis. This assessment involves three questions:
- 1) What were the circumstances as the person believed (subjectively) them to be?
 - 2) Did the person use force for the purpose of defending himself or herself or another (objectively)?
 - 3) Was the force used reasonable (objectively) in those circumstances?
79. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

80. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers, and firearms.
81. 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.
82. Police officers 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 De. 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).
83. 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.
84. 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.

Tactical communications

85. The Police 'Use of force' policy states that tactical communication is the preferred option for resolving incidents where Police action is necessary in response to uncooperative subjects. Tactical communication may enable incidents to be de-escalated and resolved without the use of force. Where possible, tactical communication should be used throughout an incident, alone or with other tactical options.
86. Police provide a five-step communications process for officers which includes passing on information, making requests, commanding responses, and ordering lawful directives.

Empty hand techniques

87. Police officers are taught a range of ways to safely use force without a weapon, known as 'empty hand' techniques. The Police 'Use of force' policy states that officers can use empty hand techniques to:
- distract a subject,
 - physically control a subject, and/or
 - defend themselves or another.
88. Uses of empty hand techniques must be fully reported in a tactical options report, except for touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground

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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