

Police detention of a man in Queenstown

INTRODUCTION

1. On the evening of 12 October 2017, Police were notified that Mr X had attempted to commit suicide at his home just outside of Queenstown. They visited him and were concerned for his ongoing safety, so took him into custody for a mental health assessment.
2. Mr X complained to the Independent Police Conduct Authority on a number of grounds. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

3. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
4. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

Summary of events

5. At 11.33pm on Thursday 12 October 2017, Mr X called Lifeline 24/7 (Lifeline).¹ He gave the call taker his first name, and Lifeline could identify the cell phone number he was calling from.
6. The Lifeline call taker said that Mr X sounded distressed. He told the call taker that he had just tried to commit suicide by hanging, but the rope had snapped. He said that he had realised that he didn't want to commit suicide. He said he was depressed, alone and isolated, but that he didn't want to go to hospital. When asked if he had any injuries, Mr X said that he had marks around his neck. Mr X ended the call abruptly.

¹ Lifeline 24/7 is one of a number of helplines provided by Lifeline Aotearoa, a non-profit community organisation. Calls are answered by qualified counsellors or trained volunteers.

7. The Lifeline call taker, however, was concerned by the conversation with Mr X, and was particularly worried that the call had ended suddenly. She contacted Police Communications, at 11.39pm, expressing concerns about Mr X's welfare and safety, and requesting Police assistance. The call taker provided Mr X's cell phone number and advised that he sounded drunk and distressed.
8. The Police communicator was able to obtain Mr X's name and address from this cell phone number, although an incorrect address was entered into the Police CARD system.² At 11.42pm, Police Communications sent Officer A, a probationary constable with 1 year of service, and Officer B, a constable with 3 years' service, to carry out a welfare check on Mr X at the address.
9. Mr X had previously interacted with Police, and Police Communications were able to update the CARD system with his details. This included making a note to alert attending officers that Mr X had suicidal tendencies. At about 11.44pm, Police Communications asked the St John Ambulance Service to attend Mr X's address, although the incorrect address was also provided.
10. Officer C, a sergeant with 20 years' Police experience in New Zealand and overseas, was the late shift supervisor, and was with Officer D, another probationary constable. Officer C heard the dispatch, and decided that they would also attend. They were already closer to the address, and Officer C wanted to support the relatively inexperienced officers first sent to the address.
11. Officer E, the night shift supervising sergeant with 17 years' Police experience, also heard the dispatch. He realised that the address given to officers was wrong, so telephoned Officers A and C, and gave them the correct address.³
12. At about 11.45pm, Officer E contacted the Southland Mental Health Emergency Team (SMHET) on their 0800 number.⁴ He was advised that the Queenstown-based duly authorised officers (DAOs) would not attend, because their service closed at midnight.⁵ Instead, the Invercargill-based DAOs would respond after they finished with a person already in their care. Officer E "*was disappointed*" by this response, knowing that this meant the DAOs would be at least three hours away. He decided he would go to Mr X's address and offer support to the other officers.⁶
13. Officers A and B arrived at the correct address within moments of Officers C and D, at about 11.50pm. The property is a large rural property, with a long driveway and various outbuildings. Officers A and B walked around the first outbuilding they came to, looking for Mr X. The

² CARD stands for Communications and Resources Deployment System. It is an electronic Police system used in communications centres in which events are created where there is a need for the dispatch of resources and the management of events.

³ There are reception problems with the analogue radio system for officers working in the rural areas around Queenstown. Officers had to communicate using their mobility devices.

⁴ This is an agreed process between the Police and the Southern District Health Board, to be used when Police come into contact with a person in need of mental health intervention.

⁵ Duly Authorised Officers are health professionals with powers to act under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

⁶ This meant that all but one of the Police officers on duty in Queenstown at that time were heading to, or at, Mr X's address.

driveway split at this point, and the officers agreed that one car would drive to the right, while the other went to the left.

14. After driving some distance, Officer C saw a car near the top of the driveway. He had Officer D check the car registration using her mobility device and she found that it was registered to Mr X.⁷ Officer C considered that this confirmed they were at the correct address. Officer D called Officer A and told him how to get to this part of the property.
15. Officer C could see a light coming from a building amongst some trees to his left. Focussing on the source of the light, Officer C walked down the path and saw the sleepout. Radio communications were unreliable with poor signal, so Officer C called Officer B on her mobility device and told her how to get down to the sleepout.
16. Arriving at the sleepout, Officer C used his torch, to look through the large glass doors. He saw a rope tied into a noose, lying on a chair. There was another piece of rope on the floor. Officer C saw a man, later identified as Mr X, sitting on the bed using a laptop. A dog was on the bed with him.
17. Officer C knocked on the door to the sleepout. Mr X did not respond. Officer C considered that, having been advised of Mr X's suicide attempt, and seeing the noose, there were reasonable grounds to consider this an emergency situation, permitting his entry into the sleepout.⁸
18. Officer C knocked again, and opened the unlocked door. He called out *"hello, Police,"* or words to that effect. Officer C said that Mr X immediately launched into a tirade of abuse, and ordered Officer C off the property. Mr X said that his first response to seeing a Police officer at his door was *"terror.... Even if it's a Police officer or any individual in the middle of the night just walking into your house you're going to be, yeah, terrified."*
19. Taking together the broken rope, the noose, the call to Lifeline, and Mr X's agitated emotional state, Officer C considered that this was an emergency situation, and that Mr X was at serious risk of harm to himself. Officer C couldn't remember exactly what he said to Mr X, but thought that he'd told Mr X that they were concerned about his having tried to hang himself, and offered to get help or get ambulance staff to come and talk to Mr X.
20. Mr X continued to verbally abuse Officer C, swearing at him and calling him names. Mr X recalled that:

"...my initial reaction was, "Get out," or, "Get the fuck out, get out of my house," and they didn't, they kept on forcing their way through, then they, I think the first sergeant to sort of walk through the whole scene, has treated it like a crime scene ... making no kind of acknowledgment of me as a human being first ... and because they weren't trying to keep me calm or sort of act in

⁷ A mobility device is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

⁸ Section 14 of the Search and Surveillance Act 2012 permits officers to enter a place when they have reasonable grounds to suspect that there is a risk to the life or safety of any person that requires an emergency response. See the discussion under Law and Policy for more detail.

any kind of empathetic way whatsoever, I started to become a bit more agitated..."

21. By this time, Officer D had come to the door of the sleepout. Mr X was still swearing and yelling. Officer C said:

"I'm thinking to myself, well, is it me? ... I'm a bit gruff, there's no connection between me and him at this point. So I asked [Officer D] to see if she could talk to him."

22. Officer C hoped that Officer D might be more successful in communicating with Mr X. However, Mr X did not engage with Officer D either, other than to direct his verbal abuse to her along with Officer C, calling her a whore and a bitch. Mr X said that:

"... There was a woman but I don't know how she was trying to engage with me. I don't recall her trying to calm me down or anything. If anything it was probably just me, you know, reacting towards these people being in the house."

23. In the meantime, Officer C had an opportunity to look around the sleepout. He saw a notepad with scribbled writing on a bedside table. The writing was addressed to Mr X's family, and included phrases such as *"I simply cannot carry on"*, *"I wish it didn't have to come this"*, and *"please look after my dog."* Mr X had signed the bottom of the page. Officer C believed that this was a suicide note from Mr X to his family, and his perception that Mr X was at risk of further self-harm was heightened. Mr X later told the Authority that this was a diary entry.

24. Officers A and B had arrived at the sleepout by this time. Officer A tried talking with Mr X and Mr X responded with insults and abusive language.

25. Officer C considered that Mr X needed psychiatric attention. He told the Authority that:

"I've made the decision at this point that he needs to be detained because, you know, it was an immediate risk. He's clearly called for help for some reason, the rope's there, that corroborates his story, it's not so much he's been a little bit down... he's actually done something to try and kill himself and there was an air of urgency there."

26. Officer C decided that he was not prepared to walk away from *"... a human being, there, that wants to kill themselves."* He told Officer A to take Mr X into custody, for prevention of suicide. Officer C explained to Mr X that he was going to be detained. Officer C thought that Mr X was aggressively resisting Police both verbally and physically, but recognised that he was not actively trying to attack Police.

27. Mr X was clutching his dog, and was not prepared to leave the dog alone. Officers A and D assured Mr X that the dog would be locked inside the sleepout and would be safe. They took the dog from him and Officer D put it in the bathroom.

28. Officer A recalled hearing Officer C offer to take Mr X to hospital. Mr X continued verbally abusing and physically resisting Police. Officers B and D took one of Mr X's arms each, and

Officer A handcuffed him. Officer B said that once Mr X was handcuffed, she and Officer A sat on the bed with Mr X, talking to him and trying to calm him. Mr X did not recall this.

29. At some point during this, Mr X's phone was ringing. Mr X said that Police would not let him answer it. Later, it was discovered that the calls were from St John ambulance staff, who realised they had an incorrect address, and were trying to locate Mr X.
30. Officer A walked Mr X out of the sleepout, towards one of the Police cars. Mr X resisted being put into the Police car. Officer C recalled Mr X telling Police that they couldn't take him, saying *"You can't do this; you know your mental health [powers]..."*
31. As Mr X was being placed in the back seat of the car, he lay on his back on the seat and kicked out at officers, making contact with Officer B. Officer C heard Officer B say, *"Don't you kick out on me."* Officer C then opened the opposite back door of the car and reached in. He took Mr X under his arms, and pulled him all the way into the back seat. Officers were then able to close the rear doors of the Police car.
32. Officer E arrived at the top of the driveway after Mr X was in the Police vehicle. He spoke with Officer C and confirmed that DAOs were coming from Invercargill. He observed that Mr X was agitated and verbally abusive. Officer E got into the back seat of the vehicle with Mr X and Officer A drove back to the Queenstown Police Station. The other officers followed in the other two cars.
33. As Officer A got to the bottom of the driveway, he saw the St John ambulance arriving, having been delayed by the incorrect address details they had been given. Officer E considered that, as Mr X was still agitated and physically resisting, the safest place for ambulance officers to assess Mr X was at the Police station. On Officer E's instruction, Officer A asked the ambulance staff to follow them back to Queenstown Police station.
34. Mr X said that he saw the ambulance and wanted to speak to the ambulance staff, rather than Police:

"...they just went and spoke to the paramedics and then all of a sudden I noticed the paramedics reversing and turning around and going away and all I wanted was to see the paramedics because... they're really calming people..."

35. Mr X asked Officer E to loosen his handcuffs. Officer E asked Mr X to move in his seat so he could do this, and Mr X responded with more abusive language and would not move. Officer E was eventually able to move Mr X and loosen the handcuffs.
36. In an attempt to build rapport with Mr X, Officer E told him that a friend of his did some work for Mr X's father. Mr X recalled Officer E saying that he'd been to the property before with a friend who worked for Mr X's father. Mr X responded by saying *"he doesn't work for my father he works for me... and you won't be telling him anything about this."* Officer E later told the Authority that although he'd been to the property before, he'd never been to the part of the property where the house and sleepout were located.

37. Officer E said that *“all the way back to the station, it was just a tirade of abuse, of swearing and running down New Zealand Police and the Queenstown Police....”* Officers A and E and Mr X arrived at the station at about 12.30am, and the ambulance arrived shortly afterwards. Officers B and C were delayed in getting back to the station, as they dealt with a minor offence in Queenstown.
38. On arrival at the station, Mr X was taken to the charge desk. CCTV shows Officer A removing the handcuffs at 12.37am and Mr X immediately turning around to face the officers. Officers A and E took Mr X into a monitored cell, and asked him to change into a tear resistant gown, to prevent him from self-harming with his clothing. CCTV shows that Mr X’s t-shirt was torn across the front of his chest. Mr X resisted Police all the way, stopping, twisting and turning his upper body to try to avoid being put into the cell. Officer E used a wrist lock restraint to control Mr X and guide him into the cell. The cell door remained open.
39. Queenstown Police Station is a small station, with a large geographical area to police. There were three officers working a late shift, finishing at 3am, and three working an overnight shift. The sergeants were concerned that, if Mr X was kept in Police cells, the officers may become tied up with other police business, and Mr X might be left unmonitored for a time, providing him with an opportunity to self-harm. Mr X refused to put on the tear resistant gown.
40. CCTV shows that at 12.40am the St John ambulance staff arrived outside the cell and Officer A came out to speak with them. Ambulance officers went into the cell to speak with Mr X at 12.41am. CCTV shows Officers A and E waiting outside the cell talking to each other. At 12.43am Mr X comes to the open door of the cell, and speaks with the Police officers. He is seen arguing with and pointing at Officer E. The ambulance officers leave the cell at 12.44am, and Officers A and E follow Mr X back into the cell. The ambulance officers wait outside the cell until 12.51am, at which point they collect their gear from the hallway outside the cell and leave.
41. The St John report states:
- “[Mr X] in Police cell aggressive, yelling, upset, screaming at the Police for the way he was handled. [Mr X] admitted mental health problem... [Mr X] stated had not consumed any alcohol. [Mr X] again started to become very aggressive towards Police. Left [Mr X] in cells, DAO to come and assess.... No physical signs of injury....”*
- Their medical assessment was cut short due to Mr X’s aggressive behaviour.
42. At about 1.10am, Officer D asked Mr X a series of questions about his health and wellbeing. He would not answer these and refused to sign forms regarding his property and acknowledging he had been advised of his rights. Mr X’s previous psychiatric history was noted.
43. Mr X was evaluated by Police as being in need of care and constant monitoring. In anticipation of the need to have Mr X monitored constantly, Officer D had called Custody Officer F, an

authorised officer employed on a casual basis, and asked him to come to the station to care for a detainee.⁹

44. Officers A, C, and E continued to negotiate with Mr X to get him to put the tear resistant gown on. At 1.16am, Officer A restrained Mr X and cut his t-shirt to remove it. Mr X then took the gown and put it on. He did not want to remove his shorts either, as he was wearing swimming shorts with no underwear. Officer A also cut these to remove them.
45. At about 1.24am, Mr X was placed in a cell where he could be under constant monitoring. Mr X demanded that Police contact his counsellor, but according to Police, would not provide any name or contact details. Mr X also asked to speak to his lawyer, and again would not provide any contact details. Officer A took Mr X and arranged for him to speak with a duty lawyer, which Mr X did.
46. Officer A then took Mr X to the observation cell and began the first period of constant monitoring. The observation cell contained a mattress, toilet, sink and water fountain. Officer A recalled Mr X was kicking the perspex cell wall, slapping the mattress against the window and using the mattress to obscure Officer A's view of him. Officer A removed the mattress from the cell. Custody Officer F arrived at the Queenstown Police station at 2am, and relieved Officer A of constant monitoring duties.
47. Mr X told the Authority that during this time, Officer C was taunting him and laughing at him. Mr X could not provide specific examples of this. Officer C said that he may have laughed at some of the things Mr X was saying, such as the names he was calling the officers, because they were funny. Officer C said that he did not laugh at Mr X at any point.
48. Officer C was able to get a telephone number for Mr X's mother, Ms Y. He called her twice, the first time at 2am, leaving a message, and the second time at 2.15am, speaking with her. Officer C explained that Mr X was at the Police Station following a suicide attempt. He told Ms Y that Mr X was okay, but was being held for a mental health assessment. He asked Ms Y if she would come to the Police Station later in the morning to meet with the DAOs before they assessed Mr X. Ms Y agreed, and asked for Police to call her again when the DAOs arrived.
49. Officer C spoke with the Mental Health Team, and they advised that they would not come to see Mr X until he had been checked by a doctor for any injury arising from his attempt to hang himself. At 2.20am, Officer C, Officer E, and Custody Officer F drove Mr X to the hospital Accident and Emergency department (A&E). Mr X was placed in a restraint belt, securing his cuffed hands and feet, to prevent him from becoming violent in the Police car.
50. At the hospital, Mr X was taken into a private examination room. Officers C and E waited outside, and Custody Officer F went into the room with Mr X. He was examined by a doctor, and cleared of any injury. The doctor told Officers C and E that Mr X required a mental health assessment, and that Mr X could wait at the hospital, provided a Police staff member stayed

⁹ Authorised officers are non-sworn Police employees who have responsibility for managing the health, safety and secure custody of detainees.

with him. The hospital emergency department was staffed by three nurses and a doctor, and there were no security officers or secure facilities to help manage the risk to Mr X.

51. Officer C thought it would be fine to leave Mr X at the hospital with Custody Officer F, as Mr X had calmed down considerably. He told Mr X that he could stay at hospital, but that *“you know you need to stay,”* and said that Mr X responded, *“Well, I’m not fucking staying here. I want my cigarettes and I’m going to fucking go.”*

52. Because Mr X became so quickly agitated, Officer C reconsidered the options. He weighed up the risks of keeping three staff at the hospital, which would have left three other officers available to respond to any other matters, and then only until the late shift finished at 3am. Officer C concluded:

“...Because of his behaviour I still thought he was a risk to himself and a risk to us and other people so I spoke to [Officer E] ... and I said, “We need to go back to the police station.”

53. Mr X did not recall there being any conversation at the hospital about whether he might stay there. He later requested his patient notes from that night, and then discovered that the doctor had agreed he could stay. The doctor told the Authority that *“I’d assumed that the plan was that he was going to stay. I wasn’t witness to their interactions”.*

54. The doctor also told the Authority that, while he felt that Mr X would be more settled at the hospital, he appreciated that Police had a difficult decision to make. He knew that Police had to consider what would happen if Mr X were to leave the hospital, and understood that these considerations were beyond his clinical assessment of Mr X. He said:

“I sort of feel quite strongly that it’s really inappropriate that mental health patients are managed in Police cells at all and that it’s a real gap in the service in our area.... It’s very stressful for all concerned.”

55. Officer C told the Authority:

“You know I don’t want to be putting people in the police cells because we’re criminalising people with mental health and that’s not what we’re here for, but we don’t have any other options ... and in the case of [Mr X], we had no other options.”

56. The officers and Mr X arrived back at the Queenstown Police Station at about 3.23am. Mr X was returned to the observation cell. Custody Officer F put a chair outside the door of the cell, so he could sit facing into the cell with the door open. Custody Officer F and Mr X talked for much of the night.

57. Ms Y arrived at the Police Station at about 3am. She did not ask to see Mr X, and she was not offered an opportunity to see him. She waited there until the morning.

58. At 7.45am the Invercargill DAOs arrived to assess Mr X. They had been delayed in leaving Invercargill as they were dealing with another person, before they caught a taxi to Queenstown Police Station. On arrival, Officer E briefed the DAOs, and they spoke with Ms Y before seeing Mr X.
59. At 8.44am the DAOs completed their assessment of Mr X. They were satisfied that it was safe to send Mr X home. Mr X was released from Police custody and returned home with Ms Y.
60. On 14 October 2017 Mr X laid a complaint with the Authority about his treatment by Police. Key concerns included his access to paramedics, medical, and mental health staff, and his treatment by Police in detaining him and holding him in cells. He felt that he had been treated like a criminal, rather than someone in a mental health crisis. He complained that Officer E, having been to the address before, ought to have known that his parents were in the main house, and should have woken them.
61. Later the same day, Mr X lodged an identical complaint online with Police. Police forwarded a copy of this to the Authority on 18 October 2017.

THE AUTHORITY'S INVESTIGATION

62. The Authority conducted an independent investigation into Mr X's complaints. In addition to reviewing Police documentation, the Authority interviewed Mr X, Ms Y, Officers A, C, D, and E, and the doctor who saw Mr X. CCTV footage of Mr X in custody was obtained, and the Authority visited Mr X's property and the Queenstown Police Station.
63. Mr X laid a complaint with the Health and Disability Commissioner also, and the Authority was able to view that complaint and the Commissioner's report.

THE AUTHORITY'S FINDINGS

64. The Authority identified and considered the following issues:
 - 1) Whether Officer C was justified in entering Mr X's address;
 - 2) Whether Officer C was justified in detaining Mr X;
 - 3) Whether Police were justified in using force against Mr X;
 - 4) Whether Police obtained appropriate medical and mental health care for Mr X; and
 - 5) Whether Mr X's continued detention after he was taken to hospital was lawful.

Issue 1: Was Officer C justified in entering Mr X's address?

65. Section 14 of the Search and Surveillance Act 2012 (the SSA) allows officers to enter premises without a warrant when they believe that there is a risk to the life or safety of any person that

requires an emergency response.¹⁰ Officers may take any action that they have reasonable grounds to believe is needed in order to avert the emergency.

66. After his arrival at the sleepout, Officer C was aware that:
- Police had been contacted by Lifeline;
 - Mr X had tried to commit suicide that evening;
 - Officer C could see a broken rope tied into a noose; and
 - Mr X was not responding to his calls or knocks on the door.
67. Taking those factors together, Officer C believed that Mr X presented a danger to himself, and that an emergency response was required to ensure that Mr X was safe.
68. The Authority accepts that Officer C was genuinely concerned for Mr X's safety and wellbeing, and that he believed that Mr X was at ongoing risk of self-harm. The Authority is satisfied that Officer C was justified in entering the sleepout to check on Mr X's welfare under section 14 of the SSA.

FINDING

Officer C was justified in entering the sleepout to check on Mr X's welfare.

Issue 2: Was Officer C justified in detaining Mr X?

69. After entering the sleepout, Officer C found what appeared to be a suicide note, and observed Mr X's aggressive response to the arrival of Police. He considered that these additional factors confirmed his belief that Mr X was at risk of further self-harm and needed support from a mental health team.¹¹
70. Having worked in the Queenstown Lakes area for some time, Officer C knew that Queenstown-based DAOs finished work at midnight, and anticipated that DAOs would come from Invercargill, so were several hours away. He considered that the best way to keep Mr X safe was to take him into custody to prevent suicide, and told the Authority that he was relying upon section 41 of the Crimes Act 1961 (the Crimes Act) to do so. He instructed Officer A to handcuff Mr X, and Mr X was taken to Queenstown Police Station.
71. Section 41 of the Crimes Act permits Police to use *"force as may be reasonably necessary in order to prevent the commission of suicide,"* or to prevent any act which he or she reasonably believes would amount to suicide. In order to rely on section 41, there must be an emergency situation requiring immediate intervention, and the threat of suicide or serious harm must be

¹⁰ Refer to paragraphs 97-98 in the appendix for more detail.

¹¹ Officer C's thought process is set out in paragraphs 25 and 26 above.

imminent. Section 41 does not give Police the power to take a person into custody and remove them from the scene.

72. If Mr X had been found in a public place, section 109 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) would have provided appropriate authority for Police to detain Mr X for no longer than six hours for the purposes of a medical examination. However, as Mr X was on private property, this did not apply.
73. Section 41 of the Mental Health Act also provides authority for Police, when called to assist a DAO, to detain a person for no longer than six hours so that a medical examination can be conducted. DAOs were aware that Mr X had attempted suicide that evening, having spoken with Officer E. However, they had not made any assessment of Mr X's current circumstances, and had no basis for instructing Police to detain Mr X, or to take him away from his home to another place, even if they had chosen to do so.
74. Officer C had already established, in his own mind, that Mr X's actions and behaviour amounted to an emergency situation, and that there was an imminent threat of serious harm to Mr X.¹² Officer C acknowledged that he had no powers of detention under the Mental Health Act, and that he was "*drawing a long bow*" by relying on section 41 of the Crimes Act. However he believed that, as a Police officer, he had a duty of care to take action to ensure Mr X's safety.
75. Officer C offered to take Mr X to Queenstown Lakes Hospital, but Mr X declined. He said that he would have preferred to monitor Mr X at his home until the DAOs arrived, or to have taken Mr X to hospital, but that these were not practical options. The Queenstown DAOs had already declined to come out, so the wait for staff from Invercargill was going to be several hours. The hospital emergency department was small, with only three staff, and not well placed to manage an aggressive person. Officer C said that "*in the case of this guy here, [Mr X], we had no other options.*" He instructed other officers to take Mr X to Queenstown Police Station, where he could be monitored in a controlled environment until DAOs arrived.
76. The Authority is satisfied that Police did not have a lawful justification to detain Mr X on his private property. However, it acknowledges that Officer C was properly concerned for Mr X's safety and had a duty to protect him from self-harm. The unavailability of mental health support for several hours placed him in an invidious position. While his actions were unlawful, the Authority is satisfied that they were reasonable in the circumstances.

FINDING

Officer C's decision to detain Mr X was unlawful, but was reasonable in the circumstances.

¹² As discussed in paragraph 67 above.

Issue 3: Was the force used against Mr X justified and reasonable?

77. Officer C instructed Officer A to handcuff Mr X while at Mr X's address. Mr X was actively resisting, and handcuffs were required to protect officers. When putting Mr X in the Police car, he was kicking out at officers, and it was necessary to use force to pull him into the car. Police loosened handcuffs at Mr X's request, although this took some time as Mr X would not assist Officer E to access the handcuffs.
78. Police are authorised to use such force as may be reasonably necessary when arresting a person.¹³ In this case, because the detention itself was not lawful, the use of force against Mr X in his detention and transportation to the station cannot have been lawful.
79. However, Mr X was physically resisting officers and kicking out at Officer B while being placed in the Police car. Police officers are responsible for their own safety as well as the safety of the public. The Authority is satisfied that, in the circumstances, the force used against Mr X to place him into the car was reasonable.
80. Once at the station, Police asked Mr X to wear a tear resistant gown. They were concerned that Mr X may be left unattended for short periods, giving him an opportunity to self-harm.¹⁴ Under section 151 of the Crimes Act, Police have a duty of care to people they have detained, to ensure they are protected from injury.
81. Mr X was assessed by Police to be at high risk of self-harm. CCTV shows an extensive period of negotiation, with Officers A, C and E all asking Mr X to help take off his clothes and put the gown on, so that this could be achieved without the use of force. Mr X was adamant that he was not going to wear the gown. After prolonged discussion, Officers C and E held Mr X down, while Officer A removed his clothing. Mr X was left to put the gown on. Mr X found this process distressing.
82. As set out above, Mr X's detention was not lawful, so that again the use of force to put him into a tear resistant gown cannot have been lawful. However, the Authority finds that use of the tear resistant gown was a reasonable measure to ensure Mr X's safety while in Police custody. The use of force was no more than necessary to remove Mr X's clothing, and the Authority considers that it was reasonable in the circumstances.

FINDING

Police were not legally justified in using force to detain and transport Mr X, and to put him into the tear resistant gown. However, the force was reasonable in the circumstances.

¹³ Crimes Act 1962, section 39.

¹⁴ As discussed in paragraph 39 above.

Issue 4: Did Police obtain appropriate medical and mental health care for Mr X?

83. Police acted quickly to obtain appropriate care for Mr X. An ambulance was called within minutes of officers being dispatched, as were the SHMET. Police offered to take Mr X directly to hospital, but due to his agitated and aggressive behaviour he was instead taken to the Police station.
84. When the ambulance arrived at Mr X's address, Mr X was behaving aggressively and was already in Police custody. It was reasonable for Police to ask ambulance staff to come to the Police station to assess Mr X in a controlled environment, for his own safety and for the safety of ambulance officers and Police.
85. Ambulance staff were given access to Mr X promptly after arriving at the station. Mr X's behaviour prevented ambulance staff from completing a full medical assessment. This was outside of Police control.
86. Mr X said that he asked Police to let him telephone his psychiatrist; however he did not give Police the psychiatrist's name or contact details.
87. At the request of DAOs, Police took Mr X to hospital to have the ligature marks on his neck checked again. Mr X's medical examination was completed and he was medically cleared as having no physical injury. The doctor on duty agreed that Mr X could stay in hospital to wait for the DAOs if an officer stayed with him.¹⁵ As Mr X began to get aggressive and threatened to leave hospital, Police had to make a decision as to whether or not he could stay. Again, to allow for the safe management of Mr X in his aggressive state, Police decided that the best place to wait for the DAOs was at the Police station.
88. Officer E made best efforts to get prompt mental health care to Mr X, but SMHET staff made the decision that Mr X needed to be seen by team members based in Invercargill. The DAOs saw three other patients before taking a taxi to Queenstown to see Mr X. The delay in obtaining mental health care for Mr X was outside of Police control.
89. The Authority is satisfied that Police ensured that Mr X had timely and appropriate medical care.

FINDINGS

Police ensured that Mr X had timely and appropriate medical attention.

Police attempted to obtain mental health care for Mr X in a timely manner, and the delay in obtaining this was beyond Police control.

¹⁵ As discussed in paragraph 52 above.

Issue 5: Was Mr X's ongoing detention after he was taken to hospital lawful?

90. Because Mr X's initial detention was unlawful, there was no legal basis on which to justify the continued detention of Mr X. Had Mr X been lawfully detained for the purposes of a mental health assessment, the period he was in Police custody exceeded the six hour time limit for such detention.
91. Police could perhaps have arrested Mr X for disorderly conduct while he was at the Queenstown Lakes Hospital. Had they done this, Mr X's detention from that point onwards would have been lawful. However, at that time, Police were primarily concerned with their need to keep Mr X safe until DAOs arrived. Arresting Mr X, and criminalising his actions, would have added to the trauma resulting from his mental health crisis. It would therefore have been in neither the public interest nor Mr X's interest to do so. It was more reasonable and humane for Police to continue to rely on an unlawful option rather than resorting to a lawful but unfair option.
92. The Authority therefore accepts that Police officers had a genuine concern for Mr X's safety and wellbeing, and finds that Police actions in continuing to detain Mr X after he had gone to hospital were reasonable in the circumstances.

FINDING

Despite there being no lawful reason to continue to detain Mr X, Police actions were reasonable in the circumstances.

CONCLUSIONS

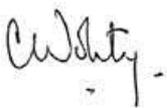
93. Incidents such as this are commonplace, and demonstrate the real difficulties confronted by Police when dealing with those experiencing a mental health crisis. The Mental Health Act appears to have been written on the assumption that mental health services will be the primary responder in these circumstances, and that Police will be there to assist them only where this is necessary to exercise restraint by force. The reality, as exemplified by this case, is quite different. In the vast majority of cases, Police are the sole responder and must deal with distressed and volatile individuals who may be at risk of harming themselves or others. Police have a duty of care to protect those individuals, but often lack the statutory powers to ensure that they can do so. This is particularly so when the distressed individual is on private rather than public property. Police are, so to speak, caught between a rock and a hard place. They often feel compelled to act unlawfully in order to protect the distressed individual and often the wider public, and the Authority does not blame them for doing so.
94. The Authority does not intend to suggest that the solution to this problem is to provide the Police with a greater range of statutory powers to deal with those who are not committing a criminal offence but are experiencing a mental health crisis. That would merely increase the risk that mentally impaired people will be inappropriately criminalised and dealt with by people who are not properly trained to address their situation. However, unless Police are

either trained to undertake the required mental health assessments or provided with better support, incidents like this will continue to arise on a regular basis.

95. Thus, while the Authority finds that Police acted unlawfully when they took Mr X into Police custody and held him for a mental health assessment, it considers that, faced with the circumstances as they were, Police actions were reasonable.

96. In particular, the Authority finds that: the

- 1) Officer C was justified in entering the sleepout to check on Mr X's welfare;
- 2) Officer C's decision to detain Mr X was unlawful, but was reasonable in the circumstances;
- 3) Police were not legally justified in using force to detain and transport Mr X, and to put him into the tear resistant gown. However, the force was reasonable in the circumstances;
- 4) Police ensured that Mr X had timely and appropriate medical attention;
- 5) Police attempted to obtain mental health care for Mr X in a timely manner, and the delay in obtaining this was beyond Police control; and
- 6) Despite there being no lawful reason to continue to detain Mr X, Police actions were reasonable in the circumstances.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

20 November 2018

IPCA: 17-0815

Search and Surveillance Act 2012 – Warrantless entry to respond to risk to life or safety

97. Section 14 of the SSA gives officers authority to enter private property without a warrant, if:
- an offence is being committed, or is about to be committed, and
 - that offence would be likely to cause injury to any person or serious damage to or loss of any property, or
 - if there is a risk to the life or safety of any person that requires an emergency response.
98. Police can take any action that they have “*reasonable grounds to believe is necessary to prevent the offending ... or to avert the emergency.*” Where there is a risk to the life or safety of a person, requiring an emergency response, an officer is authorised to enter if they have a reasonable grounds to suspect that the risk exists and that an emergency response is required.¹⁶ This requires a reasonable ground of suspicion, on which a reasonable person may act. This must be determined objectively. All relevant factors should be considered cumulatively.¹⁷

Crimes Act 1961 – Prevention of suicide

99. Section 41 of the Crimes Act allows anyone to use reasonably necessary force to prevent someone from committing suicide, or from attempting suicide. The person intervening must believe that the threat of suicide or serious injury resulting from an attempted suicide is immediate, in the circumstances as the person intervening reasonably believes them to be. Similarly the force used must be reasonably necessary in the circumstances as the person intervening reasonably believes them to be.¹⁸

Mental Health (Compulsory Assessment and Treatment) Act 1992

100. The Mental Health Act sets out the circumstances in which a person can be made to have psychiatric assessment and treatment, what powers exist to do this (including limitations on those powers) and the rights of people subject to the Mental Health Act. The Mental Health Act is administered by the Ministry of Health; however Police have some powers under the Mental Health Act, primarily to assist mental health workers in administering the Act.

¹⁶ Simon France (ed) *Adams on Criminal Law – Rights and Powers* (online looseleaf ed, Thomson Reuters) at [SS14.02].

¹⁷ *Adams on Criminal Law – Rights and Powers*, at [SS6.10].

¹⁸ Simon France (ed) *Adams on Criminal Law – Offences and Defences* (online looseleaf ed, Thomson Reuters) at [CA41.02].

101. If a DAO decides that a person needs an urgent medical examination, assessment examination, or a sedative drug, they may call on Police to enter a person's premises and detain the person, either in those premises or at another place, nominated by the DAO. The person may only be detained for as long as it takes to conduct the medical examination, assessment or to be given the sedative, with a maximum detention period of six hours. If the examination is not carried out, or the sedative not administered, within six hours, Police can no longer lawfully detain the person.¹⁹
102. A Police officer can take a person to a police station, hospital or other appropriate place if they are *'found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered...'*, and the officer thinks that it is in the interests of the person or the public for that person to have a medical assessment as soon as practicable.²⁰

People with mental impairments

103. The Police policy on 'People with mental impairments' states that Police should be aware of different types of mental disorder, but need not take action *"unless it threatens the maintenance of the law or presents a danger to the person displaying it, or to others."* Police are advised to use Police discretion and alternative resolutions in appropriate circumstances, including *"taking a holistic approach to any offending and seeking out opportunities to prevent reoffending"*, including engaging community services to protect vulnerable people.
104. Police are reminded that the association between mental health issues and offending is small, and that people with mental health issues are more likely to be victims of violence than perpetrators.
105. The primary responsibility for delivering mental health services sits with mental health service providers. Police will assist mental health services with intervention where legislation provides for it. On this basis, Police and the Ministry of Health have a memorandum of understanding governing the implementation of the Mental Health Act.
106. When a person is on private property, Police have no power under the Mental Health Act to enter or detain a person, unless asked to do so by a DAO or medical practitioner. Police are advised to use TENR (threat, exposure, necessity and response assessment tool) and to consider the use of Police discretion and alternative resolutions. If Police consider action is needed, it may be appropriate to seek help from a DAO, the person's doctor, family or friends, or to use other legislation to enter the property.

¹⁹ Mental Health (Compulsory Assessment and Treatment) Act 1992, section 110C.

²⁰ Mental Health (Compulsory Assessment and Treatment) Act 1992, section 109.

'People in Police detention' policy

107. This policy states:

"Mental health assessments should wherever practical be carried out in the least restrictive environment. The preferred option is the person's home or a health facility. The custody area should only be used after all other options have been explored."

108. The 'Procedures for custody area staff' states that custody staff must:

"evaluate and classify the detainee into one of the following categories:

- *Not in need of specific care*
- *Care and frequent monitoring*
- *Care and constant monitoring."*

109. Constant monitoring requires a detainee to be *"directly observed without interruption"*.

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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