

Complaint regarding a Police investigation into inappropriate contact between a teacher and student

December 2018

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Introduction

1. In April 2014, the Gisborne Police Child Protection Team (CPT) commenced an investigation into inappropriate contact between an intermediate school teacher, Sam Back, and a 13 year old student, Reiha McLelland.
2. The investigation was completed towards the end of June 2014, with Police concluding that there was insufficient evidence of criminal offending. No charges were laid.
3. On 31 July 2014, Reiha died in Gisborne Hospital and her death was referred to the Coroner.
4. In February 2016, Mr Back was subject to a Teachers Council Disciplinary Tribunal hearing regarding the alleged inappropriate contact with Reiha.¹ Allegations of serious misconduct, relating to inappropriate contact with Reiha, were upheld and his teacher registration was cancelled. In September 2016, the Coroner held an inquest into Reiha's death.²
5. In April 2017, after attending both the Teachers Council Disciplinary Tribunal hearing and the Coroner's inquest, Reiha's parents made a complaint to the Authority. They raised a number of concerns about the Police investigation into the alleged inappropriate contact by Mr Back, and the subsequent Police response to Reiha's sudden death, to the Coroner's inquest and to the Disciplinary Tribunal hearing.
6. The Authority commenced an independent investigation into the complaint. Police also commenced a separate investigation which, at the time the Authority publishes this report, has not yet been completed.
7. This report sets out the results of the Authority's investigation and the Authority's findings. The Authority has examined issues relating to:
 - 1) the initial response by the Gisborne CPT when they were alerted to the alleged inappropriate contact;
 - 2) the Police investigation into the alleged inappropriate contact;
 - 3) whether the CPT effectively communicated with other agencies;
 - 4) whether Police leaked information to the Gisborne Herald;
 - 5) whether adequate support and advice was provided to Reiha's parents following her death;
 - 6) whether Police provided timely and adequate disclosure to the Coroner; and

¹ The Teachers Council is now called the Education Council.

² The Coroner's findings were published in June 2017.

- 7) whether submissions made by a Police sergeant to the Teachers Council Disciplinary Tribunal regarding name suppression constituted an attempt to pervert the course of justice.

Executive Summary

8. The Independent Police Conduct Authority has found that the Police investigation into inappropriate contact between a teacher, Sam Back, and 13 year old Reiha McLelland was deficient in several respects, including that:
 - 1) the investigating officer did not adequately assess the evidence;³
 - 2) the investigating officer's supervisor had a conflict of interest which was not properly managed, and consequently the investigation was not adequately supervised;
 - 3) the investigation plan was inadequate and not all appropriate enquiries were conducted;
 - 4) information obtained from the interviews of Reiha and Mr Back was not recorded appropriately; and
 - 5) the interview of Mr Back was not conducted properly.
9. The Authority also found that the Police's initial consultation with Child, Youth and Family (CYF) was delayed.⁴ While Police policy at the time did not require a 'multi-agency' approach to the investigation, Police should have further considered how the information they held might be relevant for other agencies involved in Reiha's care.
10. Although the investigating officer's supervisor had a conflict of interest, the Authority concluded that the supervisor was not actively involved in the investigation, the case was appropriately assigned and the outcome was not pre-determined.
11. However, the supervisor did make submissions to the Teachers Council regarding name suppression for Mr Back which were patently wrong and misleading. This was contrary to Police policy and amounted to misconduct at the serious end of the spectrum, but there was insufficient evidence to prove that the supervisor intended to mislead the Teachers Council (and therefore attempt to pervert the course of justice).
12. The Authority also determined that:
 - 1) Police did not leak an internal report to the Gisborne Herald;
 - 2) while Police initially failed to disclose all the relevant data to Coroner, this was not a deliberate attempt to withhold information; and
 - 3) there was a lack of ongoing support for Reiha's family during the inquest process, but this was not due to any neglect of duty by Police.

³ Notwithstanding the inadequacy of the Police assessment, the Authority agrees that there was insufficient evidence available to Police to charge Mr Back with a criminal offence.

⁴ CYF is now known as Oranga Tamariki.

Background

13. 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 the Authority has accepted that particular account.
14. 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. Findings are made on the balance of probabilities.

SUMMARY OF EVENTS

15. In 2013, Sam Back was a teacher at Gisborne Intermediate School and Reiha McLelland was a student in his class.
16. During the 2014 school year, Mr Back was 41 and Reiha was 13 years old. Reiha had left Gisborne Intermediate School and was a boarder at a college away from the Gisborne area. When not at boarding school, Reiha lived at home with her family on a rural property approximately 50 kilometres out of Gisborne.

Inappropriate contact observed

17. In late March 2014, Reiha was admitted to Gisborne Hospital. While Reiha was a patient at the hospital on 2 April 2014, she received a visit from Mr Back.
18. On 3 April 2014, Child Youth and Family (CYF) recorded receiving a Report of Concern from a paediatrician at Gisborne Hospital. The report stated that Reiha had recently been stood down from boarding school due to behavioural issues, after which she ran away to a teacher's house. After noting that Reiha had been visited by her former teacher Mr Back and his partner while on the ward, the report said:

"In the doctor's opinion Sam and [his partner] are involved with Reiha over and above what would be expected from a teacher and partner. Night nursing staff observed Reiha going in and out of the ward with this couple against the parents' instructions for Reiha to remain on the ward. At 6.00pm [Sam's partner] left the ward and Sam remained. A nurse completed her rounds and walked into the room where she observed Sam lying on the bed and Reiha sitting cross-legged and they were holding hands. They quickly separated when observed."

19. The report also noted that Reiha had recently been transferred to Kenepuru Hospital in Porirua, Wellington, *"and is safe there"*.

Child Protection Team – Initial response

20. On 7 April 2014, the officer in charge of the Gisborne Police Child Protection Team (CPT), Officer A (a detective sergeant),⁵ received a telephone call from Reiha's mother, Hinemoa McLelland. Mrs McLelland was concerned about text messages from Mr Back on Reiha's cell phone.
21. On 8 April 2014, the Gisborne Police CPT was notified by CYF of the Report of Concern which CYF had received on 3 April 2014. On the same day, Police also received a phone call from Ms Z, Reiha's hospital-based social worker at Kenepuru Hospital. Ms Z provided Police with the name of the nurse who had witnessed the behaviour that generated the Report of Concern. Ms Z also reported to Police that Reiha had told a trainee intern at Kenepuru Hospital that on one occasion she had left home and gone to Mr Back's house, without telling her mother.
22. The following day, Officer A assigned the case to Officer B (a detective constable) for investigation.⁶
23. Officer A advised Officer B that he had a conflict of interest in the case and that he was unable to assist or be involved with the investigation. The conflict arose because Officer A was the Chairperson of the Board of Trustees for Gisborne Intermediate School, having served on the board since 2002.
24. On 10 April 2014, Officer A commenced a period of annual leave and travelled to Australia. He was due to return to work on 30 April 2014.
25. On 11 April 2014, Officer B rang Mrs McLelland and introduced himself to her as the officer in charge of the investigation. Mrs McLelland was in Wellington with Reiha. He explained that Police had received a Report of Concern from CYF regarding possible inappropriate behaviour between Mr Back and Reiha. Mrs McLelland advised Officer B that she had seen some text messages from Mr Back on Reiha's phone that had caused her concern because, although the text messages were not of a sexual nature, she felt that they had crossed the teacher-student boundaries. Officer B asked Mrs McLelland to send Reiha's cell phone to him for examination.
26. The following day, Officer B received Reiha's cell phone and attempted to extract the data using equipment available to him locally. He was unable to do so because the volume of data was too large, but he was able to view some of the text messaging.
27. On Thursday 17 April 2014, while Reiha was still in Wellington, Officer B conducted a number of further enquiries to progress the investigation.
28. Officer B successfully applied for production orders to obtain the cell phone text messaging data for cell phones used by Reiha, Mr Back and Mr Back's partner.⁷ The production order

⁵ Officer A has since left Police.

⁶ Officer B has since left Police.

⁷ Text messaging data was obtained for the period between 1 November 2013 and 17 April 2014.

requests were approved by the officer in charge of the Criminal Investigation Branch (CIB) in Gisborne at that time.

29. Officer B also rang Mr Back that day. He informed Mr Back that he had been advised by hospital staff that any outside influences would affect Reiha's rehabilitation and, at the request of hospital staff and Reiha's family, neither he nor his partner were to have any further contact with Reiha. This would allow Reiha to reconnect with her parents without any external distractions.
30. Officer B did not tell Mr Back about the investigation or provide any further details. Mr Back said he would do whatever was requested of him if it meant Reiha would get the help she needed.
31. Also on Thursday 17 April 2014, Officer B consulted CYF at the CYF office in Gisborne.⁸ Officer B advised CYF that there was currently no evidence of a criminal offence and *"separation between Sam and Reiha will be the plan"*. He advised that medical staff at the hospital would *"inform Reiha of the view that she should have no further contact with Sam ... and support any negative impact this has on her..."*
32. Officer B also informed CYF that Reiha's family were aware of the Police and CYF involvement, and that Police were accessing Reiha's text messages due to concerns about the content of some of the messages Reiha's mother had already seen. He advised CYF that:
 - a) text messages already viewed included messages where Mr Back referred to Reiha as *"darlin"*, and other messages where he informed her of when his wife was out of the home so she could visit;
 - b) the phone contained photo evidence of Reiha at Mr Back's home;
 - c) Reiha's family were waiting for updates about the criminal investigation;
 - d) Police had requested further information about the text messaging and were currently waiting for the further information; and
 - e) Mr Back was not aware of the investigation and would not be advised until the evidence had been evaluated.
33. A strategy was agreed and recorded in an exchange of emails between Officer B and CYF staff.
34. After meeting with CYF, Officer B met with the principal of Gisborne Intermediate School, Mr Y, and advised him of the Report of Concern from Gisborne Hospital and Mrs McLelland's concerns regarding the text messages.
35. Mr Y advised the Authority that Officer B told him he was carrying out an investigation into Mr Back relating to a student who had left the school the previous year. Mr Y said:

⁸ Officer B advised the Authority that Police had already met with CYF for an initial consult at the time of receiving the Report of Concern. However Officer A does not recall such a meeting and there is no record of it.

“The issue for me was around ‘is it safe to leave that teacher continuing to teach?’ On the basis of the information he gave me and subsequently the advice I took from STA [the School Trustees Association] was to just let the situation lie and part of that was around not causing any issue around the police investigation ... the issue was one child, no other child was involved and that child had left the school.”

36. Officer B asked Mr Y to keep the conversation confidential and not to inform Mr Back of their discussion. Following this meeting, Mr Back remained teaching at the school.
37. Later on 17 April 2014, Officer B reported back to CYF that he had now also advised Mr Y (the school principal) of the concerns about the contact Mr Back was having with Reiha, and the need to keep the information confidential.
38. It was agreed that CYF would await direction from Police. CYF requested that Police keep them in the ‘communication loop’ and Officer B was provided with the contact details of the assigned Gisborne-based CYF social worker.
39. CYF also confirmed with Police that, after some deliberating, it would not adopt its usual practice of actively investigating, nor would it interview Reiha.
40. Officer B was scheduled to be away from his office from Monday 21 April 2014 for a period of two weeks, including a week of annual leave. Officer B advised CYF that during this two week period he could be contacted by cell phone.
41. Following the consultation with CYF, Officer B rang Kenepuru hospital and staff confirmed that Reiha had been informed she was to have no further contact with Mr Back or his partner. Officer B then rang Mrs McLelland and provided an update of the investigation.
42. On Tuesday 22 April 2014, Officer B had a conversation with Ms Z, Reiha’s hospital-based social worker at Kenepuru Hospital. Ms Z told him it was possible Reiha would be discharged from hospital by the end of the week. After further discussion with Ms Z, Officer B decided that Reiha should be advised of the Police investigation before she left the hospital, and asked Ms Z to inform him of any disclosures made by Reiha relating to Mr Back.
43. Officer B was of the opinion that if Reiha did decide to disclose anything further at that point, she was *“in the right place should this affect her...”*. He was also aware that if Reiha did disclose information about Mr Back and his partner, Ms Z would be able to arrange an evidential interview at the Wellington Police District Child Protection multi-agency facility, Koru House.
44. The same day, Officer B received the phone data requested from the network provider for Reiha’s cell phone. Officer B forwarded the information to an analyst for the information to be extracted onto an excel spreadsheet for ease of reading.
45. The following morning, 23 April 2014, Officer B couriered Reiha’s cell phone to the Electronic Crime Laboratory (ECL) in Wellington and requested the extraction of photo, video and email data and any hidden or deleted data.

46. Officers making a request to ECL are required to complete an internal police document entitled “*E-Crime Exhibit Examination Request*”. The form accompanies the exhibit for examination and must be authorised by a supervisor. The E-Crime request form was completed as required and, although Officer A was on leave at this time, his signature appears on the form and is dated 23 April 2014. The form itself is dated 5 May 2014.
47. The form includes the request that: “*This analysis is required by 30/04/2014 ... the phone needs to be returned to the complainant before she is discharged from hospital.*” The brief circumstances of the allegation are described as: “*Possible offence of sexual grooming between a thirteen year old female student and a 40 year old male teacher.*”
48. Also on 23 April 2014, Officer B provided Mrs McLelland with another update on the investigation. Mrs McLelland told Officer B that Reiha had confided in one of her sisters that she had stayed over at Mr Back’s house. Mrs McLelland advised that she was not aware of this visit prior to it happening and had never been informed by either Mr Back or his partner that Reiha had stayed at their house.
49. On the same day, Mrs McLelland sent an email to Officer B attaching further communications between Mr Back and Reiha in the form of documents saved on the home computer and a document located in Reiha’s school luggage.

Child Protection Team – Investigation following Reiha’s return to Gisborne

50. On 24 April 2014, Reiha was discharged from Kenepuru Hospital. She returned home to Gisborne and was enrolled at the local college.
51. On 5 May 2014, Officer B returned to work and received a spreadsheet of Reiha’s telecommunications data from 1 November 2013 to 17 April 2014. The spreadsheet consisted of 190 pages of text data incorporating in excess of 3,500 messages. Officer B later said “*the data ... was overwhelming.*” Officer B was also given access to the computer in Reiha’s home, which contained a large number of email exchanges between Mr Back and Reiha.
52. Prior to returning to work, Officer B arranged to meet with Reiha’s parents on 7 May 2014 to discuss the direction of the investigation.
53. At that meeting, Mrs McLelland advised Officer B that Reiha was attending the local college and doing well. They decided that Police should interview Reiha about the contact that had occurred between her and Mr Back and Officer B immediately arranged for Reiha to attend an evidential interview with Officer C (a sergeant).
54. On 14 May 2014, Reiha met with Officer C at the Gisborne Police station for an evidential interview.⁹ Reiha declined to engage in the interview and it did not get past the introduction stage. Reiha did not disclose any criminal offences and told Police that Mr Back had not done

⁹ Officer B also attended to monitor the interview.

anything inappropriate. In an email dated 22 May 2014, Officer B recorded that Reiha had been spoken to at the Gisborne Police station and confirmed that:

- a) her relationship with Mr Back was just a friendship;
- b) no sexual activity had taken place;
- c) she had stayed at his home address on 4-5 occasions (without her parents' knowledge) and sometimes it was just her and Mr Back;
- d) they would often meet at the bus stop in Wainui;
- e) she had received gifts from him of a book and a guitar; and
- f) she had been texting and emailing Mr Back for a number of months.

55. On the following day, 15 May 2014, Reiha went missing after school. Officer B was off duty when he received a phone call late in the afternoon from Mrs McLelland. Mrs McLelland told Officer B that Reiha had been missing for about two hours and was not answering her phone or responding to text messages.
56. Officer B drove to Mr Back's house and asked Mr Back to send a text to Reiha. A short while later Mr Back told him that Reiha had made contact and advised him of her location. Officer B arranged for a patrol car to collect Reiha and return her to the Police station. He arranged for a health assessment and sat with Reiha and her family during the assessment. Reiha was re-admitted to hospital and Officer B left the Police station around 1am.
57. On 22 May 2014, Officer B obtained further production orders for the cell phones of Reiha, Mr Back and Mr Back's partner. The purpose of the enquiry was to establish if Mr Back or his partner had made contact with Reiha after being asked not to. The text data confirmed there had been no further contact.
58. On the same day, Officer B drafted a comprehensive and lengthy email about the investigation. The email was sent to Mr Y (the principal of Gisborne Intermediate School) and copied to Officer A at his Police email address.
59. In the email Officer B described receiving 194 pages of text data between Mr Back and Reiha and advised that he had not found "*any sexually explicit messages*". However he believed the content of the text messages were "*clearly inappropriate*", including instances when Mr Back and Reiha met secretly at night.
60. Officer B provided examples of text messages between Reiha and Mr Back between 28 December 2013 and 31 December 2013 to show "*how strong their relationship had become*" and provided an overview of the content of the documents he received from Mrs McLelland on 23 April 2014. Officer B also described the information Reiha gave to Police when she was at the Gisborne Police station for an evidential interview (see paragraph 54 above).
61. Officer B concluded:

“It is clear within the text data that Sam has encouraged the staying over at his house and has organised meeting points where he has told Reiha to ensure ‘her bases are covered’ and that ‘she knows the deal’...

I have read an email dated November 2013 where Reiha pours out her feel[ing]s of despair to Sam and talks of her not coping or seeing a future for her ... as a person in authority Sam should have been talking to the parents about it or at the very least informing someone at school in order for Reiha to be spoken to ... to my knowledge Sam and [his partner] have instead tried to deal with this themselves....”

- 62. In the email Officer B offered to go through any of the text data with the school principal, Mr Y.
- 63. On the following day, Mr Y contacted an industrial adviser from the School Trustees Association (STA), seeking advice. Officer A participated in the conversation in his role as Chairman of the Board of Trustees. Mr Y told the Authority the advice was: *“...regardless of the actions of Police, the Board will have to open its own employment investigation [once] Police have completed their inquiry.”*
- 64. On 27 May 2014, Officer A entered a review on the Police electronic record of the investigation. The entry reads: *“Case Investigation Plan reviewed with O/C case. Approved.”*
- 65. By 3 June 2014, Officer B had finished analysing the first set of text data requested. This required a detailed read of more than 3500 text messages.
- 66. The Authority has also reviewed the text messages and emails between Reiha and Mr Back. Some examples are provided in the table below:

DATE	REIHA	MR BACK
29 December 2013	<i>I thought what if I see my parents here, but it's alright they shop at Pak n save HOPEFULLY</i>	<i>wait in the car, I can get everything</i>
1 January 2014 at 5.48am		<i>Happy New Year Darlin! I'm just watching the first sunrise of the year and thinking of you! Bout to go surfin, what you up to today? Oh and I think I have an idea for one of my projects for you ...</i>
2 January 2014		<i>surf was small but fun enough. And of course we can make this year amazing. I dare you to find something we couldn't do. Mum's gone so it's just me and bo [the dog]. Hmmm I wonder what kind of mischief we'll get up to. Any ideas? [Text messages between Mr Back and</i>

		his partner confirm Mr Back's partner was away on holiday from this day until 9 January 2014]
3 January 2014	<p><i>I will be guarded with it but by how much do you mean?</i></p> <p><i>Yup I remember. I'll keep it brief and you're right no hurry I just want to be like I'm going to stay at Sam's then it will be all sweet instead of the lying.</i></p> <p><i>I've decided not to talk to my cousin.</i></p>	<p><i>Have fun today ... If you could be a little guarded with what you share with your sister and cousin that would be appreciated.</i></p> <p><i>You remember what we talked about? And there is no hurry, I know it feels urgent sometimes but we have time.</i></p>
4 January 2014	<p><i>Well I can be dropped off at Makarori any morning from Monday – Friday. Because my sisters' have work so yea That's all I'm saying tho the rest is up to you, you chose! [sic] Also I'm going down south next Sunday. So yeah that's all. Now your decision time?</i></p>	<p><i>So if you want to come down for a bit when would be best? Or when would it be better for me to go do you think? Ideas? Suggestions?</i></p>
5 January 2014	<i>Tuesday suits. What time?</i>	
6 January 2014	<p><i>I just need a way of getting ... to yours or I'm not sure how it will work.</i></p> <p><i>this cool dude, he's a pretty amazing friend as well.</i></p> <p><i>I'm not sure what I need him to do yet...</i></p> <p><i>Na you already know the answer to that ... unless you were hinting at</i></p>	<p><i>Any time, If I'm not home I will just leave the back door open, I'll only be surfing. Keep me posted on what's up.</i></p> <p><i>do you know anyone who can drive?</i></p> <p><i>Tell him what you need him to do.</i></p> <p><i>Don't you have a training or sports trip or somewhere you need to be or something?</i></p>

	<p><i>something?</i></p> <p><i>Oh yes I need to think on it I'll get back to you later.</i></p> <p><i>So, Mon ami, would you be able to pick me up apopo?</i></p> <p><i>Sweet, what time suits you?</i></p> <p><i>yup 11's sweet, Just give me a text once you're here and I'll come out</i></p>	<p><i>I may have been.</i></p> <p><i>I imagine that's possible, all is good?</i></p> <p><i>I don't know, how's around 11? I'm flexible, What do you think?</i></p>
7 January 2014		<p><i>On my way in [my partner's] blue car</i></p> <p><i>I'm here</i></p>
8 January 2014		<p><i>I'm a bit of a mixed bag emotionally at the moment. Happy, because it's holidays ... but super sad because I will miss seeing you almost every day. I guess what I really want to say is that this last year was so special for me, in large part, because of you</i></p>
9 January 2014		<p><i>I miss you something crazy</i></p> <p><i>[My partner] just got back</i></p>
24 January 2014	<p><i>[Reiha sent an email to Mr Back asking if she could come for dinner the following day and stay the night]</i></p>	<p><i>I think dinner would be wonderful and of course you can stay... I'm so excited!!!! Just keep me posted on what your up to and when you think you'll be around. Do I need to pick up anything special for diner. We can make anything you want ... but it is your last diner [sic] here before you are off to high school and although every diner with you (every minute for that matter) is special, I would like to do something nice for you. If you can, bring the book down so maybe we can decide on our holiday to celebrate and anything else you might want to share or discuss. Should I be this excited?</i></p>

9 February 2014 at 7.33 am		<i>I so badly want to climb in your window right now. Just jump through and tell you that I am so glad that you are here, that you always, no matter what, you bring a smile to my face and joy to my life.</i>
14 February 2014		<i>It's Valentine's Day... a day for spending time with and appreciating the ones you hold dear, so no rules will keep me from appreciating you today.</i>
22 February 2014		<i>...find out when your long weekend is, because I think the time is coming soon that I have to come down to the budding metropolis of Napier to see you (if you think that's a good idea and still want me to) If you don't, that's ok, you're not obliged to, I'd just like to. ...So be good my friend, remember how much I miss you and how excited I will be the next time I get to see you (cause I will be so excited I may jump out of my skin, wouldn't that be a sight!). Take care of yourself Darlin'</i>

67. On 9 June 2014, Officer B advised Mrs McLelland that Police did not have enough evidence to charge Mr Back, but would still be speaking with him to inform him that his behaviour towards Reiha was inappropriate. Officer B also informed Mrs McLelland that he had advised the school of his findings and they were fully aware of all the circumstances.
68. On 13 June 2014, Officer B met with Mr Back at the Gisborne Police Station to discuss the investigation. The discussion took place in an interview room, was not electronically recorded and lasted for just over an hour.
69. Officer B informed Mr Back that there had been an investigation. He advised him he was not under arrest and was free to leave at any point, and then asked Mr Back to explain his relationship with Reiha.
70. In relation to the text messages, Mr Back told Officer B that it is commonplace now for teachers and students to communicate via email or text and that his cell phone number would be available to anyone. He originally began communicating with Reiha by email and the communication was related to school work. It was only after Reiha left Gisborne Intermediate School that the conversations became more frequent. Regarding some of the language used in the messaging, Mr Back told Officer B he called everyone 'darling' and everyone called him 'big boy'.

71. Mr Back acknowledged that Reiha had visited him at home. He said that Reiha had told him she had spoken to her parents and they were fine about it. Officer B later recalled:¹⁰

“When I informed him that her parents had no idea that Reiha stopped at his house he was mortified.... He told me he loves his job and would do nothing intentionally to jeopardise this ... he feels like he’s been played by a 13 year old ... ‘I can’t believe I’ve been so naïve. All I ever wanted to do was help Reiha’.”

72. Once Mr Back had left the Police station, Officer B immediately typed notes recording his recollection of the discussion. A few days later he entered a copy of the notes onto the Police electronic record of the investigation.

73. After speaking to Mr Back, Officer B determined the investigation was complete with no further enquiries to be made. Officer B concluded that there was insufficient evidence to charge Mr Back with any criminal offence and the matter should be dealt with as an employment matter by the school.

74. On 16 June 2014, Officer B prepared a final report on the investigation, prior to forwarding the file for filing. Officer B copied the final report into an email which he sent to Officer A. The report concluded:

*“Initially when I received this file my concern was that we were possibly dealing with a teacher who was grooming a young girl for sex. As I read through the text messages and emails this opinion didn’t change as the content within these messages although never sexual were definitely inappropriate between a teacher and student. The content, the gifts and the home visits were all very concerning.”*¹¹

...After carefully reviewing all the information to hand, I feel there is no evidence to charge Sam with any criminal behaviour whether it be of a sexual nature or one of neglect.”

75. The final sentence of the report reads:

“In relation to Sam, I genuinely believe he had Reiha’s best interests at heart, yes he has made some questionable decisions but when you look at the facts as a whole it is easy to see how he quickly got sucked into a situation he had very little chance of controlling.”

76. On 16 June 2014, Officer A made the following entry on the electronic case file: *“Case reviewed with O/C. Investigation progressing in accordance with the Investigation Plan.”*

77. On 20 June 2014, Officer B met with Reiha’s parents and advised them of the outcome of the Police investigation. Officer B made the following entry about the meeting on the electronic case file:

¹⁰ In the email from Officer B to Officer A on 16 June 2014.

¹¹ Mr Back gifted Reiha a book and guitar.

“They were advised that Police were not in a position to charge Sam as I had found no evidence proving that their friendship had ever been more than that. Over the 194 pages of text messages that I had read and numerous emails between them, I never once found any content of a sexual nature.”

78. On 23 June 2014, Mrs McLelland made a complaint to Gisborne Intermediate School about Mr Back. The complaint was investigated by the School Board, which reported the matter to the Teachers Council. Mr Back remained at the school teaching, but subject to a number of conditions.
79. On 30 July 2014, at 2.22pm, Officer A made the following entry on the electronic case file:

“Reviewed prior to filing. Known lines of enquiry have been completed. No evidential statement of complaint forthcoming. Given the overall circumstances no further investigative action required. There is insufficient evidence to provide a reasonable prospect of conviction – Evidential Test. Submitted for filing.”
80. On 31 July 2014 at 8.34am, the investigation file was assigned to Officer D (a detective senior sergeant), the Eastern District Child Protection and Sexual Violence Coordinator, for review.

Police initial response to Reiha’s sudden death

81. During the evening of Thursday 31 July 2014, Reiha was admitted to Gisborne Hospital, after an incident at her home address.
82. Officers E and F (both detectives) were on call that night and, at around midnight, were called into work to investigate. The officers went to Gisborne Hospital and were briefed on the circumstances by the local Tolaga Bay officer.
83. While at the hospital the officers spoke to Reiha’s parents. Officer E spoke briefly to Mrs McLelland. Officer F spoke to Mr McLelland and obtained a statement from him describing the events leading up to Reiha being admitted to hospital. The officers left the hospital and spent the remainder of the night completing enquiries at Reiha’s home address, returning to the Police Station at 6.30am early the next morning, Friday 1 August.
84. Reiha died in hospital on Friday 1 August 2014. The Duty Coroner was notified of the death by hospital staff using the Hospital Record of Death form. The form recorded that Reiha’s family had been advised that they were able to object to a post mortem if they wished to do so. The family had already told hospital staff that they did not want a post mortem and when the death was notified to the coroner, the Duty Coroner was aware that Reiha’s family objected to a post mortem.
85. On Saturday 2 August 2014, at 7am, Officer E returned to work and was advised that Reiha had died.
86. When a death is reported to the Coroner, Police act as agents for the Coroner and are required to conduct initial enquiries into the circumstances surrounding the death and report that information to the Coroner, within a few hours of the death. This initial information is

provided to the Coroner on a standard preformatted Police form entitled 'Initial Report for Coroner'.

87. Soon after arriving at work on Saturday morning, Officer E emailed a copy of the Initial Report to the Coroner and advised he would provide the Coroner with further statements and documents later that morning.
88. On the 'Initial Report for Coroner' form, in the space titled 'Police Recommendations regarding Post Mortem', the report stated that a "*post mortem is required to be carried out*". There are areas of the form set aside to confirm if family members have been advised of the right to object to a post mortem and if there is any objection to a post mortem, but neither of these questions were answered.
89. Officer E met with Mrs McLelland at the Gisborne Police station to obtain a statement from her regarding the circumstances surrounding Reihā's death.
90. Officer E recorded in the statement that Mrs McLelland objected to a post mortem being carried out. He then completed a further report setting out the reasons why he believed a post mortem was not required, which he forwarded to the officer in charge of the CIB in Gisborne. The report is dated 2 August 2014, and recorded that Reihā's body had been at the mortuary since 6am that morning awaiting a decision from the Coroner on whether there would be a post mortem. The Coroner ultimately decided not to conduct a post mortem.

Officer D's review of the investigation

91. Meanwhile, on 1 August 2014 at 1.23pm, Officer D sent an email to both Officer A and Officer B advising them he had reviewed the case. He noted that, while there may not be evidence to support a criminal charge, "*the extent and nature of the contact between MCCLELLAND and BLACK [sic] has been completely inappropriate, especially in the context of a Teacher/Pupil relationship.*" He stated that this must be addressed and asked that the officers work with legal services to draft letters addressed to the principal, the Board of Trustees and the Teachers Council, to summarise the investigation and express Police concerns.
92. Officer D requested that the officers attach copies of the letters to the file and re-submit the file for filing. At 1.26pm Officer D recorded on the electronic file that he had reviewed the case and returned it to Officer B for further action.
93. On 4 August 2014, after Officer A told Officer D that the Board of Trustees and Teachers Council had been advised of the investigation, Officer D filed the investigation file with an entry on the electronic record that: "*Known lines of enquiry have been completed. There is insufficient evidence available to provide a reasonable prospect of conviction.*"

Coroner's inquest and Teachers Council

94. On 4 August 2014, a Coronial Services Case Manager, Ms W, wrote to Reiha's family to advise that the Coroner had opened an enquiry into Reiha's death and would be requesting reports and evidence.
95. Ms W also emailed the Police Eastern District Coronial Investigations Manager, Officer G (a detective sergeant), to advise that the Coroner had reviewed the file and had requested Police obtain a number of statements, including a statement from Officer B *"outlining his investigation of concerns about Reiha's relationship with Mr Back, and the outcome of this"*.
96. Officer G forwarded the request from the Coroner to the relevant officers and assigned specific tasks. Officer G made the following request to Officer A: *"...can you review again the file in relation to BACK and assist [Officer B] with what is required of him on this case."*
97. At some point, responsibility for preparing the Police file for the Coroner was passed to Officer H (a detective sergeant), also from Gisborne Police.
98. Officer H sent an email to Officer A, copied to Officer B, which stated that the Coroner had asked for a statement from Officer B outlining his investigation and the outcome. Officer H asked Officer A: *"Can you discuss this with [Officer B] as you know more about this matter than I do and let me know the best way to finalise this part of the enquiry."*
99. On 27 August 2014, Officer B completed a statement for the Coroner describing his investigation into the Report of Concern relating to Reiha and Mr Back.
100. In his statement Officer B described his assessment of the text data and emails and stated:

"The content of the text and emails ranged from school, homework, friends, Music and Reiha's wellbeing. At no point did I find any content that was of a sexual nature. My main concern was that their friendship had overstepped the professionalism of what a student and teacher relationship should be. It had become clear to me in reading the communication between Sam and Reiha that Sam had become emotionally attached to Reiha as a friend and confidant. The boundary had become blurred and what may have started as a teacher student relationship was now more of a mentor/counsellor relationship."
101. On 29 October 2014, Officer H was still completing statements to finalise the file and advised Officer G that he expected to have the file ready the following week.
102. On 31 March 2015, the Coroner sent an email to Officer G enquiring about the file and asking for the file to be forwarded as a matter of priority.
103. Officer H completed a report the same day outlining the enquiries made by Police. The report and attached enquiry file were forwarded to the Coroner on 14 April 2015. Officer H's report concluded as follows:

“Issues in relation to Reiha’s relationship with Samual [sic] BACK ... are being dealt with by the Teachers Council. There is no evidence of any criminal offending by them in their relationship.”

104. Between April 2015 and April 2016 Police were not asked to make any further enquiries on behalf of the Coroner. During this time, the Coroner attempted to engage with the family to explore the possibility of interviewing Reiha’s friends.
105. Throughout, the Teachers Council disciplinary process was progressing.
106. On 5 May 2015, the Gisborne Intermediate School Board of Trustees wrote to the Teachers Council in support of an application made by Mr Back for name suppression. The Board advised the Teachers Council that, subject to the result of the Disciplinary Tribunal hearing, Mr Back’s position at the school still existed and that he could potentially return to the school to teach again. The letter was signed by Officer A in his capacity as Chairman of the Board of Trustees.
107. A Teachers Council Disciplinary Tribunal hearing was held from 17 to 19 February 2016. At the end of the hearing, a complaint of serious misconduct for forming an inappropriate relationship with a 13 year old student was upheld, and Mr Back’s teacher registration was cancelled.
108. At a lunch break during the Disciplinary Tribunal hearing, a newspaper photographer took a photograph of Officer A with Mr Back in circumstances which suggested they were having lunch together.
109. The Gisborne Herald Newspaper covered the hearing and, on 5 March 2016 following the lifting of name suppression, published an article which provided details of the misconduct and included a quote from Mr Back that: *“In hindsight, I can say that I lost my way and became too involved in a student’s life.”*
110. The article also reported the following paragraph regarding the Police investigation:

“The Police cleared him of any criminal wrongdoing. The investigating officer wrote: ‘I genuinely believe he had [the girl’s] best interest at heart.... It’s easy to see how he got sucked into a situation he had little chance of controlling.’”
111. The Coroner’s inquest into Reiha’s death was held in September 2016, and the findings were published in June 2017.

2016 Police Review

112. In August 2016, the Police National Co-ordinator: Child Protection, Officer I (a detective senior sergeant), conducted a review of the investigation at the request of the Eastern District Child Protection and Sexual Violence Co-ordinator.

113. The review was requested following media reporting of the Teachers Council Disciplinary Tribunal hearing regarding Mr Back. Officer I was asked to review the investigation against current practice.
114. On 11 August 2016 Officer I reported the outcome of her review. In summary, the review found that:
- a) The matter was deemed to be a Child Protection Protocol (CPP) investigation but it appeared a joint investigation plan was not completed as required by Police policy. This should have been completed regardless of whether or not Reiha made a disclosure.¹²
 - b) It appeared there was no consultation with CYF until an update in NIA made on 17 April 2014.
 - c) It was unclear what discussions took place regarding the initial safety of Reiha and any ongoing contact between her and Mr Back until 17 April 2014, when Officer B advised Mr Back he was to have no further contact with her.
 - d) There was no evidence that consideration was given to the safety of other students that were still being taught by Mr Back. On 17 April 2014, the school was advised of the complaint but no discussion was documented in relation to how the safety of other students was being ensured. Mr Back continued to teach until August 2014.
 - e) One tasking and three supervisor reviews by Officer A were entered after the file was assigned to Officer B. These appeared to be generic and did not record appropriate oversight of the key points or decision making in relation to the file.
 - f) The investigation plan was not endorsed by Officer A until 27 May 2014, some seven weeks after the file was assigned to Officer B.
 - g) All relevant inquiries for this investigation had not been considered or completed. The investigation appeared to have been solely focussed on the telecommunication data. A number of further statements ought to have been obtained and further enquiries ought to have been completed.
 - h) Some documentation had not been attached to the file, including a record of the conversation between Officer B and the officer who located Reiha after she ran away, a record of the preliminary interview of Reiha by Officer C, and a record of the interview of Mr Back.
 - i) Officer A, in his role as the Child Protection supervisor, should have been aware that the Teachers Council was required to be advised of an investigation of this

¹² The Authority found there was a lack of clarity regarding whether or not this matter was a CPP investigation, as there was no record of that decision. Officer B (and CYF) told the Authority that it was not a CPP investigation, and therefore there was no requirement to complete a joint investigation plan.

nature as soon as possible. It was not necessarily the Police's role to make this notification, but a discussion should have been held with the school and a notification requested.

- j) There was a lack of supervisory oversight and guidance of Officer B throughout the investigation.
- k) Officer A should have told Officer D that he (Officer A) had a conflict of interest due to his role as Chair of the Gisborne Intermediate School Board of Trustees. There was no evidence to suggest this was ever done.

Complaint made to the Authority

115. In April 2017, Reiha's parents complained to the Authority, about the Police Child Protection Team investigation and subsequent Police response to Reiha's death, the Teachers Council Disciplinary hearing and the Coroner's inquest.

116. In summary, the complaint states that:

- a) The outcome of the investigation was pre-determined by Officer A, the officer in charge of the Child Protection Team, who had a conflict of interest in the investigation.
- b) Officer A gave evidence that he did not supervise the investigation but the information on the Police file suggests he did supervise the investigation. This raises serious concerns in relation to his conflict of interest. Officer A was photographed having lunch with Mr Back at the Teachers Council Disciplinary Tribunal hearing, illustrating his support for Mr Back and the extent of his conflict of interest.
- c) The investigation was assigned to an inexperienced constable who was not provided with any guidance or supervision.
- d) The investigation was inadequate because Police failed to collect all the available forensic evidence, Mr Back's interview was unplanned, ad hoc and not recorded, Reiha's interview was not appropriately conducted or recorded and Police failed to share valuable information with health professionals treating Reiha.
- e) The investigation file was reviewed by a detective senior sergeant at the same time as Reiha was in hospital shortly before she died. The File Cover Sheet was amended from version 1 to version 2 while Police were aware the matter could lead to a Coroner's inquest.
- f) After Reiha died, Police did not provide the family with any advice about the right to object to a post mortem examination, and the timing and location of statements obtained from Reiha's parents immediately after Reiha's death was culturally inappropriate.

- g) The information Police provided to the Coroner from the Child Protection file was incomplete and not provided until after the family made submissions to the Coroner, resulting in further direction from the Coroner.
- h) Officer B made an inappropriate comment in a report suggesting that Reiha, a 13 year old girl, could be responsible for 'sucking' a teacher into an inappropriate relationship. The report containing the inappropriate comment was leaked by Police to the media, resulting in the quote being reported in a newspaper. Reiha's parents read the comment for the first time when it appeared in the newspaper.

The Authority's Investigation

THE AUTHORITY'S ROLE

117. Under the Independent Police Conduct Authority Act 1988, one of the Authority's functions is to receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint.
118. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

119. During the course of its investigation, the Authority interviewed six people, including Officer A and Officer B.
120. The Authority has been provided with and has reviewed the Police file, including the spreadsheet containing the text messages and some of the email correspondence between Reiha and Mr Back.
121. The Authority has also obtained information from Child, Youth and Family (now called Oranga Tamariki), the Education Council and the Gisborne Herald newspaper.

ISSUES CONSIDERED

122. The Authority's investigation considered the following issues:
- 1) Was the initial response by the Child Protection Team to the Report of Concern adequate and appropriate?
 - a) Was the initial action and safety assessment adequate?
 - b) Was the case appropriately assigned for investigation?
 - c) Was there adequate supervision of the investigation?
 - d) Was Officer A's conflict of interest managed appropriately?
 - 2) Was the investigation by Officer B thorough and robust?
 - a) Was the investigation plan adequate and were appropriate enquiries conducted?
 - b) Did Officer A provide 'pre-authorisation' for an application for a production order before it was completed?

- c) How was a request for analysis of Reiha's cell phone dated with Officer A's signature on a day when he is known to have been overseas and why did he sign the form after he had declared a conflict of interest?
 - d) Was Reiha's interview conducted in accordance with the Child Protection Protocol?
 - e) Was Reiha's interview appropriately conducted and recorded?
 - f) Was the interview of Mr Back conducted appropriately?
 - g) Was the evidence adequately assessed and recorded?
 - h) Was there an element of pre-determination in the investigation?
 - i) Was the final covering report changed after Reiha's death?
- 3) Did the Child Protection Team effectively communicate with other agencies?
 - 4) Did Police provide the Gisborne Herald newspaper with an internal report?
 - 5) Was adequate support and advice provided to Mr and Mrs McLelland following Reiha's death?
 - a) Was appropriate and timely advice provided regarding post mortems?
 - b) Were requests for statements from family members appropriate?
 - c) Was there adequate ongoing support provided for the family?
 - 6) Was timely and adequate disclosure provided by Police to the Coroner?
 - 7) Did submissions made to the Teachers Council by Officer A regarding name suppression constitute an attempt to pervert the course of justice?

The Authority's Findings

ISSUE 1: WAS THE INITIAL RESPONSE BY THE CHILD PROTECTION TEAM TO THE REPORT OF CONCERN ADEQUATE AND APPROPRIATE?

1(a): Was the initial action and safety assessment adequate?

123. When Police received the Report of Concern from CYF, there were no immediate safety concerns for Reiha. She was in Wellington with her mother and had no access to her cell phone.
124. The initial information received by Police was that:
- Mr Back had been Reiha's Intermediate school teacher. He was 41 years old and she was 13 years old.
 - He had been seen holding Reiha's hand at hospital in circumstances that prompted a Report of Concern from a paediatrician.
 - On 8 April 2014, Reiha had reported to a staff member at Kenepuru hospital that she had been at Mr Back's house without her parents' knowledge.
 - Reiha's mother had seen text messages from Mr Back on Reiha's cell phone which she described as 'over friendly'.
125. On receipt of the file, Officer B made immediate enquiries into the concerning text messages from Mr Back on Reiha's cell phone.
126. When Officer B consulted with CYF, Reiha was still in Wellington. The discussion with CYF included agreeing that there should be no further contact between Mr Back and Reiha.
127. Officer B advised the principal of Gisborne Intermediate School, Mr Y, of the Report of Concern, and asked him to keep the information confidential to avoid prejudicing the investigation. Although there is no record of any discussion with Mr Y about how the safety of other students (still being taught by Mr Back) was being ensured, Mr Y said he did give consideration to that issue at the time.

FINDING

The initial response by the Child Protection Team to the Report of Concern about Reiha was adequate.

1(b): Was the case appropriately assigned for investigation?

128. Officer B commenced working in the Criminal Investigation Branch (CIB) in May 2013 on the Child Protection Team in Gisborne. Prior to this, his previous CIB experience had been a three month secondment to the CIB, also in Gisborne. He completed the Child Protection Investigation course in July 2013 and completed the CIB Selection and Induction course during February and March 2014.¹³
129. Police policy provides that trainee CIB investigators who have completed the CIB Selection and Induction course can be the officer in charge and/or lead investigator in child protection investigations, provided they are under the direction or supervision of a Level 4 qualified supervisor (or a Level 3 qualified investigator relieving in a Level 4 position).¹⁴
130. Officer B had completed the CIB Selection and Induction Course and therefore the case was appropriately assigned to him, subject to adequate supervision being provided.
131. Officer A told the Authority that when assigning a file he would look at the staff capabilities and the courses they had attended, together with file holdings and workload. Officer B was given this file because Officer A thought him to be a capable investigator who could do the job.
132. The Authority is satisfied that assigning the investigation to Officer B complied with policy.

FINDING

The case was appropriately assigned for investigation.

1(c): Was there adequate supervision of the investigation?

133. Officer B told the Coroner's inquest that there were no formal discussions with him about how to manage the investigation.
134. In the Authority's view, this placed Officer B in a difficult situation because he had been advised that Officer A was unable to be involved in the investigation, but no alternative arrangements for supervision were made.
135. Officer B told the Authority he was not concerned that Officer A was unable to supervise the investigation, because two of his colleagues on the CPT were qualified detectives, also qualified to sergeant level. The officers were experienced CPT investigators and had from time

¹³ The 'Child Protection – Specialist accreditation, case management, and assurance' policy provides guidelines for case management to Child Protection investigators and details the roles and responsibilities of staff involved in child protection work. The policy provides a tiered training and accreditation model to ensure families receive the appropriate standard of service. There are four levels starting with recruit training through to CIB supervisors.

¹⁴ A Level 4 qualified supervisor includes a detective sergeant in a substantive position with operational 'sign off' to level 4 from the District Crime Manager. Before obtaining Level 4 sign off, supervisors must have attended an advanced child protection course, which provides specialist training in the investigation of more complex child protection matters.

to time relieved as the CPT supervisor. The officers on the CPT would regularly discuss cases, either in the open plan office or during breaks, to obtain guidance and advice.

136. Officer J, a senior detective on the Child Protection Team, told Police that she was aware of the investigation. She was not personally involved and the specifics were never discussed with her, but *“the design of the Gisborne CPT office (open plan) often meant that general conversations held in the office were overheard and/or participated in by everyone present at the time.”*
137. Officer B also told the Authority that the investigation needed very little supervision as it was a short investigation with limited inquiries and decisions to be made. While acknowledging the level of experience and the supportive environment available to Officer B within the Gisborne CPT, this investigation required the level of supervision provided for in the Police policy (that is, supervision from a Level 4 qualified supervisor or a Level 3 qualified investigator relieving in a Level 4 position).
138. The investigation related to a school teacher sending inappropriate text messages, both in volume and content, to a 13 year old girl already receiving complex medical treatment, and required careful analysis of a large and overwhelming amount of text data and emails. Officer B had only been working in the CIB for about a year.
139. The review of the investigation conducted by Police in August 2016 noted:
- “One tasking and three Supervisor reviews by [Officer A] have been entered after the file was assigned to Officer B. These appear to be generic and do not record appropriate oversight of the key points or decision making in relation to this file.”*
140. The Authority has determined that, while Officer A completed tasks on the file that give the appearance of someone supervising the investigation, these were completed as administrative functions and he did not influence or direct the course of the investigation. Officer A was not providing guidance to Officer B and no other supervision arrangements were put in place.
141. Consequently, the level of supervision on this case did not comply with policy and was inadequate.

FINDING

Contrary to Police policy, the investigation was not adequately supervised.

1(d): Was Officer A’s conflict of interest managed appropriately?

142. The officer in charge of the Gisborne Child Protection Team, Officer A, had a clear conflict of interest in this investigation because he was the Chairman of the Board of Trustees of Gisborne Intermediate School.

143. The applicable policy at that time was the Police ‘Independence of Investigations (safe processes)’ policy. The policy stated that all Police employees must ensure that at all times when undertaking their duties they avoid any potential or actual conflicts of interest, including any perceived conflicts. The policy further provides that:

“...a potential or actual conflict of interest needs to be managed appropriately so as to ensure that the integrity of an investigation is maintained and able to withstand external scrutiny. Every employee must know how to identify a potential or actual conflict of interest and know what they are required to do ... when undertaking an investigation.”

144. It was Officer A’s responsibility to report the conflict to his supervisor, Officer D, in writing.¹⁵ Once supervisors are notified of a conflict of interest, it becomes their responsibility to assess the risk and manage the conflict of interest.¹⁶

145. Officer A told the Authority that he was aware that a conflict of interest should be recorded in writing on a Police form because he had *“done the odd internal enquiry before where these forms were on the paperwork”*, but in this case he *“didn’t send anything in writing”*. Officer A said that he believed he had phoned Officer D before he went on leave, to advise him of the conflict of interest in this case.

146. Regarding the appointment of an alternative supervisor, Officer A told the Authority that:

“It’s debatable whether I appoint that person, having the conflict of interest, but it normally fell to the 2IC ... the next person in the chain of command. I don’t recall that I said to [the 2IC] or anybody else ‘you supervise him’. ...I was basically on my way out the door ... there was an expectancy on my part that that [Officer D] would take over that role or appoint or designate or whatever needed to happen”.

147. However, Officer D told Police that Officer A did not advise him of the conflict of interest:

“I would have expected [Officer A] to recognise a conflict when there was one and to raise it with me as he had raised previous conflicts with me ... had it been raised with me ... I would have dealt with it. It was never raised with me by [Officer B]. It was never raised with me by [Officer A]. I didn’t even become aware of that until things hit the media.... [Officer A] shouldn’t have been anywhere near the decision making around this case ... [Officer A] never went anywhere close to telling me there was a conflict for him with this case.”

148. The Authority is satisfied that when Officer A assigned the investigation to Officer B, he advised Officer B of his conflict of interest and that he was unable to assist Officer B or be involved with the investigation. However, the Authority is also satisfied that Officer A did not advise Officer D of the conflict of interest and therefore the latter made no alternative arrangements for supervision of Officer B.

¹⁵ Officer D, the Eastern District Child Protection and Sexual Violence Coordinator, was based in the Hawkes Bay.

¹⁶ Where a conflict of interest is identified, *“the supervisor must decide on a course of action and document it.”*

149. The complaint before the Authority is that Officer A's conflict of interest was not adequately managed, and that Officer A influenced the investigation, while at the same time supporting Mr Back to continue teaching.
150. Having advised Officer B of his conflict of interest, Officer A failed to ensure he had no further involvement with the investigation, because he completed a number of supervisory tasks on the investigation file such as:
- approving the investigation plan;
 - authorising the forensic examination of Reihā's cell phone;
 - receiving updates and briefings from Officer B; and
 - recording supervisor reviews on the database and forwarding the file to Officer D for filing with a recommendation that there was insufficient evidence to charge Mr Back.
151. In respect of the supervisor reviews, Officer A told the Authority that he had a number of standard reviews he would copy and attach to a file. In this case, although he made an entry that he had reviewed the file prior to filing, this entry was a copy and paste of one of his standard reviews and is incorrect. He did not review the file because he knew he should not be the reviewer.
152. Regarding the investigation plan, Officer A told the Authority that Officer B needed someone to sign it off "*as per required protocol*". He accepted that the plan should have been signed off by Officer D or someone else, but said that although he signed it, he did not make any changes and simply provided Officer B with the authority to carry on with the investigation.
153. Officer A told Police:
- "...I accept that my name is on parts of the file but I still say that I didn't make a decision or influence a decision in any way to either negate him being charged or the opposite to ... try and get him charged."*
154. Officer B has also been very clear in the evidence he provided for the Coroner, and when separately interviewed by both Police and the Authority, that Officer A did not supervise the investigation in any practical sense.
155. Officer B told the Authority that although Officer A signed the file and sent it off for review: *"... he was signing my investigation plan at the end, it doesn't really constitute he's had anything to do with it."*
156. However it is clear to the Authority that Officer B provided Officer A with updates on and received his opinion about the investigation. For example, on the investigation plan, under the heading 'Supervisor Review', Officer B made the following entry: *"[Officer A] has been fully briefed in relation to this file and he supports the decision that there is not enough evidence to charge Back."*

157. The Authority considers that, when Officer A was asked to perform tasks by Officer B (such as authorising the forensic examination of Reiha’s cell phone), Officer A should have recognised that alternative arrangements had not been made to oversee the investigation and he should have taken steps to rectify the situation. Although he was not involved in guiding the investigation or influencing decision making on a day to day basis, by completing some administrative tasks he did not consider how those actions would be perceived by an external observer and did not adequately manage his obvious conflict of interest.
158. Officer B was aware of the conflict of interest and, although he had been placed in a very difficult situation, he also had a responsibility to identify how Officer A’s actions would be perceived by an external observer and manage the conflict of interest. He failed to adequately manage the conflict of interest by involving Officer A in some supervisory tasks, and by providing updates about the investigation directly to Officer A in his capacity as Chairman of the Gisborne Intermediate School Board of Trustees by sending updates directly to Officer A’s Police email address.

FINDING

Officer A’s conflict of interest was not managed appropriately.

ISSUE 2: WAS THE INVESTIGATION BY OFFICER B THOROUGH AND ROBUST?

159. The Authority is satisfied that Officer B gave the investigation the appropriate priority. He was at all times highly motivated to act in the best interests of Reiha and her family and was committed to obtaining the best outcome he could. He completed work on the file when he was off duty and at other times when he was on annual leave. He kept in regular contact with Reiha’s family and proactively sought their views on aspects of the investigation when he considered it might impact on Reiha’s wellbeing.
160. However, additional to the inadequately managed conflict of interest, the Authority has identified deficiencies with the investigation relating to the recording of information and the analysis of evidence.

2(a): Was the investigation plan adequate and were appropriate enquiries conducted?

161. The Child Protection investigation plan is a standard Police templated form which sets out tasks to be considered during child protection investigations. The purpose of the investigation plan is to ensure that a thorough investigation is carried out in accordance with Police policy and good practice guidelines. The investigation plan template provides that the plan must be reviewed regularly by supervisors; it is a living document and should be subject to regular updates and reviews.
162. Officer B maintained that, because this investigation did not qualify as a Child Protection Protocol (CPP) investigation, he only used the Child Protection plan template as an “*aide memoire*” and was not required to complete all aspects of the template. The Authority has not

focused on the requirements of the form, but rather has examined whether the plan followed was substantively adequate.

163. Although Officer B completed an investigation plan at the start of the investigation in April, it was not approved until 27 May 2014, seven weeks after the investigation commenced and when the investigation was nearly complete.
164. The plan was clearly deficient in a number of respects. In particular, it did not identify the need for a number of enquiries that ought to have been made. As the 2016 Police review found, these included obtaining statements from the medical staff who witnessed the initial inappropriate contact, Reiha's parents, Mr Back's partner and a friend of Reiha. The Review's conclusion, with which the Authority agrees, was that *"all relevant enquiries for this investigation have not been considered or completed. The investigation appears to have been solely focussed on telco data."*
165. Officer B told Police that he considered talking to Reiha's sister but he was advised by Reiha's mother, Mrs McLelland, that she had spoken to Reiha's sister and nothing had come out of it. He also considered talking to Reiha's friends and discussed this with the family, but the family did not want to further embarrass or distress Reiha.
166. Officer B told the Authority that after reading text messages on Reiha's cell phone:

"...there were a number of text messages on there I wasn't happy with and that ... a production order would show there's inappropriate behaviour and possibly leading to a sexual grooming offence ... I then received text messages from Reiha's, Sam's and [Sam's partner]'s phone. Once I started going through those it's not the case at this particular time so therefore all the evidential material I thought I had with the inappropriate text messages that I first started reading, started to get less and less. So by the time I got through I had no grounds then to go and search his house because the evidence I formed my initial production order on was now less."

167. Officer B also said:

"...if you look at the ingredients of grooming, it's about ... meeting that person for the purpose of a sexual contact. The difficulty I had right at the beginning was I could never find any text messages to say ... there's a sexual element. So I was relying more on the fact that I needed to prove that the text messages were more than inappropriate, they were of a sexual nature and that was my stumbling block ... so for me it would be something ... that actually shows there's been a physical contact of a sexual nature. That's what I was looking for."

168. Officer B told the Authority that he did not need to seek advice from either Police Legal Services or experts at Police National Headquarters because *"what I need to prove for sexual grooming is really clear, [that] there was a sexual contact or sexual conduct and there wasn't any."*

169. The Authority believes Officer B's approach was too narrow. While no explicitly sexual language was used, the messages had obvious sexual overtones.
170. The Authority notes that the deficiencies identified above went unnoticed and uncorrected because of the inadequate supervision of Officer B, as discussed in Issue 1(c) of this report.
171. In addition to the further enquiries that ought to have been conducted relating to Mr Back's contact with Reiha, the Authority's view is that, after the analysis of the text message and email data had been completed, the evidence available to Police was sufficiently concerning that Officer B should have sought further expert advice regarding Mr Back's behaviour and explored the possible need for further proactive enquires to establish if there had been any contact of this nature by Mr Back with other children. Again, this may have occurred if there had been adequate supervision of the investigation by a more experienced officer.

FINDINGS

The investigation plan was inadequate for the circumstances of this particular case and not all appropriate enquiries were conducted.

2(b): Did Officer A provide 'pre-authorisation' for an application for a production order before it was completed?

172. During the investigation, Officer B obtained production orders under the provisions of the Search and Surveillance Act 2012, for the purpose of obtaining text data and content from telecommunications companies.
173. In accordance with protocols agreed between Police and the telecommunications companies, officers obtaining information from a telecommunications company pursuant to a production order are required to have the application approved by a 'District Approver' to ensure that the matter under investigation is sufficiently serious to justify the resource and the information sought does not make unreasonable demands on the telecommunications provider.
174. Approval for all the production orders obtained for this investigation complied with policy and was provided by the officer in charge of the Criminal Investigation Branch in Gisborne at that time. The Authority is satisfied that Officer A did not 'pre-authorise' the application for a production order before the grounds for the application had been determined.

FINDING

Officer A did not provide 'pre-authorisation' for an application for a production order before it was completed.

2(c): How was a request for analysis of Reihā's cell phone dated with Officer A's signature on a day when he is known to have been overseas and why did he sign the form after he had declared a conflict of interest?

175. In addition to requesting text data from the telecommunications companies, Officer B also arranged for the Police Electronic Crime Laboratory (ECL) to download all the photo and video data and emails, from Reihā's cell phone.
176. Exhibits submitted to the ECL for analysis must be accompanied by the Police 'E-Crime Exhibit Examination Request' form. The request for analysis must be authorised by a supervisor by signing the applicable part of the form. The E-Crime Exhibit Examination Request form which accompanied Reihā's cell phone had three different dates recorded on it. The form itself is dated 5 May 2014. Officer B signed the form on 23 April 2014. Authorisation for the analysis was provided by Officer A and his signature is dated 23 April 2014, a date when Officer A was overseas.
177. Officer B told the Authority that he would have completed the form online, printed the document then presented it to Officer A for signing. Officer B was unable to explain why Officer A's signature is dated on a day he was not in the office and told the Authority: *"I can't say much about the date. That could be a typo on my behalf, I don't know."*
178. Officer B accepted that he probably did not give sufficient thought to whether or not Officer A was the appropriate person to sign the form authorising analysis but did not consider it an issue because Officer A was giving permission to get the phone analysed which is contrary to any accusations that he tried to *"dumb down"* the investigation to protect Mr Back.
179. Officer A told the Authority that he does not recall signing the form and cannot explain why his signature is dated on a day when he was overseas. He accepts that, due to his conflict of interest, he should have advised Officer B to find someone else to authorise the analysis. He said that although it was not good practice for him to sign the form, it would have been done to expedite the matter.
180. Other than it being an error in the recorded date, the Authority is unable to explain how Officer A appears to have signed the Police 'E-Crime Exhibit Examination Request' form on a day when he was overseas. The E-Crime Exhibit Examination Request form is an example of recurring deficiencies on the investigation file relating to an inadequately managed conflict of interest and poor recording of information.

FINDINGS

The Authority has been unable to determine how a request for analysis of Reihā's cell phone was dated with Officer A's signature on a day when he is known to have been overseas.

Officer A should not have signed the form, since he had declared a conflict of interest.

2(d): Was Reiha's interview conducted in accordance with the Child Protection Protocol?

181. In 2014, the Child Protection Protocol (CPP) provided that all CPP cases will have an agreed joint investigation plan which must consider the management of the initial interview of the child.
182. While Officer B did consult with CYF at the start of the investigation, he told the Authority that his reason for not involving CYF in Reiha's interview was because:

"...there was no joint investigation between us and CYF at the time so we didn't need to involve CYF and ... we would've spoken to mum. It's that whole softly, softly approach. I think the more people you bring in ... we didn't need to bring in CYF but the more people you bring, the more stress it was putting on Reiha so we just tried to do things as softly as we could, but they didn't need to be involved anyway."

183. There is no record on the file of whether or not this matter was accepted as a Child Protection Protocol case. Both Officer B and CYF advised the Authority that the matter was not investigated pursuant to the CPP. This means that there was no requirement under the CPP for Officer B to consult with CYF regarding Reiha's interview.

FINDING

Reiha's interview was not required to be conducted in accordance with the CPP.

2(e): Was Reiha's interview appropriately conducted and recorded?

184. The complaint received by the Authority was that prior to Reiha's interview, Police should have consulted with the medical professionals involved in Reiha's care and that Reiha's interview should have been conducted or overseen by a psychologist.
185. A forensic interview is a recorded interview that complies with the Evidence Regulations 2007 and can be used as evidence in court.
186. Officer B arranged for the interview to be conducted by Officer C.¹⁷ Officer C was an appropriately trained, qualified and experienced forensic evidential interviewer pursuant to the Evidence Regulations.
187. The applicable Police policy in 2014 was the 'Video recorded forensic interviews with at risk children and young people'. The policy on preparing for a forensic interview, including the pre-interview discussion with the child, included the following:

"Depending on the child's age and level of maturity, the interviewer or monitor will endeavour to explain to them about the interview procedure, its recording and use. It is desirable that any discussion with the child is recorded in writing."

¹⁷ Officer C is no longer a Police employee.

It is useful if any discussion with the child is monitored. The child may need some time to settle and familiarise herself with the surroundings before the interview begins.”

188. There was no law or Police policy that required the interview to be conducted or overseen by a psychologist. The Authority notes that the complaint also stated that a psychologist had offered to attend the interview, but Reiha had refused.
189. Officer B told Police: *“...the interview didn’t get past the introduction stage. Reiha just closed down and neither of us could get her to open up.”* The record of the interview on the Police electronic file stated: *“Prelim interview conducted with Reiha by [Officer C] on the 14th May 2014, no criminal disclosure made.”*
190. The Authority has not seen any documentation recording Officer C’s interaction with Reiha. The 2016 Police review of the investigation also noted that there was no report or notes attached to the file regarding the pre-interview discussion with Officer C.
191. However, in an email sent by Officer B to Mr Y and Officer A on 22 May 2014, Officer B reported what Reiha had confirmed to Police about her relationship with Mr Back (as outlined in paragraph 54 above).
192. While Reiha declined to provide a formal evidential interview, she clearly did provide either Officer C or Officer B with information that was relevant to the investigation. A report of the preliminary interview with Reiha should have been prepared by either Officer B or Officer C and attached to the file.
193. The poor recording of the preliminary interview is an example of deficiencies with the recording of information during the investigation.

FINDINGS

It was appropriate for Officer C to conduct the interview.

The information from Reiha’s preliminary interview was not appropriately recorded.

2(f): Was the interview of Mr Back conducted appropriately?

194. In 2014 the Police ‘Investigative interviewing suspect guide’ provided that:¹⁸

“Investigators must attempt to gain as much information as possible to establish the truth of the matter under investigation. Interviewing the suspect may provide valuable information not obtained from other sources.”

195. Regarding the initial approach to a suspect, the guide stated:

¹⁸ The guide provided a definition of suspect as: *“...‘suspect’ in relation to an offence, means any person whom it is believed has or may have committed that offence, whether or not: (a) That person has been charged with that offence; or (b) There is good cause to suspect that person of having committed that offence.”*

“If required caution the suspect. ...If they are not arrested or detained ask them to accompany you to the police station for interview. Gain informed consent by ensuring they understand they do not have to accompany you and are free to leave at any time. Keep accurate records of all interactions with the suspect using your notebook. If they make admissions or discuss the allegations, record what is said and get them to expand on that. Get as much detail as possible.”

196. When Officer B spoke to Mr Back for just over an hour at the Gisborne Police Station, the interview was not formally recorded.

197. Officer B told the Authority:

“...In the back of my mind, I’m thinking I need this for the family. I need to be able to get his version of events. I don’t want to have to go back to them and say well, I tried to talk to him and he gave us nothing. So the way I did it was I wrote some notes on what I wanted to talk to him about. I had various number of text messages that I was unhappy with on that spreadsheet ... and I just wanted him to talk. So when he came to the station I took him to a front room which was not a video room because I didn’t want him to feel ... uncomfortable. I introduced myself. I explained to him there had been an investigation. I explained to him he wasn’t under arrest and he was free to leave. I didn’t want that to cloud anything. ... He explained himself. I let him have his say. I then asked him the hard questions. I then put emails and texts to him. I asked for explanations. He [provided] self-serving explanations and got a bit emotional. I put it on hard, he cried....”

198. Officer B advised the Authority that he did not record the actual questions asked and the responses provided. He made notes but these were recorded on a notepad rather than in his notebook. The Authority has not seen any record of the interview other than typed notes made by Officer B immediately following the interview and subsequently placed onto the Police electronic file.

199. Officer B told the Authority:

“I didn’t want to sit there officially writing things in a notebook because he’s a teacher. My opinion was if I was to go in there ... official sounding and official looking ... my fear was that he would just clam up and want a lawyer and not speak. So what I tried to do was minimise the environment as best I could to allow him to speak and that’s what I did.”

200. Mr Back gave evidence at the Coroner’s inquest. The Coroner told the Authority that she thought that Mr Back would have been an incredibly difficult interviewee, even for an experienced detective, because *“his ability to prevaricate and minimise and deflect was extraordinary.”* The Coroner also stated in her findings: *“He struck me as entirely concerned for and focussed on his own needs and circumstances and lacking any insight into the impact of his conduct on Reiha.”*

201. Officer B made the following record of the interview in the Police electronic file:

“Advised him of the recent investigation and that I wished to speak to him about his friendship with Reiha McLelland. BACK was open and upfront about his friendship with Reiha stating that it was exactly that, a friendship.

The friendship had begun at the end of the school term prior to Reiha leaving. A friend of Reiha’s had disclosed [confidential information about Reiha]. Over the final few weeks of the school term BACK has been able to reach out to Reiha to gain her trust, unfortunately this has occurred as school has finished for the year.

Back has remained in contact with Reiha and has allowed her to visit his home address on the understanding Reiha’s parents were informed. Unfortunately Reiha has been able to convince BACK that her parents were aware and approved of her visits, something her parents knew nothing about.”

202. The Authority considers that this is an inadequate record of an interview which lasted for more than an hour. Furthermore, text messages sent by Mr Back to Reiha indicate that Mr Back was fully aware that Reiha was keeping the visits a secret from her parents. Mr Back also sent messages to Reiha asking her to be careful what she tells people about him, and arranged to meet up with her while his partner was away on holiday in the South Island during the first week of January 2014 (refer to examples above in paragraph 66).
203. There is no record of Mr Back being asked to provide an explanation for any of these messages. The Authority is therefore unable to determine exactly what questions Officer B put to Mr Back.
204. The Authority acknowledges that the investigation required time-consuming analysis of an unusually large and significant amount of data. The Authority also agrees with Police that prior to the interview there was insufficient evidence available to Police to charge Mr Back with a criminal offence.
205. However, the text messages from Mr Back to Reiha were sufficiently concerning that the Authority considers Officer B ought to have asked Mr Back to provide an explanation for the content of some of the more concerning messages, and fully recorded any explanation provided.

FINDING

The interview of Mr Back was not conducted appropriately.

2(g): Was the evidence adequately assessed and recorded?

206. Officer B made a number of statements to various people throughout the investigation about the nature of Mr Back’s contact with Reiha.
207. For example, in his email dated 16 June 2014, which was sent to Officer A and provided to Gisborne Intermediate School, Officer B stated:

“Once I had received all of the text and email data and I looked beyond my initial fears I began to see that Reiha had indeed reached out to her teacher at the time for help and support. He is the first to admit that he found himself overwhelmed at times with the amount of contact he had with Reiha and that both he and [his partner] had felt a sense of relief when the Police became involved”.

208. In the same email Officer B also makes the comment, later reported by the media, that:

“In relation to Sam I genuinely believe he had Reiha’s best interests at heart, yes he has made some questionable decisions but when you look at the facts as a whole it is easy to see how he quickly got sucked into a situation he had very little chance of controlling.”

209. Given the content of the text messages and emails sent by Mr Back to Reiha, it is difficult to understand the rationale for these comments. It is unclear if the comments resulted from a poor analysis of the evidence or a lack of experience, combined with no supervision. It is also possible (given the comments of the Coroner), that Officer B was just fooled by Mr Back. Whatever the reason, the Authority believes Officer B should have been far more circumspect of Mr Back’s explanations when assessing them in the light of the other available evidence. Nor has the Authority seen any documentation with detailed analysis by Officer B of the text and email data.

210. Officer B provided evidence for the Coroner that on receipt of the text information from the telecommunication companies, he sent the information to an analyst to be extracted onto an excel spreadsheet for easier reading and received the excel spreadsheet on 5th May 2014. The spreadsheet contained over 190 pages of text data content which he *“then had to analyse”*. He further stated:

“By 15 May 2014, although I had received the text message data as a result of the production order it had not yet been fully analysed by me. ...The full analysis of the text message and e-mail data was completed by 3 June 2014.”

211. The Authority has received copies of the excel spreadsheets but has not seen any document recording any further analysis of the text message data Officer B refers to in his evidence.

212. In this context, ‘analysis’ required identifying any messages judged as being of obvious concern, and any messages judged as being potentially of concern, and recording these in a manner that allowed the messages to be evaluated and referred to without having to search through 190 pages of data. If this analysis was done, it has not been provided to the Authority and does not appear in written form on the Police file.

FINDING

Officer B did not adequately assess and record the evidence.

2(h): Was there an element of pre-determination in the investigation?

213. The complaint before the Authority is that the outcome of the investigation was pre-determined and that at the start of the investigation, Officer B told Reiha's family that Officer A had said the investigation was unlikely to lead to anything.

214. Officer A denies saying this and told the Authority: "...that's just a nonsense ... I'd been working in the Police for 22 years at that stage so there's no way that we'd be saying that...." Officer A pointed out that: "...if I wanted to influence Mr Back getting off, why would I sign a form to authorise him being investigated?"

215. Officer A also stated:

"...I wasn't mates with the teacher ... I wasn't friendly with him ... I pride myself on being objective and if it meant the guy went to prison, he went to prison. ... An investigation had to take place. If there was evidence to support a conviction then so be it."

216. One of the issues raised in the complaint is that Officer A supported Mr Back, evidenced by the fact that they had lunch together during the Teachers Council Disciplinary Tribunal hearing.

217. However, Officer A told the Authority:

"I went to lunch. I had got my lunch, Mr Back turned up. I had my lunch, there were other teachers who came with us so my guess is they probably texted him something. I didn't text him, I didn't send a note to him, I didn't want to really see him, I was with the current principal at the time and I was eating my lunch. He turned up...."

218. Mr X, the school principal at that time, accompanied Officer A to the hearing to represent the school. Mr X told Police that two teachers from the school were also at the hearing, supporting Mr Back. Mr X and Officer A went for lunch with the two teachers, not realising that one of the teachers had been in contact with Mr Back, advising him where they were going for lunch. Mr X and Officer A were completely unaware that Mr Back was going to turn up. Mr X was not comfortable with the situation when Mr Back arrived, so he discreetly suggested to Officer A that they leave, which they did.

219. The Authority found no other evidence to suggest that Officer A assisted or tried to protect Mr Back. Therefore the Authority is satisfied that, although Officer A did not adequately manage his conflict of interest, he did not support Mr Back through the investigation or have a pre-determined view of the likely outcome.

220. The Authority has not found any evidence to suggest that Officer B conducted the investigation in the expectation that no offences would be uncovered. On the contrary, when he received the file for investigation he applied for production orders to obtain text data from

the telecommunications companies because he suspected that an offence may have been committed.¹⁹

221. The Coroner who held the inquest into Reihā's death told the Authority that her recollection of Officer B was that he was *"earnest and inexperienced. When he gave his evidence my impression was that he ... had absolutely no guidance"*. In her findings the Coroner describes the investigation by Officer B as *'comprehensive'* and considers that, having not been provided with instructions regarding an alternate supervisor, it was to his credit that he ran a comprehensive investigation in those circumstances.
222. Regarding the comments made by Officer B that Mr Back *"got sucked into a situation"*,²⁰ the Coroner told the Authority: *"his email is incredibly poorly framed ... but that was the worst of it ... I didn't have a sense that that was the perspective he took ... he didn't approach his enquiries in that way."*
223. Although the Authority has identified some deficiencies with the investigation, the Authority is satisfied that the outcome was not pre-determined. Officer B was sincere in his investigation into whether or not Mr Back had committed a criminal offence.

FINDING

The outcome of the investigation was not pre-determined.

2(i): Was the final covering report changed after Reihā's death?

224. When a Police file is created, a Case Cover Sheet with a version number is printed. The Case Cover Sheet is a computer generated report providing information about the file including the file number, who the file is assigned to, where the incident occurred, details of the people involved and case statistics. The cover sheet also includes the identity of the officer who prints the report and the time and date it was printed. When a new Case Cover Sheet is printed, the version number changes.
225. The Case Cover Sheet attached to this investigation file is labelled version 2. The cover sheet was printed by Officer D on 1 August 2014, at 1.44pm, soon after Officer B was re-assigned the file at 1.41pm.
226. The complaint before the Authority is: *"Why was the report changed? And where is version 1?"*
227. Officer D told the Authority that his usual practice when reviewing files and sending the file to another District, or back to Gisborne, is to print off another cover sheet with the updated case assignment, showing who the case is assigned to.

¹⁹ Ill treatment or neglect of a child pursuant to section 195 of the Crimes Act 1961.

²⁰ Email to Officer A dated 16 June 2014.

228. Officer D's file review was entered on the electronic file notes. He recorded that following a review of the file, he was returning the file to Officer B for further action relating to notifying the Teachers Council of the investigation and the Police's concerns about the contact by Mr Back with Reiha.
229. Version 2 of the Case Cover Sheet shows that the file was assigned to Officer D at 8.34am on 31 July 2014 then assigned back to Officer B at 1.41pm on 1 August 2014.
230. The Authority is satisfied that the version number of the Case Cover Sheet automatically changed when Officer D printed a new coversheet when he assigned the file back to Officer B. Although there was a new version number on the Case Cover Sheet, this does not mean that the content of the investigation file was changed.

FINDING

Although the version number of the Case Cover Sheet changed, the content of the final covering report did not change after Reiha's death.

ISSUE 3: DID THE CHILD PROTECTION TEAM EFFECTIVELY COMMUNICATE WITH OTHER AGENCIES?

231. Police 'Child protection' policy and investigation guidelines provide the principles that guide Police in responding to child abuse, and apply to all cases where the victim is under the age of 17 at the time the complaint is made. The policy applicable in April 2014 included the Child Protection Protocol (CPP), dated 18 October 2013.²¹
232. In October 2013, the CPP set out the way that CYF and New Zealand Police would work together in situations of serious child abuse. In April 2014, 'serious child abuse' was defined as sexual abuse, serious physical abuse and serious neglect.
233. The policy requires that CYF and Police staff at the local level share information about a referral (Report of Concern) and discuss what approach is to be taken. The consultation is to be clearly evidenced and recorded. In cases where the child or young person is at risk of harm, but protected in the short term, the policy provides that the timeframe for consultation is two working days. The CPP defines the roles of each organisation and the process for working together. Where CYF and Police agree that the case is to be investigated under the CPP, there must be an agreed joint investigation plan using an agreed national template.
234. The CPP also describes situations which do not require management using the processes agreed in the CPP, but where routine engagement between CYF and Police will continue as part of normal case work. The CPP notes that "*any case may be referred under the CPP at any time if new information means the case may meet the definition of serious child abuse.*"

²¹ See paragraphs 299-307 below for more information on the CPP.

235. On the Gisborne Child Protection Team, it was Officer A's responsibility to ensure that the initial consultation occurred, and that the decision regarding whether or not the case was to be investigated under the CPP was recorded on the Police file.
236. On 7 and 8 April 2014, Officer A received information from a number of sources (the Report of Concern, Mrs McLelland and Ms Z) relating to Mr Back and Reiha. He assigned the investigation file to Officer B on 9 April 2014. There is no record of Officer A consulting with CYF prior to assigning the file for investigation. Officer A told the Authority he may have consulted with CYF before he went on leave on 10 April 2014, but does not recall doing so.
237. Officer B consulted with CYF a week after receiving the investigation file, while Reiha was still in Wellington. The consultation was fully recorded in an exchange of emails between Officer B and the Gisborne CYF supervisor. However, there is no record on the Police file to indicate if the matter was accepted as a CPP investigation or not.
238. Officer B told Police that, after consulting with CYF, he determined that there were no care and protection issues for CYF to manage but he could not rule out that it was not a CPP matter and *"it remained a CPP file"*.²² Officer B did not further consult with CYF during the investigation, although CYF had requested that Officer B keep them updated with progress.
239. Following Reiha's death, CYF completed an internal review of the case. The review found that when the Report of Concern was made, it was discussed with Police and found not to meet the CPP criteria. There was some confusion following this agreement, however, as subsequent CYF case notes refer to CPP consultations with Police.
240. CYF advised the Authority that the internal review of the case determined that Police and CYF discussed the case on a couple of occasions in May 2014 at the CPP monthly meetings (which did not involve Officer B). The decision made was that CYF would remain available to the family if needed, but, as Reiha had returned to her parents care, there was no need for any follow up from CYF. CYF advised the Authority that it followed the direction of Police and Health officials that CYF involvement was likely to cause Reiha further distress.
241. It is evident that during the investigation there was a lack of clarity regarding whether or not the case was accepted as a CPP joint investigation. In the Authority's view, the circumstances of this case did not meet the criteria at that time for a CPP investigation.²³ In light of that, the Authority is satisfied that Police communication and consultation with CYF was adequate.
242. In 2014, the scope of the Child Protection Protocol (CPP) was narrower than it is currently and made no reference to a multi-agency approach (where agencies such as schools and health professionals, are included in the investigation process). The current CPP is broader in scope in terms of cases that will be accepted as a CPP matter and, for cases that are accepted as CPP matters, now requires that a multi-agency approach is considered.

²² During the investigation he formed the opinion that the issues raised would be more appropriately dealt with as employment matters, as opposed to a CPP investigation, but that this did not alter the manner in which the criminal investigation was conducted.

²³ See paragraphs 299-307 below for relevant policy.

243. When Reiha returned to Gisborne, she was under the care of Health services. Officer B told the Authority he did not consider a multi-agency approach to the investigation because CYF were not involved (as there were no care and protection issues), and Reiha's parents were in regular contact with the health professionals and were advising him that Reiha was doing well and there was no cause for concern.
244. Officer B was focussed on establishing whether a criminal offence had been committed by Mr Back but did not consider the wider implications and how evidence, particularly the text message and email data, might be relevant for other agencies. The Authority considers that this reflects in part the 'Child protection' policy and practice at that time but may also be an outcome of a lack of experienced supervision of the investigation.
245. Officer B did communicate with Gisborne Intermediate School throughout and kept the principal informed of the progress of the investigation. Although communication with the school was timely, the Authority considers that the information provided by Officer B about the nature and content of the emails and text messages from Mr Back to Reiha was inadequate. As a result, the school was not in a position to properly assess whether further action needed to be taken to ensure the safety of other students.

FINDINGS

The Police's initial consultation with CYF was delayed, and Police did not record a decision regarding whether the investigation was to be conducted under the CPP.

Since this case did not meet the criteria for investigation under the CPP, the Police's communication with CYF was adequate.

Police policy at the time did not require a multi-agency approach. There was a lack of consideration of how the information held by Police might be relevant for other agencies.

ISSUE 4: DID POLICE PROVIDE THE GISBORNE HERALD NEWSPAPER WITH AN INTERNAL REPORT?

246. The quote attributed to the investigating officer in the Gisborne Herald Newspaper on 5 March 2016 (see paragraph 110 above), was taken from a lengthy internal report written by Officer B and dated 16 June 2014. The report was emailed to Officer A, and is a summary of the investigation with Officer B's recommendation regarding charges.
247. The complaint received by the Authority is that the internal report was leaked to the media by Police. The basis of this assertion is that the statement was never presented at the Teachers Council Disciplinary Tribunal and the quote does not appear in any media release attributable to the investigating officer. Officer A was quoted in the same article in relation to the Teachers Council Disciplinary Tribunal's decision, and the complaint suggests that the lifting of name suppression and leaking of the report was an attempt to distance Gisborne Intermediate School and Officer A, as Chairman of the Board, from the teacher.

248. In his evidence to the Coroner, Officer B stated that he did not know how the newspaper got hold of the quote.
249. Officer A told the Authority he did not provide the Gisborne Herald Newspaper with a copy of the internal report. He also told the Authority he received a copy of the report as a member of the Board of Trustees, and the Teachers Council was provided with a copy of the report as part of the information released by the school during the disciplinary hearing process. The Board of Trustees sought legal advice before releasing information to the Teachers Council and the report was released following that advice.
250. The Authority spoke to the Editor of the Gisborne Herald Newspaper. He advised that the reporter who compiled the story cannot recall how the statement was obtained, but the story was a hearing report and the reporter would not have introduced a statement from Police into a hearing report. The Police reporter for the newspaper also advised he did not receive the comment from Police.
251. The Authority obtained transcripts of evidence from the Teachers Council Disciplinary Tribunal hearing. Mr Back was represented by legal counsel, Ms V. In her opening submissions to the Tribunal, Ms V referred to the body of text messages and emails and said:
- “... [Officer B] finished his [16 June 2014] report with ‘In relation to Sam, I genuinely believe he had Miss [redacted]’s best interests at heart. Yes, he made some questionable decisions but when you look at the facts as a whole, it is easy to see how he got sucked into a situation he had very little chance of controlling’.”*
252. The Chair of the Disciplinary Tribunal has confirmed for the Authority that a representative of the press was present for at least part of the hearing.
253. The Authority is satisfied that Police did not provide the Gisborne Herald Newspaper with a copy of the internal report and considers it likely that the quote was obtained from the opening submissions of Mr Back’s legal counsel.

FINDING

Police did not provide the Gisborne Herald newspaper with an internal report.

ISSUE 5: WAS ADEQUATE SUPPORT AND ADVICE PROVIDED TO MR AND MRS MCLELLAND FOLLOWING REIHA’S DEATH?

5(a): Was appropriate and timely advice provided regarding post mortems?

254. Reihā’s parents complained that Police did not advise them they had the right to object to a post mortem on cultural grounds.

255. Reiha died in hospital on Friday 1 August 2014. When a person dies in hospital, the hospital reports the death in the first instance to the Coroner. The Coroner confirms if the matter falls within the Coroner’s jurisdiction, and if the Coroner accepts jurisdiction the Police are involved and act as agents for the Coroner to obtain the information required.
256. Reiha’s death was reported to the Coroner by hospital staff. Hospital staff knew the family objected to a post mortem examination and advised the Duty Coroner accordingly.
257. Officer E met with Mrs McLelland on Saturday morning from around 8.40am. He obtained a signed statement from Mrs McLelland and recorded on the statement that Mrs McLelland objected to a post mortem. The statement, together with a report prepared by Officer E supporting the family’s objection, was forwarded to the Duty Coroner later the same day.
258. The Authority is satisfied that when Police obtained statements from Reiha’s parents, they were aware that the family objected to a post mortem and they communicated this fact to the Coroner. It was not necessary for Police to provide advice when Reiha’s parents had already taken the opportunity to raise their objection.

FINDING

There was no need for Police to provide advice regarding the family’s right to object to a post mortem, because Police were aware that the family had raised their objection.

5(b): Were requests for statements from family members appropriate?

259. Reiha’s parents complained that it was inappropriate for Police to ask them to provide signed statements at the Gisborne Police Station the day after Reiha had died.
260. Reiha was admitted to hospital late in the evening on Thursday 31 July 2014, following an incident at her home address. Sometime around midnight, Officer E and another officer went to Gisborne Hospital to obtain more detail about the incident prior to going to Reiha’s home to complete further enquiries.
261. Officer E spoke to Reiha’s mother, Mrs McLelland, and obtained some brief information only. The other detective, Officer F, spoke to Reiha’s father, Bruce McLelland, and obtained a full statement.²⁴
262. Reiha died in hospital on Friday 1 August 2014. After a death is reported to the Coroner, Police provide the Coroner with information about the death provided on a standard Police template form entitled ‘Initial Report for Coroner’.
263. The Police ‘Sudden Death’ policy advises officers to: *“Refer to the report’s prompts and aides and cover the circumstances of the death and events leading up to it in a way that will allow*

²⁴ Mr McLelland signed the statement at 10.50am on 2 August 2014 in the presence of Officer E.

the Coroner to have a clear understanding of events.” The policy requires that the report is completed and forwarded as soon as practicable and before the end of the shift.

264. In relation to obtaining statements, the policy states: *“If the death is not suspicious, obtain statements as soon as practicable (notebook statements are not acceptable).”*

265. On the Police ‘Initial Report for Coroner’ form, the prompt regarding statements sets out that:

“You are required to obtain statements, preferably written A4 statements, from ... relevant next of kin/witnesses who can comment on Deceased’s background/any issues or evidence that may support the cause or circumstances of death.”

266. Officer E was advised of the death when he arrived for work at 7am on Saturday 2 August 2014, and assumed responsibility for completing the initial Police file for the Coroner.

267. Soon after arriving at work, Officer E met Mrs McLelland at the Gisborne Police Station and obtained a written statement. He started recording the statement at 8.41am and it was signed by Mrs McLelland at 10.45am. The statement was forwarded to the Duty Coroner later that day.

268. In 2017, Officer E told the Authority that he could not recall how the arrangement to meet Mrs McLelland at the Police station was made. This is understandable given the time that has passed. Officer E recalled that Mrs McLelland was understandably upset, but he did not recall any objection to meeting at the Police station. In relation to the timing of the statement, Officer E told the Authority that interviewing in such circumstances is an extremely difficult time for everyone, but necessary.

269. Given the particular circumstances of this matter, the Authority is of the opinion that it was reasonable in the circumstances to request early statements from Reiha’s parents. This was done to inform the Coroner of the circumstances of the death, so that decisions could be made regarding a post mortem and release of Reiha’s body.

270. It is unclear, however, why the statement was obtained at the Gisborne Police station. The Authority makes the observation that in this situation, it would have been preferable for Police to arrange for statements to be obtained from family at the hospital to enable family members to remain as close as possible to Reiha and take account of their cultural practices.

FINDINGS

It was appropriate for Police to request statements from family members, but it would have been preferable to obtain the statements at the hospital rather than the Police station.

5(c): Was there adequate ongoing support provided for the family?

271. The complaint before the Authority is that no support or advice was offered to the family following Reiha's death, Victim Support was not notified and advised to contact the family, and a Police officer was not assigned to support the family during the inquest process.
272. Victim Support is an independent organisation utilising volunteers to support people impacted by a crisis. The volunteers are managed by a paid coordinator who is located within a Police building but entirely separate from them.
273. Victim Support has confirmed to Police that it was notified of the incident involving Reiha at 12.25am on 1 August 2014, on instruction from the Tolaga Bay Police officer. Victim Support also advised Police that they had made contact with the family.
274. In terms of ongoing support for the family, the Coroner advised the Authority that responsibility for this rests with the Coronial Services Office for both the period leading up to an inquest and during an inquest. When a matter is going to an inquest, Police will often assist the Coroner, for example by meeting family and going through the file with them, but only at the request of the Coroner.
275. In this particular case, the Coroner confirmed for the Authority that she wrote to Reiha's family soon after Reiha's death to advise that she had opened an enquiry and who to contact if the family had any queries.
276. The Coroner also made the point to the Authority that it is a valid criticism of the system that the Coronial Services Unit does not have the capability to be proactive about contacting families to provide updates.
277. The Authority acknowledges that Reiha's family have raised a valid issue regarding the support available for families in circumstances such as this, and accepts that following Reiha's death, there was no proactive support provided for the family for the inquest process. However, the Authority is satisfied that the lack of support is not attributable to any neglect of duty by Police.

FINDINGS

There was a lack of ongoing support for the family during the inquest process, but this was not due to any neglect of duty by Police.

ISSUE 6: WAS TIMELY AND ADEQUATE DISCLOSURE PROVIDED BY POLICE TO THE CORONER?

278. On 19 April 2016, the Coroner held a pre-inquest teleconference. Mr and Mrs McLelland were represented by legal counsel, Ms U. During the teleconference Ms U advised the Coroner that, while the evidence provided by Police to the Coroner included copies of written and electronic communication between Reiha and Mr Back, she believed there were many more documents

of that kind that had not been copied to the Coroner by Police. The Coroner tasked an officer to locate the documents and make them available to the inquiry no later than 29 April 2016.

279. On 21 June 2016, after receiving and reviewing all the emails and text messages exchanged between Mr Back and Reiha, the Coroner issued a minute directing that the text and email data obtained by Police in the course of the child protection investigation were to be included in the bundle of evidence at the inquest. The Coroner considered that the information was relevant to the circumstances of Reiha's death and *"provides significantly greater insight/context than the Summary of Facts agreed for the Teachers Council Disciplinary Tribunal."*
280. Reiha's parents complained to the Authority that:
- the Police disclosure of information was unsatisfactory;
 - Police argued they had provided all the relevant documentation, but the documents did not include all the text messages and, had it not been for the Teachers Council Disciplinary Tribunal hearing, the family would not have known about all of them; and
 - the text messages were so clearly relevant that either Police were attempting to cover things up, or Police training is poor.
281. In addition to this, the family had some difficulty obtaining an email from Officer B to Officer A dated 20 May 2014, which was not part of the child protection file and that Police claimed had been deleted from the computer system.
282. In relation to the failure to disclose all of the text messages to the Coroner, the officer obtaining the information for forwarding to the Coroner relied on the Child Protection Team to provide him with the relevant information.
283. Officer B was tasked with forwarding the relevant information and provided a formal written statement. The evidence he provided about the child protection investigation for the Coroner accurately described the volume of data.
284. The Authority considers that the failure to provide all of the data is a consequence of the inadequate analysis originally undertaken and the Police failure to recognise the significance of the information they received. The Authority is satisfied it was not a deliberate attempt to withhold information.
285. In relation to the email dated 20 May 2014, Officer B told the Authority that he did not know why the email was missing from the original file and he was certain the file was complete when it was sent for filing. Officer B was aware that the file had been pulled apart a number of times and thought this might explain how the email was no longer attached to the file. For some reason the email was also not stored on the electronic file. Officer B eventually retrieved the email after the Police IT group was able to retrieve it from backup storage.

286. There is a recurring theme throughout the investigation of inadequate recording of information. The Authority has also experienced difficulty obtaining verifiable accounts of the content of various files and whereabouts of documentation.
287. The Authority is satisfied that the difficulty obtaining the email dated 20 May 2014 was a consequence of and a further example of the inadequate record keeping on the file and not a deliberate attempt to withhold information.

FINDINGS

Police initially failed to disclose all the relevant data to Coroner, but this was not a deliberate attempt to withhold information.

ISSUE 7: DID SUBMISSIONS MADE TO THE TEACHERS COUNCIL BY OFFICER A REGARDING NAME SUPPRESSION CONSTITUTE AN ATTEMPT TO PERVERT THE COURSE OF JUSTICE?

288. On 5 May 2015, the Gisborne Intermediate School Board of Trustees sent a letter to the Chair of the Teachers Council Complaints Assessment Committee in support of an application for name suppression made to the Teachers Council by Mr Back. The letter was signed by Officer A as Chair of the School Board of Trustees.
289. The school presented a number of reasons for its support of the application, including the impact of publishing details of Mr Back or the school on Reiha's family, Mr Back and his family, Gisborne Intermediate School and the wider school community, and on the presumption of innocence. The school also argued that publishing Mr Back's name would undermine the statutory functions and prerogatives of other government agencies by stating that:

"Criminal charges have not been laid in respect to the death of the student, nor have any criminal charges been laid in respect of any alleged inappropriate behaviour by Mr Back towards the student. Identification of Mr Back or Gisborne Intermediate may prejudice the ability of the Crown to prosecute any future criminal charges that may be laid against Mr Back or any other party in relation to the death of the student."

290. The letter was signed by Officer A under the final paragraph which states:

"If you require any further detail about the Board's reasoning or would like to discuss this matter in any more detail then please contact me at [Officer A's Police email address]. Furthermore if you require the contents of this letter affirmed in an affidavit please let me know and I will do this for you on the Board's behalf."

291. Reiha's parents complained to the Authority that Officer A deliberately misled the Teachers Council, because at the time of signing the letter he was fully aware that the file had been closed and a decision had been made not to charge.

292. Officer A told the Authority that in sending the letter he did not intend to mislead anybody. The letter was sent with the backing of the School Board of Trustees, and the Board had consulted first and obtained advice on the matter from lawyers at the New Zealand School Trustees Association.
293. Officer A said that the letter had been checked by lawyers. He acknowledged that it was “dumb” to use the Police email system, but for him it was normal because he did not have another address and it was his usual practice to put that email address on everything.
294. In relation to the comment that not granting name suppression may prejudice the ability of the Crown to prosecute any future criminal charges, Officer A said:
- “...the thinking there was around whether there was evidence to come forward in relation to any of this ... there was no information ... but in the event that something else came forward ... because it wasn’t as if he was acquitted. ... It’s obviously on a Gisborne Intermediate letterhead. All that comment was about was there potential because who knows, they might come up with something else or keep the diaries or whatever.”*
295. Officer A provided information about the status of the investigation that was patently wrong and misleading. The investigation had been filed for nine months, there were no other complainants, there had been a Police determination that there was insufficient evidence and there were no other lines of enquiry to pursue. The fact that the Board obtained legal advice before sending the letter is irrelevant to the Authority’s assessment in that regard. In any event, the advice was presumably provided without knowledge of the status of the Police investigation.
296. While Officer A signed the letter in his capacity as Chairman of the Board of Trustees, his position as a Police officer lent veracity to that information. There would otherwise be no reason for a School Board of Trustees to have a view on whether or not declining an application for name suppression was likely to prejudice a future Crown investigation or prosecution.
297. The Authority notes that if Officer A had intended to mislead the Teachers Council, he would have been guilty of the offence of attempting to pervert the course of justice. However, it does not think that such an intent can be proved. Officer A was clearly in breach of Police policy and his behaviour constituted misconduct at the serious end of the spectrum, but his actions were more likely the result of a foolish and unthinking attempt to protect the school than a deliberate attempt to mislead the Teachers Council.

FINDINGS

The submissions to the Teachers Council regarding name suppression were patently wrong and misleading.

However, there is insufficient evidence to prove that Officer A intended to mislead the Teachers Council (and therefore attempt to pervert the course of justice).

Officer A's actions were contrary to Police policy and amounted to misconduct at the serious end of the spectrum.

Conclusions

298. The Authority has determined that:

- 1) The initial response by the Child Protection Team to the Report of Concern about Reiha was adequate.
- 2) The case was appropriately assigned for investigation.
- 3) Contrary to Police policy, the investigation was not adequately supervised.
- 4) Officer A's conflict of interest was not managed appropriately.
- 5) The investigation plan was inadequate for the circumstances of this particular case and not all appropriate enquiries were conducted.
- 6) Officer A did not provide 'pre-authorisation' for an application for a production order before it was completed.
- 7) The Authority has been unable to determine how a request for analysis of Reiha's cell phone was dated with Officer A's signature on a day when he is known to have been overseas.
- 8) Officer A should not have signed the form, since he had declared a conflict of interest.
- 9) Reiha's interview was not required to be conducted in accordance with the CPP.
- 10) It was appropriate for Officer C to conduct the interview.
- 11) The information from Reiha's preliminary interview was not appropriately recorded
- 12) The interview of Mr Back was not conducted appropriately.
- 13) Officer B did not adequately assess and record the evidence.
- 14) The outcome of the investigation was not pre-determined.
- 15) Although the version number of the Case Cover Sheet changed, the content of the final covering report did not change after Reiha's death.
- 16) The Police's initial consultation with CYF was delayed, and Police did not record a decision regarding whether the investigation was to be conducted under the CPP.
- 17) Since this case did not meet the criteria for investigation under the CPP, the Police's communication with CYF was adequate.
- 18) Police policy at the time did not require a multi-agency approach. There was a lack of consideration of how the information held by Police might be relevant for other agencies.
- 19) Police did not provide the Gisborne Herald newspaper with an internal report.

- 20) There was no need for Police to provide advice regarding the family's right to object to a post mortem, because Police were aware that the family had raised their objection.
- 21) It was appropriate for Police to request statements from family members, but it would have been preferable to obtain the statements at the hospital rather than the Police station.
- 22) There was a lack of ongoing support for the family during the inquest process, but this was not due to any neglect of duty by Police.
- 23) Police initially failed to disclose all the relevant data to Coroner, but this was not a deliberate attempt to withhold information.
- 24) The submissions to the Teachers Council regarding name suppression were patently wrong and misleading.
- 25) However, there is insufficient evidence to prove that Officer A intended to mislead the Teachers Council (and therefore attempt to pervert the course of justice).
- 26) Officer A's actions were contrary to Police policy and amounted to misconduct at the serious end of the spectrum.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

11 December 2018

IPCA: 15-2207

Appendix A - Applicable Laws and Policies

CHILD PROTECTION PROTOCOL (CPP)

The CPP in 2014

299. In 2014, the scope of the CPP, as it related to the circumstances of this case, was as follows:

“This protocol applies to serious child abuse including:

- *Sexual abuse*
- *Serious physical abuse*
- *Serious neglect*
- *Serious family violence where the child is a witness*

This protocol does not apply to:

- *Any report of force on a child which is of a minor, trivial or inconsequential nature and where there is no evidence of serious abuse or neglect.”*

300. The definition provided for “Sexual abuse” was: *“An act involving circumstances of indecency with, or sexual violation of, a child or using a child in the making of sexual imaging”.*

301. Under the heading ‘Consultation on the case’, the protocol provided:

“The consultation or discussion should include:

- *Confirming that the case is a CPP case*
- *Sharing information or intelligence about a particular case*
- *Discussion of any immediate action that needs to take place*

302. The protocol provided for allegations against teachers under the heading ‘Mass Allegation Investigation’ as follows:

“Allegations of abuse involving an adult working in, or associated with, an education setting will be managed under Schedule One Managing Abuse allegations, Memorandum of Understanding between Child, Youth and Family and the Ministry of Education 2012.

The parties to the agreement are Child, Youth and Family, the Ministry of Education, New Zealand Police and the New Zealand Teachers Council.”

303. The schedule set out the process for managing allegations of abuse in an education setting and provided that, when any party to the agreement receives information about alleged abuse, they will notify agreed representatives of the other parties.

The current CPP

304. The scope of the current CPP, relating to the circumstances of this case, is as follows:²⁵

“The CPP is the joint process that is followed when Child, Youth and Family and Police are responding to actions or behaviour that may constitute a criminal offence. These actions or types of behaviour fall into three categories:

- *Physical abuse*
- *Sexual abuse*
- *Neglect.”*

305. The current CPP provides definitions and examples of behaviour that would be included in the definition. The definition of sexual abuse is:

“Sexual abuse within the CPP context is an act involving circumstances of indecency with, or sexual violation of a child, or using a child in the making of sexual imaging.

For example:

- *Grooming a child in preparation for sexual abuse (this may be done via the internet).”*

306. The current CPP also sets out the process to be followed by Child, Youth and Family and Police staff in CPP cases. Under CPP consultation, the current CPP provides:

“The consultation should:

- *Share information or intelligence about the particular case*
- *Confirm if the referral meets the threshold of the CPP*
- *Discuss any immediate action required to secure the immediate safety of the child*
- *Consider whether a multi-agency approach is required.”*

307. The current CPP also provides guidance on other matters that should also be taken into account when considering an investigation. These are provided under the heading ‘Further investigation considerations’. This part of the protocol states as follows:

“Dependant on the circumstances of each case, there may be a need to take the following guidance into account during an investigation.

Underage sexual conduct

During the CPP consultation, the factors to be considered include:

- *Is there predatory, exploitative or coercive conduct by the offender?*

²⁵ The CPP still refers to CYF rather than Oranga Tamariki because it was last updated in September 2016.

- *What is the age difference between the victim and offender?*
- *Are there power and control dynamics in the relationship?*

....

Abuse within an educational setting

Any CPP case where the alleged abuse has occurred within an educational setting and the alleged offender is a child, will require collaboration between Child, Youth and Family, Police and the relevant education facility. It may be that the school or educational facility is invited to be part of the CPP investigation using a multi-agency approach.”

Appendix B – Index of Officers and Civilians Involved

Index of officers

Field Staff	Roles/Comment
Officer A	Detective sergeant - officer in charge of the Gisborne Police Child Protection Team
Officer B	Detective constable – assigned the investigation into Mr Back’s contact with Reiha
Officer C	Sergeant – assigned to interview Reiha
Officer D	Detective senior sergeant - the Eastern District Child Protection and Sexual Violence Coordinator
Officer E	Detective – assigned to investigate Reiha’s death
Officer F	Detective - assigned to investigate Reiha’s death
Officer G	Detective sergeant - Eastern District Coronial Investigations Manager
Officer H	Detective sergeant - responsible for preparing the Police file for the Coroner
Officer I	Detective senior sergeant - Police National Co-ordinator: Child Protection
Officer J	Senior detective on the Gisborne Police Child Protection Team

Index of civilians

Field Staff	Roles/Comment
Ms Z	Reiha’s hospital-based social worker
Mr Y	The principal of Gisborne Intermediate School at the time of the Police investigation into Mr Back’s contact with Reiha
Mr X	The principal of Gisborne Intermediate School at the time of the Teachers Council Disciplinary Tribunal hearing
Ms W	Coronial Services Case Manager
Ms V	Mr Back’s legal counsel at the Teachers Council Disciplinary Tribunal hearing
Ms U	Mr and Mrs McLelland’s legal counsel at the Coroner’s pre-inquest teleconference

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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