

REPORT OF THE POLICE COMPLAINTS AUTHORITY ON AN INCIDENT IN THE CARPARK OF A SHOPPING MALL IN KARORI, WELLINGTON, ON 20 FEBRUARY 1999

Introduction

On the afternoon of Saturday February 20, 1999 a confrontation occurred between two motorists in the carpark of a shopping mall in the suburb of Karori, Wellington. It arose when one car was seen to be obstructing the passage of the other car through the carpark area. The driver of the car behind tooted his car horn. The first driver alighted and walked back to ascertain why the other driver had reacted in that way. The driver of the first car was Esther Jane Haddon ("the complainant"). The driver of the second car was an off-duty Police officer.

The language used by and the behaviour of the Police officer during the incident which followed became the subject of a complaint by the complainant made first to the Wellington Central Police Station late the same day and later delivered to and received by the Police Complaints Authority on 1 March 1999.

Investigation

An investigation was directed pursuant to the Police Complaints Authority Act. It was commenced by Inspector D G Allo. After discussions between the Authority and the office of the Police Commissioner, Detective Superintendent J Millar of Christchurch became involved in the oversight of the investigation.

The results of the investigation were reviewed at various levels before being submitted to this Authority for independent review. That review process involved the District Manager of the Wellington Metropolitan District, Superintendent John Kelly and later a further review was conducted at the Internal Affairs Section of Police National Headquarters. In addition, before

referring the matter to the Authority for review, the Police Commissioner sought from the Solicitor General an opinion on whether any charge should be brought against the off-duty Police officer.

Public Report

Having completed a review the Authority has decided to exercise the discretion under Section 32 (2) of the Police Complaints Authority Act to release a public report, pursuant to Section 34 (1) of that Act. The reason for this is the widespread public interest in the matter which flows from nationwide media attention, following television coverage of the incident initiated by the complainant. The Authority has also decided to refer to the Police officer by name in the report. His identity had been disclosed by the media in the publicity that followed the incident. The officer was Inspector T E Stenhouse, of Wellington, currently Head of the Police Diplomatic Protection Squad.

The Complaint

The complainant first made a statement to the Police on the day of the incident, 20 February 1999.

In that statement she described reversing out of the carpark when a car behind *"tooted his horn several times"*. She got out of her car and approached the other driver and asked him what his problem was. He asked her to move faster. He then said *"why don't you move your arse you black bitch"* She demanded an apology and he replied *"why should I?"*. She said *"for what you called me"* and he said *"well you are aren't you?"*. At that stage Ms Haddon said *"my brother is a Police officer and I want your details so I can lay a complaint"*. He declined that request.

She returned to her car followed by the other driver who again asked her to move her car. She said she would not do so because she wanted his *"details"*. He said *"I know what sort of person you are. You want to make an issue out of nothing"*. She demanded an apology. He said *"I'm sorry"*. She asked *"Sorry for what?"* He said that she knew, but she replied *"I don't, I want you to tell me."*

He returned to his car and drove away. She followed the other car as it left the carpark and both stopped in a nearby Campbell Street alighting from their cars. She still wanted the other driver's *"details"*. She said he told her *"I can have you up for harassment"* and then disclosed that he was a Police officer. As she persisted with a request for his *"details"* he responded *"you're mental"*, to which she replied *"I'll see you on a dark night then"*.

During the course of investigation the complainant made a further statement on 31 March 1999 to Detective Superintendent Millar confirming details of what was contained in her first statement of complaint and describing the demeanour of Inspector Stenhouse in the carpark as *“having a very threatening manner about him”*.

As to the offering of an apology the complainant said in this later statement : *“Stenhouse returned to his car but soon returned to mine and said ‘okay, I’m sorry, can you move on’. I asked him what he was sorry for. He indicated that I knew. I said ‘I don’t know, I want you to tell me’. He just made a grunting noise. He returned to his own car.”*

The essence of the complaint then is the allegation that Inspector Stenhouse said to Ms Haddon *“move your arse you black bitch”* and, more generally, the demeanour and behaviour of the officer during the incident.

Mrs Haddon

Support for the complaint can be found in statements from the complainant’s mother Mrs Daphne Haddon who was seated in the front passenger seat of the complainant’s car at both stages of the incident in the carpark and in Campbell Street.

On 8 March she produced a brief statement in her own handwriting in which she said *“I just heard bits here and there as I was sitting in the car”*. After her daughter had left the car *“to see what the problem was”* she recorded *“I did hear this person call out very loud black bitch, well your one of those arn’t you”*.

On the same day Mrs Haddon made a formal statement to an investigator. In that statement she said that after her daughter left the car following the *“car horn tooting”*:

“I couldn’t hear my daughter speaking but I heard a male person talking very loud and I heard him say, ‘you’re a black bitch’. There was then a bit of a break and then the person said ‘well you’re one of those aren’t you’. I did not see the person who used this language at that time and I didn’t know at this point who he was talking to. I didn’t hear anything else.

The next thing that happened was that a male person came round to the driver’s side of our car with my daughter. I don’t know what they were saying to each other because I couldn’t hear. The male person said something about an apology but I couldn’t hear properly what was said.”

She described her daughter as she got back into the car as being *“very upset and shaken”*.

Response Of Inspector Stenhouse

Inspector Stenhouse provided a written response to the complaint and was later interviewed by Detective Superintendent Millar. He admitted using some words that were consistent with the allegation of the complainant but denied that he had ever used the word "*black*".

After waiting for the complainant to move off and then tooting his horn he described the complainant coming back to his car and speaking in an aggressive tone and claimed that she said she was going to make him wait some more. After the complainant had gone back to her car but not entered and driven off, the officer acknowledged tooting his car horn again and calling out "*come on lady. Move your arse. There's other people waiting now*".

The complainant returned to the officer's car when there was further discussion. As the complainant walked away again and was in front of his car he acknowledged saying "*stupid bitch*". He said that was an opinion he had formed of her actions and attitude but he did not say it in a loud voice and did not expect that he would have been heard.

The complainant returned to the officer's car, grasping the window sill of the driver's door demanding his name and address, shaking the car and appearing "*almost hysterical*". He alighted from the car.

In the conversation that followed the complainant said that "*my brother is a Police officer. I'm going to report you to him. He will sort you out. I want your name and address.*" She demanded an apology. He offered one, to which the complainant responded "*You're sorry for what? What did you say?*" He said "*Do you want me to say it again?*" The complainant said she did but he declined. He acknowledged saying to her at this stage "*Some people won't let go. You're one of those aren't you?*". He told her "*to get in her car and piss off*".

Of her demeanour at this stage the officer said: "*All her conversation from the time she had grasped the window sill of my car was heated and loud. At times both our voices were raised. I had tried talking to her calmly and that had not worked. A louder approach did not work either.*"

Eventually Inspector Stenhouse returned to his car and reversed several metres to enable him then to drive past the complainant's car. He abandoned his intention to visit the mall and drove away. Noting that the complainant was following him he took an indirect route to his home. In Campbell Street, with the complainant still following him, he stopped. The

complainant drove alongside and then moved forward stopping her car in front at an angle preventing him from driving directly forward.

Both drivers alighted and there was further discussion. He told her she was harassing him. She again referred to her brother as a Police officer and he acknowledged that at that stage he identified himself as a Police officer. He told her he wondered whether she had a “*mental problem*”, to which the complainant responded that it would not be her brother that would be “*sorting*” him out, but herself. He claims she said “*watch yourself these nights because it will be me sorting you out*”.

He went back to his car, drove up on to the footpath around the left side of the complainant’s car and drove away. The complainant did not follow.

Inspector Stenhouse expressed his view that the encounter was not precipitated by any unusual action on his part, that any aggravation was initiated by the complainant whose actions were designed to prolong the encounter, while his aim throughout was to end the encounter and leave.

Independent Witnesses

As a result of publicity of the incident six persons who witnessed the confrontation, or part of it, and who were unconnected with either the complainant or Inspector Stenhouse, made written statements during the investigation. The Authority is grateful to all these witnesses for their co-operation and contribution. It is not proposed to identify them but their evidence will be summarised. It must be said at the outset that there were marked differences in the recollection and perception of the various witnesses about what may have been said, and more particularly, the attitude and demeanour of the two persons involved in the incident. This is not unexpected, as witnesses are asked to recall an incident involving tension which they have come upon suddenly and unexpectedly and where each observes the incident from slightly differing vantage points and may be recalling separate segments of the total incident.

Witness “A” had parked his car at the western end of the carpark and was walking along the path leading to the mall entrance when he heard an argument taking place. The “*male person*” was standing out of his car near the driver’s door of the “*female driver*”.

“The male was shouting at the female and he was complaining that her car was blocking his way. The female was responding and her voice was also raised and it

was definitely a two way argument. His voice was the one I heard the most and was loud enough to hear but I can't recall the exact words used. The thrust of his argument was that her car was blocking his way. I don't recall hearing any racial abuse, I would have recalled it if that was said. I don't recall hearing any foul language, there might have been a bit of mild language but it was a very heated discussion.

Although I didn't hear any racial abuse or foul language to her my impression was that he was being arrogant, overbearing and was using language that was more angry than I would have expected that the situation would warrant.

The other thing that is part of the picture is that she was also raising her voice and shouting back at him. She was being assertive, she wasn't just taking it all in and was raising her voice also."

Witness "B", having parked in the carpark, was walking across the park towards the footpath outside a video shop when he heard "*raised voices*". On reaching the footpath he stopped and observed what was going on.

He recalled a woman and man arguing, both of them using "*raised voices*". He said he became concerned and "*I walked forward a bit, my concern was that it might get physical and I may need to intervene. I got that impression by the way he walked to her and he was pretty angry and looked pretty aggressive. I'm not sure if she was or not because I was watching what he was going to do*".

He could not recall the exact words being used but did recall the woman asking for an apology. Both were "*shouting to each other*". He said:

"I did not hear the male say to the woman to 'move your arse you black bitch'. I assume I was on the scene after that if it was said and that would have been why she was asking for an apology. I did not hear the woman swearing at all. If such a comment was made while I was listening I would have recalled it."

He described the man's demeanour in the following way. "*He walked to her with quite big strides, a confrontational brisk walk.....he seemed very aggressive, had a raised voice and was towering over the woman*".

Of the woman he said *“she was firm and assertive in what she was saying, she was holding her own but she definitely wasn’t hysterical, she kept her composure I thought.”* He described his *“lasting impression”* as being *“that the male seemed to be the aggressive one”*. He thought that the male was *“a wild bugger”*.

Witness “C” had driven into the carpark when the cars of the two persons involved in the incident were already ahead of him. After waiting for a period he drove past, parked and walked into the mall. As he did so he observed a male and female near the two cars. He said:

“The lady was gesticulating with her hands and the man was standing there and just seemed to be taking it in. The woman was definitely the aggressor in the incident that I saw. She was right up close to him and if anyone had done that to me I would have considered they were right in my space, in my comfort zone”.

He did not hear anything of what was being said but commented *“there are regular occurrences of this nature in that carpark and that is one of the reasons why I didn’t think too much of it.”*

His observation was *“I didn’t see the male being aggressive at any stage and I think that by the way the woman was being aggressive the male was being more restrained than I might have been.”*

Later, he left the mall and on driving towards his home came across the two cars again, by now parked in Campbell Street. *“The male’s car was parked against the kerb and the woman’s car was parked across the front of it on an angle as if to prevent it from moving on”*

He said of this incident as he drove past *“once again the woman was confronting the guy, it was pretty much like she was going right up to him in his face appeared to be shouting at him”.*

He concluded *“the major thing that stuck out in my mind was that the female was the one who was the confrontational one at both scenes.”*

Witness “D” had parked in a street adjacent to the mall and, because of rain, was running from her car to the mall when she heard *“tooting of a car horn”*. On reaching the cover of the

footpath leading into the mall she observed what she described as an “altercation” for some minutes. Initially she heard the woman ask “*what did you do that for?*”.

Her statement continued:

“The male replied ‘do what’. Then he just waved at her and said ‘move on, move on’. Then at that point the woman seemed to just lose it. She said ‘I’m not bloody well moving on until you apologise’. He said ‘just move out of the way so that we can all get past’ and he was sort of indicating the other traffic behind him. She said again, and she was screaming, ‘I’m not moving until you apologise’. He then said ‘shift your arse, get back into the car’. At that point she started walking toward him and I thought that there might be a physical confrontation. The male walked forward slightly too. If there was going to be anything physical it would have been from the woman’s side. He seemed to be trying to calm the situation down but she just kept on saying ‘not until you apologise’.

It is alleged that the male told the woman to move your arse you black bitch. That comment was not said. I can say that categorically. If he had said that I would have recalled that definitely. He definitely said to move your arse but he did not say black bitch. He was yelling and she was yelling as well. She started the whole yelling thing.”

She concluded her observation by saying “*I just felt that the male was cornered. He had nowhere to go, this woman was blocking him in and she was causing a scene. Although the male was yelling I think he was justified. He had to be assertive to deal with the woman who was over the top.*”

Witness “E” had also parked her car in the adjacent street but had completed her shopping and returned to her car when she heard the tooting of a car horn. Because of rain she entered her car, rolled down the window and observed the incident from there. She saw the “*female*” get out of the front car and go up to the driver’s window of the other car.

Her statement continued:

“She said something to the male but I couldn’t hear what was said. I just presume that she was responding to the tooting.

I think she then retreated to her car but she didn't get right there before she wheeled around and this time she was angrier. She said something to the male and went back to his car. She grabbed the top of the door as if she was trying to drag it open. It was a fairly assertive act I would have thought. I can't recall if the male had been out of his car at this stage and got back into it but something appeared to have happened as she was walking back to her car the first time which made her wheel round and go back to his car. I don't know what it was but it had to have been verbal.

The woman then walked back to her car, the male then got out of his car and it looked like he said something to the female. It was quite aggressive from the male now. He then got back into his car and drove it forward toward her car in a threatening manner.

I just seemed to remember that he was in and out of his car at least twice and she got back into her car at the end. The male then managed to squeeze past her car on the righthand side and drove off faster than I would have. He drove off fairly quickly but not with tyres squealing."

Of the demeanour of each she described the woman as *"assertive and got angrier later in the exchange"* and further that she *"was no shrinking violet, she stood up for herself and didn't look intimidated by the whole thing"*.

The man however *"behaved like a bully and I thought his actions were inappropriate and overly aggressive for what the situation warranted, especially when it was a situation that he initiated.....He gave the impression of a man who just wanted to get his own way."*

Witness "F" had completed her shopping and returned to the carpark to find her car was blocked in by *"the female's car."*

She heard the two people *"yelling at each other. There was aggro on both sides."*

She could not recall details of the conversation, did not hear the male say *"move your arse you black bitch"* but did observe *"lots of irritation."* Although she did not have the impression *"that there would be physical confrontation between the two"* she thought *"there was aggression on both sides really and it would have been about the same."*

Finding on Factual Issues

As one considers then the statements made by the six independent witnesses it is noticeable that there are markedly different perceptions of those witnesses both as to the demeanour of Inspector Stenhouse and the complainant and the contribution which each may have made to the development and escalation of the incident.

After a consideration of all the evidence, the Authority is satisfied that during the incident Inspector Stenhouse called the complainant a *"bitch"* and told her to *"move your arse"* and to *"piss off"*. In his demeanour and conduct he displayed some aggression and irritation and resorted to using a loud voice all of which made a contribution to (but was not solely responsible for) an unfortunate escalation of the incident.

The more difficult issue is whether he used the adjective *"black"* when he called the complainant a *"bitch"*. The complainant's allegation that he did is denied by the officer. The only other person who heard that word used was the complainant's mother. She heard only *"bits here and there"* and recalled just two specific phrases, one of which contained the words *"black bitch"*.

Of the six independent witnesses none of them heard the word *"black"* used.

In these circumstances the Authority has been unable to conclude with a sufficient degree of confidence that the word *"black"* was used by Inspector Stenhouse.

A similar conclusion on the facts had been reached by the investigators and those responsible for review of the investigation before the file was forwarded to the Authority.

Opinion of Solicitor-General

As indicated earlier the Police Commissioner referred the matter to the Solicitor-General for an opinion as to whether a charge for any offence should be brought against Inspector Stenhouse. His conclusion and advice was that, after applying the Solicitor-General's Prosecution Guidelines, no charges should be brought against the officer.

Those Guidelines, which are of general and national application to all criminal investigations, specify that in making a decision to initiate a prosecution there are two major factors to be considered, namely, evidential sufficiency and the public interest. Details of matters to be considered in the determination of both factors are set out in the Guidelines.

Assessment of Conduct

The opinion of the investigators Detective Superintendent Millar and Inspector Allo was that Inspector Stenhouse's *"general conduct, language and demeanour was unbecoming of a Police officer, particularly a Senior Commissioned Officer"*.

Superintendent Kelly, the District Manager of the Wellington Metropolitan District, was of the opinion the officer was *"unwise to become embroiled"* and that his actions *"although he was off duty, have brought discredit to himself and the Police"*.

When the file was reviewed by the Acting National Manager of Internal Affairs Section in the office of the Police Commissioner, it was concluded that the officer's actions were *"not that which the Commissioner would expect as proper"*. The officer was *"expected to maintain high standards of conduct befitting his occupation whether on or off duty"* and that to be drawn into the matter did no credit to him.

The Authority is of the view that in his involvement in this incident Inspector Stenhouse displayed conduct which should not have occurred. He used language and displayed a demeanour that was rude and, at times, aggressive. Although he was off duty at the time it is incumbent on Police officers at all times to act in a manner consistent with professionalism. On this occasion, in his language, attitude and behaviour, Inspector Stenhouse's conduct fell below the standard required of him. It was misconduct justifying a disciplinary response.

Aware of the possibility of criticism of his behaviour, Inspector Stenhouse has expressed his opinion as to how his conduct should be judged.

He was of the view that the language he used was 'in common usage' and 'widely accepted' and that his words and actions were those 'of an average member of the public'.

Whether or not that is seen as a valid opinion, the Authority is of the view that there is a clear distinction between the use of such words in a jocular or light-hearted fashion amongst friends and acquaintances and the forthright, irritated or angry use of the words directed to a stranger.

Inspector Stenhouse was also of the view that his words should be considered as being used by an ordinary citizen, not a Police officer, as he was off duty and his appearance would not have led anyone present to believe he was a member of the Police.

While it is true that it would not have been apparent to anyone observing this incident that Inspector Stenhouse was a Police officer, he did in the second part of the incident identify himself as such to the complainant. The Authority is required to report on the conduct of a member of Police and an assessment of whether conduct or language of a member of Police could be subject to criticism should not depend on whether his identity as such is apparent to the observer or is later revealed. However the circumstances in which the conduct occurs may well be a mitigating factor in considering a disciplinary response to any misconduct.

Disciplinary Response

The decision on the appropriate disciplinary response is for the Police Commissioner not the Authority. The proposal of the Commissioner is that Inspector Stenhouse be the subject of an Adverse Report, which is a formal disciplinary response available to him.

In considering the appropriate response Inspector Stenhouse is entitled to have taken into consideration his commendable service to the Police over a period of 35 years. Furthermore, the Police Commissioner reports to the Authority that this is the first time the officer's integrity or conduct have been called into question. It is expected that he has also been hurt and humiliated by the considerable exposure of this incident. That in itself is a significant punishment.

In all the circumstances the Authority would not disagree with the proposed disciplinary response of the Commissioner to the findings of this investigation.

Supplementary Issues

At an early stage of the investigation some concerns were expressed by the complainant about the Police response to her complaint and these matters have been investigated.

1. The complainant said she was advised by the Police officer to whom she reported the incident that it would take 14 days to ascertain the registered owner of the vehicle being driven by the person complained of. This concern appears to have arisen from a misunderstanding. It is reported that the complainant was told that while the registered owner of a vehicle could be ascertained immediately, the identity of the driver may not necessarily be able to be obtained for 14 days. In giving this advice the Police were conscious of Section 67 of the Transport Act which places an obligation on the owner of a vehicle in certain circumstances to disclose information leading to the identity of the driver within 14 days. The advice was not given with the intent to deflect or defer the complaint.

The registration number given by the complainant in her original statement was not that of Inspector Stenhouse's vehicle. When the correct number was later supplied confirmation that the owner was a Police officer was available.

2. The complainant was also concerned that the complaint was not dealt with appropriately in the initial stages when it was discovered that the person complained of was a Police officer.

This complaint was made in a written statement made late on a Saturday. The correct registration number of the vehicle was not supplied that day and the complainant was advised of that the following day.

A perusal of the file indicates that after the correct registration number was provided the matter was appropriately reported to senior officers through various supervisory levels.

On the Tuesday following the incident the Complaints Investigation Manager for the Wellington Metropolitan District, Inspector Orr, contacted the complainant to discuss the complaint. Inspector Orr told her that the matter would be reported to the Police Complaints Authority. The complainant said she would do that directly. She did so by filing a complaint with a copy of her statement of 20 February and this was received by the Authority on 1 March.

The matter was drawn to the attention of Internal Affairs Section of Police National Headquarters on 24 February and the District Manager of the Wellington Metropolitan District on his return to Wellington at the end of a week long absence on Friday 26 February. He appointed an investigator on the following Monday, 1 March. That investigator first spoke with the complainant on 3 March.

A suggestion was also made that the file may have been lost but that was not substantiated. The file was passing through several hands in the reporting process.

Understandably the complainant was concerned about the unpleasant incident in which she had been involved and was anxious to pursue the matter. However the Authority has not been able to detect any improper delay or failure to take the complaint seriously in those early stages in responding to the complaint and initiating an investigation.

Judge N C Jaine

POLICE COMPLAINTS AUTHORITY

18 May 1999