

# Police actions during the arrest and detention of a man in Christchurch

## INTRODUCTION

1. On 14 January 2015, the Authority received a complaint from Mr X that Police had used excessive force on him when he was arrested in Christchurch on 11 January 2015. Mr X sustained injuries to his face and a finger.
2. Mr X also complained that racist comments were directed at him, that he complained to Police at the time of his arrest about the excessive force used on him but his complaint was not followed up by them, that he was not able to consult with the lawyer of his choice and that there was a delay in him being seen by a “*medical professional*”.
3. The Independent Police Conduct Authority notified Police of the complaint, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority’s findings.

## BACKGROUND

4. During the evening of 10 January 2015, Mr X drank alcohol and smoked cannabis with two friends at his house. They went to a party and then decided to go for a drive. At the time, Mr X was on Police bail. He had a curfew to remain at his bail address between the hours of 7pm and 7am and a condition not to consume alcohol. He was also a disqualified driver.<sup>1</sup>
5. At about 1.10am on 11 January 2015, Mr X was driving a silver BMW car<sup>2</sup> in the suburb of Woolston in Christchurch. His two friends were passengers. Officers A and B, who were on routine patrol in Woolston, saw Mr X driving west on Ferry Road while they were driving east. They estimated he was driving at about 100kph in a 50kph zone.

<sup>1</sup> Mr X’s licence was suspended for three months from 17 November 2014.

<sup>2</sup> Mr X’s brother was the registered owner of the car but the car belonged to Mr X.

6. The officers activated their red and blue flashing lights and siren to signal Mr X to stop and did a U-turn. When Mr X continued to drive at speed, the officers commenced a pursuit pursuant to section 114 of the Land Transport Act 1998. Mr X later told Police that he was trying to evade them because he had breached his bail conditions and did not want to be arrested.
7. Officers A and B followed Mr X through a number of streets but, due to his speed, lost sight of him and the pursuit was abandoned.
8. Between about 1.15am and 1.30am a number of other Police officers saw Mr X and engaged him in pursuit. All lost sight of him and the pursuits were abandoned.
9. At some point while being pursued, Mr X's right front tyre deflated and officers reported seeing sparks coming from his car.
10. Officers C and D were the last officers to pursue Mr X. During this pursuit, Mr X pulled over outside Beckenham Park. Officer C attempted to position the front of his Police car beside the driver's door of Mr X's car to stop him from fleeing on foot. As he did so, Mr X flung his car door open and got out of the car. He fell onto the bonnet of the Police car and then ran into Beckenham Park.
11. Officers E and F arrived at Beckenham Park almost at the same time as Officers C and D. Officer F chased Mr X into the park for about 100 metres until they reached the soccer field. The lighting in the park had been limited up to this point. Officer F said that he told Mr X repeatedly to stop and get on the ground but Mr X continued to run. Mr X ran, with Officer F following, for about another 30 metres into the middle of the soccer field where there was no lighting.

### Presentation of Taser and laser painting of Mr X

12. Mr X told the Authority that Officer F said he had a Taser and threatened to discharge it if he did not stop running. Mr X said that he did not want to be tasered so he stopped and followed Officer F's instructions.
13. When Officer F had almost caught up with Mr X, he said that he removed his Taser from its holster, gave a verbal warning and laser painted Mr X.<sup>3</sup> Mr X was told a number of times to get on the ground.<sup>4</sup> Officer F considered that a number of factors justified the use of his Taser at this point:
  - Mr X had been pursued by Police for quite a lengthy period of time and had then fled on foot; both actions indicating that he was trying to avoid being arrested.
  - He was the only officer who initially chased Mr X into Beckenham Park so had no back-up.

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<sup>3</sup> This involves overlaying the laser sighting system of the Taser on the subject as a visual deterrent, in conjunction with providing a verbal warning.

<sup>4</sup> Officer F was qualified and certified to use a Taser at the time.

- Mr X was not known to him and was not complying with instructions to stop and get on the ground.
  - It was dark in the soccer field so he did not know exactly how close Mr X was to him or whether Mr X had any weapons on him.
  - He did not consider oleoresin capsicum (OC) spray to be an available option due to the darkness and therefore his inability to see Mr X.
14. The footage from Officer F's Taser camera shows Mr X stopping, turning around and moving around. Mr X got onto one knee but did not comply with Officer F's instruction to get on the ground. Officer F believed that Mr X had walked toward him and this potentially escalated the threat posed by Mr X. The footage does not conclusively show Mr X walking toward Officer F but the movements Mr X does make are not aggressive. Mr X can also be heard saying "sorry man" in the footage.

### Use of force

15. Mr X complained about the force used by Police during his arrest, when he was escorted to the Police car and when he was transported to Christchurch Central Police Station. He said that this force caused him to sustain head injuries and a fractured finger. Both Mr X and Police involved have different accounts of the force used as set out below.

### Force used during arrest

16. Mr X sustained an injury to the left side of his face in the eye/forehead area which he said was caused by an officer deliberately kneeling him during his arrest. Mr X believed that the same officer then deliberately dropped his knee into the back of his head a number of times while he was lying on the ground. Mr X said that at the time he was following instructions and was not resisting arrest.
17. The end of the Taser camera footage shows Officer C arriving from Mr X's right side and grabbing Mr X's right arm. At this point, Officer F recalled initially trying to assist Officer C in arresting Mr X by coming from Mr X's left side using only his left hand because he was still holding the Taser in his right hand. Officer F subsequently turned his Taser off and put it back in its holster. The officers said that Mr X was then taken to the ground and was lying on his front with his hands under his body.
18. Officer C said that he told Mr X multiple times to put his hands behind his back but he would not do so. According to Officers C and F, Mr X put his hands under his chest to avoid being handcuffed. He also kicked out with his legs and tried to get up off the ground.
19. Around this time, Officer D arrived at the scene. He told the Authority that he put one of Mr X's feet behind Mr X's opposite knee and applied pressure to try and prevent Mr X from kicking his legs out and getting back on his feet. He then moved into a position above Mr X's head and pushed Mr X's chest to the ground using both hands. He placed his right shin

across Mr X's shoulder blades to hold Mr X's upper body down so that he could be handcuffed.

20. Officer D said he then took control of Mr X's head by holding it on both sides and told Mr X to turn his head to the side. As Mr X turned his head to the side, Officer D held it firmly on the ground using the open palm of his left hand.
21. Officers D and F assisted in getting Mr X's hands behind his back and he was handcuffed. Officer C told Mr X that he was under arrest.

#### *Force used during escort to Police car*

22. Mr X told the Authority that, when he was being walked to the Police car, the officer on his right side was hitting him in the back of his head with his elbow and the officer on his left side was hitting him in the back of the head with either his fist or his elbow.
23. Mr X also sustained a fracture to his right index finger which he said was caused by an officer deliberately bending this finger back when he was leaned against the side of the Police car.
24. Officers C, D and H were all involved in escorting Mr X and deny these allegations.
25. Officers C and D told the Authority that they walked Mr X to the Police car using an approved restraint hold. Officer C was on Mr X's left side and Officer D was on Mr X's right side. Both officers describe putting their arms, that were closest to Mr X, through the loop that was created by Mr X's arms and then putting their hand on each of Mr X's shoulders.
26. Officers C and D both said that Mr X continued to resist when being walked to the Police car so they bent him forward to regain control. Officer C said that the restraint hold outlined above was the only force used when Mr X was walked to the Police car. Officer D thought that Mr X was going to try to head-butt them when they were walking him to the Police car so he pushed Mr X's head toward his left shoulder with the open palm of one of his hands.
27. When Officers C and D reached the area outside Beckenham Park, Officer H took over from Officer D for the last part of the escort of Mr X to the Police car. Officers C and H recalled that Mr X got straight into the back left passenger seat of the Police car without incident and was not leaned against the Police car. While Mr X was seated in the back of the Police car, Officer C gave him a Bill of Rights caution. Mr X's details were also obtained at this time.

#### *Force used during transport to Police Station*

28. Officers G and H transported Mr X to Christchurch Central Police Station. Officer G got into the driver's seat and Officer H got into the back right passenger seat.

29. Before Officer H got into the Police car, Officer G said that she talked to Mr X in an effort to calm him down. Officer G said that Mr X was yelling and alleging that she had punched him in the face, although Officer G had not had any involvement with Mr X up to this point. Mr X could not recall having a conversation with Officer G before the Police car left Beckenham Park and only remembered her telling him to 'shut up'.
30. Mr X told the Authority that, about 100 metres from Beckenham Park, Officer G pulled over and adjusted her rear-view mirror so that she would not be able to see anything that happened in the back seat. She then continued driving. He said that Officer H then got up onto the back seat of the car and pushed his head into the left rear door of the Police car and punched him in the back of the head repeatedly. Mr X also stated that Officer H used his knee to push the back of his neck into the car door. Mr X told the Authority that, before arriving at the Police Station, Officer G returned her rear-view mirror to its original position.
31. Both officers told the Authority that the Police car only stopped at intersections on the way back to the Police Station and that it was not stopped for Officer G to adjust her mirror. Officer H denied punching or kneeling Mr X in the back of the head. He told the Authority that Mr X was yelling at him and leaning over to his side of the car as he did so. Officer H said that he felt Mr X's head was "*within striking distance with his head*" so redirected him by putting his hand on Mr X's shoulder and pushing him back toward his side of the car. Officer H also said that Mr X was spraying him in the face with saliva when he spoke. He told Mr X to stay on his side of the car. Officer H said that he had to redirect Mr X a second time in the same manner.
32. Mr X also said that Officer H called him a "*black cunt*" when they were in the back of the Police car and insisted on Mr X calling him 'Sir'. Officer H denies these allegations.

### Processing at Christchurch Central Police Station

33. Mr X said that he complained at the Police station about the force used on him but his complaint was not followed up. Mr X also said that he was not given medical attention until late morning on 11 January after he had been in custody since about 3am, despite having obvious injuries and complaining about them throughout his time in custody.
34. The authorised officer<sup>5</sup> responsible for processing Mr X said that she noticed an injury to one of Mr X's eyes when he arrived at the Police Station. The authorised officer also recorded on the 'Watchhouse Keepers Evaluation of Condition of Person in Custody' form that "*has injuries to left eye, bruising to eye, nose, jaw, back of head, states these injuries were sustained by Police at time of arrest*". There is no record of Mr X raising the injury to his finger until he spoke with a doctor at 10.45am. The form also states 'yes' next to "*Person injured or ill*" but there is no comment next to "*Signs of being in pain*".
35. Mr X was searched and 1.1 grams of cannabis plant was found in his pocket.

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<sup>5</sup> Authorised officers are non-sworn Police employees authorised to exercise many of the powers of Police constables, except the power of arrest.

36. Mr X also underwent a breath screening test and then an evidential breath test to establish his breath alcohol level. These were conducted by Officer C. Officer C said that he offered medical assistance to Mr X for his swollen eye at the time he administered the evidential breath test but this was declined by Mr X.
37. Before the evidential breath test was administered, Mr X said he asked to speak to his mother, or for Police to do so, so that she could contact her lawyer for advice. Mr X said that Officer C told him he could only speak to a lawyer and not his mother and gave him a list of available lawyers. Mr X said he could not read this list because his eye had swollen shut by this stage. Mr X said that he did not want to choose a lawyer from the list but one was chosen for him. Mr X spoke to the lawyer briefly but refused any help.
38. Officer C said that Mr X only asked to speak to his mother and did not explain that calling his mother would enable the lawyer's details to be obtained or legal advice to be arranged. On this basis, Officer C told Mr X that he could speak with a lawyer but not his mother. Officer C offered to contact Mr X's mother after the evidential breath test had been completed.
39. The evidential breath test produced a positive result of 661mcg of alcohol per litre of breath; the breath-alcohol limit at the time was 400mcg.
40. A short time later Police had contact with Mr X's mother. She advised that Mr X had been hospitalised in 2010 for a drug-induced psychosis. This was recorded on the 'Watchhouse Keepers Evaluation of Condition of Person in Custody' form.
41. Due to Mr X's mother advising of the previous mental health issue, a duly authorised officer (DAO)<sup>6</sup> was called to assess Mr X. Records show that the DAO attempted to assess Mr X at 3.31am on 11 January 2015 but he would not respond to any questions.
42. After being placed in a cell, Mr X said that he slept for a bit because he had a "*massive headache*". He then woke up and banged on the cell door because he wanted some pain killers. Mr X said he was told that he could not be given any pain killers, so he then asked to see a doctor. When interviewed by the Authority, the authorised officer said that she could not recall Mr X asking for medical treatment but that she certainly would have asked him if he required medical treatment.
43. Custody records show that Mr X was given Paracetamol at 7.52am. He was assessed by another DAO at 8.05am.

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<sup>6</sup> Duly Authorised Officers are chosen by Directors of Area Mental Health Services to perform the functions and exercise the powers conferred on them under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Usually a registered nurse, DAOs must be trained and competent to deal with mentally disordered people and that is the focus of their role.

44. Mr X was seen by a doctor at 10.45am who considered that x-rays were necessary. Mr X said that he had been telling staff that he needed 'something for his head' for several hours before he saw the doctor. Mr X was subsequently transferred to Christchurch Hospital for x-rays on his finger and jaw/head. An oblique fracture of Mr X's right ring finger was identified.
45. Mr X told the Authority that an officer asked him in the morning if he wanted photographs of his injuries to be taken in case he wanted to make a complaint. Mr X said he declined the offer because he did not think there would be any point in making a complaint.

### Mr X's passengers

46. Both passengers in Mr X's car were detained and taken to Christchurch Central Police Station. They were released a short time later without being charged.

### Charges faced by Mr X

47. As a result of the incident on 11 January 2015, Mr X was charged with failing to stop for red and blue flashing lights, reckless driving, driving while suspended, driving with excess breath alcohol, resisting arrest, possession of cannabis and breaching bail.
48. Police did not proceed with the breaching bail charge. Mr X pleaded guilty to the other six charges. He was convicted and sentenced to four months' community detention and nine months' supervision. He was also fined \$2,000 and disqualified from driving for six months.

## LAWS AND POLICIES

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### Use of force by Police

#### Law

49. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process "*can be carried out by reasonable means in a less violent manner*".
50. Section 40 of the Crimes Act 1961 provides that a Police officer may use "*such force as may be necessary*" to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
51. Section 48 of the Crimes Act 1961 provides justification for a Police officer to use "*such force as, in the circumstances as he or she believes them to be, it is reasonable to use*" to defend himself or herself or another.
52. Section 62 of the Crimes Act 1961 makes a Police Officer criminally responsible for excessive use of force.

### *Police guidance on use of force*

53. The Police's *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
54. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
55. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
56. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
57. Police policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

### *Carriage and presentation of Taser*

58. Police Taser policy at the time of this incident<sup>7</sup> was that a Taser could be carried when an officer's PCA of a situation was that it was necessary because it was possible or likely that the officer may encounter a situation in or beyond the assaultive range.
59. As a visual deterrent and in conjunction with a verbal warning, a Taser could be drawn and presented at a person and that person laser painted.

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<sup>7</sup> Police policy changed on 1 August 2015. Officers could routinely carry a Taser after this date.

## Taking complaints

60. The *Police investigations of complaints and notifiable incidents* policy states that every complainant must have their complaint “*received and actioned promptly*” and be advised of the procedures for progressing their complaint.
61. The policy also states that if a complaint is made orally, the Police employee receiving the complaint must “*summarise it in writing or ask the complainant to do so, and get the complainant to sign it as soon as practical*”. The Police employee must then refer it as soon as possible to their supervisor. They must not ask the complainant to return or attempt to have them dealt with by another Police employee.

## Right to consult a lawyer

62. Section 23(1)(b) of the New Zealand Bill of Rights Act 1990 states that everyone arrested or detained has the right to consult and instruct a lawyer without delay.
63. Police policy at the time stated “*All prisoners have the right to consult and instruct a lawyer in private and without delay. Give the prisoner an up-to-date list of lawyers practising in your area and allow them to telephone the lawyer they choose*”.
64. The right is also reflected in the *Notice to Person in Custody*, which detainees are given when they are formally processed at a Police station, and in Section H of the *Breath & Blood Alcohol Procedure Sheet*.

## Duty of care

65. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times.
66. Police policy in relation to the management of prisoners at the time of this incident<sup>8</sup> provided that:

*“All people identified as in need of care because of their health, medical condition or the presence of any suicidal warning signs must be examined as soon as practical by a:*

- *Police medical officer, or*
- *duly authorised officer, or*
- *(CAT) -Community Assessment Team member.”*

67. The policy also stated that Police must:

*“Call a health professional (use Police medical officers where practical) for advice / assistance if:*

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<sup>8</sup> A new Police policy, *People in Police detention*, came into force in September 2015.

- *if (sic) the prisoner has been injured or says they are on any medication*  
....”

## THE AUTHORITY’S FINDINGS

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### Was Officer F justified in presenting his Taser at Mr X?

68. Officer F was qualified and certified to use a Taser at the time.
69. Officer F chased Mr X into Beckenham Park and called out to him at least twice to stop and get down on the ground. Officer F told Mr X that he had a Taser.
70. Mr X said that he did not want to be tasered so he stopped and followed Officer F’s instructions.
71. Officer F said that Mr X did stop but turned and started to advance toward him. The footage from Officer F’s Taser camera shows Mr X stopping, turning around and moving about, but not in an aggressive manner. Mr X got onto one knee but did not comply with Officer F’s instruction to get on the ground.
72. As they were arriving at the scene, Officers C and D both heard Officer F instruct Mr X to stop and get on the ground.
73. Officer F presented his Taser and laser painted Mr X but did not ultimately discharge it because Officer C and then Officer D arrived and were able to help physically restrain Mr X.
74. As detailed in paragraph 13, Officer F perceived that the threat posed by Mr X justified the use of his Taser because he was the only officer who initially chased Mr X into Beckenham Park. He had no back-up and Mr X was not complying with instructions to stop and get on the ground. As it was dark in that area of the park Officer F did not know exactly how close Mr X was to him or whether Mr X had any weapons on him.

### FINDING

Officer F was justified in presenting his Taser and laser painting Mr X due to the threat that he perceived Mr X posed at the time.

### Was the force used by officers during the arrest and transportation of Mr X reasonable and justified?

#### (i) *The arrest of Mr X*

75. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another. Section 40 of the Crimes Act also provides legal justification for Police to use reasonable force to prevent a person from escaping.

76. Mr X sustained an injury to the left side of his face in the eye/forehead area which he said was caused by an officer deliberately kneeling him during his arrest. Mr X believed that the same officer then deliberately dropped his knee into the back of his head a number of times while he was lying on the ground.
77. Officers C, D and F were all involved in Mr X's arrest. Officer C took hold of Mr X from Mr X's right side, which is supported by the footage from the Taser camera. Mr X was taken to the ground and Officer F assisted in the arrest from Mr X's left side.
78. Officer D arrived a short time after and initially attempted to stop Mr X from kicking his legs out. He then moved into a position above Mr X's head and said that he pushed Mr X's chest to the ground using both hands. He then placed his right shin across Mr X's shoulder blades to keep Mr X's upper body from moving so that he could be handcuffed. Due to Mr X's continued resistance, Officer D held his head on the ground.
79. The three officers involved in Mr X's arrest all said that Mr X put his hands under his chest, refused to comply with instructions to put his hands behind his back and kicked out with his legs in order to try and get back on his feet. A significant amount of force was clearly required to restrain Mr X so that he could be handcuffed.
80. The Authority accepts that the evidence shows Mr X was resisting arrest, and notes that Mr X pleaded guilty to this charge.
81. There is insufficient evidence to suggest that the injury to the left side of Mr X's head was deliberately caused by the officers when Mr X was taken to the ground and restrained.

## FINDING

The force used by Officers C, D and F to arrest Mr X was reasonable and justified.

### *(ii) Injuries to the back of Mr X's head*

82. Mr X said that when he was walked to the Police car Officer C and Officer D hit him on the side and back of his head.
83. The officers said they put Mr X in an approved restraint hold that required them to place an arm through the cuffed arm on each side of Mr X. When Mr X continued to resist, the hold enabled the officers to put their hands on his shoulders and force him forward.
84. Officer C said that the restraint hold was the only force he used on Mr X when he was being walked to the Police car.
85. While still in the hold, Officer D said that he thought Mr X was going to try to head-butt them, so he placed his right palm over Mr X's right cheekbone and pushed Mr X's head toward Mr X's left shoulder.

86. Mr X also states that Officer H climbed up onto the back seat of the Police car, pushed his face into the inside of the left rear door, then punched him in the back of the head repeatedly and put his knee into the back of his neck/head area.
87. Mr X said that the driver of the Police car, Officer G, stopped and altered the position of her rear-view mirror before this happened so that he could not see what was going on. Officer G denied stopping to move the rear-view mirror at any point on the drive back to the Police Station. Officer G also said that she did not recall any aggressive behaviour by Officer H toward Mr X in the back seat of the Police car. She added that she would definitely have remembered if Officer H had kicked, punched, kneed or elbowed Mr X, but he did not.
88. Officer H also denied that Officer G stopped and adjusted her rear-view mirror. He said he did not push Mr X's face into the Police car door or hit him in the back of the head. He said that, when Mr X got too close to him and spat on him, he twice redirected Mr X by pushing his shoulder toward the door.
89. The Authority accepts that the medical evidence shows Mr X sustained a soft tissue injury to the back of his head behind his right ear. However, how and when the injury occurred cannot be determined with any degree of certainty. It is possible that it occurred when Mr X fell onto the bonnet of the Police car before running into Beckenham Park, when he was being arrested and had his head held on the ground by Officer D, when he was escorted to the Police car or when he was being transported to the Police station.
90. Due to conflicting evidence, it is not possible to determine whether the force used by the officers during escorting and transportation was reasonable and proportionate to the situation.

## FINDING

Due to conflicting evidence, the Authority is unable to determine how and when the injury to the back of Mr X's head occurred or whether the degree of force used by the officers was reasonable and proportionate.

### *(iii) Fracture to Mr X's finger*

91. Mr X also said that, after arriving at the Police car, he was leant against it and his finger was deliberately bent which caused a fracture.
92. Officers C, G and H all said that they did not remember Mr X being held against the Police car. All recall that he got straight into the back seat.
93. The Authority accepts that the fracture to Mr X's finger occurred during his arrest or while being escorted to the Police car. Faced with the conflicting evidence of the officers and Mr X, the Authority is unable to determine whether Mr X's finger was fractured in the manner he alleged. It is also possible that the injury occurred when Mr X was being arrested and the three officers were trying to pull his arms from underneath him to handcuff him.

94. However, the Authority does find that there is no evidence to support Mr X's claim that the injury to his finger was deliberately caused by any of the officers involved in arresting or escorting him.

#### FINDING

Due to conflicting evidence, the Authority is unable to make a finding on how and when the injury to Mr X's finger occurred. However, there is no evidence to support Mr X's allegation that his finger was deliberately fractured.

#### Was Officer H racially abusive to Mr X when he was being transported to the Police Station?

95. Mr X alleged that racist comments were directed at him by Officer H while he was being transported to Christchurch Central Police Station. Mr X also told the Authority that Officer H wanted Mr X to call him 'Sir'.
96. Officer H said that this was a "*fabrication*" on the part of Mr X and did not happen. He said that he made no racial or derogatory remarks to Mr X. Officer H told the Authority that Mr X did say to him that he had only been arrested because he was "*black*".
97. Officer G said that Officer H did not make any racist remarks to Mr X and could not recall Mr X saying he had only been arrested because he was "*black*".
98. Faced with the conflicting evidence of Officer H and Mr X, the Authority is unable to determine whether Officer H made racist comments to Mr X.

#### FINDING

Due to the conflicting evidence of Officer H and Mr X, the Authority is unable to determine whether Officer H made racist comments to Mr X.

#### Should the authorised officer have taken Mr X's complaint about the excessive use of force by Police at the time he was processed at the Police Station?

99. Mr X complained to the Authority that when he arrived at Christchurch Central Police Station he reported having been assaulted by Police but that no statement of complaint was taken from him.
100. The authorised officer who processed Mr X at the Police station said she noticed an injury to Mr X's eye when he arrived at the Police Station. At the time she recorded on the 'Watchhouse Keepers Evaluation of Condition of Person in Custody' form "*has injuries to left eye, bruising to eye, nose, jaw, back of head, states these injuries were sustained by Police at time of arrest*". When the authorised officer was asked by the Authority whether Mr X indicated he wished to make a complaint, the response was that he did not.

101. The authorised officer added that if someone says at the time of arrest they want to make a complaint about Police actions, this is not generally recorded by an authorised officer as it is not part of their duties to take complaints. She added that, if a person in Police custody wants to make a complaint, an authorised officer will advise that person to come into the Police station or call after they have been released.
102. The prescribed process for Police to take complaints from detainees is set out at paragraphs 60 and 61. This policy states that Police must take a complaint at the time it is made orally.
103. The Authority accepts that Mr X made it sufficiently clear to the authorised officer that he felt he had been assaulted by Police. This is reflected in what the authorised officer has written on the 'Watchhouse Keepers Evaluation of Condition of Person in Custody' form. Unfortunately the authorised officer has not considered that Mr X was making a complaint and has not taken the matter any further.
104. While it is appreciated that this authorised officer did not think it was part of her duties to take complaints against Police, Police policy on taking Police complaints is applicable to all employees regardless of whether they are sworn or non-sworn, and requires them to respond in a timely and pro-active manner. Authorised officers can pass complaints onto the custody sergeant for appropriate action or simply provide a person with the Authority's complaint form.

## FINDING

Mr X made it sufficiently clear to the authorised officer that he felt he had been assaulted by Police. The authorised officer should therefore have ensured that Mr X's complaint was actioned in a timely way in accordance with Police policy.

### **Was Mr X given reasonable access to legal advice by Officer C before being evidentially breath tested?**

105. Mr X said that during the breath testing procedures he asked Officer C to contact his mother so that she could send a lawyer to the Police station because he did not know the name or contact details of her lawyer. Officer C would not do this and instead contacted a lawyer from the list of available lawyers.
106. Officer C, who conducted the breath testing procedures, said that when given his rights Mr X just asked to speak to his mother and did not mention that he wanted to speak to her for the purposes of getting the name and contact details of her lawyer or arranging legal advice.
107. Officer C would not let Mr X call his mother and would not call her himself as he had commenced the breath testing procedures. He said he did offer to call Mr X's mother after the breath testing procedures had been completed.

108. Mr X was then provided with a list of available lawyers. He did not want to choose any of the lawyers on the list and one was eventually chosen for him. He spoke to this lawyer but was uncooperative.
109. Any person detained or arrested has the right to consult a lawyer.<sup>9</sup> This principle is also reflected in Police policy and documentation provided to people in Police custody.
110. The Authority accepts that Mr X believed he made it clear to Officer C that he wanted to contact his mother to get her lawyer's details. However, the Authority is satisfied that this connection was not clear to Officer C, who believed Mr X only wanted to contact his mother and was not aware that Mr X's wish to contact his mother had any connection with obtaining a lawyer's details or legal advice. In addition, Officer C gave Mr X a list of lawyers and said he would contact his mother once the evidential breath test had taken place. When Mr X refused to choose a lawyer from the list, Officer C called one for him.

## FINDING

In the circumstances Officer C gave Mr X a reasonable opportunity to contact a lawyer.

### Did Police ensure that Mr X was seen by a medical professional in a timely manner?

111. Mr X complained to the Authority that he was not seen by a medical professional until late morning on 11 January when he had been in custody since about 3am, presented with injuries and complained about the injuries throughout his time in custody.
112. Mr X was arrested about 1.35am on 11 January 2015 and processed at Christchurch Central Police Station about 3.30am. The authorised officer who processed Mr X said she noticed an injury to his eye when he arrived at the Police station. She also recorded on the 'Watchhouse Keepers Evaluation of Condition of Person in Custody' form "*has injuries to left eye, bruising to eye, nose, jaw, back of head, states these injuries were sustained by Police at time of arrest*".
113. Officer C said that he offered medical assistance to Mr X for his swollen eye at the time he administered the evidential breath test but this was declined by Mr X.
114. A DAO tried to examine Mr X at 3.31am but he would not respond to questions. The DAO's report notes that Mr X's mother had advised Police of his mental health history. The report also notes that an injury to Mr X's face was sustained during his arrest but does not mention any injury to his finger. Due to the DAO's inability to assess Mr X, he was assessed as 'in need of care' and frequently monitored by custody staff.

<sup>9</sup> Section 23(1)(b) of the New Zealand Bill of Rights Act 1990.

115. Between 3.31am and 7.52am Mr X was checked in accordance with Police policy. Mr X said that, after being placed in a cell, he slept for a bit because he had a “*massive headache*”. He then woke up and banged on the cell door because he wanted some pain killers. Mr X said he was told that he could not be given any pain killers, so he asked to see a doctor. When interviewed by the Authority, the authorised officer said that she could not recall Mr X asking for medical treatment but that she certainly would have asked him if he required medical treatment.
116. Mr X was given Paracetamol at 7.52am. He said that he had been telling staff that he needed ‘something for his head’ for several hours before he saw the doctor.
117. Mr X was examined by a second DAO at 8.05am. By this time, he was calm and cooperative and was assessed as ‘not in need of specific care’. As expected, the focus for the DAO at this time would have been on Mr X’s mental health rather than his physical health.
118. Mr X was seen by a doctor at 10.45am. The doctor noted that Mr X had sustained injuries to the left side of his head/face and his right ring finger. He also had pain when trying to open or clench his jaw. The doctor concluded that x-rays were necessary to exclude a facial fracture and for the possible finger fracture. Mr X was taken to Christchurch Hospital about 12pm for the x-rays, which revealed no facial fracture and an oblique fracture to his finger.
119. Police policy at the time stated that a health professional should be called for advice or assistance if a prisoner had been injured.
120. The Authority is of the view that there were a number of risk factors that indicated Mr X should have been seen by a doctor as soon as possible. These include his obvious eye injury, the additional injuries noted on the ‘Watchhouse Keepers Evaluation of Condition of Person in Custody’ form, that Mr X was claiming his injuries were caused by Police, that several officers had used force on Mr X, that Mr X was affected by drugs and alcohol and that he had been complaining of a headache after being placed in a cell.

## FINDING

In the circumstances Police should have ensured Mr X received medical attention for his physical injuries sooner than he did.

## CONCLUSIONS

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121. The Authority has concluded on the balance of probabilities that:

- 1) Officer F was justified in presenting his Taser and laser painting Mr X.
- 2) The force used by Officers C, D and F to arrest Mr X was reasonable and justified.
- 3) Due to conflicting evidence, the Authority is unable to make findings on how and when the injury to the back of Mr X's head occurred or whether the degree of force used by the officers was reasonable and proportionate.
- 4) Due to conflicting evidence, the Authority is unable to make a finding on how and when the injury to Mr X's finger occurred. However, there is no evidence to support Mr X's allegation that his finger was deliberately fractured.
- 5) Due to the conflicting evidence of Officer H and Mr X, the Authority is unable to determine whether Officer H made racist comments to Mr X.
- 6) The authorised officer should have ensured Mr X's complaint was actioned in a timely way in accordance with Police policy.
- 7) In the circumstances Officer C gave Mr X a reasonable opportunity to contact a lawyer.
- 8) In the circumstances Police should have ensured Mr X received medical attention for his physical injuries sooner than he did.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

9 March 2016

**IPCA: 14-1306**



## ABOUT THE AUTHORITY

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### 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 Sir David J. Carruthers.

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?

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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.



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