

Officer A was not justified in punching Mr X in the head three times. This was an unnecessary and excessive use of force.

Officers A and B were justified in using a low level of force to control Mr X after he was removed from the Police car.

Analysis of the Issues

Background

What happened before Police arrived?

6. Mr X, Ms Y, and Mr X's aunty (Ms Z) had been drinking alcohol at Mr X's home. Just before 10pm, Mr X and Ms Y began arguing. Mr X walked down the long driveway, planning to go up the road to sit in the grass and "cool off". Ms Y followed Mr X and the couple continued yelling loudly at each other.
7. Mr X says he was "significantly drunk" at the time. Ms Y and Ms Z were less intoxicated.
8. We found Mr X, Ms Y and Ms Z to be honest and genuine in their recollection of events, though their recollection of specific details was no doubt compromised due to intoxication and the heightened situation they found themselves in.

What did Officers A and B know before arriving?

9. A neighbour called Police to report the incident. The Police dispatcher told the attending officers Mr X:
 - was screaming and other people at the property were yelling for help;
 - was intoxicated and "off his face";
 - was known to keep a large kitchen knife by his bed (though they had not seen this during this incident);
 - had been chasing people around the property and down the driveway;
 - had been yelling: "I'll kill you"; and
 - had alerts for using/carrying knives and three instances of family violence.¹

What happened when Officer A arrived?

10. Upon arrival, Officer A saw Mr X and Ms Y having a heated argument on the roadside. He got out of his car to separate them and ensure no-one was hurt. Mr X told Officer A to "fuck off" and said he was going to "cool off". He then began walking along the road.

¹ A Police safety alert flags important information about the potential risks that an offender may pose to the Police officers they have contact with.

11. Officer A spoke briefly with Ms Y who asked him to check Mr X was okay but not arrest him. Officer A encouraged Ms Y to return to the house before following Mr X up the road. Officer A yelled at Mr X to stop so he could speak with him and told him to get off the road.²
12. Officer A says the 100 kph road was extremely dark, with no lighting. There was occasional traffic, including trucks. He was concerned that:
 - Mr X was wearing dark clothes, intoxicated, and was stumbling into the road;
 - the stretch of road was close to a corner where approaching cars would be unable to see Mr X and stop in time;
 - Mr X's position on the road created risk to other road users; and
 - Mr X was showing no regard or realisation of the danger he was in.
13. Officer A says: "... my concern was primarily [Mr X's] welfare, however, I was also mindful that an incident had occurred at his address which he needed to be spoken to about."
14. We are satisfied Officer A determined that Ms Y was not seriously hurt or in any immediate danger once Mr X walked away. It was therefore appropriate for him to shift his focus to ensuring Mr X's safety before addressing the incident that occurred prior to his arrival.
15. Neither Mr X nor Ms Y have any recollection of interacting with Officer A when he first arrived. They recall Officer B as being the first officer they saw.
16. Officer B arrived less than one minute after Officer A. He saw Mr X "stumbling all over the place", walking onto the road then back towards the shoulder. He approached Mr X, trying to engage him in conversation, saying words to the effect of: "Hey mate, just stop here, let's have a chat." Mr X appeared very angry, intoxicated, and kept walking along the road, telling Officer B to "fuck off".
17. Officer A says he was about 20-30 metres behind Mr X when Officer B arrived. He saw Officer B pointing to the road shoulder, trying to usher Mr X off the road. He says Mr X was "kind of trying to shrug us off", telling Officer B to leave him alone: "Although he wasn't being touched, he was kinda like flailing, like trying to swat a fly sort of thing, like 'leave me alone', like 'I just want to cool off'."

ISSUE 1: WAS MR X'S ARREST LAWFUL?

What do the officers say happened?

18. Officer B says he made several attempts to get Mr X to move off the road, but that Mr X kept pulling away from him, swearing and telling him not to touch him. Officer B then reached out with an open hand, to guide Mr X off the road. He says Mr X turned around 180° and swung at

² We are satisfied Ms Y also followed Mr X, however, she and Officer A remained unaware of each other, possibly due to the darkness and because they were focusing on Mr X. Officer B was also unaware Ms Y was in close proximity.

him with a closed fist while yelling: *"Fuck off, leave me alone, don't touch me"*. Officer B saw the swing coming, so stepped back and avoided being hit.

19. Officer B told us Mr X continued to walk away so he went after him again, trying to get him off the road. Mr X again swung at him, in the same manner, saying: *"Fuck off, don't touch me..."*. This second swing did not connect with Officer B either. Officer B believes both Mr X's swings were deliberate attempts to hit him.
20. Officer A says he was about 5 – 10 metres away when he saw Mr X swing at Officer B.³ Officer A says when Officer B tried to take hold of Mr X's arm to lead him off the road, Mr X turned sharply to face Officer B and pulled his arm away. At the same time, Mr X raised his other arm and deliberately swung it towards Officer B's head. Officer A could not see if Mr X's fist was clenched but does not think that he had an open palm.

What do Mr X and Ms Y say happened?

21. Mr X says Officer B grabbed the back of his t-shirt. He turned to break Officer B's grip on him, using a 'windmill' motion. He says: *"My arm hit his wrist. I remember the impact. I did not hit with force or aggression; I was merely brushing him off."* He told Officer B: *"Don't!"* and *"Fuck off"*, while swinging around to break his grip. He continued walking and Officer B grabbed him again in the same manner. Mr X responded the same way, brushing him off using a windmill motion. Mr X is adamant he did not intend to punch Officer B and did not use a closed fist during the movement.
22. Ms Y says she saw Officer B grab Mr X on the shoulder and hold him by his loose t-shirt. She says Mr X *"sort of twisted himself out of his grip"*, rolling his shoulder. Mr X then kept trying to walk past Officer B. Officer B grabbed Mr X again, telling him to stop. Mr X said something like: *"I've done nothing wrong"*, and again tried to break out of his grip and walk away. (We note neither Officer A nor B saw Ms Y nearby and did not realise she was present.)
23. We are unable to determine whether Mr X was on the road or the road shoulder at the time due to conflicting accounts.

Was the arrest lawful?

24. Section 10 of the Summary Offences Act 1981 provides it is an offence to assault any officer who is acting in the execution of their duty. Section 39 of the Act states that an officer may arrest a person *"whom he has good cause to suspect of having committed an offence"*.
25. Officer B was acting in his duty as a Police officer. Whether or not Mr X was on the road or nearer the shoulder, it was appropriate for Officer B to try and move him away from the road for Mr X's own safety and the safety of road users.
26. Officer A says Mr X was flailing his arms around and telling Officer B to leave him alone.

³ We believe this was most likely the second swing described by Officer B.

27. Both Mr X and Ms Y also demonstrated to us Mr X's movement which we considered to be consistent with trying to break Officer B's grip.
28. In our assessment, it is plausible that Mr X was trying to break Officer B's grip on him, rather than deliberately trying to hit him.
29. However, the highway was dark at the time and, by all accounts, Mr X was intoxicated, non-compliant, and using aggressive language towards the officers. In such circumstances, it was entirely reasonable for Officers A and B to conclude that Mr X was attempting to strike Officer B.
30. On that basis, we are satisfied Officers A and B had good cause to suspect Mr X was attempting to assault Officer B. Therefore, the arrest was lawful.

FINDING ON ISSUE 1

The officers genuinely and reasonably believed Mr X attempted to assault Officer B, and the arrest was legally justified.

ISSUE 2: WAS THE FORCE USED ON MR X JUSTIFIED AND REASONABLE?

31. Here we will consider:
 - a) whether the officers' uses of force were justified; and
 - b) if not, whether we recommend Police:
 - i) consider charging an officer with assault; and/or
 - ii) consider commencing disciplinary proceedings.

What happened?

32. When Officer A saw Mr X appearing to swing at Officer B, he ran towards Mr X from about five metres away and tackled him to the ground. The tackle occurred almost simultaneously with the second swing.
33. Mr X describes being tackled suddenly from behind with no warning, and that his feet left the ground, causing him to slide in the gravel. He says he landed on his side, with the officer on top of him.

Was Officer A justified in tackling Mr X to the ground?

34. Officer A says he tackled Mr X to prevent any further attempt on his part to assault Officer B.

35. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. Under section 48, we must assess Officer A's actions on both:

- a subjective basis (that is, what Officer A genuinely believed); and
- an objective basis (what a "reasonable" person would have done).

36. This provision involves three questions:

- a) What were the circumstances as the officer believed them to be? (a subjective test)
- b) Was the officer's use of force against Mr X for the purpose of defending himself or another? (a subjective test)
- c) Was the officer's use of force against Mr X proportionate and reasonable in the circumstances as he believed them to be? (an objective test)

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

37. Officer A had initially considered Mr X to be uncooperative due to his noncompliance with instructions, being verbally aggressive and "*clearly extremely angry*" towards Police. He now deemed him to be assaultive, as he believed Mr X intended to harm Officer B by striking at him.

38. Officer A says following the first swing, Mr X kept his attention on Officer B:

"... he [Mr X] followed him [Officer B]. He certainly wasn't just trying to, or what I believed... push him away, he was now focused on him and not just trying to walk down the street."

39. Officer A believed he had to act immediately:

- as he feared Mr X might attempt to strike at Officer B again and that he had to prevent this; and
- because he, Officer B, and Mr X were all at risk of being hit by approaching vehicles.

Was Officer A's use of force for the purpose of defending Officer B and keeping all three men safe?

40. We accept Officer A tackled Mr X because he believed he needed to defend Officer B from assault and get the three of them off the road.⁴

Was Officer A's use of force against Mr X proportionate and reasonable in the circumstances as he believed them to be?

41. Officer A says he thought: "*[Mr X's] just thrown a punch at [Officer B], now he's facing him again, is he going to have another go properly? So I didn't have any time to do anything else other than get physical with him...*". He says he did not have time to use other options such as pepper-

⁴ There is no indication that Officer A saw the alleged second attempt by Mr X to swing at Officer B. He was running towards them at the time.

spray or a Taser, and that in any event, these options were inappropriate given Mr X was not facing him, and Mr X's close proximity to Officer B.

42. Officer A says he was mindful that Mr X was at least 6-feet tall and likely exceeded 100 kg, and that is why he used a tackle to move him away from Officer B, and off the road: *"I tackled [Mr X] around the upper midsection and drove him, pushed him off the road, and then we fell onto the grass on the side of the road."*
43. Officer A does not think the tackle was overly aggressive, but rather, was *"just enough to get him to the ground."* He wanted Mr X to be on the ground as it is much easier to place a non-compliant person in handcuffs if they are not standing up.
44. Photos show Mr X's back, arms and legs were grazed in a manner which we accept to be consistent with being on gravel. We conclude the grazes likely occurred at various times throughout the entire incident. Given Mr X landed on his side when tackled, we believe this is when his upper arm was most likely grazed.⁵

Conclusion

45. We accept Officer A had limited options available, and we have concluded that the tackle was a reasonable means to move Mr X away from Officer B and off the road.

What happened when Mr X was on the ground?

46. Mr X was told he was under arrest for assault and Officer B placed him in handcuffs, with his hands behind his back, while Officer A assisted.
47. Ms Y recalls running up to them, asking: *"What are you doing? He hasn't done anything wrong... You don't need to do this."* She says the officers told her to leave or she would be arrested. She returned to the house to get Ms Z.
48. Mr X says he *"wasn't exactly resisting"*, given his level of intoxication, and that he just wanted to be left alone. He admits he was swearing at the officers and calling them *"pieces of shit"*.
49. Mr X recalls being *"rag-dolled"* during the handcuffing process, in a motion where he was rolled and shaken by the officers. Based on the accounts of the officers, we are satisfied the officers had to roll Mr X to retrieve his hand which had become caught underneath him when he landed on the ground.
50. There are different accounts as to *when* Mr X was placed in handcuffs. The officers say they handcuffed Mr X after the tackle and before placing him in the Police car, whereas Mr X says he was handcuffed later, when extracted from the car. We are satisfied he was handcuffed *before* being placed in the Police car. The officers were mindful that Mr X was a large, intoxicated man

⁵ We consider it likely that some cuts and grazes were also a result of later falling when getting out of the Police car and rolling on the gravel while restrained on the ground.

who they believed had assaulted Officer B and was being verbally aggressive towards them. Given this, it is unlikely they would have placed him in the Police car unrestrained.⁶

51. Mr X does not recall being informed of his rights until later, when he was at the Police station. However we are satisfied this happened at the time of his arrest or just before being taken to the Police station. He told us he was angry at Police and recited an anti-Police rap to them at the “*top of his lungs*”. Officers A and B recalled this recital took place while Officer B was attempting to inform him of his rights. However, Mr X refused to stop the recital and listen to what Officer B was saying.

What happened when Mr X was placed into the Police car?

52. Mr X was placed into the back seat of Officer B’s Police car, behind the front passenger seat. Officer A kept the car door partially open and stood by it, using his mobile phone to conduct checks on Mr X on the Police database. He said Mr X remained “*pretty mouthy*” but sat relatively calmly.
53. A short time later, Ms Y and Ms Z approached the car, which appeared to cause Mr X to become more agitated. Officer A shut the car door so the parties could not interact, while Officer B stood by the front of the car with Ms Y and Ms Z, stopping them from getting closer to Mr X.
54. When the car door was closed, Mr X headbutted the car window forcefully three times, with the side of his head. Mr X told us he was trying to break the window.
55. Officer A believed the force used was so great that, if Mr X continued, he would break the window. Both officers say they were concerned Mr X may seriously injure himself. Officer A says:

“The window was bulging, I thought he’s about to break the window and the car was shaking with him throwing his body. He wasn’t just sitting upright just like moving his head from his neck, he was throwing his whole type body into it and then connecting with his head.”
56. Officer A says he opened the car door to stop Mr X from hurting himself and from damaging the car. He says he was aware the nearest hospital was at least 20 minutes away, so that there would be a delay in receiving treatment for Mr X if he concussed himself or cut his head by headbutting the window.
57. Officer A says he used one hand to push Mr X upright and towards the centre of the back seat, saying: “*What are you doing? You’re gonna hurt yourself or you’re going to damage the car.*” He says Mr X resisted him, not wanting to be moved away from the door.
58. According to Officer A, he was leaning into the car, still holding Mr X, when Mr X “*began hoicking really loudly*” and tried to lunge his body towards Officer A. Officer A moved backwards as he believed Mr X was going to spit on him. Mr X then sat himself upright and spat a large blob of

⁶ We note Ms Z and Mr X both believed Mr X punched the window with his fist once in the Police car, however, we consider this is most likely a faulty recollection. When Mr X was later taken out of the Police car, he fell onto the ground and there is no indication he used his hands to break the fall.

saliva which landed on the front of Officer A's vest, shirt, and upper arm.⁷ Officer A says: "I felt it hit my vest, my, my arm and my shirt and kind of like spittle round my face." It is at this point that Officer A punched Mr X three times to the face.

59. Officer A says:

"[Mr X] was leaning hard against me, against my hand and I was trying to stop him from either getting out or falling out and I thought he might try and get out or spit on me again so I punched him three times."

60. Officer A says he did not give Mr X any warning that he was going to punch him. He was still holding Mr X's shoulder, with Mr X leaning heavily on his arm, when he swung his left hand in a sideways, upward motion towards Mr X's head, with a clenched fist.

61. Mr X recalls he was headbutting the window when the door quickly opened. He does not recall Officer A saying anything to him or attempting to move him towards the centre of the car. He says Officer A just started punching him on the jaw, between three and five times.

62. Ms Y was standing at the front of the car, to the side, and saw the punches through the car window. She says Officer A opened the door and told Mr X to "Stop it!" She recalls seeing Officer A grab Mr X and pull him towards him. She heard the sound of 'smacking' and saw the punches connecting with Mr X's head.

63. Ms Z says, when Mr X was banging the window, Officer A yelled words to the effect of: "Don't fucking smash my car" and pulled the door open. She says, when Mr X was being punched: "... his head was like it wasn't attached to his body, it was just like being flung around with these punches."

64. Officer B did not see Officer A open the door. He saw a spit mist and saw the motion Officer A made as he punched Mr X. However, he could only provide limited details as his vision was obscured by the car door and front passenger seat.

Was Officer A justified in punching Mr X?

65. Officer A was required to complete a tactical options report on his use of force, soon after the incident. In it, he said:

"When [Mr X] assaulted me by spitting on me after head butting the window of the patrol vehicle multiple times, I believed it necessary to act immediately to prevent any further assault, attempts to flee from the vehicle...."

66. We have considered whether Officer A was justified in punching Mr X in accordance with section 48 of the Crimes Act 1961,⁸ as he says he punched Mr X:

- in self-defence, to stop him from spitting at him again; and

⁷ Mr X does not dispute spitting at Officer A, though was unsure at what point during the incident it occurred.

⁸ See paragraph 35.

- in defence of others, to stop him from getting out of the car and potentially trying to assault him, Officer B, or Ms Y and Ms Z.

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

67. Officer A says he was mindful that Mr X had already attempted to punch Officer B, and that he had *“been violent in the car just on his own”*. By spitting, he had now committed another assault.
68. Officer A told us he was *“pretty confident”* that Mr X was going to *“at least try and spit if not get physical again.”* He believed Mr X was trying to reposition himself to continue some form of assault on him, and that any delay in acting would give Mr X further opportunity to spit, bite or kick him.
69. Officer A says he was convinced Mr X was going to get out of the car and *“try and have another go”*, placing any person outside the car at risk (including Ms Y and Ms Z). He said:

“... if [Mr X] gets out and he’s fired up, he doesn’t want [Ms Y] there, he’s not happy about being arrested and he’s just spat on Police, and then had force used against him. I was convinced that he was going to try and attempt another assault and if he’d got out it was either going to be spitting or worse. If he landed a headbutt on someone with the same force there was no doubt in my mind he was going to injure someone.”

Was Officer A’s use of force for the purpose of defending himself or others?

70. We do not accept Officer A was trying to defend Officer B, Ms Y or Ms Z, as the likelihood of Mr X getting out of the car and assaulting them was very low, despite the car door being opened. If Mr X had got out of the car, the officers and Ms Y and Ms Z would have been able to move away from him.
71. However, given Officer A punched Mr X immediately after being spat at, we accept the punches were primarily to defend himself.

Was Officer A’s use of force against Mr X reasonable in the circumstances as he believed them to be?

72. Officer A says his *“short and sharp”* punches were with his dominant hand and with a closed fist. He estimates he used about 65%-75% force. Photos of Mr X’s jaw show significant swelling, indicating Officer A punched him with some force.
73. According to Officer A, due to the height of Officer B’s car, his own head was above the roof line when he delivered the punches. He says he could not see from Mr X’s collarbone and above. When swinging his arms in the *“sideways upward motion”*, he was unsure exactly where the punches landed on Mr X.
74. According to a Police supervisor of tactical options training, Police officers are taught that, if delivering punches to a person, they should aim just below the sternum and try to avoid hitting the head. Officer A says, in this instance, delivering punches to Mr X’s sternum was not possible due to his body position and the confined space.

75. Police officers are also taught that they must assess whether a strike has been effective before delivering another. Officer A told us the punches were delivered “*relatively quickly in succession*” with minimal time in between. This is consistent with the accounts of Mr X, Ms Y and Ms Z.
76. Officer A says the first two punches seemed to have no effect on Mr X as he continued feeling the weight of his torso pushing against him. He stopped punching him after the third punch as this is when Mr X stopped pushing against his hand and withdrew further into the car.
77. Officer A also says, while he was punching Mr X, he thought that Mr X was going to try and get out of the car or attempt to spit on him again, “*or some other form of assault if he was able to get out of the car.*” When Mr X began to pull away, he thought: “*... now he’s moving out of the way, he can’t get out the other side... so now I can stop and get him out.*”
78. Officer A says that he did not think other options were appropriate. He says:
- communication was not working. Mr X had continued to tell him to “*fuck off*” when he told him to stop headbutting the window;
 - if he did nothing, Mr X would most likely headbutt the window again;
 - he was too close to Mr X to use pepper-spray and did not have enough time to use it; and
 - it would be unreasonable to use his Taser on Mr X while he was handcuffed, in the back of the car. If he stepped back and created space in order to use the Taser, it would have given Mr X the opportunity to get out of the car.

Conclusion

79. We accept that Mr X spat at Officer A as described. We also accept that communication was ineffectual and that using other options such as pepper-spray or a Taser would have been inappropriate. However, Officer A could have stepped back and used the door to immediately separate himself from Mr X, if necessary. Alternatively, he could have restrained Mr X, using his open palm to direct Mr X’s face away from him, and asked Officer B to come and assist.
80. In our view, punching Mr X three times in the head forcefully was a disproportionate and excessive use of force.

Should Officer A be charged for punching Mr X in the head?

81. While it is not our job of course to determine criminal liability, we are obliged to reach views as to whether Police action that is the subject of a complaint is justified or not, and we may make non-binding recommendations to the Commissioner of Police, including that Police consider criminal prosecution. In deciding whether to recommend prosecution we must consider:
- a) whether in the event of a prosecution there would be a reasonable prospect of a conviction; and
 - b) whether it is in the public interest to prosecute.

82. The first issue concerns evidential sufficiency, whether it can be established beyond reasonable doubt (the criminal standard of proof) that the offence was committed. This requires that the evidence is so convincing that there is no other logical explanation other than that Officer A is guilty of using excessive force under section 62 of the Crimes Act 1961.⁹
83. In this case, we are not convinced that the evidence is sufficient to reach that standard. Therefore, we agree with the decision not to charge Officer A. In the interests of avoiding any further delays in the disposal of this matter, we refrain from expressing any view as to the appropriateness or otherwise of Police not considering the officer's actions from an employment perspective.

Was Officer A unnecessarily forceful when removing Mr X from the Police car?

84. When Officer A pulled Mr X out of the Police car, Mr X either did not have the opportunity to put his feet on the ground or his foot gave way. He fell heavily onto the gravel. Mr X was unable to break his fall because his hands were behind his back, handcuffed. We are satisfied the fall was accidental and unintentional.

Were the officers unnecessarily forceful with Mr X when restraining him on the ground?

85. Ms Y and Ms Z believe the officers were unnecessarily rough when restraining Mr X on the ground. Ms Y says Mr X was being "*kind of thrown around a bit*" and Ms Z recalls an officer using his foot to roll Mr X over. Ms Z says at one point, Officer A came in "*like a bull in a china shop.*" She says Mr X was "*rolling around a bit*" and making it "*quite hard*" for the officers, but adds that he was not lashing out at the officers.¹⁰
86. Officers A and B explained that they took turns restraining Mr X on the ground once he had been removed from the car, while the spit hood was retrieved and applied. Officer A initially lay Mr X on the ground on his side and held him there. Mr X was then repositioned to lie on his stomach. Officer B held Mr X's head down, turned to the left, and put his knee on Mr X's lower back. Officer B says Mr X was "*thrashing about*", "*flailing and kicking*" and spit was coming out of his mouth. Officer A assisted Officer B to restrain Mr X when the spit hood was applied, and says no other force was required.¹¹
87. Mr X says he was angry and was being "*cheeky as fuck*" to the officers. One of the officers put a knee forcefully on his back and the other pushed his face into the gravel. He recalls telling them his handcuffs were too tight, but told us he had no other concerns regarding the force used on him at this time.

⁹ Section 62 of the Crimes Act provides that: "*Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.*"

¹⁰ Ms Y and Ms Z believed Mr X was being placed in handcuffs at this point, however we believe Mr X was already in cuffs and the officers were just restraining him.

¹¹ Officer B also dressed some of Mr X's wounds and offered him a Ventolin inhaler, which he declined to use.

88. We are satisfied there was a need to control Mr X in order for a spit hood to be retrieved and applied, and that the officers used a low level of force which was proportionate given Mr X's level of resistance.

Was the manner of the officers unnecessarily aggressive when dealing with Ms Y and Ms Z?

89. Ms Y and Ms Z say Officers A and B's manner in communicating with them throughout the incident was aggressive and that they unnecessarily threatened them with arrest rather than listening to them and addressing their concerns.
90. Officers A and B told us they were dealing with a large, intoxicated, and aggressive man who they believed had assaulted them and who was also a risk to himself. They wanted Ms Y and Ms Z to return to the house as they believed their presence was causing Mr X's behaviour to escalate. Officer A recalls yelling at them that if they did not move further away from Mr X, they would be arrested for obstruction. Officer B also recalls telling Ms Y and Ms Z to move out of the way.
91. Upon her arrival, Officer C asked Ms Y and Ms Z to return to the house on the understanding that she would come and speak with them shortly. Ms Y found Officer C's demeanour reassuring in the stressful situation. When speaking with Ms Y and Ms Z later, Officer C listened to their concerns and advised them how they could make a complaint about Officers A and B, if they wished to do so.¹²
92. It is not difficult to understand why Ms Y and Ms Z felt the officers were aggressive, particularly when they were threatened with arrest. We are mindful, however, that Officers A and B were involved in a volatile situation with Mr X and that this made it difficult for them to communicate more effectively with Ms Y and Ms Z. In our assessment, Officers A and B were not unnecessarily aggressive in their dealings with Ms Y and Ms Z.

¹² Officer C also asked about what happened prior to the Police arrival. Ms Y said there had been arguing but no violence. Given this, the initial potential domestic violence matter Police were called to was not taken any further.

FINDINGS ON ISSUE 2

Officer A was justified in tackling Mr X to the ground following the alleged attempted assault, to prevent any further attempted assault and to move him off the road.

Officer A was not justified in punching Mr X in the head three times. This was an unnecessary and excessive use of force.

Officers A and B were justified in using a low level of force to control Mr X after he was removed from the Police car.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

27 August 2024

IPCA: 22-16178

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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. 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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