

The force used on Mr Z and Mr X during their arrests was unlawful because the arrests were unlawful.

If the arrest of Mr Z had been lawful, the force used by officers would have been justified.

Even if the arrest of Mr X had been lawful, the force used during his arrest was excessive and therefore unjustified.

Issue 4: Did Police treat Mr Z and Mr X inappropriately after their arrests?

We are not satisfied that officers took adequate care of the phones of Mr Z or Mr X while they were in custody, although we have not been able to determine how one phone was damaged, and the other phone was temporarily lost.

We have not been able to determine if the Police van was driven in a manner to intentionally cause harm to the unrestrained occupants.

The Police decision to not pursue any charges against Mr Z and Mr X not only appropriate but necessary to avoid Police embarrassment and wasting judicial time and costs.

Analysis of the Issues

What happened?

7. At about 6.00am on Sunday 25 September 2022, five Police officers responded to an incident on Hobson Street, Auckland, where an individual was arrested, and an injured man was being taken to hospital. Officers A, B and C were aiding a two-person unit, Officers D and E.
8. Mr Z and Mr X, who are cousins and were not involved in the incident, were walking down Hobson Street at this time. When Mr Z saw Police dealing with the injured man, he stopped, got out his phone and started filming.
9. Two CCTV cameras in the street captured, without sound, parts of what occurred.
10. Initially, Officer D, who was escorting the injured man on the footpath, asked Mr Z to step aside and to afford the man some privacy and not film them. Mr Z did move aside although continued to film on his phone.
11. Officer D led the injured man away and Officer A walked slightly behind them. When Mr Z shuffled forward to follow, Officer A stopped and warned Mr Z to not obstruct, then pushed lightly with one hand onto the arm of Mr Z.
12. Mr X stepped between his cousin and Officer A and appears on the CCTV footage to be trying to de-escalate the situation. Officer A then pushed more forcefully onto Mr Z's chest. Mr Z stumbled back against a nearby wall.

13. Officer A then walked after Officer D, with Mr Z following about a metre behind, still filming, and with Mr X next to him.
14. After about six paces, Officer A turned towards Mr Z, confronted him, and pushed him again with force, one-handed. Mr X tried again to step between the officer and his cousin, still appearing, with his arms down by his side, to be trying to de-escalate the situation.
15. Officer B then walked over and pushed Mr Z, which was followed by Officer A pushing Mr X forcefully with two hands.
16. The two officers then walked about 10 metres, to stand on the footpath next to their Police van and two colleagues, Officers C and E.
17. From that initial incident, one man was secured in the Police van, and the injured man was sitting with Officer D in the rear of a nearby Police car, waiting to be driven to hospital by Officer E. Mr Z (still filming) and Mr X, had followed slightly behind the officers to the Police van and now stood on the footpath about two or three metres away. From the CCTV footage, it appears the officers had an opportunity at this point to leave.
18. After about a minute, Officers A, B and C stepped up to Mr Z. Mr X stood about four metres further away and also started filming, using his own phone.
19. Without comment, Officer B grabbed Mr Z's phone and tried to pull it from his hand. Mr Z did not release it. Officer A then grabbed an arm of Mr Z and started to restrain him as if he was under arrest. Mr Z's phone fell to the pavement.
20. At no time was Mr Z told he was being arrested, as captured by the footage taken by Mr X. Officer C and the last officer, Officer E, went in and assisted with restraining Mr Z.
21. Mr X continued to film and is heard on the recording repeatedly saying: *"That's not your job officer."* And then: *"What's the point?"*
22. When officers had control of Mr Z, Officer A stepped away and quickly walked towards Mr X, saying words to the effect of, *"back off"* or *"get back,"* to Mr X.
23. Mr X is heard on the footage replying in a calm voice: *"I'm not doing anything, I'm not doing anything."*
24. Officer A pushed or grabbed Mr X, who stepped backwards, into a nearby bus shelter. His camera footage stopped when this occurred.
25. Both Mr Z and Mr X were taken to the ground and had handcuffs applied, Mr Z by Officers C and E, Mr X by Officers A and B. Each was then placed into the prison van and taken to the Auckland custody suite where they were processed on the charge of obstructing Police. Mr Z was held for 5 hours and Mr X for 2 ½ hours. They were both released without charges.

26. Officers A and B later submitted reports which detailed that Mr Z and X had both resisted arrest, and force had to be used.¹
27. While in custody, Mr Z's phone was in his property but was damaged. It was not established how. No footage was able to be recovered from Mr Z's phone.
28. Mr X's phone was not part of his property when processed at the custody suite. Mr X later used technology to locate his phone from an address in an Auckland suburb. This is how the footage Mr X captured was later available.

ISSUE 1: WERE OFFICERS A AND B JUSTIFIED IN PUSHING MR Z AND MR X?

29. Here we will consider whether officers were justified in pushing Mr Z and Mr X and whether the actions of the officers were lawful and appropriate. We will focus on the more forceful pushes by the officers, after the initial minor push.
30. We outlined in paragraphs 10 to 15, how Officers A and B pushed Mr Z and then Mr X.

What did the parties say?

31. We spoke to Officer A, who told us: *"(Mr Z) began laughing and lunging his phone at my face recording in an intimidating manner. I began fearing for my safety as (Mr Z's) phone and fist were within striking distance of my face."* Officer A said he gave a push to Mr Z's right hand to redirect the phone away.
32. Officer B told us he cannot recall any pushing, by himself or any other officer. When he was shown the CCTV footage which captured him and Officer A pushing Mr Z, the officer did not provide a comment.

Were the officers justified under section 48 in pushing Mr Z and Mr X?

33. Section 48 of the Crimes Act 1961 states:²

"Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use."

34. Under section 48, we must assess the officers' actions on both:
 - a subjective basis (that is, what Officers A and B genuinely believed); and
 - an objective basis (what a *"reasonable"* person would have done).

This assessment involves asking three questions:

- 1) What were the circumstances as the officers believed them to be (a subjective test)?

¹ Officers are required to submit a Tactical Options Report (TOR) when they have used force on a person.

² See paragraphs 121 to 125 for relevant policy relating to the use of force.

- 2) Were the officers' use of force against Mr Z and Mr X for the purpose of defending themselves or another (a subjective test)?
- 3) Were the officers' use of force against Mr Z and Mr X reasonable in the circumstances as the officers believed them to be (an objective test)?

What did the officers believe the circumstances to be?

35. Officer A told us he feared for his safety as he believed Mr Z's phone and fist were within striking distance of him and he outlined this in his submitted report.
36. In watching the CCTV footage, we observe Mr Z filming and following the officers. It was Officer A who stopped and stepped towards Mr Z. We do not accept Officer A felt threatened by Mr Z, when it was the officer who closed the distance between himself and Mr Z to be within a "striking distance".
37. Officer B chose to make no comment regarding the pushing of Mr Z and Mr X.
38. Although this test is subjective, our assessment on the evidence is that the proposition that Officers A and B felt threatened is not credible. In short, we do not accept that either Officer A or Officer B felt threatened by Mr Z, such that they would need to act in self-defence.
39. It follows that the force used by Officer A and Officer B was not for the purpose of defending themselves or another officer so there is no need to consider the reasonableness of the force.

Conclusion

40. The only potential justification Officers A and B had for using force when they pushed Mr X and Mr Z was that of self-defence under section 48 of the Crimes Act. However, we do not accept that either officer feared for their safety. In our view they were therefore not acting in self-defence and had no lawful basis for the more forceful pushes of Mr X and Mr Z.

FINDING ON ISSUE 1

Officer A and Officer B were not justified in pushing Mr Z or Mr X.

ISSUE 2: WERE THE ARRESTS OF MR Z AND MR X LAWFUL?

41. Here we will consider whether the decision to arrest Mr Z and Mr X was lawful and consider whether officers used appropriate judgement in this action.
42. Obstruction is an offence under section 23(a) of the Summary Offences Act 1981. To obstruct Police, Mr Z and Mr X needed to intentionally hinder an officer from executing their duty.³ The duty the officers were carrying out related to the earlier, non-related incident which involved an arrested man (who was secured in the prison van) and an injured man (who was placed into a Police car by Officer D).

³ See paragraph 116.

43. We have outlined how Mr Z and Mr X were pushed by Officers A and B while the officers walked back towards their Police vehicles. In viewing the CCTV footage, we do not accept that either Mr Z or Mr X were hindering any officer from executing their duty.
44. Once by the Police van, four officers (including Officers A and B) stood on the footpath. From that initial incident, officers had control of two individuals, one in the rear of the Police van, and the other in a nearby Police car waiting to be taken to hospital.
45. From viewing the CCTV as well as the phone footage from Mr X, we have concluded that all officers had opportunity to leave the scene.
46. Mr Z stood on the footpath about two or three metres away from the officers and was still filming. After about a minute, Officer A, Officer B and Officer C, stepped up to Mr Z. Mr X stood about four metres further away and at that stage, also started filming, using his own phone.
47. In paragraphs 18 to 25 we outline the arrest of Mr Z and Mr X by the officers, initiated by Officer B.

The conflicting accounts of what occurred

What did the officers say?

48. Because Officers A and B used force during the incident, both officers submitted Tactical Options Reports (TOR).
49. Officer A recorded in his TOR that both Mr Z and Mr X constantly blocked his path and followed him approximately 15 metres to the safety of the patrol vehicle (the van), shoving their mobile phones towards his face while recording.

50. We spoke to Officer A, who told us:

“They were blocking me from walking to the van which was blocking me from taking the victim to the van for that medical attention and from my perception [Mr Z] was putting ... presenting his phone into my face.”

51. When we showed Officer A the CCTV footage which did not appear to be consistent with his account, Officer A maintained that this was his recollection of how he perceived what occurred.

52. Regarding the arrest of Mr Z, Officer A said:

“[Officer B] and I communicated to each other that it was unsafe to retreat to the patrol vehicle as ... as we felt the possibility of [Mr Z] assaulting us as our backs were turned, was highly likely.

At the time I feared [Mr Z] was assaultive ... as he was increasingly confrontational and aggressive, refusing to comply with verbal directions to give Police space and record from a respectful distance.

Having exhausted all options of de-escalation, [Officer B] and I began to conduct the arrest procedures on [Mr Z].”

53. Regarding the arrest of Mr X, Officer A said:

“I observed [Mr X] approaching one of the ... officer’s back in an unimpressed, aggressive, intoxicated state.

... [I] created a physical barrier between [Mr X] and [Officer E]. I delivered a defensive push to [Mr X’s] chest and [Mr X] instantly grabbed a hold of the centre of my fluoro high-vis Police vest and pulled me into the nearby bus stop.”

Officer A also told us:

“This pulling action from [Mr X] was conducted with such force it was enough to make a large rip in my fluoro high-vis vest. [Mr X] grabbed a hold of my duty belt and my pants leg and started forcefully squeezing and pulling me extremely close to him. I really feared that if [Mr X] grasped one of my appointments he could inflict serious injury on myself, and [Officer B] was also in close proximity. I deemed [Mr X] at a highly assaultive level on the Tactical Options Framework as I believed he was capable of physically harming me. I delivered a forearm push to [Mr X’s] upper chest and lower facial area in (an) attempt to break his strong grip.”

54. Officer B recorded in his TOR that Mr Z and Mr X were obstructing Officer A from walking as they were blocking his pathway. Officer B also outlined that the two men were then obstructing officers from getting into their Police vehicle, as they were unable to turn their backs due to fear for their safety.
55. Officer B also recorded that withdrawal was not an option, so he decided to arrest Mr Z, who was refusing to move on and walk away.
56. We spoke to Officer B, who told us:

“We didn’t feel that we could turn-around or turn our backs to these individuals for the fear of our safety ... We didn’t know what the intent or capability of these people were. Upon realising that we couldn’t withdraw from the situation, I made the decision to arrest the first person [Mr Z].”

Officer B also told us:

“I saw my colleague [Officer A] trying to arrest the second person [Mr X], and this was taking place in the bus stop. I could see [Officer A] was in real danger of being assaulted due to the fact that [Mr X] was much bigger and acting in a disorderly manner and trying to writhe and wriggle his way out of being arrested.”

57. We spoke to the other officers who were present, but none could offer detail as to the reason Mr Z or Mr X were arrested.

What did Mr Z and Mr X say happened?

58. Mr Z acknowledged filming the officers but did not believe he was interfering when Officer A: *"... came up to me straight away and he pushed me and said, 'don't obstruct justice'"*.

59. Mr Z said that a short time later, they had followed behind the officers to their Police vehicle by a bus stop, when: *"... they pretty much come up to me, snatched my phone out of my hand and then they begin to arrest me and [put me in a] bit of a headlock."*

60. Mr X told us his cousin (Mr Z) was filming the officers, when:

"I'm standing maybe two or three metres away ... I'm not getting involved. But the four, I think it was four Police, they surround [Mr Z] and then one of the officers just reaches for [Mr Z's] phone and then just tries to rip it off him and then all of the officers get involved and start pulling body parts in opposite directions.

I don't want to escalate anything 'cos I'm already worried at this stage and then one of them, then one of the other officer's notices me and then just once they've got [Mr Z] most of the way under control they, he [Officer A] just said: 'Stay with me,' and then starts, and then just grabs me, grabs the phone off me"

61. Mr X also said:

"I've gone up to protect my face and I can just remember like multiple knocks and then I just don't really have too much. Yeah, all I can see, and feel, is just getting hit basically. I wasn't sure if there was a punch or a knee"

What is our assessment of what occurred?

62. As we have outlined in paragraphs 11 to 15, when walking back to the Police vehicles, Officer A turned and pushed Mr Z. From the CCTV footage:

- Mr Z was not obstructing any officer from moving along the footpath or preventing them from doing their duty.
- After the first engagement, neither Mr Z or Mr X were obstructing any officer from taking an assault victim to a Police car or from officers leaving the scene.
- We note that the assault victim was in the rear of a Police car before either Mr Z or X were arrested.

63. A short time later at the Police vehicles, four officers were beside the Police van, which had its side door open for easy access for Police staff. CCTV footage from Hobson Street recorded Officer B near the van's side door with his back to Mr Z, talking to Officer C. It does not appear to us that the officers were in fear for their safety.

64. The footage from Mr X's phone shows him to be a short distance from the officers and questioning their actions. His words are not abusive or aggressive.

65. When Officer A approached Mr X, Officer A says words to the effect of “back off” or “get back.” These words imply that the officer wanted Mr X to move away, and we accept the officer pushed him for this purpose.
66. On the phone footage, Mr X is calm when he twice says: “I’m not doing anything.” Officer A pushed Mr X backwards and into the bus shelter. In our view, Mr X was not obstructing or threatening any officer or presenting a risk to their safety.
67. Our assessment is that officers had ample opportunity to safely leave; Mr Z and Mr X did not obstruct them from doing so. Therefore, the arrests of Mr Z or Mr X were not lawful or justified. We also note that the officers’ actions in carrying out the arrests, delayed an assault victim getting medical attention.

FINDING ON ISSUE 2

The arrests of Mr Z and Mr X were unlawful.

ISSUE 3: WAS THE FORCE USED IN THE ARRESTS OF MR Z AND MR X JUSTIFIED?

68. Because the arrests of Mr Z and Mr X were unlawful, any subsequent force used by Police to arrest them was unjustified. However, because Officers A and B say they believed that a charge of obstruction was correct in the circumstances, we have also considered whether the force used would have been reasonable in the event the arrests had been lawful. We have outlined in paragraphs 19 to 25 the force used by officers against Mr Z and Mr X.

Were officers legally justified in using force against Mr Z and Mr X?

69. In assessing whether the force used by Officers A and B was excessive, it is necessary to apply the language of the Crimes Act 1961. This is because the Crimes Act provides a defence to the use of force in certain circumstances.
70. The relevant provisions are sections 39 and 48, both of which we will consider.

Were the officers’ actions justified under Section 39?

71. Section 39 of the Crimes Act 1961 empowers Police to use “such force as may be necessary” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. “Necessary” force in this context is generally accepted as meaning “reasonable” and “proportionate to the degree of force being used to resist”.
72. Under section 39, the Authority must consider:
 - a) Did the officer genuinely believe that the person was using force to resist? (a subjective test)?
 - b) If so, was it reasonable for the officer to conclude it was necessary to use force to overcome that resistance (an objective test)?

- c) If so, was the officer's use of force to overcome that resistance reasonable (an objective test)?

Did the officers believe that Mr Z was using force to resist arrest?

73. After Officer B grabbed the phone and hand of Mr Z, other officers (Officers A, C and E) moved in and gripped Mr Z's arms to restrain him. Mr Z's phone fell to the ground.
74. Mr Z did not cooperate in that he tensed up, then stepped forward and did not comply with instructions, although he did not fight back or resist with violence.
75. We accept that the officers involved in the arrest of Mr Z believed he was resisting arrest and that they needed to use a level of force to overcome that resistance.

Was it reasonable for the officers to conclude it was necessary to use force on Mr Z to overcome that resistance?

76. As Mr Z did not cooperate, then stepped forward and did not comply with instructions, our conclusion is that it was reasonable for the officers to use force to overcome that resistance.

Was the officers' use of force with Mr Z reasonable in the circumstances?

77. Officer A applied a restraint hold around Mr Z's neck for a brief time, then moved that to be across Mr Z's upper body. When another officer pulled Mr Z's head down, Mr Z was overpowered and handcuffed.
78. The force used by the officers was low level. No punches or extreme open hand tactics were used. Mr Z stopped resisting when he was overpowered by the officers and taken to ground where he was handcuffed.
79. In our view, the level of force used by the officers with Mr Z was reasonable.

Did Officers A and B believe that Mr X was using force to resist arrest?

80. As outlined in paragraphs 21 to 24, as Mr Z was being taken to the ground, Officer A stepped away and quickly moved across to Mr X where he pushed or grabbed him, and the pair went backwards into the bus shelter.
81. Officer A told us that he was trying to create a physical barrier between Mr X and Officer C (who was involved in the arrest of Mr Z), and delivered a defensive push to Mr X, who then grabbed his vest and pulled him into the bus stop.
82. Officer A said his fluoro vest was ripped when grabbed by Mr X, and that Mr X also grabbed him violently in the groin area which led to him suffering an injury which he later had assessed by a doctor. Officer A told us:

"I deemed [Mr X] at a highly assaultive level on the Tactical Options Framework as I believed he was capable of physically harming me. I delivered a forearm push to [Mr X's] upper chest and lower facial area in (an) attempt to break his strong grip."

83. Officer B went to assist Officer A in the bus shelter once Mr Z was secured. Officer B told us:
- “I also noticed that [Mr X] had grabbed onto [Officer A’s] high vis vest, which meant that he couldn’t withdraw from the situation.”*
84. Before going off duty, Officers D and E reported to their supervisor that they each witnessed punches being thrown at the head and torso of Mr X by either Officer A or B. The supervisor recorded the information and forwarded this through appropriate channels.
85. Officer C, who was holding the handcuffed Mr Z at the rear of the Police van, said he looked across to the bus shelter, *“for 2 or 3 seconds,”* and saw Mr X bent over at the waist with both his hands holding onto the front of Officer A. Officer C said that he then saw Mr X punching the groin area of Officer A, so Officer A used his elbow or forearm to push Mr X off.
86. Mr X told us he did not resist or use force against any officer as he tried to protect himself.
87. The CCTV footage from Hobson Street is from a distance and has road signs across the key parts of the incident. The opaque glass side of the bus shelter is visible, and the figure of Mr X can be seen going backwards into the rear of the shelter. Mr X’s phone is on as it transmits a light from the screen. The phone is visible during the engagement with Officer A and then Officer B, both down low by Mr X’s waist and then held up by his shoulder. It then appears that the phone falls to the ground.
88. With Mr X clearly holding his phone in this manner, there is a conflict between the accounts of Officers A and B, who say Mr X was grabbing Officer A, and Officer C who says he saw Mr X punching Officer A.
89. From viewing the CCTV footage of Mr X in the bus shelter, we determine Mr X was not using force in the two different manners described by Officers A, B or C. Rather, we find that Mr X was having force applied to him, as observed by Officers D and E (as per paragraph 84).
90. We do not accept that Officers A and B genuinely believed Mr X was resisting arrest and that they needed to use force to overcome resistance. The officers are not therefore entitled to rely on section 39 of the Crimes Act to justify their use of force.

Were Officers A or B justified in using force against Mr X under section 48 to defend themselves or another person?

91. As we have outlined in paragraphs 89 to 91, CCTV footage captures Mr X holding his phone and not using force against an officer as claimed by three officers, we do not accept officers were using force to defend themselves or another person. The officers are not entitled to rely on section 48 of the Crimes Act to justify their use of force.

FINDINGS ON ISSUE 3

Neither the force used on Mr Z nor Mr X during their arrests was lawful because the arrests were unlawful.

If the arrest of Mr Z had been lawful, the force used by Officers A and B against him would have been justified.

Even if the arrest of Mr X had been lawful, the force used during his arrest was excessive and therefore unjustified.

ISSUE 4: DID POLICE TREAT MR Z AND MR X INAPPROPRIATELY AFTER THEIR ARRESTS?

92. In this section we outline what Mr Z and Mr X told us about how Police treated them after they were secured and under arrest, and the officers' response.

What happened to the phones of Mr Z and Mr X?

93. During the incident, both Mr Z and Mr X were filming on their phones. Only the footage taken by Mr X has come to light.

94. As recorded by Mr X, Mr Z's phone is seen to drop to the footpath when Mr Z is arrested. No other footage captures what happened to this phone, although the phone was later put into Mr Z's property at the custody suite. A photograph taken at the custody suite reveals the phone had significant damage to the screen, with four separate sharp indentations. Mr Z told us his phone had not uploaded remotely (meaning the video he was recording), so we consider the phone was damaged before the recording was stopped. Mr Z later disposed of this broken phone, and as a result no footage was recovered.

95. All the officers involved said they did not know how Mr Z's phone was damaged. The nature of the damage to the phone screen suggests it may have been intentionally damaged, rather than it being a result of falling to the footpath, but we have been unable to establish how this occurred.

96. Mr X's phone was not part of his property at the custody suite. We asked the officers what happened to Mr X's phone, and they all said they did not know.

97. When Mr X was released from custody, his phone was not amongst the personal items returned to him. Utilising a tracking component that was on his phone, two days later, Mr X went to a house in Freeman's Bay, Auckland, and spoke to an unknown male who handed over the phone. The man's details or how he had obtained possession of Mr X's phone are unknown.

98. CCTV footage from Hobson Street shows Mr X holding his phone in the bus shelter, while being arrested by Officer A, as per paragraph 87. Moments later, an object is seen on the footpath adjacent to the bus shelter, and then Mr X is placed onto the ground and handcuffed.

99. As the officers left Hobson Street, with Mr Z and X in the rear of the Police van, Officer C is seen to bend down and pick up an object and take it with him.
100. We asked Officer C what this object was, and he said it was a damaged phone that belonged to one of the arrested men. We assume this was the phone belonging to Mr Z.
101. We are not satisfied that Police took adequate care of the phones, although we have not been able to determine how Mr Z's phone was damaged and how Mr X's phone was temporarily lost.

Did Police drive the Police van in a manner that was intended to cause harm to the arrested persons?

102. Both Mr Z and Mr X said that when they were handcuffed, with hands behind them in the secure cage of the Police van, the van was driven in an aggressive manner which caused them to be thrown about in a dangerous way. Both men considered this was intentional.

103. Mr Z told us:

"It felt like they were in a race because my cousin and I were being thrown around the back and I can't hold myself up, so I'm, a few stages I'm pushing as hard as I can against [Mr X] so that we don't get thrown around the van, the back of the van more."

104. Mr X outlined similar, saying:

"They were making it so that you felt the corners and that you braked. I think my head hit the front wall. 'Cos you, you know, you're in handcuffs so you can't brace yourself. So, me and [Mr Z] are like bouncing in, around like bloody, like just some loose basketballs, you know. And it was, it was just so uncalled for."

105. In the CCTV footage from Hobson Street, the Police van is seen pulling away from the curb, then the vehicle's red and blue emergency lights are activated.
106. Officer A was driving the van and told us he did not drive in a manner to cause harm to the passengers.
107. Officers B and C said they did not believe a deliberate effort was made to drive in a manner to cause harm to the prisoners.
108. The officers commented that numerous road works on the route from Hobson Street to the custody suite, along with the rudimentary, metal surfaces of the prison van interior, are likely to have made the ride uncomfortable.
109. We do not consider the van needed to be driven with emergency lights activated, and conclude from the fact that it was, that it was being driven briskly by Officer A. However, we have not been able to determine if the van was driven in a manner intentionally to cause harm to the unrestrained occupants.

What happened to the charges against Mr Z and Mr X?

110. Officers charged Mr Z and Mr X with obstruction. A short time after arriving at the custody suite, a decision was made by Police that both men would be offered a restorative justice pathway, and they were then released with the intention of this process being implemented.
111. As Mr Z and Mr X considered their arrests were unlawful, they did not follow through with the process. Police then withdrew the charges. In our view, this was the only realistic option Police had.

FINDINGS ON ISSUE 4

We are not satisfied that officers took adequate care of the phones of Mr Z or Mr X while they were in custody, although we have not been able to determine how one phone was damaged, and the other phone was temporarily lost.

We have not been able to determine if the Police van was driven in a manner to intentionally cause harm to the unrestrained occupants.

The Police decision to withdraw the charges against both Mr Z and Mr X was the correct course.

112. The Authority completed our investigation in July 2023, although the publishing of this report was delayed as we waited for Police to complete their investigation and take subsequent action.

Subsequent Police Action

113. Police conducted their own investigation and then charged Officer A with common assault upon Mr X. On 26 September 2024, Police withdrew the charge when Mr X indicated he was not prepared to give evidence.
114. Police then conducted employment processes with Officers A and B which resulted in each officer receiving an internal sanction.
115. Police inform us they have undertaken significant work on the workplace practice and culture of this workgroup, to ensure that processes are appropriate and to the expected standard.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

3 April 2025

IPCA: 22-15365

Appendix – Laws and Policies

LAW

Summary Offences Act 1981, Section 23: Obstructing or resisting Police, prison or traffic officer

116. Resisting Police, prison, or traffic officer: Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct,—
- (a) any constable or any authorised officer, or any prison officer, or any traffic officer, acting in the execution of his duty; or (b) any other person acting in aid of any such constable, authorised officer, prison officer, or traffic officer; or (c) any Police dog working under the control of a Police dog handler.

Crimes Act 1961: Use of Force

117. Section 39 of the Crimes Act 1961 provides for law enforcement officers 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”*.
118. Section 48 of the Crimes Act 1961 states: “Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”.
119. Section 62 of the Crimes Act 1961 says anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICE POLICY

Arrest and Detention

120. Force used during an arrest must be reasonable and be used only when it is not reasonable to make the arrest in a less violent manner.

Use of Force

Police policy on the use of force

121. The Police 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.

122. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure 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.

123. Police officers 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:

- 1) the incident type, location, and time;
- 2) the officer and subject's abilities;
- 3) the subject's emotional state;
- 4) the influence of drugs and alcohol and the presence or proximity of weapons;
- 5) similar previous experiences with the subject; and
- 6) environmental conditions.

Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

124. A key part of an officer's decision about 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:

- 1) cooperative;
- 2) passively resisting (refuses verbally or with physical inactivity);
- 3) actively resisting (pulls, pushes or runs away);
- 4) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action);
- 5) 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.

125. The 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.

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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