

# Unjustified entry and use of force during search in Palmerston North

## Summary of the Incident

1. On 8 November 2020, Police went to Mr Z's address in Palmerston North to search for two youths, Mr X and Y, who they believed to be there.
2. Police had a warrant to arrest Mr X that allowed them to enter any premises if they had reasonable grounds to believe he was present. Mr Y was also wanted by Police for multiple breaches of court bail. Police did not have a warrant in respect of him.
3. Mr Z answered the door and was arrested for obstruction after failing to allow Police access to the property.
4. On gaining access and searching the property, Police discovered a hatch to the roof cavity where it appeared one or more persons was hiding.
5. Police attempted to speak with those in the roof cavity but got no response. Eventually, the hatch was opened by those hiding up there. Police identified Mr Y and attempted to talk him down. Police were also aware of another person up in the roof cavity but could not initially identify them.
6. Mr Y became verbally and physically assaultive, kicking out at Officer A from his position in the roof cavity and threatening to stab Officer A and his Police dog (which was not physically present inside the address).
7. Officer A responded to Mr Y by swearing at him and using inappropriate language.
8. Shortly afterwards, Mr Y jumped down from the roof cavity and hit out at Officer A. Officer B and C attempted to restrain Mr Y and a struggle ensued while trying to arrest him.
9. Following this, Mr X came down from the roof cavity and was arrested with no incident. Mr X, Y and Z were taken to Palmerston North Police Station.

10. The Authority received a number of complaints after mobile phone footage was released online showing the interaction between Mr Y and Officer A.

## Issues examined by the Authority

- Issue 1:** Did Police have lawful authority to enter Mr Z's property and search for Mr X?
- Issue 2:** Did Officer A act professionally when communicating with Mr Y?
- Issue 3:** Did Police use excessive force in the arrest of Mr Y?

## The Authority's Findings

11. The Authority found that Police did not have reasonable grounds to believe the subject of the warrant, Mr X, would be present at the time it was executed, therefore, they had no lawful authority to enter the property. This means Mr Z should not have been arrested for obstruction.
12. The arrests of Mr X and Y were also not lawful.
13. Officer A acted unprofessionally and used inappropriate language when speaking with Mr Y.
14. The use of force against Mr Y was not justified as Police did not have lawful authority to be on the premises.

## Analysis of the Issues

### ISSUE 1: DID POLICE HAVE LAWFUL AUTHORITY TO ENTER MR Z'S PROPERTY AND SEARCH FOR MR X?

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15. Mr X was wanted by Police and they had a warrant to arrest him, which was issued by Palmerston North Youth Court on 6 November 2020.
16. Police believed Mr X to be at the address in question for the following reasons:
  - the briefing at the start of the shift provided information stating Mr X was frequenting or being hidden at that address;
  - Mr X was in a relationship with a relative of the occupier of the address; and
  - Mr X was believed to be committing offences with Mr Y and two further relatives of the occupier.
17. Officer B was the shift supervisor for the night shift that executed the warrant to arrest. Officer B believed the information surrounding Mr X being at the address came from a credible source. He told Police in a formal written statement: *"I was satisfied based on the information available to me that I had an objectively reasonable suspicion that [Mr X] would be at the property"*.

18. Mr Y was wanted by Police for multiple breaches of bail conditions. There was an alert on the Police database for him to be arrested and brought before the court.
19. On 8 November 2020 at about 4.30am, Police went to the address to look for both Mr X and Y. (Police chose this time as Mr X and Y were believed to be sleeping there, however, they were known to often be active between 10pm and 3am and subsequently not 'home' between those hours.)
20. The officer who first knocked on the door heard a flurry of movement and what sounded like multiple people running upstairs. Officer E saw *"a pair of legs in dark pants running up the stairs to the second storey"*, through a window. He alerted the other officers present. Officers A, B, C, D and E all say this supported their belief Mr X was at the property.
21. Mr Z was told Police had a warrant to arrest Mr X and had reasonable grounds to believe he was at the address. He refused Police entry to his address, for about three minutes before he was arrested for obstruction.
22. A warrant to arrest states:

*"For the purposes of executing this warrant, the member of the police executing it may at any time enter on to any premises, by force if necessary, if the member of the police has reasonable grounds to believe that the young person is on the premises."*
23. Accordingly, the officers needed to have reasonable grounds to believe Mr X was on the premises at the time they entered the property. The warrant did not provide for officers to enter the property just because they had reasonable grounds to believe Mr X may be there.
24. The High Court makes this clear:
  - In one case the Court noted:<sup>1</sup> *"Plainly, the Police must have reasonable grounds to believe that the suspect is there and not merely that he might be there."* The Court concluded the evidence did not establish anything more than a possibility that the person might have been at the address, rather than establishing reasonable grounds to believe he was actually there.
  - In another case,<sup>2</sup> Police had a reasonable belief the person had been at the premises the night before. However, the Court said Police would have entered the property unlawfully if they had not been able to prove they had grounds to believe the person was present at the time they executed the warrant.
25. There was no specific information to suggest that Mr X would be at the address at the time Police attended. While we think Police had good cause to suspect that Mr X may be at the address, there was not sufficient information for Police to be able to form a belief he was there. The legs seen running up the stairs cannot be considered evidence of Mr X's presence at the

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<sup>1</sup> *R v Pou* [2002] 3 NZLR 637

<sup>2</sup> *Karlsson v Police* [2019] NZCA 409

property as his face was not seen. Therefore, Police did not have lawful authority to enter the premises.

26. Due to the fact Police did not have lawful authority to search the property, Police were not justified in arresting Mr Z for obstruction.

#### FINDINGS ON ISSUE 1

Police did not have reasonable grounds to believe Mr X would be present at the address at the time they executed the warrant, therefore, they had no lawful authority to enter or search the property.

Mr Z was unlawfully arrested for obstructing police.

#### ISSUE 2: DID OFFICER A ACT PROFESSIONALLY WHEN COMMUNICATING WITH MR Y?

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##### Interaction with Mr Y in the roof cavity

27. Police gained entry and searched the house, starting with the ground floor and working up to the first floor. They cleared all the rooms and had not found Mr X and Y.
28. Officer D located a manhole cover in the bathroom that appeared to have been recently moved. He used his extended police baton to move the cover, and it was moved back with force indicating there was someone up there.
29. Officer D decided to contact the on-duty dog handler, Officer A, to assist.
30. Officer A arrived on scene and was provided an update by Officer D. Officers B, C and E were also present at this point.

##### Mobile phone footage

31. One of the persons present in the address used their mobile phone to record part of the interaction between Officer A and Mr Y. At this point, there was only one person in the roof cavity interacting with Police. Officer A confirmed this to be Mr Y once the manhole cover had been removed.
32. The footage is 26 seconds long and is filmed from a room that appears to be on the opposite side of the corridor from the bathroom.
33. Officer A can be seen looking up to the ceiling, with Officer C just behind him in the bathroom. Officer B is stood in the hallway, standing between Officer A and the person filming.
34. The footage does not show Mr Y or the hatch where he is situated but his voice can be heard in parts.
35. Officer A is standing on a small table, holding what appears to be a torch in his left hand, pointing this up into the roof area. He also has his extended baton in his right hand.
36. Officer A says: "Are you gonna come down boys or I'm chucking my dog up".

37. Mr Y says: *"(something inaudible) coming down bro"*.
38. Officer A responds: *"Nah, nah, nah, stay, no stay there. Stay there c\*\*t till I get my f\*\*king dog"*.
39. At this point, Officer A brings his Police baton back across his body so it looks like he is going to strike out. He feints hitting out once and says: *"F\*\*king stay up there"*. Officer A then hits out whilst saying: *"Better f\*\*king stay up there, ya pussy"*. A noise can be heard, indicating he makes contact with the ceiling or manhole cover with this hit.
40. Mr Y says: *"Are you calling me a pussy are ya"*.
41. Officer A's response to this is: *"Yeah, you're going to come down... get your f\*\*king... shut up, get your f\*\*king arse down here or I won't chew you"*.
42. As this last comment is said, the bedroom door is shut, causing the visual footage to end.

#### *Officer A's version of events*

43. Officer A had prior knowledge of Mr X and Y.
44. Officer A told the Authority he initially tried to move the manhole cover but there appeared to be weight bearing down on the cover.
45. He told the Authority that he called out to Mr X and Y by name and told them they were under arrest. He believed they were using force to resist arrest by physically preventing the manhole cover from being opened. So, Officer A used his Police baton to punch a hole in the cover.
46. The aim was to punch a small hole in the cover to *"speak clearer with somebody and... view what's going on up there"*.
47. Eventually the resistance from above subsided and Officer A was able to remove the manhole cover with his hands. At this point, Officer A was able to confirm it was Mr Y in the roof cavity.
48. Officer A describes Mr Y's immediate behaviour as: *"extremely aggressive and violent in his actions... swearing at me, says he's gonna stab me and he's been quite aggressive right from the outset, telling me to go away"*.
49. In a statement that Officer A wrote on 26 January 2021, he says he initially tried to persuade Mr Y to come down but *"after a period of 5-7 minutes, I became frustrated with the resistance and aggression being offered by [Mr Y]"*.
50. The statement goes on to say he *"did use language that could be unprofessional"*.
51. When questioned about this, Officer A says:

*"I've used different levels of communication, that was at the severe end but by no means was the entire dialogue I've had with [Mr Y] throughout that time, at that level"*.

52. Officer A did not perceive the words he used towards Mr Y as being a threat.
53. Officer A was asked about his actions with his Police baton. He says he was: *“just trying to deflect what he’s trying to do... he did kick out his foot... he’s continually trying to, with his foot, motion that he’s going to kick me”*.
54. Officer A says: *“I didn’t know if he had access to or even had a knife in one of his hands. The last thing I wanted to do was get stabbed and I certainly believe[d] it was a possibility”*.
55. Officer A reflected on the incident and said:

*“There [are] still different things I could’ve said, and it doesn’t make Police... [or] me look good... but when taken out of context, an eight second clip from a 20 [or] 22-minute job, can be perceived poorly, and I accept that 100%”*.

#### *Account of Mr X and Y*

56. Neither Mr X nor Mr Y would speak with us.

#### *Officers’ version of events*

57. Officers B, C, D and E were all within the vicinity of the bathroom when this took place.
- Officer B was in the bathroom, standing to the left of Officer A, near the doorway. He says the video footage was a *“tiny snippet of an incident that lasted about 25 minutes”*. Officer A had been trying to talk Mr X and Y into coming down from the ceiling for *“quite some time”* and that *“... screaming, yelling, threatening them”* was not going to convince them to come down. He believes the communication had been fine up until the point where the manhole opened and Mr Y started kicking out at Officer A. He says the language used by Officer A *“could have been better... he could have chosen different words... in hindsight, we all could”*.
  - Officer C was also in the bathroom on the right of Officer A, standing near the bath. She says there was a *“significant amount of professional verbal communication”* used prior to the hatch being opened. She says: *“there wasn’t aggression, it was just very loud, very clear”*. Once the cover opened, Mr Y: *“immediately starts becoming verbally... aggressive... He was swearing at us calling us f\*\*king c\*\*ts... [he] just didn’t wanna come down”*.
  - Officer D was standing out in the corridor, near the doorway of the bathroom. He says communication *“started off at a very low level... to where... it got a little bit more loud and more direct”* and Mr Y *“was swearing back”*.
  - Officer E was in the bedroom opposite the bathroom. He heard Mr Y make threats of *“I’ll f\*\*king stab you and your dog or words to that effect”* and says he was yelling profanities and refusing to come down. He says the footage was after ten to fifteen minutes of communication and he *“didn’t have any concerns... due to... it being a snippet of what happened”*.

58. Officers B and C witnessed Mr Y kick out with his foot towards Officer A. They saw Officer A respond using his baton to deflect the kicks.
59. Officer B describes the kicks as being close enough to hit Officer A in the face. Officer C describes seeing Officer A having to lean back to avoid being assaulted.

#### **Did Officer A act professionally when communicating with Mr Y?**

60. Police were not lawfully on the premises, therefore, the arrests of Mr X and Y were unlawful. They had no authority to request Mr X or Mr Y come down from the roof cavity.
61. We accept the accounts of other officers, that Officer A had communicated reasonably with Mr Y for some of the time before the video footage was taken. However, the footage shows evidence the situation escalated to a point where Officer A failed to communicate effectively with him. He delivered confusing instructions and used highly inappropriate language that was derogatory and unprofessional. The way in which this was delivered was also threatening and provocative.
62. Officers A, B and C allege that Mr Y kicked out at Officer A. Although Mr Y's leg cannot be seen in the footage, we accept it occurred at some stage not captured on footage. However, Officer A was not justified in using any force against Mr Y due to the arrest being unlawful. Therefore, Mr Y was entitled to defend himself in these circumstances.
63. Even if Police had lawful authority to be in the premises and the arrest of Mr Y had been justified, the way Officer A brandished his baton was visibly threatening and entirely unreasonable. Mr Y was a youth and was up in the manhole. Officer A could have moved away if he felt threatened. It appears that at the time the video footage was taken, Officer A was using his baton out of frustration rather than self-defence.
64. None of the behaviour displayed by Officer A in the footage would have been conducive to encouraging Mr Y to come down from the roof cavity.

#### **FINDINGS ON ISSUE 2**

The arrests of Mr X and Y were unlawful.

Officer A used inappropriate language when speaking to Mr Y and was unprofessional in the way he interacted with him.

#### **ISSUE 3: DID POLICE USE EXCESSIVE FORCE IN THE ARREST OF MR Y?**

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##### **What happened when Mr Y came down from the roof cavity?**

65. Shortly after the video footage ends, Mr Y jumped down from the roof cavity and landed in the middle of Officers A, B and C.

66. Officers A, B and C all describe Mr Y as being assaultive. They witnessed him trying to punch Officer A, who says he was hit in the chest.
67. In response to this, officers took the following action:
- Officer A used his open palms to push out at Mr Y and create distance between them.
  - Officer C saw Mr Y moving backwards from Officer A with his arms still waving around. Officer C was standing on the side of Mr Y and went in to wrap her arms around his chest, just below his shoulders.
  - Officer B saw Officer A redirect Mr Y away from him. Officer B then responded by grabbing Mr Y from behind with his right arm reaching across and around to Mr Y 's left armpit. From here, he stepped backwards into the hallway and pulled Mr Y over his hip and down to the ground.
  - Officer E witnessed Officer B moving backwards out of the bathroom with Mr Y swinging punches towards Officer B. Officer E took hold of Mr Y's arm to pull him from the bathroom, but he was still *"heavily resisting"*.
68. Officer B says both himself and Mr Y hit one wall of the narrow corridor during the takedown process and then the other because of the resistance from Mr Y. As a result, Officer B's knees went through the internal wall, making holes in the wall.

#### What happened when Mr Y was restrained on the ground?

69. Once on the ground, Officer B's arm was trapped under Mr Y and he was trying to break free, but this was difficult because of Mr Y's weight bearing down on him.
70. Officer B and E both describe Mr Y as punching, kicking, and spitting at Police.
71. Mr Y was kicking his legs around, so Officer C took hold of them to prevent him from kicking out at any of the officers.
72. Officer B tried to push Mr Y away to free his arm and get him onto his chest so he could be handcuffed. Mr Y then started to spit at Officer B whilst their faces were inches apart.
73. Officer B used his palm to strike Mr Y in the face to get him to turn his face away. He says: *"there was little force in it. I don't know how many times, however many times in order to stop"*.
74. This was unsuccessful so Officer B then punched Mr Y twice in the face. However, he says he had little range of motion, so these were short arm jabs of low intensity. This caused Mr Y to turn away and Officer B used this opportunity to extract his arm from underneath Mr Y.
75. Officer E put Mr Y in a *"figure four body lock"* to prevent him from resisting and so he could be handcuffed. He describes wrapping his right leg around Mr Y's, putting his right arm under Mr Y's and across his chest and his left arm being on Mr Y's shoulder.



76. Officer E used moderate force to pull Mr Y towards him for about 20 – 30 seconds which enabled handcuffs to be applied.

### Injuries to Mr Y

77. Whilst at Palmerston North Police Station, Mr Y was assessed by a doctor at about 5.35am.

78. The doctor describes Mr Y's injuries as:

- a small scratch over the bridge of the nose
- multiple superficial grazes over the back and right shoulder with bruising evident
- blood from a minor scratch of the left toe

79. The doctor's conclusion was that the injuries were minor and no specific treatment was needed.

80. Mr Y was further seen by a GP on 10 November 2020 where his injuries were assessed and photographed.

81. His medical records state that Mr Y was held down by his neck, nose hit, leg put across his chest by an officer and hit over his whole torso.

82. The doctor describes Mr Y's injuries as:

- redness of the sclera of the right eye
- small laceration to the bridge of the nose, above right eyebrow and left side of chin
- bruising to the front of the neck, upper left arm, right wrist, right forearm, right upper arm, right shoulder, upper back, left and right sides of body

83. In response to the injuries, the officers said the following:

- Officer B possibly had contact with Mr Y's neck when taking him to the ground, but he recalls grabbing Mr Y underneath the arm, not the neck.
- Officer B suggested the laceration on Mr Y's nose could have been from his wedding ring when he connected with Mr Y's face.
- Officer E may have had some contact with Mr Y's neck, but this was not the intended target.

84. Mr Y's injuries suggest that a considerable level of force was required in order to restrain him. Officers are unable to account for all the injuries but as this altercation took place on the floor in a narrow corridor this would explain much of the grazing and bruises. The confined space would have impacted how Police responded. Once Mr Y and Officer B landed on the ground, there would have been limited options for Police to take.

### Audio clips from Mr Y being restrained

85. Ms W was present at the address when Mr X and Y were arrested. She provided a statement to Police about what she heard and saw.
86. Following the interaction that was captured on mobile phone footage, Ms W described: *“a whole lot of banging, like the upstairs was getting torn apart”*.
87. She heard Mr Y screaming: *“Get off my f\*\*king throat and my chest. I’m in cuffs you piece of s\*\*t. Take the cuffs off and we’ll throw hands outside”*.
88. Ms W also provided some audio clips that were recorded whilst Mr Y was being detained.
89. These provide evidence of the threatening and abusive behaviour of Mr Y. He can be heard saying: *“Take off these cuffs and I’ll f\*\*king knock you out”*.
90. Mr Y can also be heard telling Police: *“...and then get your f\*\*king knee off my... chest”*, shortly followed by: *“Can I go anywhere? Why the f\*\*k you standing on me b\*\*\*h”*.
91. Based on what Mr Y is saying, these audio clips are after he has been handcuffed.
92. Officer C describes that once Mr Y was handcuffed, he was lying on his back, but he kept sitting up, kicking out at staff, and pushing himself off the walls. In response, Officer C continued to sit on Mr Y’s thighs so he could not get up. Every time Mr Y sat up, Officer C used an open palm to push Mr Y back down to prevent him from being able to headbutt or spit at her. It wasn’t an application of force, more a way to prevent him from getting any closer.
93. When Officer C was asked about anyone applying pressure to Mr Y’s chest or neck, she stated she was the only person who had any pressure on him. She also described Officer B assisting her a couple of times to get Mr Y to lay back down on the floor.
94. The officers were asked about whether anyone applied force to Mr Y’s chest or throat. None of them saw anyone do this. The only force applied when Mr Y was in handcuffs was as Officer C described in paragraph 92.

### Were officers justified in using force when attempting to restrain Mr Y?

95. Because the entry to the house was without lawful authority, the arrest of Mr Y was unlawful. Therefore, any uses of force during the arrest were also unlawful.
96. However, if the arrest had been lawful, the force used was proportionate to the resistance Mr Y was putting up and would have been justified.

### FINDING ON ISSUE 3

Police did not have lawful authority to be at the property so all uses of force against Mr Y were unjustified.

## Subsequent Police Action

97. Police completed their own investigation and found no issues with entry to the premises or the uses of force by officers.
98. Officer A was subject to an employment investigation for the language evidenced in the mobile phone footage. He received an appropriate employment outcome.

A handwritten signature in black ink, appearing to read 'C. Doherty', with a horizontal line underneath.

**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

10 November 2021

**IPCA: 20-5501**

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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 Colin Doherty.

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?

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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

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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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Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140  
Freephone 0800 503 728  
[www.ipca.govt.nz](http://www.ipca.govt.nz)

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