

# Police trespass into private home

## Summary of the Incident

1. Ms X complained to the Authority that Police unlawfully entered her Bay of Plenty home on the evening of 2 November 2020.
2. Following an encounter with Ms X, a woman asked Police to serve Ms X with a trespass notice. The woman commented to officers that she believed Ms X was distressed, unwell and unstable.
3. Ms X told us, and we believe, that she was not suffering from any mental illness at the time. Her distress arose from objectively stressful circumstances, relating to family court proceedings.
4. Three officers went to Ms X's home and knocked on her front door. Ms X was in bed and did not wish to speak with them, so did not answer. When Ms X heard the officers opening her back gate, she was alarmed and fled into the bathroom, locking herself in. The officers entered her home through the unlocked kitchen door, without a warrant.
5. Police say their entry was lawful as they had reasonable grounds to suspect a risk to the life or safety of Ms X that required an emergency response. Ms X says the officers did not have those grounds.
6. We initially sought to resolve this dispute with an apology from Police and a debrief for the officers involved. That was unsuccessful. We then independently investigated Ms X's complaint, to determine whether Police lawfully entered Ms X's home.

## Issues the Authority has identified and determined

### Issue 1: Did Police lawfully enter Ms X's home?

Police unlawfully entered Ms X's home.

The officers did not have the necessary information to form a reasonable suspicion that Ms X's life or safety was at risk and that they needed to urgently respond, which would justify a warrantless entry under section 14 of the Search and Surveillance Act 2012. No other power made their entry lawful.

## Issue 2: Other matters

Frontline Police staff are not equipped to effectively respond to mental health crises, yet they are routinely called upon to do so.

Officer A should not have considered detaining Ms X under section 109 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, as that power was not in fact available to him because Ms X was on private property.

## Analysis of the Issues

### DID POLICE LAWFULLY ENTER MS X'S HOME?

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7. At around 6:30pm, Ms X visited Ms Y's home regarding a civil dispute. Ms Y was distressed by Ms X's visit and called Police.
8. At around 7:30pm, Officers A and B arrived at Ms Y's home and spoke with her. An acting sergeant, Officer C, arrived there at around 7:45pm.
9. Ms Y was very upset. She asked officers to serve a trespass notice on Ms X. During the discussion, Ms Y commented to the effect that she believed Ms X was distressed, unwell and unstable.
10. At around 7:55pm, Officers A, B and C drove from Ms Y's home to Ms X's home, 800 metres away.
11. The three officers have since given different accounts, at different times, regarding their purpose in going to Ms X's home. Those accounts are explored later in this report.

### How did officers enter Ms X's home?

12. Upon arriving at Ms X's home, the three officers walked to the front door. Officer B knocked and announced 'Police'. Ms X did not respond.
13. The officers opened a side gate and walked to a patio area, outside the kitchen door. Standing on the patio looking through the kitchen windows, Officer A briefly glimpsed Ms X inside the house, running across the hall.
14. Officers B and C then heard a loud bang from inside, akin to a slamming door or falling object. Unbeknown to the officers, Ms X had run from her bedroom to the bathroom and locked the door.
15. Officers A and C entered through the unlocked kitchen door and walked through the house, looking for Ms X. Officer B did not enter immediately – he went around the perimeter of the house looking for Ms X, before entering through the kitchen door.

16. The three officers found the bathroom door was locked, and stood outside it, calling to Ms X. Officer A recalls:

*...At that point we obviously figured that [Ms X]... was in the bathroom with the doors locked and we'd heard this bang and I sort of thought "what's going on here" like and I kept voice appealing trying to engage with her and no response and at that point what crossed my head was, has she tried to hang herself in the bathroom...*

17. Similarly, Officer B recalls:

*So, in [Ms X's] mind, I mean, sometimes, like, people will think they're going to be arrested so they'll go and kill themselves and go and hang themselves, so we also were worrying about her state of being, you know, like, has she hurt herself? Was she going to hurt herself?*

18. Officer A asked Officer C whether they ought to break down the bathroom door. Instead, Officer B went outside again, using a stepladder to try and look through the bathroom window; he could not do so, as the window was too high. Officer C left the house as she needed to use a bathroom. Officer A went outside to see what Officer B was doing.

### How did officers serve the trespass notice?

19. At around 8pm, Officer A called Ms X's mobile phone, but there was no answer.
20. Unbeknown to the officers, Ms X climbed out the bathroom window and ran to a neighbour's home for assistance. She returned home around 8:05pm. Officers A and B were in the garden beneath her bathroom window. A neighbour pointed out Ms X. She hurried away down a lane adjacent to her home, through a hedge and into the backyard of another property. Officers A and B ran after her, calling on her to stop.
21. At 8:10pm, Officer A served the trespass notice on Ms X while in the backyard of the neighbouring property. He took a series of photographs on his phone to show that he had served the notice. Ms X felt angry and upset, especially at having her photo taken. Officer C returned. The officers departed.

### Why did the officers go to Ms X's home?

22. The accounts of the three officers as to their purpose in going to Ms X's home varied – both amongst each other, and over time.
23. On the day of the incident, Officer A made a note in his notebook implying they went to Ms X's house out of a general concern for Ms X's mental health.
24. Officer A later explained Ms Y had told Police she believed Ms X was having a mental health episode and asked Police to conduct a welfare check on Ms X and serve her with a trespass notice. However, the record he created in the Police database a few days after the incident only mentioned serving the trespass notice.

25. Officer A told us he did not record the welfare concerns in the database, nor the fact that Police entered Ms X's home, as he believed those matters were not relevant. Officer A told us the primary purpose of going to Ms X's home was to check on her welfare, and a secondary purpose was to serve the trespass notice.
26. Officer C initially told us she became generally concerned about Ms X's welfare after arriving at Ms X's home. However, she later said they went to see Ms X in response to Ms Y's concerns about Ms X's mental health. In interview, Officer C clarified that the primary purpose of going to Ms X's home was to serve the trespass notice, and secondarily to check on Ms X.
27. Officer B's notebook entry from the day of the incident is very brief and does not refer to any welfare or mental health concerns about Ms X. He told us the purpose of going to Ms X's house was to serve the trespass notice.
28. Officer B said they went to Ms X's house due to Ms Y's fear of Ms X and because she wanted her trespassed. When asked whether Ms Y raised the issue of Ms X's mental health, he recalled Ms Y made generic comments about Ms X to the effect that she would be known to Police and that she was mentally unwell. He told us the officers held welfare concerns with respect to Ms Y, not Ms X. Like Officer C's account, Officer B's general concern for Ms X's welfare arose after they arrived at her house.

#### *What do we conclude?*

29. We believe the primary reason Police went to Ms X's home that day was to serve the trespass notice, and that the secondary purpose was to check on Ms X out of a general concern for her welfare.
30. Significantly, none of the officer accounts suggest they went to Ms X's house because they thought she was at risk of suicide or self-harm. Officer A was firmest in the view that Ms X's welfare was the primary concern motivating their attendance. Yet the substance of that concern remained general "*...like we were going to go there, figure out if she was okay, whether we could help her with some mental health services...*".
31. The actions of the officers after meeting Ms X do not support assertions the visit was primarily motivated by concern for her welfare and mental state:
  - they did not persist in engaging with Ms X. They said she was angry and irrational, yet even if that were true, she may still have required help and support;
  - they did not ask basic questions about her mental health and intentions to try to ascertain the risk she might pose to herself or others; and
  - they did not offer to facilitate access to support services for her, as is expected of officers when they have concerns about someone's wellbeing and mental state.
32. Rather than showing concern for Ms X's wellbeing, the officers served her with the trespass notice.

### Were Police legally justified in entering Ms X's home?

33. Section 14 of the Search and Surveillance Act 2012 gives Police authority to enter a property without a warrant if they have “*reasonable grounds to suspect*” there is a risk to the life or safety of any person that requires an emergency response.<sup>1</sup>
34. In order for Police to have “*reasonable grounds to suspect*” an emergency response is required; they must have sufficient information upon which to base their suspicion. Whether entry was lawful therefore depends on the information that was known to the officers before they entered.

### What did the officers know about Ms X before arriving at her home?

35. The officers had checked Ms X's Police records. The records did not in any way suggest Ms X was a risk to her own safety or to the safety of others.
36. None of the three officers had previously interacted with Ms X. Officer C was told by another officer that Ms X was ‘difficult’. She had also been told by another officer that Ms X was a serial complainant to the Authority. Both of these assertions were unfounded and should not have had any bearing upon the Police's interactions with Ms X at any time.<sup>2</sup>
37. The officers also knew that Ms Y believed Ms X was distressed, unwell and unstable. This gave rise to a general concern amongst the officers for Ms X's welfare.
38. Yet Ms Y's comments did not prompt an immediate response from the officers. Ms X's home is 800 metres from Ms Y's home, yet Officers A and B spent over 20 minutes with Ms Y before departing for Ms X's home.
39. Each officer gave examples of other circumstances where they had relied upon section 14 to enter a private home. Those examples had a common feature – the officers had specific information suggesting a risk to the life or safety of a person (for example, a phone call from a person who said they were going to stab themselves or seeing a person hanging through a window.)
40. We accept the officers believed what Ms Y had said about Ms X and that this would have fed their general concern for Ms X's welfare. However, her comments did not provide reasonable grounds to suspect a risk to Ms X's life or safety that required an emergency response.

### What did the officers know about Ms X after arriving at her home, but before entry?

41. Before entering Ms X's home, the officers established she was inside but not answering the front door. Officers B and C heard a bang from inside, akin to a slamming door or falling object.

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<sup>1</sup> See paragraph 58 for relevant law.

<sup>2</sup> Ms X made one earlier complaint to the Authority in 2019.

42. We do not consider Police entering a private home based on the general views of a neighbour regarding a person's mental health, someone not answering their front door, or the sound of a bang, to be reasonable grounds for a warrantless entry under section 14. The officers did not have any substantial information indicating Ms X was harming or was intending to harm herself.
43. We understand the officers' reliance upon section 14, given their frequent and common experiences in responding to suicide and self-harm incidents. Examples of such incidents were provided by each officer during interview. However, the examples were different from the incident with Ms X in that the officers had more specific information available to them.
44. It was evident those incidents remained fresh in the minds of the officers. Their concern for Ms X's welfare, although insufficient to enable warrantless entry, was genuine. As Officer B observed:
- I think the worst thing would have been... if we'd just left her and then two days later, we get a job that she's hanging in her bathroom, you know.*
45. Although the actions of the officers were unlawful, they were not uncaring.
46. No other statutory powers were then available to Police to render warrantless entry lawful.

## FINDING

Police unlawfully entered Ms X's home.

## OTHER MATTERS

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### **Are frontline Police staff sufficiently trained to effectively respond to mental health crises?**

47. Our investigation highlighted a broader issue that we have raised repeatedly over many years, including with the Inquiry into Mental Health and Addiction.
48. Frontline Police staff are routinely called upon to act as first responders to mental health crises. Yet those staff are not equipped to provide that response.
49. Here, this was evident in the language the officers used to speak to us about mental health. The officers used imprecise – and on one occasion, pejorative – language about mental health and mental illness.
50. If there is an expectation that frontline Police staff are to act as first responders to a mental health crisis, then those staff must be properly equipped to do so. This includes having timely and appropriate support from crisis teams and mental health support services. It is unrealistic to expect Police staff to provide a proper response without that support.

51. We welcome the development of a co-response model, which is intended to enable Police and crisis support services to attend mental health crises together. While this model is practised in some Police Districts, it will not be rolled out in all areas of the country.
52. Elsewhere, we urge Police and Mental Health Services to continue to work together to find ways of providing a coordinated response to calls for service.

### **Detention for assessment**

53. Officer A said that before meeting with Ms X, he thought he might need to detain her for assessment under section 109 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
54. Upon meeting with Ms X in the backyard of a private home, Officer A says he considered whether he ought to detain Ms X under section 109. He concluded Ms X was not then a danger to herself or others and therefore did not require detention. However, section 109 does not authorise Police to detain a person for that purpose while the person is on private land.
55. Police officers should have a full understanding of the requirements of this Act to ensure their actions are lawful when dealing with people who appear to have mental health issues. Frontline staff can access guidance on section 109 and other relevant laws using a Police mobility device application called Checkpoint. They may also seek advice and guidance from a supervisor.

### **Reporting warrantless entry**


56. Ms X's legal representative questioned why no report of a warrantless entry was made by the attending officers, as required by section 169 of the Search and Surveillance Act 2012.
57. Section 14 does not confer a power of search, so is exempt from the reporting requirement by section 169(4).

## FINDINGS

Frontline Police staff are not sufficiently trained to effectively respond to mental health crises, yet they are routinely called upon to do so.

Officer A should not have considered detaining Ms X under section 109 of the Mental Health (Compulsory Assessment and Treatment) Act, as that power was not available to him because Ms X was on private property.

Officers were not required to report the warrantless entry under section 169 of the Search and Surveillance Act.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

**Judge Colin Doherty**

Chair

Independent Police Conduct Authority

**27 October 2022**

**IPCA: 20-5509**



## Appendix – Laws and Policies

### INSERT ANY RELEVANT POLICY

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58. Section 14 of the *Search and Surveillance Act 2012*, specifically 14(2)(b), provides for warrantless entry where Police have reasonable grounds to suspect there is a risk to the life or safety of any person that requires an emergency response:

(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a place or vehicle may—

(a) enter the place or vehicle without a warrant; and

(b) take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.

(2) The circumstances are as follows:

(a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:

(b) there is risk to the life or safety of any person that requires an emergency response.

# 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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