



Assault on a youth in Christchurch by an off-duty Police officer.

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. Early on 12 June 2011 Officer A, an off-duty Police officer, struck a 17 year old youth (X) with a Police baton. Officer A believed that X had damaged his letter box.
2. Police undertook an investigation into Officer A's actions and elected to resolve the incident through the Police Code of Conduct process. He was never prosecuted for the assault.
3. The Police notified the Independent Police Conduct Authority of the incident. The Police conducted an investigation into the allegation of assault, which the Authority reviewed. Paragraphs 44 to 45 set out the result of that review.
4. Following the review, the Authority conducted an independent investigation into the Police decision not to prosecute Officer A. Paragraphs 46 to 57 set out the result of that investigation and the Authority's findings.

BACKGROUND

Summary of events

5. Shortly after 12am on 12 June 2011 an unknown person destroyed a letter box at a property in Fendalton, Christchurch. The letter box belonged to Officer A, a Police officer who was off-duty at home at the time.
6. When Officer A heard the sound of his letter box being smashed he left his house and saw a group of people on his driveway. He returned to his house to get dressed, and collected his Police baton before returning to the driveway.

7. By this time the group had left the driveway but Officer A could see a group of people nearby, walking away. He believed that this was the same group responsible for the destruction of his letter box and set off after them in his car.
8. At the same time, Officer A's wife rang the Southern Police Communications Centre (SouthComms) to inform them of what had happened and that Officer A was following a group of youths in his car. She was worried that Officer A was outnumbered and concerned for his safety.
9. X and his friend, Witness Y, were walking at the back of the group that Officer A was following. They were separated from the main group by a short distance. According to X, a man caught up with them, stopped his car, and then walked aggressively towards them. X could see that the man was holding something in his hand.
10. The man was Officer A. At the time X was not aware that Officer A was a Police officer nor was he aware that the item held by Officer A was a Police baton.
11. X alleges that Officer A verbally challenged him as he approached, asking who had smashed his letter box. X replied that he didn't know. X says that Officer A then grabbed him and hit him with a "baton" three times, on his calf and upper thigh.
12. Following the call from Officer A's wife, a Police unit was sent to his address where they found Officer A and his wife in the driveway. They spoke with Officer A's wife who said that, as the group of youths had moved on, Police assistance was no longer needed.
13. A separate Police unit had located the group of youths following their encounter with Officer A. The group reported that X had been hit by a "baton" but had now run off. Officer A's wife was asked to attend the scene to see if she could identify any of the youths. She did not recognise any of them.
14. A search of the area failed to locate X. Officer B, one of the officers who had been dealing with the group of youths, advised SouthComms that, after speaking to the youths, no further Police action was required.
15. X had run home, which was nearby. He told his mother that he had been attacked by a "man with a stick".
16. Later that day, X's mother reported the attack to the Police. That evening Officer B rang to speak with her. She told the Authority that Officer B was quite open during this phone call. In hindsight, she did not think that at this stage he realised that the person who had hit X was a Police officer.

17. X's mother told Officer B that X did not wish to make an official complaint but that he and his family were willing to co-operate with the Police should they wish to pursue the matter further.
18. Officer B and X's mother spoke again several days later. By this time Officer B was aware that the person who had allegedly assaulted X was a Police officer. X's mother told the Authority Officer B was not as open with her as in the first conversation, and that he told her that he was restricted in what he could say by the Privacy Act.
19. X's mother says that when she questioned why X's attacker had a "*baton*", which X had described to her, Officer B tried to steer the conversation in a different direction. She said that she believed that, in hindsight, the second call was an attempt to "*make it go away.*"
20. Officer B told the Authority that, as Officer A had not yet been charged, he was trying to protect Officer A's identity. He says he would have done this regardless of whether or not Officer A was a Police officer. He also said that he rang X's mother twice to encourage her son to make a statement.

Police Investigation

21. Once it was ascertained that X's alleged attacker was a Police officer the matter was referred to Police Professional Standards. The matter was investigated by Mr C, an unsworn member of the Police who at the time was both Professional Standards Manager and Employment Practices Manager for Christchurch Police.
22. During the initial investigation Mr C interviewed X and witnesses to his assault, as well as X's parents, who acted on behalf of their son throughout the investigation.
23. Initially, X and his parents were not aware that the alleged offender was a Police officer. When Mr C informed them of this they resolved to provide the Police with as much information as possible so that a formal investigation into Officer A's actions could be undertaken.
24. X's mother claims that the process that the investigation would follow was not explained clearly to her and her husband. She does not remember saying that the family did not want charges to be laid, but told the Authority they were reluctant to do so because of the likely interruption to X's schooling. However, she says they were insistent that some action be taken against Officer A.
25. X's mother told the Authority that the family were led to believe that a Police employment investigation would adequately address the alleged offending. They felt that the investigation was being taken very seriously and that Officer A would likely lose his job, which they thought was an appropriate punishment.

26. Mr C told the Authority that he explained the options available to X and his family to them clearly, including the Code of Conduct process and the ramifications of not taking criminal action. He says that X's mother was very clear that they did not wish to proceed to a criminal hearing. He also said that while he would have informed them that the Police considered that the situation was very serious he would not have said that Officer A would likely lose his job.
27. On 23 August 2011 Mr C submitted a report to the Acting District Commander recommending that Officer A not be prosecuted. While Mr C established that there was sufficient evidence to charge Officer A with assault under the Crimes Act 1961, he believed, after applying the Solicitor-General's Prosecution Guidelines, that prosecuting Officer A would not be in the public interest because:
- The offence was not premeditated.
 - The harm caused was minor and a one-off occurrence.
 - The victim and his family did not wish to take a criminal case against the officer.
 - The victim and his family were concerned for Officer A's mental well-being.
 - The Police Code of Conduct provided a proper alternative to prosecution.
28. The Acting District Commander approved Mr C's recommendation and the allegation was referred for an employment investigation pursuant to the Police Code of Conduct. He told the Authority that in the circumstances as conveyed to him, the Code of Conduct process appeared to be a proper alternative to prosecution.
29. Officer A was not interviewed by Mr C until 7 September 2011, as part of the Code of Conduct investigation. During this interview he admitted that he had struck X twice with a baton. He also added that he had been suffering from stress as a result of his involvement in the Christchurch earthquakes.
30. On 8 September 2011, in response to a telephone call the day before, X's mother contacted Mr C via email, telling him that she and her husband trusted that the correct procedures were being followed by Police and the right disciplinary action would be taken against the officer. She emphasised the family's view that the officer should be held properly accountable for his actions as well as their disappointment that he was not taken off front line duties while this incident was investigated.

31. Mr C contacted X's mother by letter on 19 September 2011 in order to inform her of the outcome of the Police's investigation. The letter stated that the investigation findings substantiated X's complaint and that Officer A's actions were not reasonable, necessary or proportionate. It also stated that Officer A was still a member of the New Zealand Police.
32. X's mother has expressed disappointment to Police regarding the outcome of their investigation.

The Authority's Review of the Police Investigation and Independent Investigation

33. The Authority was first notified of this incident in July 2011. It received notification of the result of the Code of Conduct investigation in February 2012, and the complete Police file in September 2012.
34. The Authority undertook a review of the Police finding that Officer A struck X, and also reviewed the Police file and investigation. Through this review the Authority became aware that a prosecution against Officer A was never initiated.
35. On 27 March 2013 the Authority informed the Commissioner of Police that it would undertake an independent investigation into the decision of Police not to prosecute Officer A.

APPLICABLE LAW AND POLICY

Crimes Act 1961

36. Section 196 of the Crimes Act 1961 makes it an offence to assault another person.
37. Section 2(1) of that Act defines assault as:

"the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose."

Solicitor-General's Prosecution Guidelines 2010¹

38. The Solicitor-General's Prosecution Guidelines ('the Guidelines') provide guidance to persons whose job it is to enforce the criminal law, including the Police, as to whether criminal proceedings should be commenced and what charges should be laid.

¹ On 1 July 2013 these guidelines were updated.

39. The Guidelines are not an instruction manual for prosecutors, nor do they necessarily cover every decision that must be made by prosecutors. However, it is expected that all prosecutions in New Zealand will be conducted in accordance with the principles in the Guidelines.
40. According to the Guidelines, prosecutions ought to be initiated only where the evidence which can be presented in Court is sufficient to provide a reasonable prospect of conviction, and the prosecution is in the public interest. The prosecutor must thoroughly and critically analyse and evaluate all of the evidence and information available.
41. A reasonable prospect of conviction exists where an offender can be identified and there is credible evidence to present to the Court which will enable a judge or jury to decide, beyond reasonable doubt and in accordance with law, whether that person has committed a criminal offence.
42. Even where there is a reasonable prospect of conviction prosecution should only be initiated if it is in the public interest. The seriousness of the offence is the predominant consideration. However, the following may also be taken into account:
- Whether the defendant was in a position of authority or trust and the offence is an abuse of that position;
 - Whether the defendant was a ringleader or an organiser of the offence;
 - Whether the offence was premeditated;
 - Whether the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim, the greater the aggravation;
 - Whether there are grounds for believing that the offence is likely to be continued or repeated.
 - Whether the Court is likely to impose only a very small or nominal penalty;
 - Whether the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgment or a genuine mistake;
 - Whether a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness;
 - Whether the defendant was, at the time of the offence, suffering from significant mental or physical ill-health; and
 - Whether any proper alternatives to prosecution are available.

43. These considerations are not exhaustive. The extent to which each should be taken into account will differ from case to case, depending on the relevant circumstances.

THE AUTHORITY'S FINDINGS

Review of the Police finding that Officer A struck X

44. During his Code of Conduct interview Officer A admitted striking X at least twice with a Police baton. This is supported by the statements of X and other witnesses.
45. Police found that Officer A struck X with his baton. The Authority agrees with this finding.

FINDING

X's complaint that he was assaulted by Officer A is UPHELD.

Did the Police investigation follow proper process?

46. A criminal prosecution of Officer A was never undertaken, despite the serious nature of his offending. The Authority has investigated the Police decision not to prosecute, and has identified a number of shortcomings in the Police decision making process.

Failure to interview Officer A

47. Initially Police commenced a criminal investigation into Officer A's actions in order to establish whether he could be held criminally liable for his behaviour. As part of this investigation Mr C interviewed X, his family, and witnesses to the event but, crucially, did not interview Officer A.
48. The failure to interview Officer A meant that a thorough criminal investigation was never completed, and suggests that Mr C had prematurely decided that a Code of Conduct investigation would be sufficient in resolving this matter. This departure from proper process was not justified.

Application of the Solicitor-General's Prosecution Guidelines

49. In his report to the Acting District Commander, Mr C recommended that a prosecution against Officer A not proceed, as he believed that prosecution would not be in the public interest. This recommendation was approved by the Acting District Commander.
50. The Authority has found that in reaching this decision Police incorrectly applied the Solicitor-General's Prosecution Guidelines.

51. Mr C considered the detrimental impact of a prosecution on Officer A's mental well-being. This is not mentioned in the guidelines, which refer only to consideration of the impact of a prosecution upon a *victim's* well-being.
52. The guidelines do refer to consideration of whether the defendant was suffering from "*significant mental ill-health*" at the time of the offence. There is no evidence that he was.
53. In any case, it is unclear how Mr C came to be concerned for Officer A's mental well-being. He did not interview Officer A until after he had submitted his report to the Acting District Commander, so the information could not have come from Officer A himself. Initially, Mr C told the Authority that this information came from X's parents, something that they both strongly deny. When interviewed by the Authority Mr C was unable to explain why he had included this as a factor in deciding not to prosecute, but has since advised the Authority that the information could have come from a Police welfare officer.

Wishes of the victim and his family

54. Mr C placed undue emphasis on the fact that the victim and his family did not wish to pursue a prosecution.
55. Initially, X and his family were reluctant to be involved in a prosecution due to the likely disruption to X's schooling. They were under the impression that a Code of Conduct investigation would adequately address Officer A's actions and that he would be quite heavily sanctioned, most likely losing his job as a Police officer.
56. X's mother advised the Authority that given the serious nature of the offending and the fact that Officer A was a Police officer, had the criminal and Code of Conduct processes been properly explained, it is likely that X, his family, and the witnesses would have supported Police in a prosecution.
57. There was obvious confusion amongst X and his family regarding the difference between a criminal and Code of Conduct investigation. This meant that their views regarding prosecution were not properly informed.

FINDINGS

Mr C should have endeavoured to interview Officer A as part of a criminal investigation into his actions.

The decision that it was not in the public interest to prosecute Officer A was made without proper consideration of the relevant factors in the Solicitor General's guidelines.

CONCLUSIONS

58. Sections 27(1) and 28(1) of the Independent Police Conduct Authority Act 1988 require the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation by the Authority or by Police was contrary to law, unreasonable, unjustified, unfair or undesirable.
59. The Authority has formed the opinion that:
- The actions of Officer A in assaulting X were contrary to law and unreasonable.
 - The process that was followed by Police in reaching their decision not to prosecute Officer A was unfair.

SUBSEQUENT ACTION

60. Following the decision not to prosecute, Police conducted an employment investigation. Officer A was interviewed as part of this process.
61. As Officer A had been informed that he would not be charged, the Authority is of the opinion that any reconsideration of the prosecution decision at this late stage would be an abuse of process.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

20 MARCH 2014

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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