

Complaint regarding an arrest in Upper Hutt

INTRODUCTION

1. On Friday 23 January 2015, Police arrested Mr Y at his home in Upper Hutt after mistaking him for an offender they were seeking. Mr Y was handcuffed, bitten by a Police dog, and taken to a nearby Police car before the officers accepted they had arrested the wrong person.
2. Mr Y made a complaint to the Independent Police Conduct Authority, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Events leading up to the arrest

3. At about 7.25pm on Friday 23 January 2015, Police were called to Ms W's address in Upper Hutt after her ex-partner, Mr X, drove to her house and rammed her car which was parked in the driveway.
4. At the time Mr X was driving a white Toyota Land Cruiser owned by a company in which he was a minority shareholder. Ms W's father, Mr Y, is the director of that company.
5. The Police Central Communications Centre (CentComms) dispatcher advised officers responding to the incident that Mr X had alerts for 'carries knives' and 'family violence', and that he had threatened Ms W and her friend with a wrench before ramming her car. The dispatcher was initially unable to confirm what type of vehicle Mr X had left the scene in but said the most recent vehicle registered to him was a blue Nissan Skyline.
6. After an officer asked what other addresses Mr X was linked to, the CentComms dispatcher read out Mr Y's home address (which is 2.3 kilometres from Ms W's house), without stating whose address it was.

7. Officer A, a sergeant, radioed that he would check that address. Unknown to him, although Mr X was 'linked' to Mr Y's address, he did not live there and did not go there after the incident with Ms W.
8. Meanwhile, after hearing about the incident at his daughter's house, Mr Y left his address and went to check on her. Mr Y was driving a white late model Ford Kuga SUV.
9. Officer A arrived outside Mr Y's address and reported to CentComms that there was no blue Nissan Skyline there. He decided to wait for a few minutes to see if Mr X would return.
10. Two officers (Officers B and C) arrived outside Ms W's house, and spoke to Mr Y and a woman who had witnessed the incident. Mr Y told the officers that Mr X was driving his work vehicle, the white Toyota Land Cruiser.
11. Officer B said Mr Y *"seemed agitated and said he was annoyed because the guy who did this to the car was driving a car that belonged to him."* Officer C recalled that Mr Y *"seemed very angry, yelling at us and pointing at us as he stated that [Mr X] had used his vehicle to ram the car and he wanted it back."*
12. The female witness provided Officer C with a registration number for the Land Cruiser, and he passed it on to CentComms, but the number given was incorrect. The officer also advised: *"We've got a witness here [Mr Y] who says that's his vehicle. I think it's the girl's father."*
13. Mr Y told the Authority he gave the officers his home address in case they needed further information from him, and one of them said that a sergeant would come over to see him later (however neither Officer B nor Officer C recalled this happening). Mr Y then went home, where he and his wife (Mrs Y) were looking after their two young grandchildren.
14. A dog handler, Officer D, advised CentComms that he would look for the car linked to Mr X (the Land Cruiser) when they provided further details. However the CentComms dispatcher said that the vehicle did not exist (he could not find the car on the Police database because he had been given the incorrect registration number).
15. About this time Officer A recalled hearing a traffic unit advise over the radio that Mr X was a methamphetamine addict.
16. Officer A got on the radio and asked the officers at the scene to get updated information about the car used by Mr X. Officer C said: *"Oh sorry, we'll have to go back down and see the witness, we're just in the house at the moment. Apparently it could be linked to her father."*
17. Officer C then provided CentComms with the correct registration number for the Land Cruiser. However, Officer D had spoken to a witness at the scene who told him Mr X had left in an *"older style"* white SUV, and he got on the radio and mentioned a different registration number. He said that the car driven by Mr X was a white, *"old style"* SUV, apparently linked to Mr Y and his home address. Officer A told the Authority that he only heard Officer D say that the vehicle was a white SUV.

18. The CentComms dispatcher said he would check the registration number stated by Officer D. In the meantime Officer A left Mr Y's address and drove to a nearby shopping centre in search of the white SUV Mr X was driving. After Officer A had left, Mr Y returned home from checking on his daughter and parked his white Ford Kuga in the driveway.
19. When Officer A returned to Mr Y's address about five minutes later, he saw a white SUV (the Ford Kuga) parked at the house and thought it could be the car driven by Mr X. At about 7.40pm Officer A radioed Officer D and said "*Come down to [Mr Y's address], there's a white vehicle in the driveway.*" Officer D said he would be there in about two minutes.
20. An unidentified officer told CentComms the white car was a late-model SUV but he did not have the registration number. The CentComms dispatcher said: "*Roger, I'm really struggling for the correct [registration number].*" The unidentified officer replied that he thought Ms W's father (Mr Y) had a white SUV, possibly a RAV4. Officer A later told the Authority that he did not hear this information, possibly because he was trying to get on the radio at the time. He said he did not know that Mr Y had a late model white SUV.
21. Officer A then reported that Officer D had joined him outside Mr Y's address. The CentComms dispatcher advised that he had found a white Ford Kuga registered to Mr Y. Officer A then read out the registration number of the car in the driveway and the dispatcher confirmed it was the same vehicle. Although the witness had told Officer D that the car driven by Mr X was an "*older style*" white SUV, he and Officer A appear to have believed that the late model Ford Kuga was the car Mr X had used to ram Ms Y's vehicle. They did not examine the Ford Kuga to see if it had damage consistent with ramming another car.
22. Officer A did not ask for, and CentComms did not provide, a description of Mr X. Officer A later told Police that he could not remember if he had accessed any information about Mr X on his mobility device.¹ Officer D said he did not even know Mr X's name and: "*The only description relating to the offender that I was aware of, was that he left in a white SUV.*"
23. According to Mr Y, Mr X does not look anything like him and is about 24 years younger, 4 inches shorter and 30 kilograms lighter than him.
24. Officers A and D went up the driveway to Mr Y's house. Officer D took his Police dog with him because he assessed Mr X to be "*assaultive*", due to his actions earlier that evening and his possession of a weapon.
25. While walking up the driveway, Officer D touched the bonnet of the Ford Kuga and it felt warm, which indicated to him that it had recently arrived at the address. He decided to stay near Officer A at the front of the house "*to provide another tactical option*" if Mr X posed a threat when Officer A knocked on the door.

¹ This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

26. Officer A said:

“My plan was to go and knock on the door to talk to [Mr X], as I believe he was linked to living at that address and that he’d just left [Ms W’s address] in a white SUV. A white SUV had turned up in the driveway.

... My perceived risks were that there was a male who was extremely angry, had just made threats to a female holding a wrench, that he was a meth addict ... I was concerned he may still be angry, under the influence of drugs and still in possession of a weapon ... these types of people can be unpredictable.”

Mr and Mrs Y’s account of the arrest

27. Mr and Mrs Y provided the Authority with the following account of what happened after Officer A knocked on their front door.
28. Mr Y was expecting a visit from a sergeant because of the conversation he had with the two officers at his daughter’s house. Mr Y was on the phone when Officer A knocked, and his two small dogs started barking and ran to the front door. Mrs Y said: *“[Mr Y] smiled, gave me the phone and went to answer the door saying it was probably the police sergeant.”*
29. Mr Y could see through the glass that a Police officer was at the door. He grabbed the dogs by their collars with his left hand and opened the door with his right hand, telling the officer *“I’ll just get my dogs sorted.”*
30. Without saying anything, Officer A grabbed Mr Y by his right arm and dragged him out of the house, slamming him into the wall beside the front door. Mr Y asked what was going on but the officer just told him to *“stop resisting”*.
31. Mr Y saw a Police dog handler (Officer D) running down the driveway towards him. He told Officer A: *“I’m [Ms W]’s father, you have the wrong person.”* Officer A twisted Mr Y’s right arm up behind his back and put a handcuff on his right wrist.
32. Mrs Y heard Mr Y screaming in pain and ran to the door. She told the Authority: *“[Mr Y] was pinned against the wall while the Police officer kept throwing his full weight against him. [Mr Y] was however keeping still.”*
33. Officer D arrived at the doorstep and took hold of Mr Y’s right bicep. Both officers screamed at Mr Y to stop resisting. Mrs Y asked *“What the hell is going on?”* but the officers did not reply.
34. Mr Y was still holding his two dogs in his left hand because he did not want them to start fighting with the Police dog. Mrs Y took the two dogs away and Mr Y was then able to bring his left arm behind his back so Officer A could put the handcuff on. Mr Y continued to tell the officers they had the wrong person, but they kept yelling at him to *“stop resisting”*.

35. Mr Y told the Authority:

"I was not resisting, aggressive or violent in any way, I was totally compliant, however I am entitled to ask questions for the reason of my arrest, this is not resisting. ... In my opinion both the Sergeant and the handler were out of control, aggressive and did not follow some basic investigation procedures, like asking some simple questions."

36. Officer A started yelling at Mr Y to sit down on the ground, and he responded that the officers had the wrong person and he had not done anything wrong.

37. Meanwhile Mrs Y returned after locking the dogs away in the bedroom and again asked the officers *"what the hell"* they were doing. Officer D told her to back off. She asked what Mr Y had done but the officers *"just kept yelling at [Mr Y] and telling us nothing."* Mrs Y said she was terrified for her husband's safety:

"... so I grabbed the dog handler's earpiece cable as he walked away and yelled at him to leave my husband alone hoping this would delay him."

The dog handler continued to walk away so the ear piece popped from his ear. He then turned around and called me a fucken bitch."

38. Mr Y heard Officer D call Mrs Y a *"fucken bitch"*, and said his four year old granddaughter also witnessed this and was upset. The officers started dragging Mr Y down the driveway and Officer A told him he was under arrest. Mr Y asked *"What for?"* but the officer did not answer him.

39. Mr Y said that Officer D grabbed the link between his handcuffs and forced his arms up behind his shoulders, and repeated this action after Mr Y told him he had recently dislocated his shoulder and asked him to *"take it easy"*.

40. Officer D again screamed at Mr Y to *"stop resisting"*, and the Police dog bit Mr Y on the right hip/buttock area. The bite caused abrasions and ripped Mr Y's shorts. Mr Y, who is a former Police dog handler himself, told the Authority:

"The handler [Officer D] should never have physically engaged with me and tried to control his dog at the same time, which I believe is what led to me being bitten. In my view this was an uncontrolled bite, as I did not hear any command from the handler for the dog to engage me."

41. The officers and Mr Y reached the street and were standing by his letterbox, and Mr Y noticed that his neighbours were watching what was going on. Officer A asked Mr Y if he was the driver of the car in his driveway (the white Ford Kuga), and Mr Y said he was. Officer A then screamed at him to stop resisting and to get on the ground. When Mr Y again asked why he was being arrested, Officer A said it was for *"obstruction"*.

42. Mr Y heard his wife calling out from the driveway, about three metres away, that the officers had the wrong person. Officer D yelled at her to shut up and back off or she would be arrested for obstruction.

43. When Mr Y asked Officer A how he and Mrs Y had obstructed them he would not answer. Mr Y told him he was an ex-Police officer and repeated that the officers had arrested the wrong person. Officer D yelled *"I don't give a fuck who you are"* and screamed *"stop resisting"*. He again grabbed Mr Y by the handcuffs, forcing his arms up behind his back, and started pushing him across the street. Mr Y said he could not stand up as the pain was *"excruciating"* and *"the force was so great I was doubled over."*
44. Officers A and D forced Mr Y to walk across the road to a parked Police car (Mr Y later determined that the distance from his doorstep to the Police car was about 75 metres). Officer A radioed CentComms and advised that they had an offender in custody. Mr Y said Officer A had not given him a Bill of Rights caution and: *"I was now deeply concerned for my well-being, agitated, and humiliated in front of my neighbours who were all street side."* He again asked Officer A what he had done but received no reply.
45. Mr Y told Officer D *"you guys have made a fuck up"*, and said that he was a former Police dog handler. After Officer D screamed at him *"I don't give a fuck who you are, stop resisting"*, Mr Y said he would be letting the National Coordinator: Police Dogs know of Officer D's *"misuse of a Police dog"* and his conduct. Officer D said *"I don't give a fuck, tell him what you like."*
46. Officer A was telling Mr Y to get into the Police car, but Mr Y said his handcuffs were too tight and he was trying to adjust them. Officer A ignored this and pushed him into the back seat.
47. Mr Y again said that the officers had made *"a big fuck up"* and stated that he was Ms W's father, not Mr X, if that was who they were looking for. Officer A then wrote down Mr Y's details, let him out of the car and removed the handcuffs.
48. Mr Y told the Authority:
- "I spoke directly to both [Officers A and D], calling them a couple of fucken morons and [saying] they were both incompetent. I said: 'You are a disgrace to that uniform.' To the sergeant I said: 'You are not fit to be an NCO.' I said I was an NCO in the Police and I have never seen such bad conduct."*

The officers' account of the arrest

49. Officers A and D provided their own accounts of what happened after Officer A knocked on Mr Y's front door.
50. Officer A said that he was going to identify Mr X by asking to speak to him when someone answered the door. He saw two small barking dogs run to the window beside the door and heard a man (Mr Y) say *"it's the fucking Police."* Mr Y opened the door a third of the way and said *"You can fuck off"*, then tried to close the door on him. Officer A told the Authority that Mr Y was not holding on to his two dogs when he answered the door.

51. In a job sheet Officer A wrote: *“At this point I could tell that this male was very angry based on his body posturing and tone of his voice.”* He listed the following factors which prompted him to immediately grab hold of the man:
- a) There had been a serious family violence incident which involved a weapon (a wrench) and someone ramming a parked car.
 - b) The offender, Mr X, had left the scene in a white SUV and taken a weapon with him. He was very angry and potentially on drugs.
 - c) A white SUV had just arrived at this address.
 - d) The man who came to the door was in an *“extremely agitated”* state, told him to fuck off and tried to slam the door in his face.
 - e) He did not want the man to go back inside and lock the door on him.

52. Officer A believed he had good cause to suspect that the man who answered the door was Mr X. He said the man did not give him an opportunity to talk to him, and:

“Disengaging was not an option as I was also concerned that the offender could leave the address and continue to be a threat to the victim and other members of the public. I was concerned that this male would disappear from my view and that he could potentially re-arm himself and then continue to be a threat to himself and the Police. I had to immediately intervene to detain this male until I could exclude him as the offender.”

53. Officer A reached in and grabbed Mr Y’s right arm, pulled him outside and held him up against the wall of the house. As Officer A did this the two small dogs came out and started biting the bottom of his legs. Mr Y was very upset and refused to comply with Officer A’s requests to put both his arms behind his back. Officer A said in his job sheet:

“At this stage I just wanted to talk to him but he was yelling at me and trying to break free. I was trying to calm him but he was actively resisting me. He was very angry. I did not want to release him while he was highly agitated.”

54. When interviewed by Police, Officer A described Mr Y as *“extremely verbal and abusive”*. He said:

“From this point onwards through the whole process, he was anti police, so he was constantly telling me how useless I was and [was] derogatory towards me and my colleague. Also at this point, I was telling him that I just wanted to talk to him but he wasn’t in a rational frame of mind ... no way did he want to have a conversation with me.”

55. Officer A told the Authority that Mr Y did not continue to swear at him after initially telling him to *“fuck off”*. When the Authority asked how Mr Y was abusive towards him, Officer A said he could not remember his exact words. He was aware that Mr Y was protesting his innocence.

When questioned about what Mr Y was doing to resist arrest, Officer A said he was not letting him put the handcuffs on *“by keeping the other hand around the back”*.

56. Officer D was initially standing about six metres down the driveway with his Police dog, to avoid a clash between his dog and the dogs he heard barking inside the house. When interviewed by Police he recalled seeing Mr Y holding two dogs by their collars when he opened the door. He stated that Officer A began speaking to Mr Y, who immediately began yelling in an aggressive tone. Officer D could not hear what was being said. He saw Mr Y attempt to slam the door into Officer A, then Officer A grabbed his arm and moved him outside onto the doorstep.

57. Believing that Mr Y was the offender they were looking for, Officer D joined Officer A to assist with the arrest. Mr Y was being uncooperative and keeping his hands in front of his body, so Officer D moved forward with his Police dog and commanded it to bark. Officer D said:

“I also advised the male to place his hands behind his back. The presence of [the Police dog] appeared to have some effect on the male who not immediately but did eventually stop struggling to allow [Officer A] to move the male’s hands to the rear of his body and apply handcuffs.”

58. Officer A told Mr Y he was under arrest, and Mr Y wanted to know why. Officer A asked if he had just come from Ms W’s address and if he had rammed a car. Mr Y said he had just come from Ms W’s address but denied ramming a car. He stated that he was Ms W’s father and that they *“were in the shit”*.

59. During Officer A’s Police interview he said the reason for the arrest at that point was obstruction. When asked whether he had warned Mr Y *“for being obstructive”*, Officer A said he had not had the opportunity but was constantly telling Mr Y to put his hands behind his back and not to resist him. The officer also said he did not have time to give Mr Y a Bill of Rights caution.

60. Officer A asked Mr Y to sit down on his veranda, and to calm down so he could talk to him. In his jobsheet he wrote: *“From this point onwards I was trying to de-escalate this incident but this male would not comply with my requests.”* Officer A described the scene as *“very hectic”* and said there were dogs barking, people screaming, and he was trying to restrain Mr Y by holding him still. Mr Y refused to sit down and comply with Officer A’s instructions, and *“again started resisting by walking around and yelling at us.”*

61. When interviewed by Police, Officer A said:

“... I had doubts at this point if he was [Mr X] and that is why I was trying to get him to sit down and relax, but he would not stop abusing me and stop resisting me.”

62. Although he had doubts about the identity of the man he had arrested, Officer A did not remove the handcuffs because:

“... I did not have a calm enough situation to remove the handcuffs. I continually pleaded for him to calm down but he refused.

... I had arrested him believing he was the offender. From this point on I was focussed on my safety and that of [Officer D] and that I did not have an opportunity to release [Mr Y] until the situation had calmed down, so I still considered him to be a threat or risk to the Police.

[Mr and Mrs Y] never gave me the opportunity to de-escalate the situation to a point where I could safely release him.”

63. Officer D observed that Officer A was having difficulty and that Mr Y was “*thrashing his body around violently and yelling out obscenities*” He saw a woman (Mrs Y) come out from the house and she also began yelling at the officers. Officer D could not make out what she was saying but believed she was going to try and interfere with the arrest so he told her several times to go back inside.

64. Mrs Y continued to scream at the officers. Officer D moved forward to help Officer A but felt himself getting pulled back towards where Mrs Y was standing. He turned and saw that she had grabbed the cord of his portable radio and pulled it off him. At his Police interview Officer D said he did not believe he called Mrs Y a “*fucken bitch*” but:

“... I have instructed her once again to go back inside the house, however this time I have used stronger language and told her to get back inside the fucken house. I don’t usually use this language however due to the nature of the incident and the behaviour demonstrated by the female, ignoring my previous instructions, I felt that the use of stronger language in my instruction would have a better chance of her compliance. The use of the stronger language worked and the female went back inside the address, enabling me to go and assist [Officer A] who was still struggling with the male.”

65. Mr Y was shouting at the officers not to yell at Mrs Y, and was also trying to pull away from them. He refused to comply with their instructions to calm down, and refused to move, so Officers A and D each put an arm under his arms to direct him off the property.

66. Officer D recalled that Mr Y was throwing his body around, and he feared for Officer A’s safety if he did not help escort Mr Y down the driveway. He considered returning his Police dog to the dog van but decided not to because the vehicle was too far away. He also thought of tying his Police dog to a nearby fence, but discounted that course of action because he thought the two dogs inside the house could come out of the open front door. He believed the safest option was to hold his Police dog on a short lead, and attempt to control it while helping Officer A to escort Mr Y.

67. When the Authority asked Officer D what danger Mr Y posed at that stage, he said Mr Y was violently thrashing around and trying to break free from the officers’ grip, but was not kicking out at them. He said Mr Y is a large man and:

“In my experience when dealing with aggressive and violent offenders it takes more than one officer to safely restrain them and even after they’re restrained in handcuffs, I’ve been assaulted on numerous occasions by people in handcuffs.”

68. Mr Y’s complaint that his arms were painfully forced up his back, forcing him to double over while the officers were escorting him, was raised with the officers. Officer A said: *“... the standard handcuff escort relies on the offender to be put off balance and to lean forward. This would have almost certainly been the case.”*
69. Officer D remembered Mr Y mentioning that he was in pain due to a previous injury to his shoulder. He said Mr Y was not bent over while they were walking him down the driveway. The officers used ‘wrist lock’ holds on each of Mr Y’s arms, which involved taking *“hold of his fingers and pushing them up towards his wrist, which if required can be used to gain compliance through pain.”*
70. Officer A told the Authority he could not recall if Mr Y said anything about being in pain. Mr Y did say he had a shoulder injury but that did not change the way the officers were dealing with him. Officer A believed they needed to take him off the property after Mrs Y got involved, to get the situation under control and be able to discuss things without everybody yelling and screaming at each other.
71. Both officers were of the view that the force they used to escort Mr Y down the driveway and towards the Police car was reasonable and necessary.
72. Officer A could see that while Officer D was helping him escort Mr Y, he was also trying to restrain his Police dog with his other arm. Officer D said Mr Y *“continued to throw his body around violently”* and made threats that the officers would lose their jobs, and:
- “As a result of the male’s actions, [the Police dog] has been able to get closer to the male, where he has been able to bite him on his upper right hip area. I saw this happening and have gone to pull [the Police dog] away from the male; however I was unable to prevent the bite. However [the Police dog] only managed to bite the male’s shorts and has immediately released his bite.”*
73. Officer D told the Authority it was *“regrettable”* that the dog bite occurred. He said he had learned from this incident, and if the same situation arose again he would reconsider his options in light of what happened on this occasion.
74. When they reached the letterbox Mr Y refused to stand still and yelled at the officers, saying he was going to sue them. Mrs Y was also standing nearby yelling at them. Officer A said he could not reason with Mr Y in that situation, so they moved Mr Y across the road to the Police car and away from Mrs Y.
75. Officer D recalled Mr Y informing them that he was an ex-Police dog handler, but said he had *“been given no information that the alleged offender was or was not a former Police dog handler.”* He considered that information to be irrelevant, and said his actions were guided by Mr Y’s aggressive attitude and behaviour and the seriousness of the incident they were dealing

with. He also told the Authority he never heard Mr or Mrs Y say they had arrested the wrong person.

76. According to Officer A, Mr Y started to calm down once they were at the Police car. Mr Y told the officers his name and said he was Ms W's father, and that he had been up to see her and just arrived back home.
77. At this point Officer A removed the handcuffs from Mr Y. As Mr Y was walking back across the road, he said he had been bitten by the Police dog. Officer D asked to see the bite and Mr Y showed them some teeth marks on his right thigh. There was no broken skin. Mr Y was extremely angry, and told them he was an ex-Police officer and had worked as a dog handler for eight years.
78. Officer A later advised the Authority that he regrets arresting Mr Y, but believes he *"acted in good faith with the best of intentions in responding to this incident."* Both officers said the incident could have been avoided if Mr Y had been more reasonable to deal with when he answered the door.

After the arrest

79. Mr Y demanded to see a Police doctor, but Officer D said he would call an ambulance. Mr Y advised him that was not good enough because he needed his injuries to be documented, then returned to his house. About 15 minutes later another officer came to Mr Y's doorstep and said an ambulance was on the way but Mr Y repeated that he wanted a Police doctor not an ambulance.
80. When the ambulance arrived a few minutes later, the paramedics told Mr Y he would have to go to the hospital if he wanted his injuries documented. Mr Y declined their offer to take him to hospital, saying it was a waste of their time.
81. Officer D approached Mr Y and asked him to confirm he had refused to be seen by the ambulance staff. The officer then asked to speak to Mr Y about what had happened, but Mr Y was not interested in talking to him:

"By this time I was incredibly annoyed with their conduct, humiliated and in a lot of pain, and my language towards him was not the best. I told him to fuck off my property, and that I was trying to get hold of [the officer in charge of the Wellington Dog Section]."

82. Officer D gave Mr Y the phone number for Officer E, the officer in charge of the Wellington Dog Section. Officer E later rang Mr Y, but Mr Y found him to be very supportive of Officer D.
83. A Police doctor visited Mr Y's house at about 9.30pm, and afterwards advised Officer A that Mr Y had marks on his thigh consistent with a dog bite plus other small injuries including handcuff marks, bruising under both arms and a numb sensation in both thumbs. Officer A then arranged for a Police photographer to document Mr Y's injuries.

THE AUTHORITY'S FINDINGS

Issue 1: Was Mr Y's arrest lawful?

84. Police have the power to arrest and take a person into custody without a warrant when they have 'good cause to suspect' the person has committed a breach of the peace or an offence punishable by imprisonment. Officers may have 'good cause to suspect' from their own observations or information provided to them (see paragraphs 115-116 for relevant law and policy).
85. In this case, Officers A and D had the following information:
- a) A domestic incident had just occurred, which involved Mr X threatening Ms W with a wrench and ramming her parked car.
 - b) Mr X had alerts for using drugs, carrying knives and family violence, and had left the scene in a white SUV, which belonged to Ms W's father. A witness had informed Officer D that the SUV was an "older style" vehicle, but Officer A told the Authority he was not aware of this information.
 - c) Mr X was linked to another address (Mr Y's address). A late model white SUV (Ford Kuga) had shown up at that address.
86. The officers assumed that the white SUV which arrived at Mr Y's address was the car used by Mr X during the domestic incident. They do not appear to have inspected the car for damage consistent with ramming another vehicle.
87. The officers did not ask CentComms or check their mobility devices for a description of Mr X. Nor did they seek information about who lived at the address that was linked to him. If the officers had taken these steps, they would have been in a better position to identify who they were dealing with when Mr Y answered the door.
88. The crucial conflict between the accounts of Mr and Mrs Y, and the accounts of Officers A and D, concerns Mr Y's reaction when he answered the door. The officers had slightly different recollections of what occurred but both stated that Mr Y was immediately abusive and aggressive towards Officer A, which led them to believe he was the offender Mr X. Mr Y denied this, saying all he did was tell Officer A that he needed to sort his two dogs out before Officer A instantly grabbed his arm and pulled him outside to be handcuffed. Mrs Y did not witness this but her account supports her husband's in respect of his state of mind when he went to answer the door.
89. The Authority's view is that Mr Y's version of events is more credible than the officers' accounts of what happened. Mr Y had just spoken with Police about the incident involving his daughter and was expecting a visit from a Police sergeant. He had already indicated his willingness to help with the Police's enquiries and there was no reason for him to be hostile towards the officers when opening the door.

90. It is possible that Officer A misread the situation and interpreted Mr Y's actions in trying to stop the dogs from getting out as Mr Y trying to slam the door on him. However if Officer A had done background checks on the identity of the alleged offender and Mr Y's property, he would have known it was very likely that the door might be opened by someone other than Mr X.
91. Officer A did not have 'good cause to suspect' that Mr Y had committed any offence that would justify his arrest, because he failed to take basic steps to identify the person he was arresting. He did not ask Mr Y who he was and was not prepared with knowledge of what the offender, Mr X, looked like.
92. Officer A failed to give Mr Y a Bill of Rights caution. In addition, the reason given for the arrest was "*obstruction*", but Mr Y had done nothing to justify an arrest for obstruction before Officer A pulled him out of the house with the intention of handcuffing him. It is clear that Officer A gave little or no thought to his legal powers before deciding to arrest Mr Y.
93. For these reasons the Authority finds that Officer A's actions were grossly negligent, and the arrest of Mr Y was unlawful.
94. Officer A has argued that he did not have any time to communicate with Mr Y about his identity, because he believed he had to take immediate action to stop him from slamming the door. The Authority considers that, even if Mr Y did try to close the door on him, it was not necessary or reasonable for the officer to immediately pull him outside and arrest him. A dog handler (Officer D) was immediately available as backup if the person at the door tried to escape.

FINDING

The arrest of Mr Y was unlawful under the circumstances.

Issue 2: Did Police use excessive force against Mr Y?

95. After failing to identify who Mr Y was before arresting him, Officer A compounded his mistake by insisting on removing Mr Y from his property before addressing his protests that they had arrested the wrong person.
96. Both Officers A and D said that Mr Y resisted arrest, and was aggressive and abusive towards them, so they had to use force to handcuff him and escort him down the driveway (see paragraphs 117-121 for the Police's *Use of Force* policy).
97. Mr and Mrs Y stated that they repeatedly told the officers they had the wrong person and asked why they were arresting him. Mr Y denied physically resisting the officers and pointed out that questioning the reason for his arrest does not amount to resisting Police.

98. Officer A has admitted that he had doubts about whether Mr Y was the offender just after he had put the handcuffs on. However, he considered that Mr Y needed to calm down before he could discuss the situation with him and establish his identity. He stated that Mr and Mrs Y did not give him a chance to de-escalate the situation.
99. Officer D denied ever hearing Mr Y or Mrs Y say that the officers had arrested the wrong person. He heard Mr Y say that he was a former Police dog handler, but this did not make him question whether Mr Y was the offender they were looking for.
100. The Authority believes Mr and Mrs Y's assertion that they repeatedly told the officers they had arrested the wrong person. The officers should have realised their mistake a lot sooner and immediately released Mr Y from custody. They had no lawful reason to remove Mr Y from his property, and it was unrealistic to expect Mr and Mrs Y to "*calm down*" in the face of his wrongful arrest, especially when he was still in handcuffs and the officers were doing nothing to acknowledge their objections.
101. Consequently, while the force the officers used to handcuff Mr Y and forcibly march him down the driveway may have been justified if he was in fact the offender, the Authority finds that it was excessive and contrary to law in these circumstances. The officers did not have good cause to suspect that Mr Y had committed an offence; nor were their actions justified on the basis of self-defence.
102. It was reasonable for Officer D to bring his Police dog with him when the officers approached Mr Y's house, due to his assessment of the risks associated with Mr X and the possibility that he was at the address and may try to flee if confronted by Police. However Officer D should not have tried to escort Mr Y while still holding onto his Police dog, because this placed the dog in a position where it could bite Mr Y without being commanded to do so (see paragraph 122 for relevant policy). The Authority does not accept Officer D's assertion that the uncontrolled dog bite occurred due to Mr Y's actions (see paragraph 72).

FINDINGS

Due to their failure to immediately acknowledge that they arrested the wrong person, Officers A and D used excessive and unlawful force against Mr Y when handcuffing him and escorting him down the driveway to the Police car.

Officer D should not have placed himself and his Police dog in a situation that allowed the uncontrolled dog bite to occur.

Issue 3: Was Officer D's conduct during the arrest appropriate?

103. Mr and Mrs Y told the Authority that Officer D called Mrs Y a "*fucken bitch*" after she grabbed Officer D's earpiece cable to get his attention. Officer D denied that, but admitted that he told Mrs Y to "*get back inside the fucken house*". He said he did this because she had ignored his previous instructions, and believed it was effective because she went back inside the house afterwards.

104. The Authority's view is that Mrs Y was legitimately protesting at the unlawful arrest of her husband, and Officer D should have listened to what she was saying rather than swearing at her. He failed to act in accordance with Police's core values of respect and professionalism.

FINDING

Officer D's conduct during the arrest was inappropriate.

SUBSEQUENT POLICE ACTION

105. Police stood down Officer D for one shift immediately after the incident with Mr Y. Officer D and his Police dog successfully completed a control assessment and returned to their normal duties on the following shift.
106. Police conducted an investigation into the incident and upheld Mr Y's complaints regarding his unlawful arrest, the inappropriate language used by Officer D, and the uncontrolled dog bite.

Decision not to prosecute

107. Having taken into account the Authority's view of this case, Police decided not to prosecute Officer A or Officer D for assault. Instead they have taken internal employment action against both officers.
108. The Authority agrees with the Police's decision not to prosecute Officer D for assault, because it was Officer A's unlawful arrest of Mr Y which prompted the use of force against him. Officer D was trying to assist Officer A with what he believed to be a justified arrest.
109. On 11 January 2016, the Authority received information about Officer A's personal circumstances which had not previously been disclosed. This information was relevant to Officer A's judgment and decision-making ability at the time of his arrest of Mr Y.
110. Police have advised the Authority that they did not take this additional information into account when deciding not to prosecute Officer A.
111. The Authority is of the view that Police should have decided to prosecute Officer A, based on the information known to them at the time, as there was evidential sufficiency and it would have been in the wider public interest.
112. However, taking all current information into account, the Authority considers a decision not to prosecute Officer A for assault is appropriate due to Officer A's personal circumstances.

CONCLUSIONS

113. The events of 23 January 2015 were stressful and humiliating for Mr Y, who was forcefully arrested in response to a criminal act for which he was not responsible.
114. The Authority has determined that:
- 1) Officer A unlawfully arrested Mr Y because he neglected to take basic steps to identify the person he was dealing with and failed to consider the extent of his legal powers.
 - 2) As a result of the unlawful arrest, Officers A and D used excessive and unlawful force to handcuff Mr Y and remove him from his own property. The officers should have realised and acknowledged their mistake much sooner than they did. Furthermore Officer D should not have placed his Police dog in a position where it was able to bite Mr Y while the officers were escorting him to a Police car.
 - 3) Officer D's conduct during the arrest was inappropriate.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

23 June 2016

14-1392

Arrest and detention

115. Police officers may arrest and take a person into custody without a warrant when they:
- a) find the person disturbing the public peace or committing any offence punishable by imprisonment; or
 - b) have good cause to suspect the person has committed a breach of the peace or an offence punishable by imprisonment.
116. The Police's *Arrest and detention* policy advises officers that they may have 'good cause to suspect' from their own observations, statements from witnesses, admissions from the offender, examining the scene, or forensic evidence.

Use of force

117. The Police's *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.
118. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring 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.
119. An officer 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: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
120. A key part of an officer's decision to decide 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: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); 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.

121. 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.

Use of force with Police dogs

122. The Police's *Use of force with Police dogs* policy provides that Police dog handlers must have control of their dog at all times during deployment and "*must take all reasonable steps to prevent unintended contact and bites.*" It further states that:

"Contact with suspects

Police dogs must not be allowed to contact or bite suspects unless commanded to do so by the handler.

Handlers must be alert to the indications of their Police dog when patrolling, tracking or searching. From the time the dog indicates the possibility of the presence of a suspect or person, or locates a suspect, they must take immediate and appropriate action to prevent contact and/or dog initiated bites including:

- *reducing the tracking line to half or less at the time the dog indicates a person may be nearby*
- *recalling the dog to them*
- *downing the dog and going to the dog*
- *placing the dog on a lead and chain or lead and collar*
- *shortening their hold on the lead."*

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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
