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# Complaint of excessive force on a 15 year old boy in Taupo

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## INTRODUCTION

1. On 9 December 2014 an officer informed a supervisor about an event during which another officer used excessive force while restraining a 15 year old boy (X) in Taupo on 21 November 2014.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

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## BACKGROUND

### Summary of events

3. On 21 November 2014, at about 10.36pm the Police were alerted to some youths (X and Y) "*acting suspiciously*" near Waitahanui, south of Taupo. A short time later the informant told the Police that the youths had hitched a ride in a four-wheel drive car heading towards Taupo.
  4. The Police Northern Communications Centre (NorthComms) passed the information on to Officers A and B who were on patrol together in the area. Officer A was driving while Officer B was in the passenger seat. The officers located and stopped the four-wheel drive car near the Taupo airport, travelling north towards Taupo.
  5. Due to concerns for the two boys' safety, Officer A decided to take them home using a power contained in section 48 of the Children & Young Persons and Families Act 1989 (see paragraph 31). The boys got into the back seat of the Police car. They were not searched before they got in.
  6. By way of explanation, the officers stated that they did not search the boys at this time as their intention was simply to drive the boys home and not arrest or detain them for any length of time.
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7. The officers asked X for his current address. However, when they arrived at the nominated address, they discovered that X did not live there. X then told the officers that he had forgotten his address and he actually lived in the house next door. However, when Police knocked on the door of that house, a man from across the street yelled out that nobody was there as it was a holiday home.
8. At this point, Y, who lived across the road, went home. Before he left the Police car Y told X to stop “messing” the Police around and tell them where he lived.
9. When X continued to refuse to give the officers his correct address and they could not contact any of his relatives, by phone, the officers decided to take X back to the Police station to try and find out where he was supposed to be living.

#### *Police Car*

10. Officer A said that X made it clear that he did not want to go back to the station and was “swearing and muttering under his breath the whole time”. The officer said that he thought that X was “pissed off that he didn’t get to go with his mates, he didn’t get to go where he wanted to go”.
11. En route to the station, X sat in the rear seat behind the driver, Officer A. Officer B sat in the front passenger seat. Officer A said that he did not know why Officer B did not get in the rear with X, as is usual practice.
12. Officer B told the Authority that X was not initially considered a threat. However, part way through the trip X began tapping on a can of pre-mixed bourbon and coke, which he had pulled out from under his jacket.
13. Both officers asked X to give Officer B the can, as they were concerned it could be used by him as a weapon against them.
14. Officer B said in interview that X was just about to hand over the can when Officer A abruptly pulled over, got out of the car and “forcefully pushed [X] down onto the back seat, and he was sort of holding him down trying to get the can off him” and said to him, “are you going to behave?”.
15. Officer A then handcuffed X while Officer B put his seatbelt on. Officer B told the Authority that Officer A’s actions were “a bit excessive”.
16. When asked about his actions, Officer A said that he feared the can could be used as a weapon against Officer B or himself, so he asked X to give the can to Officer B and, when X refused, he stopped the car and got out and handcuffed him.
17. X confirmed to the Authority that he had cans of alcohol on him and that the officer who was driving got out of the car and grabbed his arm to put handcuffs on him. He said that it felt like the officer was going to break his arm.

## Police Station

18. On arrival at the Taupo Police station, Officer A searched X and removed his shoes.
19. Despite repeated requests, X continued to refuse to give the officers his address, saying that he did not want to be taken home. Eventually, the officers obtained his mother's details from Child, Youth and Family.
20. As X's mother did not answer the telephone, Officer A decided to drive X to her address. When X was told of this arrangement, Officer A said that X ran from the charge area into the female holding cell, refused to leave and told Officer A that he did not want to go.
21. X told the Authority that Officer A then put his arm around his throat and lifted him up against the wall from a seated position, with his feet off the ground for 15 seconds. X said he could not say anything, because the officer was choking him. He said he thought he was going to die.
22. Officer B was standing in the female holding cell behind and to the right of Officer A and had a good view of what occurred.
23. Officer B confirmed that X told Officer A that he did not want to be taken to his mother's address. Officer B said X was just sitting there when Officer A *"grabbed him with one hand around the front of his neck or his throat and lifted him up against the wall and pushed him against the cell wall"*. Officer B said that Officer A told X, *"you're going to go home and you're going to behave"* but X could not talk to respond. Officer B said that when X was released he was *"crying and quite visibly upset and breathing really heavily"*.
24. When questioned about his use of force, Officer A told the Authority that X said that he would *"kill [him]self"* before he went back to his mother's address and got *"real angry"*. He said that X sprinted from the charge area into the female holding cell and put his hands and arms inside his t-shirt, so it was not possible to grab his arms, and then sat down in a corner and would not come out. Officer A said he and Officer B called him a few times to come out but he would not and X *"got real abusive"* and *"started swearing at [them]"*.
25. Officer A said he went in to the cell to hurry him along and X *"postured like he was going to kick"* him and looked like he was going to spit at him. In response, Officer A said he *"grabbed his sort of scruff of his neck, pushed him up against the wall"*.
26. Officer A told the Authority that he was not trying to choke X; it was more to try and stop him from spitting and that he was pushing his chin away rather than using force on his throat. He accepted that in hindsight a better option would have been to work out a plan with Officer B and the custody officer to remove X from the cell without using force.
27. The custody officer, who was the only other officer in the cell block at the time, did not witness the events in the female holding cell.

### *CCTV*

28. CCTV footage shows X lying and crawling on the floor and doing a “*high kick*” into the air prior to entering the female holding cell. The female holding cell does not have a camera and there is no footage of the alleged use of force by Officer A.

### *Post incident*

29. Seven days after the incident, when the supervisor returned from leave, Officer B raised concerns about how X was treated while in Police custody. This matter was then reported to a sergeant who notified the Commissioner, as is required by policy.

### **X**

30. At the time of this incident X was 15. He had been under the care of Child, Youth and Family but had been placed back in his mother’s care two days before this incident.

### Power to detain unaccompanied children and young persons

31. Section 48 of the Children, Young Persons, and their Families Act 1989 (CYFS Act) empowers Police to detain any child or young person found unaccompanied by a parent or guardian in a situation where the child or young person's physical or mental health is or is likely to be impaired. With the child or young person's consent, officers may then take them to their parent or guardian.

### Use of force by law enforcement officers

32. Section 39 of the Crimes Act 1961 provides that Police can use reasonable force in the execution of their duties.
33. The Police *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
34. 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.
35. 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. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
36. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actual 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.
37. 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.

## THE AUTHORITY'S FINDINGS

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### Issue 1: Were Officers A and B justified in apprehending and detaining X?

38. Section 48 of the CYFS Act states that an officer can deliver a young person to a parent or guardian if they are found in an unsafe environment (see paragraph 31).
39. Officer A told the Authority that he formed the view that the two boys were too young to be out by themselves, especially as they had been drinking and hitch hiking and seen acting suspiciously.
40. The officers were therefore entitled to stop the four wheel drive and put the boys in the Police car in order to return them to their parents.
41. When X failed to give the officers his correct address, and the officers were unable to contact his relatives, they took X back to the Taupo Police station so that further enquiries could be made.

#### FINDING

Officers A and B were justified in apprehending and detaining X pursuant to section 48 of the CYFS Act.

### Issue 2: Was the force used by Officer A in the Police car excessive?

42. Officers A and B did not search X before putting him in the patrol car. It was not until after Y had been dropped off, and X was in the back seat alone, that they realised he had a full can of bourbon and coke on him.
43. Officer A said he feared that X could use the can as a weapon on either Officer B or himself while he was driving the car.
44. Both Officers A and B asked X to give the can to Officer B. When X refused, Officer A stopped the car to handcuff X.
45. Officer B advised the Authority that Officer A's actions in forcing X down onto the seat and handcuffing him was "*a bit excessive*".
46. The Authority considers that it would have been good practice for the officers to have searched X before putting him in the car and, given that he was unhappy about being transported, for Officer B to have sat in the back with X. However, given X's failure to cooperate, and the potential risk he posed, the Authority finds that the force used by Officer A to remove the can and handcuff X was reasonable in the circumstances.

## FINDING

Officer A was entitled to use reasonable force to remove the can from X and to handcuff him in the back of the Police car.

### Issue 3: Was the force used by Officer A at the Police station excessive?

47. The CCTV footage shows X lying on the ground beneath the charge room counter before walking to the female holding cell, rather than sprinting to the cell as described by Officer A.
48. Both X and Officer B told the Authority that X was sitting on the seat in the cell, saying he did not want to go to his mother's house, when Officer A suddenly grabbed X, with one hand around the front of his neck, and lifted him up against the wall.
49. In contrast, Officer A told the Authority that when X was told he was going to be taken to his mother's house, he got abusive and started swearing. Officer A said when he went into the cell to hurry X along, X was standing there with clenched fists and appeared to be going to kick him. Officer A also said that he thought that X was going to spit at him so he grabbed the scruff of his neck and pushed him up against the wall.
50. Officer A told the Authority that he was not trying to choke X, but was trying stop X from spitting at him, and was pushing his chin away rather than his throat.
51. After considering all the evidence, the Authority finds the version of events given by X and Officer B to be more credible than that given by Officer A. The Authority is satisfied that X was only verbally resisting going to his mother's house when he was grabbed by Officer A and held against the cell wall by his throat.
52. The Authority has concluded that the force used by Officer A was excessive and not justified in the circumstances. Officer A's actions escalated the situation rather than resolved it.

## FINDING

Officer A's actions in grabbing X by the throat, in the manner that he did, amounted to excessive force and were contrary to law.

## CONCLUSIONS

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53. The Authority has concluded on the balance of probabilities that:

- Officers A and B were justified in apprehending and detaining X pursuant to section 48 of the CYFS Act;
- Officer A was entitled to use reasonable force to remove the can from X and to handcuff him in the back of the Police car; and
- Officer A's actions in grabbing X by the throat, in the manner that he did, amounted to excessive force and were contrary to law.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

21 January 2016

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## ABOUT THE AUTHORITY

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### **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?

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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.







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