

STATEMENT ON INVESTIGATION

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Outcome of Ombudsman Investigation - Department for Correctional Services' handling of a physical altercation

The Ombudsman investigated nine issues concerning the Department for Correctional Services (**the department**) in response to a prisoner's complaint arising from a physical altercation at a facility on 21 January 2017:

1. Whether the level of force used by the department involved in the physical altercation was reasonable

There were substantially differing versions of events from the complainant and the department regarding the physical altercation. According to the complainant, he was assaulted. According to the department, a department officer was assaulted by the complainant and the complainant's injuries were inadvertently caused by a collision with furniture as officers attempted to restrain the complainant. There was no CCTV footage as the physical altercation occurred in an office.

The Ombudsman considered evidence of officers who were present and three prisoners who were in the vicinity at the relevant time.

The Ombudsman was satisfied that the complainant was injured as a result of the physical altercation. The complainant had significant facial injuries which required hospitalization and surgery. The Ombudsman was prepared to accept that the complainant had been treated for a brain injury but was unable to conclude on the balance of probabilities that the brain injury was acquired as a result of the physical altercation.

The Ombudsman was unable to prefer one version of events over the other, and noted that it did not appear that there was any other evidence that would assist to determine the issue. The Ombudsman did not consider that he had sufficient evidence before him to be satisfied that the department's officers used unreasonable force during the physical altercation or in restraint of the complainant.

The Ombudsman did not consider that the department acted in a manner that was unlawful, unreasonable or wrong for the purposes of the Ombudsman Act.

2. Whether the department erred by inviting the complainant into an office without CCTV

The Ombudsman noted that his investigation (and presumably those of SAPOL and the department) was disadvantaged by the lack of video footage of the physical altercation.

The Ombudsman was tentatively prepared to accept that it may be appropriate, in some instances, to call a prisoner into an office to discuss matters such as the prisoner's behaviour. The Ombudsman noted that the department was considering implementing the use of body-worn cameras for its officers.

The Ombudsman considered that the physical altercation would not have taken place off camera, and may not have taken place at all, if the complainant had not been invited into the office.

The Ombudsman concluded that whilst it would be preferable for all such discussions to be subject to visual recording, as the department has not implemented body-worn cameras, he did not consider that the decision by department officers to invite the complainant into the office was wrong for the purposes of the Ombudsman Act, based on the information before the officers at the time and based on the department's usual practice.

The Ombudsman did not consider that the department acted in a manner that was wrong for the purposes of the Ombudsman Act.

3. Whether the department erred by failing to provide timely medical treatment to the complainant

After the physical altercation, the complainant was transferred to a special management unit where he was subjected to a strip search and changed into clean clothing. The complainant was then transferred to the Infirmary where the nurses called an ambulance.

The Ombudsman expressed concern that the department did not initiate a 'Code Black - Medical Emergency' (**Code Black**) given the complainant's injuries were severe enough to require hospitalization. The Ombudsman expressed concern at the decision to transfer the complainant to the special management unit, given that it effectively delayed medical treatment.

The department's view was that it was necessary to transfer the complainant to the special management unit to minimise further risk to staff and the complainant. The Ombudsman did not accept that submission, noting that the complainant had been successfully restrained and handcuffed, had suffered a head injury and been attended by approximately a dozen officers.

The Ombudsman's view was that in the circumstances a Code Black should have been initiated, noting that the complainant's facial injuries and bleeding were sufficiently obvious, even to a medically untrained person, and that any reasonable person would have concerns and consider that immediate attention from medical staff was warranted.

The Ombudsman concluded that the department failed to comply with its procedures and acted in a manner that was unreasonable and wrong by failing to provide timely medical treatment to the complainant.

To remedy that error, the Ombudsman recommended that the department:

- issue a reminder to staff that, when responding to an incident or a Code Yellow (i.e. an incident requiring officer assistance), they must consider whether a Code Black should also be initiated
- apologise to the complainant for the delay in the provision of medical treatment due to the department taking him to the special management unit instead of immediately to the Infirmary.

The department has indicated that, while it supports the first recommendation, it does not consider that an apology is warranted and does not support the Ombudsman's recommendation in that regard.

4. Whether the department erred by failing to record video evidence of transfer to another unit

The department's procedure provides that transfer of a prisoner to the special management unit must be recorded.

While it appeared from CCTV footage that an individual was operating a video camera during the complainant's transfer to the special management unit, the department advised that the footage did not exist as the camera memory was full and therefore nothing was recorded on the relevant date.

The complainant alleged that the video camera was recording during the transfer and that the department must have deleted the footage.

The Ombudsman accepted, on the basis of the available evidence, that an officer attempted to record the transfer of the complainant but was unable to do so. The Ombudsman noted that the department has since implemented a new practice following the incident whereby a spare SD card is stored in the Supervisor's office at all times.

The Ombudsman concluded that the department acted in a manner that was wrong by failing to comply with its procedure. Given the steps already taken by the department, the Ombudsman did not consider it necessary to make a recommendation.

5. Whether there was an unreasonable delay in the department facilitating the complainant's complaint to SAPOL

The complainant alleged that following the physical altercation, he asked to be interviewed by SAPOL and department staff refused to assist him to do this.

The department advised the investigation that SAPOL was notified immediately following the physical altercation. The department also alleged that the complainant had stated on multiple occasions that he did not want SAPOL involved.

In the circumstances, the Ombudsman did not consider that there appeared to be an unreasonable delay in the department facilitating the complainant's report to SAPOL, but the Ombudsman commented that the department should have ensured that the complainant was provided with the SAPOL report number.

The Ombudsman did not consider that the department acted in a manner that was unlawful, unreasonable or wrong for the purposes of the Ombudsman Act.

6. Whether the department erred by allowing one of the officers involved in the physical altercation to have contact with the complainant following his return from hospital

The complainant alleged that on a number of occasions following his return from hospital to the facility, one of the officers involved in the physical altercation was permitted to come into contact with him, which he found very distressing.

The Ombudsman considered that it appears that the complainant mistook another officer for the relevant officer. Based on information provided to the investigation, the Ombudsman was satisfied that the officer with whom the complainant had contact was not the relevant officer as alleged.

The Ombudsman did not consider that the department acted in a manner that was unlawful, unreasonable or wrong for the purposes of the Ombudsman Act.

7. Whether the department's decision to not suspend an officer involved in the physical altercation was reasonable

The complainant submitted that the department should have suspended the relevant officer until the Ombudsman's investigation concluded. The department considered that the relevant officer was a victim of assault and did not consider changes to the officer's employment.

The Ombudsman accepted that it was department's decision whether to modify or suspend the officer's duties and that it was reasonably open to the department to allow the officer to continue with his usual duties for the duration of the Ombudsman's investigation.

The Ombudsman did not consider that the department acted in a manner that was unlawful, unreasonable or wrong for the purposes of the Ombudsman Act.

8. Whether the department's investigation into the conduct of an officer involved in a previous incident was reasonable

As part of its investigation into the physical altercation, the department investigated certain events preceding the physical altercation (**the previous incident**).

The Ombudsman's investigation viewed CCTV footage of the previous incident and the versions of events put forward by the complainant and the department.

The Ombudsman considered that it was reasonably open to the department to reach its conclusions.

The Ombudsman did not consider that the department acted in a manner that was unlawful, unreasonable or wrong for the purposes of the Ombudsman Act.

9. Whether the department's investigation into the physical altercation was reasonable

The Ombudsman noted that the department's officers failed to comply with a number of its procedures immediately following the physical altercation, in particular by cleaning blood spills and not photographing items of evidence in situ. The department accepted that its officers did not fully comply with the relevant procedures in that regard.

The Ombudsman also considered the department's investigation of the physical altercation. The department put its investigation on hold for approximately six months while SAPOL conducted its investigation. The Ombudsman noted that the complainant was interviewed by the department approximately nine months after the physical altercation.

While the Ombudsman did not have concerns about the department's process once it recommenced its investigation, the Ombudsman considered that the department's actions as part of its initial investigation immediately following the physical altercation were inadequate. In particular, the Ombudsman noted that the department:

- removed the blood spill without preserving any evidence
- failed to take photographs of the office immediately following the physical altercation
- failed to retain CCTV footage of the morning in question
- failed to promptly interview persons involved in the physical altercation.

The Ombudsman's view was that those errors caused detriment to all of the relevant investigations including his investigation, the department's investigation and the SAPOL investigation. The Ombudsman did not consider that the department provided any compelling reasons why the criminal and disciplinary proceedings could not run concurrently.

The Ombudsman concluded that the department had acted in a manner that was unreasonable.

To remedy that error, the Ombudsman recommended that the department provide retraining on its relevant procedures to every officer working in the facility. The department has indicated that it supports that recommendation.

Given that the department had disbanded its investigation unit in place at the relevant time and introduced a new investigation unit, the Ombudsman did not consider it necessary to make any further recommendations.

Outcome

The Ombudsman's final view is that:

- the department did not act in a manner that was unlawful, unreasonable or wrong by restraining the complainant following the physical altercation
- the department did not act in a manner that was wrong by inviting the complainant into an office without CCTV
- by failing to provide timely medical treatment, the department acted in a manner that was unreasonable and wrong
- by failing to record video evidence of the complainant's transfer to the special management unit, the department acted in a manner that was wrong
- the department did not delay in facilitating the complainant's report to SAPOL and therefore did not act in manner that was unlawful, unreasonable or wrong
- the department did not allow an officer involved in the physical altercation to come into contact with the complainant following his return from hospital and therefore did not act in a manner that was unlawful, unreasonable or wrong
- the department did not act in a manner that was unlawful, unreasonable or wrong by allowing an officer involved in the physical altercation to remain on his usual duties during the course of the Ombudsman's investigation
- the department did not act in a manner that was unlawful, unreasonable or wrong in its investigation of the previous incident
- by failing to preserve evidence in its initial internal investigation into the physical altercation, the department acted in a manner that was unreasonable.

The Ombudsman recommended that:

1. the department issue a reminder to staff that, when responding to an incident or a Code Yellow, they must consider whether a Code Black should also be initiated
2. that the department apologise to the complainant for the delay in the provision of medical treatment due to the department taking him to the special management unit instead of immediately to the Infirmary
3. the department provide retraining on its relevant procedures to every officer working in the facility.