

Delay in charging off-duty Police officer for driving offence

INTRODUCTION

1. On Friday 6 November 2015, an off-duty Police officer was driving north on State Highway 3 near Mimi, Taranaki, when he collided with an oncoming vehicle driven by Ms Y. The crash caused minor injuries to Ms Y's face and hand.
2. On 28 March 2016 Ms Y wrote to the Authority, complaining that Police had not charged the officer and that time was running out to prosecute him (because charges must be laid within six months). She was concerned that Police appeared to be treating the officer more favourably than an ordinary member of the public.
3. The Authority notified Police of the complaint and conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At about 3pm on 6 November 2015, Ms Y was driving her Mazda Demio car south on State Highway 3 with Ms Z as her only passenger. They had just passed Mangamaio Road on their way from Auckland to New Plymouth.
5. Officer A, an off-duty sergeant, was travelling on the same stretch of State Highway 3. He was driving a Holden Commodore Ute in the northbound lane, and was heading to Hamilton to see a family member who had been admitted to hospital.

6. Just after a right hand bend in the road, heading downhill, Officer A pulled over into the southbound lane to overtake a large vehicle.¹ He recalled that the vehicle was a small tanker, while Ms Y and Ms Z described it as a large truck, possibly with a trailer unit behind it. Officer A said the tanker was travelling at a slow speed, and he began overtaking it when the double yellow 'no passing' lines marking the bend in the road ended.
7. Ms Y was driving up the hill at the time, and saw Officer A enter her lane directly into her path. She avoided a head-on collision by braking and swerving left, but Officer A's vehicle scraped down the driver's side of her car and hit the rear wheel, shearing off the wing mirror in the process. The wing mirror smashed through the driver's window, covering Ms Y and Ms Z in glass. Ms Y's car was significantly damaged and was later written off by her insurance company.
8. The truck (or tanker) drove on, but both Ms Y and Officer A stopped on the side of the road. Officer A was uninjured, and the damage to his car was minor. He approached Ms Y's car to check on the occupants, and found that neither Ms Y nor Ms Z were seriously injured. Ms Y had suffered small cuts to her face and right hand, which were bleeding slightly.
9. Officer A gave Ms Y and Ms Z a business card with his insurance details and told them he was an off-duty Police officer. There was no cell phone coverage at the scene but a passing motorist called emergency services to attend. A first responder then arrived and began attending to Ms Y.
10. Officers B and C arrived at the scene of the crash within about 20-30 minutes. Officer B is a senior constable experienced in dealing with serious traffic crashes, and he took charge of the crash investigation.
11. Officer B approached Officer A and spoke to him about what had happened. Officer A believed Officer B would have recognised him as a Police officer because they had attended a training course together in the past; however Officer B later said he had never met Officer A before, and he became aware that Officer A was a Police officer while obtaining his details for the traffic crash report.
12. Officer B wrote Officer A's identification details in his notebook but did not record any notes of his account of the crash. Meanwhile Officer C spoke to Ms Z, and recorded her comments in his notebook but did not get her to sign them as correct.
13. Neither Officer B nor Officer C took a statement from Ms Y. Ms Y said that when Officer B spoke to her at the scene, he only requested her contact details and did not ask about her account of the incident. However Officer B denied this, and stated that he had asked both drivers for their version of events.
14. When interviewed by the Authority, Officer B accepted that best practice would have been to record the drivers' accounts in his notebook and ask them to sign the notes as correct. He said he did not do this because:

¹ The speed limit on this section of State Highway 3 is 100kph, and the right hand bend has an advisory speed of 65kph.

“I had a State Highway that was blocked. I had a situation to be resolved and did so. I had sufficient information in front of me as to how this matter was going to proceed”

15. Officer B considered that formal written statements were not needed because there was no doubt that Officer A had caused the crash. He said he would only have arranged for formal statements to be taken after making a final decision to proceed with a prosecution.
16. Several different options were available to Officer B to address Officer A’s liability for the crash. At the lower end of the scale, he could have given Officer A a warning or a traffic infringement notice for unsafe passing. Alternatively he could have charged Officer A with careless driving or dangerous driving.²
17. Ms Y informed the Authority and Police that Officer B told her at the scene that Officer A could lose his job if his boss found out about the crash. When she stated she did not want Officer A to lose his job:

“[Officer B] told me that if [Officer A] had paid restitution before he went to court, it would go better for him. He also told me that if restitution was sorted out that I wouldn’t have to come back down to New Plymouth for the Court case, saying that I probably wouldn’t want to do that. From what [Officer B] was saying, I thought this was the right and normal way of dealing with it.”

18. Officer B told Ms Y to send her reparation claim to him. Ms Y said she thought what Officer B was saying was *“a little strange”* and felt uncomfortable, but went along with it.
19. Ms Y believes this conversation happened at the scene of the crash, but in his Police statement Officer B recalled that he rang Ms Y two days later to discuss *“the option of proceeding with this matter via way of a written traffic warning for the offence of careless driving”*, as part of an *“alternative resolution process”*.³ According to Officer B, he explained to Ms Y that the matter would not proceed through the court system but that a written traffic warning would be noted on Officer A’s driving history instead. He said Ms Y *“accepted that this would be a suitable way of finalising the situation provided full reparation was received.”*
20. Ms Y did not recall Officer B telling her that Officer A would receive a written traffic warning. She said she still expected that Officer A would be charged, because Officer B had mentioned him going to court during their conversation at the crash scene.
21. Officer B also said in his Police statement that, before Officer A left the scene of the crash, he advised him *“that he would probably be the subject of a charge of careless driving.”* However later in the same statement Officer B said he decided that: *“Because it was a non-injury accident, then a written traffic warning would be appropriate.”*

² Ms Y’s injuries were not serious enough to justify charging Officer A with careless or dangerous driving *“causing injury”*.

³ When interviewed by the Authority two months after making his Police statement, Officer B said he and Ms Y agreed at the scene that a charge would only be laid if Officer A failed to pay reparation.

22. Officer A recalled that Officer B told him at the scene: *“If all the reparation is sorted you’ll get a warning letter and that will be the end of it. I have spoken to the other driver and she does not want to see this go to Court.”*⁴ Officer A also stated:

“There is no way [Officer B] was trying to do me any favours. On the day I believed that his approach, not his investigation, but his approach was the same way that I would have dealt with anybody else regardless whether they were a cop or not.”

23. Officer C said:

“From the information I had established at the crash scene and the fact there were no injuries to anyone involved, I think it would’ve been dealt with by way of an infringement notice ... for unsafe passing; however I also consider another option could be to issue a written traffic warning for careless driving.

... I do not believe that [Officer A’s] position as a Police officer has had any influence on the way this matter has been dealt with.”

24. Officer B did not take photos or measurements at the scene, and wrote his report on the crash back at the Police station. He told the Authority he completed parts of the report from his memory of what Officer A and Ms Y had told him about the crash (as he had not taken notes at the time). In the ‘Driver interview notes’ section for Ms Y’s account, he wrote:

“I was driving towards New Plymouth. As I started to drive up the hill the black ute tried to overtake a tanker. He did not have enough time or room. We both braked hard and I pulled to the left but the front right of his ute hit the right middle/rear of my car.”

25. Ms Y later said that some of the details provided in the report were wrong:

“... because I thought it was a truck, not a tanker, I didn’t know [Officer A’s] black vehicle was a ute until AMI insurance advised me a few days later, and I also don’t believe that the black vehicle braked hard.”

26. The report did not mention that Ms Y had received minor injuries to her face and hand (Officers B and C later said they were unaware of any injuries), and incorrectly recorded that Ms Y had a learner driver’s licence rather than a full licence. It also stated that Ms Y’s speed before the crash was 40 kph, and Officer A’s speed was 50 kph, but Ms Y said both their speeds would have been much higher.

27. The report noted that Officer A’s breath screen was negative for alcohol, although Officer A has stated that no test was ever conducted.

28. In a Police statement, Officer A said that Officer B called him at about 7.30pm on the night of the crash and asked whether he had been drinking prior to driving that day. Officer A advised

⁴ Officer A said that on Sunday 8 November 2015, he tried to arrange a meeting to receive his warning letter as Officer B had instructed, but Officer B advised that he should wait until reparation had been organised.

him that he had not been drinking. Officer A said he had not thought about it at the time of the crash, but:

"I knew that [Officer B] had forgotten to breath-test me on the side of the road. I know it is policy to put every traffic job through the procedure and especially when a cop is involved in one. It's one of the first things to eliminate in case there are any further accusations."

29. Officer A also told the Authority that, during the call, Officer B informed him he was going to record in the crash report that he had breath-tested Officer A at the scene (although he had not).
30. Officer B said in his Police statement: *"As is common practice I required [Officer A] to undergo a roadside breath screening test which returned a reading of no alcohol."* When interviewed by the Authority, Officer B maintained that he had completed a roadside breath test on Officer A. He did not recall phoning Officer A on the night of the crash and doubted that he had done so. He could not explain why Officer A would say that he had failed to carry out a breath test, but suggested that he may have been in shock following the crash.
31. Officer B does not appear to have notified any supervisors that an off-duty Police sergeant was involved in the crash. Officer B's immediate supervisor, Officer D (a sergeant) was on leave at the time of the crash but Officer B could have notified the officer in charge of Waitara Police Station, Officer E (a senior sergeant).
32. Officer E told the Authority he did not think Officer B needed to advise him about the crash involving Officer A, and said if he had been consulted on the day it was unlikely he would have done anything differently. He believed Officer B was sufficiently independent from Officer A, as they worked in different areas, and said:

"I think my likelihood, chances of ringing the Waikato Police and saying, can you send a member down to investigate this minor traffic crash, because it involves a policeman, it would be unlikely that I'd get a positive reply."

33. Officer B could not recall consulting anyone about his decision to issue a written traffic warning in this case. He believed it was *"entirely reasonable"* for him to decide that a warning was appropriate, and was comfortable making that decision without oversight from a supervisor. He did not think the fact that Officer A was a Police officer made any difference to how he should handle the crash investigation, since *"it was a simple careless driving accident"* which did not result in significant injuries and occurred while Officer A was off-duty: *"He was a motorist. That was it as far as I was concerned."*
34. Officer B explained that he believed officer A's driving was 'careless' rather than 'dangerous', because:

"... dangerous driving consists of two facets, either dangerous speed or dangerous manner, and dangerous manner would tend to suggest that it was more than one specific incident that led up to the causation of the crash. This one here, it was the definition of careless"

35. When interviewed by the Authority, Officer B said he did not consider the possibility that Ms Y or anyone else would believe he was treating Officer A more favourably because he was a fellow Police officer. Consequently he did not take any steps to avoid this 'perceived' conflict of interest (such as immediately notifying his supervisors and obtaining approval for the proposed outcome).
36. Officer A advised his own supervisor (Officer F, a senior sergeant) about the crash on Monday 9 November 2015. Officer A informed Officer F that there were no significant injuries and no alcohol involved in the crash, and that Officer B had suggested he would get a warning. Officer F told the Authority:

"... it seemed a bit odd to me because the scenario didn't sound like a warning issue but I didn't know the facts, it was just a phone call so I said, "We'll just wait until you're charged or wait 'til whatever happens and we'll deal with the facts then."

... I mean, it could be a warning, it sounded to me like a warning, it could be unsafe passing manoeuvre which is an [infringement offence notice] or it could be careless use. It didn't sound from what he told me that it would be more serious than that."

37. Officer F assumed that the investigation would be completed within a couple of days and that it would be overseen by Officer B's supervisor. He did not inform anyone else about the crash because he thought it was being dealt with through Officer B's investigation. He believed Officer A had acted appropriately following the crash.
38. Officer B told the Authority he prefers to carry out an 'alternative resolution process' (where the offending driver receives a warning instead of being charged, as long as he or she pays reparation to the victim) because it is more "victim-centric" and:

"I would rather see the victims have full reimbursement for costs incurred rather than throw it into careless driving, for example, into the JP traffic Court where quite often the JPs are reluctant to award reparation."

39. Officer B said he was very much aware of the six-month time limit for laying charges, and that Officer A "was left in no doubt that if reparation wasn't made then prosecution would be proceeded with."
40. In this case there was a prolonged negotiation process regarding Ms Y's reparation claim, which was facilitated by Officer B.
41. On 19 November 2015, Ms Y sent her claim for reparation to Officer B, who forwarded it to Officer A to present to his insurer. About two weeks later Officer A's insurer advised Ms Y of the amount they would pay regarding her reparation claim, which was not the full amount she had requested.
42. Meanwhile Officer D returned from leave and, on 11 December 2015, he reviewed Officer B's files and asked Officer B about his investigation into the crash involving Officer A and Ms Y. Officer D later said that:

- a) Officer B advised him he had discussed the incident with Officer E, and they had agreed to give Officer A a formal written warning as long as he paid reparation to Ms Y. Officer B also said that Ms Y was happy to resolve the matter in this way.
 - b) Officer D advised Officer B to be wary of the time restraints in case it became necessary to charge Officer A.
 - c) Officer D did not feel it was necessary to look into the case any further because it had already been reviewed by Officer E.
43. However Officer E said that the first time he became aware of the crash was when he was alerted to Ms Y raising concerns about how the matter was being dealt with. He thought this was around Christmas-time but the evidence suggests this was in February the following year (see paragraph 48 below).
44. No further action was taken to resolve the reparation claim in December 2015.
45. After the Christmas holidays, Ms Y and Officer B exchanged further emails and a phone call regarding her remaining claim for reparation. On 20 January 2016 Ms Y asked Officer B for an update, and he asked her to re-send her claim which she promptly did.
46. Officer A also emailed Officer B on that date, stating his opposition to the remaining claim and asking for proof of costs. He did not receive a reply. Officer A commented that:
- "[Officer B] did not seem to be in a hurry to resolve the matter. There was no reply to my requests for clarification on the remaining reparation sought."*
47. Ms Y emailed Officer B again on 28 January 2016 because she had not heard anything further. Officer B replied, apologising for the delay as he was on leave. He asked her to advise how much she had been paid by the insurance companies.
48. On 9 February 2016, Ms Y called her local Police station in Auckland to express her concern that Officer A had not yet been charged. The officer she spoke to assured her that a Police officer involved in a traffic accident would be treated the same as any ordinary member of the public, and offered to send an email to Officer E, notifying him of her concerns (Officer B's immediate supervisor, Officer D, was on leave at this time).
49. On 10 February 2016, Officer B emailed Ms Y as he had not received a response to his email from 28 January 2016. Ms Y sent him the information he had requested that same day and noted that she was not happy with having to chase payment for the rest of her reparation claim. She wrote: *"It is over three months since the accident occurred and at present I have little faith that the process is a fair one. This matter should have been settled before Christmas."*
50. Officer E contacted Ms Y on 12 February 2016. He recalled explaining to her that Officer A did not work at the same station as them, and that *"... I was surprised that she had the perception that we were treating [Officer A] favourably."* He also advised her that if they could not come

to an agreement regarding reparation, Officer A would be charged within the six-month timeframe.

51. However Ms Y remembered that Officer E said he had instructed Officer B to charge Officer A with ‘careless use of a motor vehicle’, and that there was some urgency because the charge needed to be filed within six months of the incident (in this case, by 6 May 2016).
52. Ms Y subsequently provided Officer E with the details of her reparation claim on 15 February 2016, and two weeks later requested an update from him because she had not received any response. After receiving an email from Officer E on 1 March 2016 (which Officer D was copied into), Officer B called Ms Y on 2 March 2016 to advise her that Officer A was not willing to pay the amount she had asked for.
53. Officer B sent a text message to Officer A on 3 March 2016, and advised him that Ms Y had contacted Officers D and E to complain “*so we need to progress this*”. Officer B wrote that if Officer A did not agree to pay the rest of the reparation claim then “*we are off to Court.*” Officer A said this was the first time court had been mentioned in their discussions.
54. Officer A stated that he called Officer B the next day to express his concerns about the reparation claim and again asked for (but did not receive) proof of the costs. Officer B then indicated that he intended to let a judge sort out the reparation issue, and informed Officer A that the charge would be careless driving. According to Officer A, during the conversation Officer B said: “*... another way to sort this out is just to pay the amount and make it all go away.*”
55. Officer A stated:

“I had asked [Officer B] to discuss the issues with a supervisor and together they can decide what they think is reasonable and let me know. This did not happen. I got the impression he did not want to make a decision, but then he didn’t go looking for advice either.”
56. Also on 3 March 2016, Officer B emailed Ms Y with a proposed settlement amount. He wrote that if she did not agree with that payment, “*... then we will proceed to trial and allow the Judge to decide.*”
57. On 10 March 2016, Ms Y requested that Officer B revise his calculations regarding the proposed settlement amount and asked whether he had charged Officer A yet. Officer B replied the same day, asking Ms Y:

“Can you please advise me of the total reparation you are seeking, minus what has already been paid by the insurance companies and if this is not paid then I will commence prosecution.”
58. On 15 March 2016 Ms Y emailed Officer B and re-stated the amount she wanted Officer A to pay. She also wrote: “*Your email implies that [Officer A] won’t be charged if he makes full restitution. He needs to be charged and very soon.*”

59. On 28 March 2016, Ms Y complained to the Authority and highlighted her concern that time was running out for Police to charge Officer A (as charges needed to be filed before 6 May 2016). She argued that the Police's decision to lay a charge should not be dependent on whether or not her claim of reparation was resolved, and said that she feared the calls and emails between her and Officer B had been a "delaying tactic" to ensure that Officer A's boss did not find out about the crash.

60. Ms Y also stated that:

- a) Officer A was being treated differently from an ordinary member of the public due to his position in Police.
- b) Officer B had failed to take a statement from her and: *"I would have thought this was standard procedure as I was the driver and owner of the vehicle involved."* Ms Y acknowledged that she was in shock after the crash, but said she was capable of answering questions.
- c) She did not believe the proposed charge of 'careless use of a motor vehicle' was appropriate because, without her taking action to avoid Officer A's vehicle, he *"would probably have killed or seriously injured me and seriously injured my passenger."*
- d) Officer B had: *"... failed to do his job to uphold the law and from my perspective, is more concerned that [Officer A] retains his job."*

61. In response to Ms Y 's complaints, Officer B has said:

"I categorically deny the charge levelled at me by [Ms Y]. The fact that [Officer A] is a Police officer played no part in the evolution of my decision-making process or in the execution of my duty."

62. On 29 March 2016, Officer A emailed Officer D to complain about a "severe lack of communication" from Officer B, and about Officer B's "threat" to prosecute if Officer A did not agree to pay the full amount requested by Ms Y. Officer A wrote:

"To prosecute a person simply to obtain the balance of a disputed cost is an abuse of process. If [Officer B] was to prosecute it should have been decided from the outset that my actions required the intervention of the criminal court."

63. Officer D discussed the matter with Officer A, and then with the Area Commander. Officer D looked at the crash investigation file, and later said:

"The file or [traffic crash report] weren't exceptional, if the issue had been resolved in say a month, six weeks and the reparation was paid then it would have been fine."

There were no formal written statements, but I wouldn't have expected formal written statements to be taken because it's basically a waste of time on this type of file if it is going to be resolved."

64. Officer D also commented that:

"I would prefer for incidents like this to be discussed with a supervisor before any decisions are made about how the incident would be resolved.

The nature of policing in a small sub area is that Constables working on their own frequently make decisions themselves.

[Officer B] in my view was not doing [Officer A] any favours. I know of him dealing with incidents in the past where alternative resolutions have been used. It is a viable option."

65. Ultimately Ms Y and Officer A were unable to agree on the reparation amount, and in April 2016 Officer A was charged with careless driving.

66. On 14 June 2016, Officer A appeared at court and pleaded guilty to one charge of careless driving. He was fined \$400 and ordered to pay \$130 costs. The court decided not to disqualify him from driving.

Police investigation

67. Police conducted their own investigation following Ms Y's complaint to the Authority, and on 14 July 2016, advised Ms Y that they had found no evidence to suggest Officer B had attempted to pervert the course of justice, or that Officer A and Officer B had colluded to prevent Officer A from being charged.

68. Police also informed Ms Y that:

"This investigation did highlight some internal performance issues in relation to decision making. The performance issues have been addressed with the staff involved, the details of which cannot be disclosed due to the confidential nature of the employee/employer relationship."

LAWS AND POLICIES

Traffic crashes policy

69. The 'Traffic crashes' chapter of the Police Manual states:

"Traffic crashes involving Police employees

... Police must ensure traffic crashes involving Police employees are appropriately overseen to ensure compliance with the 'Managing conflict of interest' chapter of the Police Manual (i.e. that the investigation will withstand external scrutiny).

Police must ensure the District Police Professional Conduct Manager (PPCM) is notified of all crashes involving Police employees in their district. The PPCM must ensure:

- *crashes are investigated in a timely manner and within statutory limitations*
- *the investigation is recorded on ... [the] PPCM database*
- *early intervention will access this information to identify employees that may need future assistance.*

70. The policy appears to be aimed at addressing what should occur in a situation where a Police employee is involved in a crash while on duty and driving a Police vehicle. It does not specify what should happen if the Police employee is off-duty, and driving their own personal vehicle at the time of the crash.

71. One of the policy's requirements for Police employees involved in a crash is to notify their supervisor and Area Commander. The remaining requirements relate to making an insurance claim and completing a personal injury report if appropriate.

Written traffic warnings

72. Police policy on written traffic warnings states:

"Police constables have a general discretion to issue warnings for minor traffic offending. Minor traffic offending is considered to be offending that does not place other motorists at undue risk. It is important when using discretion that:

- *Police take into account the circumstances of the offence and offender, which can include previous offending, and matters outside of the incident at hand;*
- *Police act in a consistent manner;*
- *Any warnings do not encourage or condone risky behaviours that lead to increased and injury rates."*

73. There is a presumption that warnings should not be issued for certain offences, including speeding, alcohol or drug-impaired driving, failure to wear restraints, dangerous or careless driving (unless the careless driving is minor, such as changing lanes without adequate indication), and high-risk driver behaviours.

74. In respect of crashes, the policy provides that written traffic warnings:

"... may be used for a crash arising from minor carelessness or other traffic offence when:

- *a supervisor authorises a WTW [written traffic warning]; and*
- *the circumstances are minor (for instance minor inattention); and*
- *there is no injury to another person and no serious property damage arising."*

75. Written traffic warnings are supposed to be affirmed within seven days of the offence. The policy also states:

"In exceptional circumstances, constables can use their constabulary discretion and deviate from the above guidelines if the totality of the circumstances renders the strict application of these guidelines unduly harsh."

Managing conflicts of interest policy

76. The ‘Managing conflicts of interests’ chapter of the Police Manual explains that conflicts of interests can occur *“fairly frequently”* in a small country like New Zealand. The policy states that all actual, potential or perceived conflicts of interest must be declared and appropriately managed:

“All Police employees must be aware of these critical points:

- *A perceived or potential conflict of interest can be just as damaging as an actual conflict of interest.*
- *All actual, potential or perceived conflicts of interest must be declared to a supervisor by way of the appropriate declaration.*
- *Supervisors must never investigate allegations of sexual or other serious misconduct by employees under their direct supervision.*
- *Supervisors must work with employees who declare conflicts of interest to assess the risks involved, and to identify appropriate strategies to manage those risks.”*

77. The policy defines the following terms:

<i>“Actual conflict of interest</i>	<i>A conflict between our official duties and our other interests that could interfere with our ability to be impartial, objective and independent.</i>
<i>Perceived conflict of interest</i>	<i>The perception of outside observers that our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case. The perception of a conflict of interest can be just as damaging to reputation as an actual conflict.</i>
<i>Potential conflict of interest</i>	<i>A situation where our other interests have the potential to interfere with our official duties in the future, or where our official duties could affect our other interests in the future.”</i>

78. The Police Code defines a conflict of interest as: *“a situation where our personal or professional interests may conflict with our position, obligations or responsibilities as a Police employee.”*

79. The ‘Managing conflicts of interest’ policy identifies that Police investigations of Police employees, and the resolutions of any incidents or investigations, are *“most likely to face scrutiny”*. The policy states:

“It is important when we are involved in informal resolutions, pre-charge warnings and prosecution that we ensure that our objectivity cannot be questioned. Employees involved at this stage of any incident or investigation should be aware of the potential for conflicts of interest, and declare any

actual, perceived or potential conflicts of interest to our supervisor in writing as soon as we become aware of the conflict.”

THE AUTHORITY’S FINDINGS

Issue 1: Did Officer B adequately investigate the crash?

80. Officer B regarded the traffic crash involving Ms Y and Officer A as a straightforward non-injury collision.
81. Since it was clear that Officer A was at fault for the crash, Officer B did not consider it necessary to take formal written statements from the drivers involved and did not take notes of their accounts at the scene. Nor did he map or photograph the scene of the crash. He later completed the traffic crash report from his memory of what the drivers had told him.
82. Ms Y believes that Officer B failed to ask for her account of the crash, but Officer B denies this. Ms Y has highlighted inaccuracies in the traffic crash report which, in her view, demonstrate that Officer B did not ask about her experience of the crash. She also pointed out that she received minor cuts to her face and hand which were not noted in the report, and that she believed the crash outcome could have been a lot worse if she had not taken evasive action.
83. In addition, Officer A has stated that the traffic crash report is inaccurate because it records that Officer B breath-tested him at the scene although Officer A believes he forgot to do so. Officer B denies that he failed to breath-test Officer A and stands by the contents of the traffic crash report. The Authority is unable to make a finding on this particular point in the absence of further evidence.
84. In any event, the Authority’s considers that Officer B’s investigation into the crash fell short of the expected standard and was not sufficiently thorough and accurate.
85. Officer B should have collected more evidence at the scene by taking photographs and measurements, and completing diagrams of the area of the crash. He also should have recorded the drivers’ accounts at the time they provided them, and asked the drivers to sign his notes as correct. If Officer B had taken notes at the scene, he would have a record of the content of his conversation with Ms Y to prove that he obtained her account.
86. The Authority acknowledges that if the matter had been resolved quickly, and to both parties’ satisfaction, then these extra steps may have been superfluous.
87. However prosecution was always a possibility in this case, because Officer B’s proposed resolution of a written warning for Officer A was dependent on Ms Y and Officer A reaching an agreement regarding reparation. If that did not happen, then Officer B planned to lay a careless driving charge against Officer A (as eventually occurred). The Authority also notes that Ms Y expected Officer A to be prosecuted all along, regardless of the reparation issue.

FINDING

Officer B should have conducted a more thorough investigation into the crash, since prosecuting Officer A was a viable option.

Issue 2: Did Officer B manage the perceived conflict of interest appropriately?

88. Police policy requires officers to notify their supervisors of any actual, perceived or potential conflicts of interest. The supervisors must then work with the officers “to assess the risks involved, and to identify appropriate strategies to manage those risks.” Available strategies to address conflicts of interest include assigning a different officer to conduct the investigation (sometimes from another region), or simply ensuring that the decision-making process is appropriately transparent.
89. This incident involved a ‘perceived’ conflict of interest because the offending driver was a Police officer. It was probable that Ms Y and others would question the impartiality and independence of the Police investigation into Officer A’s actions, whether or not any actual conflict of interest existed. Another relevant factor was that Officer A is a sergeant, and he was being investigated by a lower-ranking officer (Officer B is a senior constable).
90. Officer B did not believe that the fact Officer A was a Police officer made any difference in how he should handle his investigation into the crash, and said he dealt with Officer A in the same way he would have treated any other motorist. He did not consider it necessary to consult a supervisor about whether his proposed resolution of this incident was appropriate.
91. The Authority accepts that, in the circumstances of this crash, it was not practical or necessary to call in a crash investigator from a different area just because Officer A was involved. The crash only resulted in minor injuries, and it was clear who was at fault. Furthermore there does not seem to have been any real connection or familiarity between Officer A and Officer B that made it inappropriate for Officer B to conduct the investigation.
92. Nevertheless, Officer B should have immediately notified a supervisor that a Police sergeant was involved in the crash he was investigating, and sought advice about how to proceed. By the time Officers D and E became aware of the incident, Officer B had already proposed a resolution to Officer A (and possibly Ms Y, although she denied agreeing that Officer A should not be prosecuted).
93. This process of consulting a supervisor may or may not have resulted in the same proposed outcome for Officer A, but it would have ensured that the investigation received proper oversight and that it was not just Officer B making the decision. Police would have been less vulnerable to accusations of bias and collusion in that situation.
94. Officer B and his supervisor should also have considered informing the Area Commander and Road Policing Manager of the crash so that they were aware of the incident, could have input into the decision-making, and were prepared to deal with any issues that arose.

95. Following the crash, Officer B spent a lot of time liaising with Ms Y and Officer A about the reparation claim. However Ms Y was either not informed that Officer A was only going to receive a written warning (as long as he paid reparation), or she did not understand that to be the case. Furthermore, Officer A said that the possibility of prosecution was not raised with him until 3 March 2016.
96. The Authority considers that Officer B failed to communicate effectively with both parties, and this worsened Ms Y's and Officer A's perception of how the investigation was being handled.
97. After almost five months passed without Officer A being charged for causing the crash on 6 November 2015, Ms Y complained to the Authority that Officer B appeared to be treating Officer A more leniently than an ordinary member of the public. She was concerned that the drawn-out process of trying to settle a reparation amount could be a tactic by Officer B to avoid laying a charge against Officer A.
98. Officer B, and his supervisors Officers D and E, said they were well aware of the six-month time limit for laying a charge, and were always prepared to charge Officer A if an agreement could not be reached regarding reparation.
99. The Authority finds that, even allowing for the Christmas/Summer holiday period, Police should have resolved this matter much more quickly and should not have allowed it to drag on in the manner it did. It was undesirable that the decision to charge Officer A with careless driving was only made five months after the crash, and after several complaints from Ms Y.

FINDINGS

Officer B did not recognise that Ms Y and other members of the public may perceive a conflict of interest in his investigation of Officer A, and failed to manage that risk appropriately.

Officer B did not communicate clearly with Ms Y and Officer A about the proposed outcome of the crash investigation.

Issue 3: Was the proposed outcome of a written traffic warning for Officer A appropriate?

100. Police policy provides that written traffic warnings should only be given for minor traffic offending "*that does not place other motorists at undue risk*". Written traffic warnings should not be considered in cases of careless or dangerous driving. When the traffic offending has resulted in a crash, then (i) a supervisor must authorise the issue of a written traffic warning, (ii) the circumstances must be "*minor*" and (iii) there must be no injury to another person or serious property damage. Written traffic warnings should be issued within seven days of the offence.
101. The Authority's view is that a written traffic warning would have been an inappropriate and insufficient outcome for this crash investigation because:

- a) Although the 6 November 2015 crash could be considered “*straightforward*” because it was clear that Officer A was in the wrong, it was not an example of minor traffic offending. Officer A’s actions clearly placed Ms Y, Ms Z and himself at undue risk, and it was fortunate that there were no serious injuries.
- b) Officer A’s actions clearly amounted to careless, if not dangerous, driving. This was not a case of minor inattention, such as failing to indicate when changing lanes.
- c) Officer B failed to comply with the policy requirements when a crash has occurred because:
 - i) He did not seek a supervisor’s approval before deciding that a written traffic warning should be the outcome. The Authority does acknowledge, however, that Officer B’s supervisors did become aware of his intention to issue the written traffic warning sometime after the crash, and that the warning was never actually issued.
 - ii) As discussed above, the circumstances of this crash were not “*minor*”.
 - iii) Ms Y did receive injuries from the crash in the form of small cuts to her face and hand, and she suffered significant damage to her car.
- d) The written traffic warning was not issued within seven days of the offence, due to the delays caused by trying to arrange reparation first.

102. While the Authority has concerns about Officer B’s proposal to issue a written traffic warning to Officer A in these circumstances, it has not found evidence to suggest that Officer B’s decision to deal with Officer A in this manner resulted from any bias or favouritism because of Officer A’s position as a Police officer. Officers B, C, D and E all indicated that this was a common approach in similar clear-cut crash situations, and that the fact that Officer A was a Police officer was irrelevant.

FINDING

The proposed outcome of a written traffic warning for Officer A was inappropriate.

Issue 4: Was the eventual charge against Officer A of 'careless driving' appropriate?

103. Officer B said he believed that Officer A's actions amounted to careless driving, rather than dangerous driving, because there was no evidence of dangerous speed or more than one instance of a dangerous manner of driving.
104. The Authority considers that Police could have charged Officer A with dangerous driving, given the location and the manner in which he attempted to overtake the truck (or tanker). However the charge of careless driving was clearly available and was not unreasonable in the circumstances.

FINDING

Under the circumstances, it was appropriate for Police to charge Officer A with careless driving.

CONCLUSIONS

105. The Authority has determined that:

- 1) Officer B should have conducted a more thorough investigation into the crash, since prosecuting Officer A was a viable option.
- 2) Officer B did not recognise that Ms Y and other members of the public may perceive a conflict of interest in his investigation of Officer A, and failed to manage that risk appropriately.
- 3) Officer B did not communicate clearly with Ms Y and Officer A about the proposed outcome of the crash investigation.
- 4) The proposed outcome of a written traffic warning for Officer A was inappropriate.
- 5) Under the circumstances, it was appropriate for Police to charge Officer A with careless driving.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

9 February 2017

IPCA: 15-1798

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.





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