

After signalling for Mr Z to stop, Officer A followed him for 3 kilometres before determining him to be a fleeing driver. In our view, the officer was in a position to make that judgment earlier.

Officer A should not have pursued Mr Z, particularly given the risks associated with a motorcycle travelling at high speeds. He failed to comply with policy when initiating the pursuit.

Officer A should have abandoned the pursuit earlier.

Officer A should have stopped his patrol car as soon as he was able to after abandoning the pursuit.

Officer A breached Police policy by failing to communicate with the Emergency Communications Centre during the pursuit.

On the available evidence we are unable to conclude that Officer A's actions were causative of Mr Z's crash.

THE AUTHORITY'S ROLE

4. After supervising a Police investigation or conducting an independent investigation, the Authority's statutory responsibility is to:

"... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable."

5. The Authority must convey its opinion to Police, and may make whatever recommendations it regards as appropriate. The Authority's jurisdiction is wide ranging, and expressly includes reaching a view as to whether or not the Police should consider commencing civil (disciplinary) or criminal proceedings.

ISSUE: WAS OFFICER A JUSTIFIED IN PURSUING MR Z AND DID HE COMPLY WITH 'FLEEING DRIVER' POLICY?

Did Officer A conduct a pursuit?

6. In Officer A's initial report he referred to the incident as a 'pursuit'. However, he later explained to us that he considered it to be a fleeing driver matter, not a pursuit.

7. We determined that Officer A did conduct a pursuit as:
- he followed Mr Z at very high speeds under lights and siren, trying to catch up with him after he failed to stop;
 - he passed other road users who believed he was chasing Mr Z; and
 - he made a conscious decision to abandon the chase.
8. We note that, at the time of this incident, the Police 'Fleeing driver' policy did not provide a definition of a pursuit. However, it now defines it as:

"A pursuit occurs when—

- (i) a driver indicates by their actions and/or by continuing their manner of driving that they have no intention of stopping following a direction to do so; and*
- (ii) the enforcement officer decides to continue to follow behind the vehicle with a view to reporting on its progress or stopping it."*

9. In this report, we consider whether Officer A was justified in pursuing Mr Z and whether his decision-making was appropriate. We also consider whether Officer A complied with Police policy. In his submissions Officer A contended that we should have placed no reliance on the current policy as it was not in force at the time. We disagree. In our assessment the current policy is a codification of the policy that Police were then working in.

Did Officer A comply with law and policy when signalling for Mr Z to stop?

10. Section 114 of the Land Transport Act 1998 provides authority for Police officers to stop a vehicle by using a siren or flashing blue and red lights, in order to enforce the requirements of the Act.
11. Police 'Fleeing driver' policy says that prior to signalling a person to stop, officers must request support from the Emergency Communications Centre (Comms) if they suspect the person may flee. This allows Comms to assist in the assessment of the risks and in the planning of the response.
12. Policy says: "A fleeing driver is a driver who has been signalled to stop by an enforcement officer but fails to stop or fails to remain stopped." This includes drivers who may be unaware of the signal to stop.
13. Although not in policy at the time of this incident, the current 'Fleeing driver' policy now further defines a pursuit as:

"A pursuit does not include the time during which an officer attempts to gain the attention of a motorist during a routine traffic stop; however, a pursuit does commence from the time that it becomes clear that the driver of that vehicle does not intend to stop in a reasonable amount of time and the officer makes the decision to follow.

A reasonable amount of time is an amount of time by which a reasonable person would have been expected to stop when subjected to a routine traffic stop.”

14. We are inclined to the view that that definition was simply a clarification of a pre-existing position.

What happened when Officer A first saw Mr Z?

15. As Officer A was approaching Whakatane, he saw Mr Z accelerating out of a roundabout on his motorcycle. Officer A used his radar to lock Mr Z’s speed at 115 kph.

16. Officer A says he decided to signal for Mr Z to stop as:

- Mr Z was exposing himself and others to a high level of risk by travelling at such high speeds;
- Mr Z needed to be held to account for his offending; and
- he needed to get Mr Z’s licence plate number in order to identify him as he did not recognise either him or his motorcycle.

17. Officer A made a u-turn, then turned on his flashing lights and siren, accelerating in an attempt to catch up to Mr Z. He drove 1.4 kilometres along the straight before seeing Mr Z about 400 metres in front of him. He did not believe Mr Z knew Police were behind him and signalling for him to stop. Officer A continued attempting to catch up to Mr Z for another 1.5 kilometres. Despite reaching speeds of 140 kph,² he was unable to close the gap between them.

18. Officer A says: *“Initially, to start with, I was catching up to him. I thought he was going to stop... giving him the opportunity to stop.”* After following him for a total of about 3 kilometres, Mr Z turned a corner, heading onto another straight. Officer A says it was at this point he realised Mr Z had no intention of stopping and he now considered him to be a fleeing driver.

Were Officer A’s initial actions legally justified and compliant with policy?

19. Officer A was legally justified in signalling Mr Z to stop under the Land Transport Act. Mr Z could have been summoned to court for excessive or dangerous speeds, given he was exceeding the speed limit by more than 50 kph.³

20. We accept Officer A genuinely believed Mr Z would stop and therefore, did not consider it necessary to advise Comms of his intention to signal him to stop.

21. While we do not necessarily consider Officer A was engaged in a ‘pursuit’ at this point, the 3 kilometre straight provided ample opportunity for him to reach the conclusion that Mr Z was fleeing from him. Given Mr Z’s speed, Officer A should have realised that he was unlikely to be able safely to stop him, or get close enough to see his licence plate number.

² The posted speed limit was 80 kph along this first straight.

³ This is a Category 1 offence and carries a maximum fine of \$1,000.

22. In our view, Officer A should have notified Comms that he was trying to catch up with a motorcyclist who was either unaware of the signal to stop or was deliberately failing to stop, if for no other reason than in case there were other Police staff in the area who could have assisted. Officer A submitted that because of his experience in road policing it was unnecessary for him to have notified Comms. We disagree. There are a number of reasons for this requirement and insofar as most are concerned the experience level of the officer involved is not relevant.

Was Officer A justified in deciding to pursue Mr Z and did he comply with policy when initiating the pursuit?

23. 'Fleeing driver' policy requires officers to undertake an assessment of the risks when deciding whether to initiate a pursuit. They must consider environmental factors, the threat posed by the driver, and the seriousness of their offending. They must determine the necessity of responding, weighing this up against the risk a pursuit poses to the fleeing driver, Police, and members of the public.
24. A pursuit should only commence (and continue) if the seriousness of the offence, and the necessity immediately to apprehend the driver, outweighs the risk of pursuing.⁴
25. Officers are required to notify Comms when they initiate a pursuit, providing the initial reason for signalling the driver to stop and their justification for pursuing.

Should Officer A have initiated the pursuit?

26. Having determined Mr Z to be a fleeing driver, Officer A considered the following factors in his assessment of the risks posed in pursuing Mr Z:
- Mr Z was a threat to himself, other road users, and to him (Officer A);
 - Mr Z was committing a serious traffic offence and it was necessary to hold him to account for dangerous/reckless driving based on his high speed;
 - he had no knowledge of Mr Z's identity;
 - it was approximately 5.47pm on a sunny day;
 - the road was dry, tar sealed, flat and straight; and
 - there was a minimal amount of traffic on the road.
27. Officer A decided to continue to attempt to stop Mr Z and/or get his licence plate number to assist in identifying him.

⁴ According to policy, a pursuit is possible if the officer's assessment of the risk places the driver as assaultive or above (displaying intent to cause harm, through body language/physical action), or the risk of them continuing to commit ongoing harm by their offending, is assessed to be high.

28. Shortly after entering the straight, Officer A thought: "... well this isn't working; I'm just going to jump on the radio....". Officer A says his intention had been to tell Comms he had a fleeing driver. However, the radio was busy so he did not attempt to communicate with Comms.
29. While we accept the Police radio channel was busy at the time, our review indicates there was sufficient opportunity for Officer A to have transmitted, had he attempted to do so.⁵ Officer A failed to comply with Police policy when initiating the pursuit without notifying Comms.
30. Further, in our assessment, Officer A did not adequately consider the risks associated with following motorcyclists at high speeds, as we would have expected of him as an experienced road policing officer. Motorcyclists are at an increased risk because they have a lower level of safety protection, can reach very high speeds, and are harder to see on the road. If they crash, this is very likely to result in death/serious injury to the rider. For this reason, Police cannot use road spikes on motorcycles, so if a rider chooses not to stop, there is little Police can do to stop them.
31. In our view, Officer A should not have initiated a pursuit in this case. He had not communicated his intention to Comms and the risks associated with following Mr Z at high speeds outweighed the seriousness of the offence and the necessity immediately to apprehend him.

Was it appropriate for Officer A to continue pursuing Mr Z and did he comply with policy in doing so?

32. Police policy requires pursuing officers to conduct a continuous assessment of the risks to determine whether continuing to pursue is still appropriate, given factors or circumstances may change during a pursuit.
33. Comms have command and control of all pursuits and officers are required to maintain communication with them. In fact, policy states that a pursuit must be abandoned if there is a sustained loss of communication between Comms and pursuing Police.

What happened during the pursuit?

34. Officer A says that, after turning the corner onto the straight, he saw Mr Z between 500 metres to 1 kilometre ahead of him. Officer A followed Mr Z at a speed of about 140 kph, accelerating to about 160 kph when passing a couple of vehicles. Mr Z was travelling at a similar or faster speed and the distance between them did not change materially throughout the pursuit.
35. The accounts of other road users indicate that both Mr Z and Officer A passed other cars on the road, with some pulling over to let the Police vehicle pass.⁶ Witnesses say Mr Z was driving erratically, "*overtaking dangerously*", crossing the centre line and cutting close to other road users.

⁵ We reviewed the relevant Police radio channel's traffic three minutes prior to the crash. Other officers were communicating with Comms about two other matters during this pursuit. However, there was no other transmissions for the following periods of time: 7 seconds, 38 seconds, 5 seconds, 15 seconds.

⁶ We know of at least four other vehicles who were on this straight, travelling in the same direction as the officer and Mr Z.

36. One witness provided the following description of what he saw after Mr Z passed him then cut back in front of him:

“The rider had no protective gear on and his shirt was riding up exposing his whole back. It covered his face and the rider was moving his body in such a way as to try and get it down. He didn’t use his hands - he kept these on the handle bars.”

“The rider passed the car in front... he kept looking back over his left shoulder. He did this 3-4 times and then the last time I saw him do this, he looked back over his right shoulder. When he did this, I noticed that his bike moved over to the right. He was riding the centre line and passed two more cars in front of me.”

“It looked like he was running from something.”

37. Officer A says he saw Mr Z pass ‘one or two’ cars and assumed he crossed the centre line, though was unsure as he could not see the road markings.
38. Officer A did not notify Comms of the incident until after the crash. They were unaware and therefore unable to assist, advise or provide oversight.

Should Officer A have abandoned the pursuit earlier?

39. Officer A told us he does not consider that he should have abandoned the pursuit earlier (shortly after entering the straight) because: *“... I can’t catch up to him quickly... so it took that amount of time, constantly doing assessments, before I got to that point.”*
40. Officer A does not believe Mr Z knew Police were following him and does not believe his presence impacted Mr Z’s manner of driving. He says Mr Z maintained the same manner of driving from the moment he first noticed him coming out of the roundabout. He does not recall seeing Mr Z turn around and thinks it is unlikely that Mr Z would have heard his siren, given the loud noise of the motorcycle and the wind, Mr Z’s helmet, and the distance between them.
41. Our view is that it is more probable than not that Mr Z became aware that Police were pursuing him as two road users describe seeing Mr Z turning around to look behind him multiple times. We cannot discount the possibility that this realisation on Mr Z’s part may have influenced his driving.
42. Officer A says he was concerned about Mr Z’s offending, though was not ‘worried’ about his manner of driving.
43. Our assessment is that Officer A should have abandoned the pursuit earlier than he did, given:
- he had not told Comms he was pursuing a fleeing driver;
 - both he and Mr Z were travelling at unsafe, high speeds;
 - there was other traffic being impacted by the pursuit; and
 - the risk of the pursuit outweighed the offence committed.

Did Officer A comply with policy when abandoning the pursuit?

44. Police policy provides that, when abandoning a pursuit, officers must immediately reduce their speed to increase the distance between themselves and the fleeing driver, and turn off their lights and sirens once below the posted speed limit. They must stop as soon as it is safe to do so, advising Comms when they have stopped.

What actions did Officer A take when abandoning the pursuit?

45. Officer A says about 1.5 kilometres along the 2.5 kilometre straight, with Mr Z still about 500 metres in front of him, it became apparent to him that he was not going to be able to stop Mr Z and that he would not be able safely to get close enough to obtain his licence plate number. He says Mr Z was “*still driving dangerously*” and appeared intent on continuing to drive at speed.⁷ He says: “*There was no necessity to carry on.... we’d try and work out some other way to catch him or identify him.*” He decided to abandon the pursuit as the risk of pursuing outweighed the necessity to continue.
46. With less than 900 metres to the start of the upcoming sweeping bend, Officer A turned off his flashing lights and sirens. He recalls seeing Mr Z about 500 metres in front of him at the time he did this.
47. Officer A slowed down and continued driving at road speed, intending to turn around at one of the upcoming intersections, partway around the bend. He told us that he could not pull over immediately as the road had quite high curbs, his patrol car was quite low slung, and there was no area to pull off the road over the fog lines.
48. As Officer A came around the bend, he saw a Nissan car upside down, with two women crawling out of it. Initially unaware that Mr Z had collided with the car, he slowed down and put his flashing lights back on. He then stopped his patrol car and called Comms to say he needed immediate assistance.

Did Officer A’s actions comply with policy when abandoning the pursuit?

49. When we began our investigation, we had concerns that Officer A may have still been pursuing Mr Z when he crashed. We reviewed the accounts of witnesses who were at the restaurant next to the crash site, and the statements of road users from both directions. One witness, who pulled over to let the Police car pass on the straight just before Officer A abandoned the pursuit, provided this account:

“Around ten seconds after the patrol car had passed me, I saw the lights of the patrol car turn off. I had a clear view of the back of the patrol car at that time and the lights were off for 3-4 seconds. The lights were then turned back on again and then the patrol car was out of view.”

50. We also analysed the restaurant’s footage. It shows Officer A’s patrol car approaching and turning on its flashing lights nine seconds after Mr Z crashed.

⁷ We note Officer A said in paragraph 42 that he was not worried about Mr Z’s manner of driving.

51. We are satisfied that Officer A slowed down and turned off his lights and sirens, abandoning the pursuit a short time before Mr Z crashed.
52. However, regardless of whether Officer A believed Mr Z knew he was there or not, it is good practice to indicate clearly to fleeing drivers that you are no longer pursuing by pulling over and stopping. This reduces the pressure on fleeing drivers to continue driving at high speeds. Our review of the road indicates there were some places where Officer A could have pulled over sooner. In our view Officer A could have but failed to stop at the first available opportunity.

Concluding comment

53. Mr Z's level of intoxication was more than three times over the legal driving limit. Given this, he was driving while significantly impaired. Officer A placed great emphasis on this in his submissions. However, he was of course ignorant of Mr Z's level of intoxication until after the event. Accordingly, we do not view this as being relevant in the decisions he made.
54. For the reasons already outlined, in our assessment, it is more likely than not that the Police pursuit of Mr Z had some impact on his manner of driving. However, on the available evidence, we are unable to conclude that Officer A's actions were causative of the fatal crash.

SUMMARY OF FINDINGS

Officer A:

- was legally justified in signalling for Mr Z to stop and complied with policy in doing so;
- was in a position to determine Mr Z to be a fleeing driver sooner than he did;
- should not have pursued Mr Z, particularly given the risks associated with a motorcycle travelling at high speeds;
- failed to comply with policy when initiating the pursuit;
- should have abandoned the pursuit earlier;
- should have stopped his patrol car as soon as he was able to after abandoning the pursuit; and
- breached Police policy by failing to communicate with the Emergency Communications Centre during the pursuit.

On the available evidence we are unable to conclude that Officer A's actions were causative of Mr Z's crash.

Recommendations

55. We recommend that Police amend the 'Fleeing driver' policy to include:

- 1) When motorcyclists flee, they often do so at high speeds and exhibit high risk riding behaviour which gives rise to increased risks for all involved. Accordingly, the decision to pursue a motorcyclist should only be made in the most extreme circumstances, and only after carefully weighing up, in accordance with TENR:⁸
 - a) The seriousness of any alleged offending;
 - b) The risks already posed by the motorcyclist; and
 - c) The additional risks that a pursuit may give rise to.
- 2) If a motorcyclist flees when signalled and the officer initiates a pursuit, they must notify the Emergency Communications Centre that they have initiated a pursuit with a motorcycle.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

11 December 2024

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⁸ The Police threat assessment methodology 'TENR' (Threat Exposure Necessity Response) is a decision making process that supports the timely and accurate assessment of information directly relevant to the safety of Police and others.

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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