

REPORT OF THE POLICE COMPLAINTS AUTHORITY ON THE INVESTIGATION INTO THE DEATH OF STANLEY GRANT BARBER IN AUCKLAND ON 17 JULY 1999

Introduction

Shortly after 6.00 am on Saturday 17 July 1999 a head on collision occurred on the southbound lanes of Auckland's Motorway where it spans Beaumont Street. The collision involved a Ford Cortina car, being driven in a northerly direction by Stanley Grant Barber (aged 25) of Mangere, Auckland and a Mazda 323 car, being driven in a southerly direction by Bruce Glover of Takanini, Auckland. Also involved in this collision was a following southbound Mitsubishi car driven by Mr Claude Glassford Williams of Birkdale and his passenger, Mrs Lorna Williams.

Mr Barber died instantly from multiple injuries. Subsequent analysis of his blood disclosed a result of 118 milligrams of alcohol per 100 millilitres of blood. The legal driving limit is 80 milligrams per 100 millilitres. Mr Barber was a fully licensed driver. He had a 1998 conviction for driving with excess breath alcohol when he had been fined and disqualified from driving for six months. He was not a disqualified driver at the time of this incident.

Of the other persons involved in the incident, Mr Glover received multiple injuries to the legs, arms and pelvis. Mr Williams was uninjured but Mrs Williams sustained injuries necessitating her hospitalisation for a seven-day period.

Mr Barber's driving had shortly before attracted the attention of a Police patrol. As a result Mr Barber had been stopped by the patrol and had undergone a roadside breath screening test. When Mr Barber fled, with the procedure incomplete, Police had pursued Mr Barber in his car until he entered the southbound lanes of the motorway, travelling against the flow of traffic.

Report to the Police Complaints Authority

Section 13 of the Police Complaints Authority Act 1988 provides that:

'Where a member of the Police acting in the execution of the member's duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused.'

In light of the pursuit of Mr Barber by a number of Police patrols in the period prior to his death in the fatal collision with the car driven by Mr Glover, the Authority was notified of this fatality.

Action Taken

In response to this notification I advised the Commissioner's staff that the Authority would oversee the Police investigation of the incident. To that end a Senior Investigating Officer of my staff travelled to Auckland on Monday 19 July 1999 to make a preliminary assessment of the incident, to establish a presence and to confer with the Police officers investigating the incident.

Two Police internal investigations had been set in train. One of these addressed the traffic aspects of the fatal collision. The other Police investigation, overseen by this Authority, addressed the wider aspects of the incident embracing established Police policy, practice and procedures.

An additional, and important, object of the Police Complaints Authority investigator's visit to Auckland was to make contact with the civilians involved and injured in order to acquaint them with the Authority's functions and also to advise them of the course that the Police investigation and the subsequent independent review of the investigation was expected to take. In this regard telephone contact was made with the deceased's next of kin and with those injured. However, Mr Glover, who was under intensive hospital care, was not visited, at the request of his mother. However a meeting with both his parents was held. Mr and Mrs Williams were seen together at Auckland Hospital.

The Police Complaints Authority investigator was, in a helicopter, able from the air to follow the route taken during the pursuit of Mr Barber. This commenced in Victoria Street, travelled along College Hill to the end of Jervois Road and then returned along the same route to Union Street and as far as the Cook Street motorway off-ramp. Later, copies of the

documentary material generated in the immediate aftermath to the incident, including initial statements and job-sheets submitted by the Police officers who had been involved, were supplied to the Police Complaints Authority investigator.

Following these preliminary enquiries the Commissioner has since supplied the Authority with copies of the Police reports and associated documents and other material including a copy of the finding of the Coroner at Auckland after an inquest on 24 November 1999 into the death of Mr Barber. Also supplied was a transcript of the Police radio broadcasts between Police cars involved in the pursuit and the Police Northern Communications Centre, (referred to hereafter in this report as 'Comms'), and with each other.

Purpose of this Report

This report will describe in narrative form the events of the morning of Saturday 17 July 1999 that eventually culminated in the death of Mr Barber. It will address the actions of Mr Barber and also those of the Police officers who became involved in the incident either directly or indirectly.

Pursuant to the Police Complaints Authority Act 1988 the report will then examine the Police policies, procedures and practices relating to the conduct of Police operations in vehicle pursuits. It will assess the effectiveness of their application to this incident. Finally the report will attempt to draw conclusions on the action taken by Police in the incident. It will make such recommendations as appear appropriate in the light of those conclusions.

Narrative

The incident giving rise to this report began at 6.05 am on 17 July 1999 when Constable F, an officer with three years and four months Police service, was driving a marked Police car in central Auckland. He observed the Ford Cortina car driven by Mr Barber come to an abrupt halt at the intersection of Albert and Victoria Streets. With Constable F was Constable C, an officer with one and a half months Police service. The radio call sign of this Police car was AKI.

The Cortina was stopped by these officers in Victoria Street West. Constable F spoke to the driver, Mr Barber. Two passengers in Mr Barber's car, a man and a woman, alighted after being asked to do so by Mr Barber. Constable F later reported that he had detected the odour of alcohol as he approached the Cortina. When he asked the driver, Mr Barber, if he had been drinking, Mr Barber is said to have admitted doing so. When asked how much he had had to drink, Mr Barber's reported response was '*Heaps*'.

Mr Barber remained seated in the driver's seat of the Cortina with the engine running. He was not wearing a seatbelt. When asked to alight by Constable F, Mr Barber is reported to have said, *'I'd prefer to stay in my car'*. The Constable then administered a roadside breath-screening test and the device used recorded a *'Failed'* result.

Constable F showed the result to Mr Barber and asked him to come to the Police station in order that an evidential breath or blood alcohol test could be administered. Mr Barber was lawfully required to accompany the Constable. To the Constable's request Mr Barber is said to have replied, *'I'd rather die before coming back with you'*. Mr Barber then without warning drove off in the Cortina at speed along Victoria Street. Constable F was unable physically to prevent this.

At this point I would comment on the remark attributed to Mr Barber in the preceding paragraph. Whilst at first glance it may appear to have been a dramatic portent of the eventual tragic outcome of this incident, a senior Police officer has observed that *'It is a comment that is not infrequently heard by Police members dealing with intoxicated members of the public'*.

Constables F and C followed in the patrol car with siren and flashing red and blue incident lights operating. Constable C reported to Comms that the driver of the Cortina had driven off, indicating that that patrol car was in pursuit. The Comms dispatcher acknowledged the report and advised, *'If the pursuit continues and becomes dangerous to yourself or public, um, pull out of the pursuit, copy?'*. This instruction was acknowledged.

At the intersection of Victoria and Beaumont Streets a Ford Laser car, driven by Mr Takashi Sugiyama, was stationary on Victoria Street at a red traffic light. The car driven by Mr Barber collided with the rear of this vehicle, disengaged, and continued up College Hill at a speed estimated at approximately 120 kph.

Constable F had momentarily halted and the Constable was about to alight when the Cortina continued its flight. Constable F followed at a distance of approximately 150 metres this lengthening to about 400 metres. The car driven by Mr Barber was, in Constable F's words, *'all over the road'*.

At this point a second marked Police patrol car, driven by Constable D with Constable O and using the radio call-sign GAI, was travelling down College Hill having overheard radio calls that indicated that AKI was in pursuit of the Cortina. The officers in GAI saw the collision

between the Cortina and the car driven by Mr Sugiyama and attempted to impede or halt the progress of the Cortina. They were unsuccessful and, after noting that no injuries appeared to have been sustained by the occupants of the Mitsubishi, GAI turned and followed AKI up College Hill and along Jervois Road.

Jervois Road, along which the pursuit sped, terminates in a cul-de-sac. Constable F reported to Comms that the car driven by Mr Barber was entering this no-exit road. The Constable later reported that the car had executed a 180 degree turn at the blind end of Jervois Road and returned in the direction opposite to its former travel. Although Constable F attempted to stop the car driven by Mr Barber by obstructing its progress it scraped past the Police car and continue at speed in the direction from which it had come, along Jervois Road, passing Constables D and O in GAI, and down College Hill. Constables F and C in AKI followed Mr Barber, with GAI in their train.

At this time a third Police car, using the radio call sign AKQ and comprising Constables L and H, was in Jervois Road having also responded to the radio calls. It proved impossible for them to stop the Cortina as it passed the position of AKQ at a speed estimated at between 100 and 120 kmh. The officers in AKQ then pursued the Cortina as it travelled through the junction of Ponsonby and Jervois Roads and College Hill.

However, AKI overtook AKQ and resumed a position behind the car driven by Mr Barber, coming up to it as it slowed and turned right into Union Street. Constable F later stated that he thought Mr Barber was going to stop but instead he drove up Union Street at approximately 50 kph and executed a U-turn onto the motorway off-ramp. Constable F halted and reported to Comms that Mr Barber had driven in a northerly direction onto the southbound lanes of the motorway. He asked Comms if he should continue the pursuit.

At about this time a fourth Police entity became directly involved in the person of Sergeant R who used the radio call sign AKS. Sergeant R was the supervisor of Constable F at the time of this incident. Whilst not directly engaged in the pursuit Sergeant R had monitored the radio commentary of the pursuit that had been broadcast by Constable F.

Sergeant R spoke to Constable F at intervals to establish the initial cause of the pursuit, being advised by the Constable that the offending party was a drunk driver. When Sergeant R heard Constable F ask Comms if he should continue the pursuit onto the motorway, Sergeant R immediately advised him that he was not to do so.

After entering the motorway, and having reached a point approximately halfway along the Victoria Park flyover, the vehicle driven by Mr Barber collided head on at high speed with the Mazda driven by Mr Glover. Mr Williams in the Mitsubishi then collided with the two vehicles with the outcome already noted. A period of four and a half minutes had elapsed between Mr Barber driving away from the roadside breath test and the termination of the Police pursuit.

External Factors

In considering what external factors may have had a bearing on the fatal outcome of this incident, attention was directed to the mechanical condition of the car being driven by Mr Barber, to the traffic density, lighting conditions, road conditions and the prevailing weather.

A Police Vehicle Inspector, in his report on the mechanical condition of the Cortina detailed the very severe damage it had sustained in the collision. When considering any defects in the mechanical condition of the car the Inspector's report concluded that:

'As far as I could inspect the vehicle, it was very severely damaged, I found no mechanical defects that, in my opinion, may have been a contributing factor to the cause of the crash. The defective left rear brake would have reduced the braking force on the rear considerably, resulting in an imbalance. But having regard to the circumstances of this crash this defect was not a significant factor. Due to the severity of the crash damage it was not possible to fully inspect the brakes, steering or electrical systems.'

Witnesses' accounts of the road conditions vary. However, it is apparent that the road surfaces were wet at the time and likely to have been greasy. Some light drizzle was said to have been detectable at the time the pursuit was in progress. Vehicular traffic was light and there was no noticeable pedestrian or two-wheeled traffic. Although dark, the route along which the pursuit passed was well lit by street lighting.

Inquest

An inquest into the death of Mr Barber was presided over by Mr M F P Frankovich at Auckland District Court on 24 November 1999. The Coroner's finding contained no criticism of the Police or of the management of the pursuit of Mr Barber. It was found that:

'The deceased died on the 17th July 1999 on the Victoria Park overbridge, Northern Motorway off-ramp as a result of multiple injuries sustained while evading the police he crashed the motor vehicle he was driving into an

oncoming vehicle and while the alcohol level in his blood was 173 milligrams per 100 millilitres of blood.'

The finding included a comment that:

'It is a matter for regret that the Police are unable to remove a driver's car keys after being found to have exceeded the limit of an alcohol breath test.'

Issues

Three main issues emerged from an examination of the circumstances surrounding the death of Mr Barber.

The first of these concerned the interaction between Constable F and Mr Barber at the roadside in Victoria Street West when the Cortina was first stopped and the Constable administered a breath screening test to Mr Barber. The question is whether Mr Barber was obliged to turn off the motor of his car or to comply with the Constable's request to alight from it. This is seen as an important issue in the wider context of this incident. It appears possible that, had Mr Barber not been seated in the driving seat of his car with the motor running, what later transpired, and the fatal results suffered by Mr Barber himself, may not have eventuated.

The other two important issues, relating to Police practice and procedures in respect of pursuits of offenders, were, first, whether or not the pursuit was justified and secondly whether the pursuit should have been abandoned, either by the pursuing officers or on instructions from Comms.

Breath Screening Test

This preliminary but important issue, warranting consideration before discussing the other two, was whether Constable F, who first approached Mr Barber as the latter sat in his car, should have required Mr Barber to alight to undergo the screening breath test. It has already been noted in this report that Mr Barber did not alight but sat in the car with the motor running. The breath test was failed. When Constable F then invited Mr Barber to accompany him to Auckland Central Police station for further tests Mr Barber drove off, with the fatal result some four and a half minutes later that has resulted in this enquiry.

This preliminary issue was central to the concern initially expressed by Mr G Glover, the father of Bruce Glover who sustained serious injuries in the crash. Mr Glover expressed some concern that Mr Barber was allowed to stay in the car while being breath tested. The

issue therefore arises as to whether the Police should have greater powers to take keys off motorists in circumstances such as those encountered by Constable F when he approached Mr Barber.

This issue was recognised by the Police as of some consequence. Comment was sought of a Police legal adviser on the legal position in an encounter between a Police officer and a motorist who had been stopped and asked by the officer to undergo a breath screening test.

The legal adviser's response addressed the power of a Police officer, under the provisions of Section 121 of the Land Transport Act 1998, to seize the keys from a driver stopped at the side of the road. Under that provision the officer may take the keys if the enforcement officer believes on reasonable grounds that the person *'in charge of the motor vehicle is, because of his or her physical or mental condition, incapable of having proper control of the vehicle'*.

The legal adviser observed that:

'If we relate this provision to the stopping of an alcohol impaired driver, that driver would have to be exhibiting very apparent signs of being incapable of having proper control of the vehicle before an enforcement officer could take the keys. In O'Malley v MOT it was held that the enforcement officer's belief must be reasonable and honest, formed by a rational assessment of the circumstances before him. Therefore until circumstances arise which would lead an enforcement officer to such an honest and reasonable belief, he cannot take the keys, or for that matter immobilise the vehicle.'

The question then becomes one of whether there was evidence, on Constable F's first approach to the stationary car driven by Mr Barber, to support an honest and reasonable belief that Mr Barber was exhibiting very apparent signs of being incapable of having proper control of the vehicle. If there were such evidence then the Constable would have had grounds to seize the keys of the vehicle at the outset of their interaction.

The trigger for the encounter between Constable F and Mr Barber was that the car driven by Mr Barber had, in Constable F's words, *'screeched to a halt'* at an intersection. The fact that the car had been brought to a halt at the intersection may support a view that the driver probably *'had proper control of the vehicle'*. Further, Constable F subsequently stated that:

'Because we were very quiet at the time, I decided to stop Barber's vehicle. This was not so much for the screeching of the tyres, but more as a general turnover.'

It seems likely therefore that grounds for the seizure of Mr Barber's keys were not present.

The conclusion to be drawn from examination of this aspect of this matter is that Constable F did not at the point of initial approach have grounds, or the legal right, to remove Mr Barber's car keys or to require Mr Barber to surrender the keys.

Issues relating to the pursuit

The Authority now turns to a consideration of whether the Police were entitled to embark on a pursuit and whether the pursuit at any point should have been abandoned by the pursuing Police officers.

Initiation of pursuit

It is evident from the enquiries that have been made that Constable F, driving the Police car AKI, with his patrol colleague Constable C as observer, had a statutory entitlement, under Section 114 of the Transport Act and Section 317A of the Crimes Act 1961 together with Police General Instructions, to undertake the pursuit of Mr Barber's car for a traffic enforcement purpose.

As the pursuit was commenced Comms was accordingly informed of this by Constable C. There was lawful justification for Mr Barber to be pursued. The Authority would however observe that this justification should ideally have been reviewed at intervals as the pursuit progressed, to detect the development of any factors relating either to the conduct of the pursued driver, or the prevailing traffic and other conditions that might be seen as rendering the pursuit dangerous, undesirable or otherwise inappropriate.

Abandonment of pursuit

From the accounts that have been recorded from participants in, and witnesses to, the pursuit it is apparent, from the manner and speed with which the pursued car was reportedly being driven, that Constable F did have cause to consider abandoning the pursuit.

In response to a question later put to Constable F in the course of the investigation of this incident about his observance of the Police General Instruction governing Police pursuits the Constable stated, *'I was constantly reassessing my position during the pursuit. I was very concerned about the speed we were doing but until the offender drove onto the motorway, I thought we had it pretty well under control.'*

In this context Police General Instruction V5, addressing the continuation of a pursuit, lists the factors that should be taken into account in considering whether the continuation of a vehicle pursuit is justified. These relate to the safety of the public, the pursuing Police officers and the pursued driver; the influence the pursuit appears to be having on the offender's driving; the number of people in the pursued vehicle giving potential for innocent parties to be injured; the known identity of the pursued driver and whether an arrest can be made later.

Constable F stated that he had considered these provisions and thought the pursuit in which he was engaged was within the provisions of the foregoing Instruction. Nevertheless, the transcript of the radio broadcasts between Police entities during the pursuit records Constable F as saying in one radio call, '*..he's heading back ah Jervois towards Ponsonby again. Roger I'm keeping up with him, ah speed's in excess of 100K, **this guy's not gonna stop Comms***'. (My emphasis)

This observation in itself, albeit made in the heat of the pursuit, should in the Authority's view have prompted the despatcher or his supervisor at Comms where the pursuit was being monitored and supervised to have given immediate consideration to instructing AKI to break off the pursuit. It is reported that the registration number of the car driven by Mr Barber had been noted and reported from the pursuing Police car to Comms at an early stage in the pursuit. This implies that follow-up action to locate the car and its driver could have been taken at a later time in due course.

Before discussing further the point at which the decision to discontinue the pursuit might have been taken it is apposite to consider the circumstances under which Constable F was driving whilst simultaneously maintaining a radio commentary to Comms.

This commentary is, pursuant to General Instructions, the responsibility of the driver's colleague, or observer. In this instance the observer, Constable C, a recently qualified and inexperienced officer, later stated to the complaint investigator that '*I didn't feel competent enough to give the commentary so Constable F said he would take over*'. Constable F explained in a statement that he did so, '*as I could tell she was having difficulty in continuing under the circumstances*'. Constable F was clearly under pressure in maintaining contact with the pursued vehicle whilst also radio-ing a commentary on the pursuit to Comms.

First Collision

The review of the Police investigation conducted in the Office of the Police Commissioner (before the Authority's review) found that serious consideration should have been given to

abandoning the pursuit at the time of the collision between Mr Barber's car and another car at the Victoria Street/Beaumont Street/College Hill traffic lights. There is merit in that finding.

Mr Barber struck the rear of a car that was at the traffic lights on Victoria Street facing College Hill, waiting to turn right into Beaumont Street, nudging it forward. After the collision he then reversed and continued up College Hill.

An attempt by GAI to impede Mr Barber's car by blocking its forward exit from the junction where the collision had occurred was thwarted when Mr Barber drove at the Police car necessitating evasive action.

At this point it would have been prudent for the pursuing officers to have re-assessed the justification for continuing the pursuit. To his credit, Constable F has since expressed the view that, with the advantage of hindsight, the pursuit should have been terminated at this point.

Mr Sugiyama later stated that the Cortina was pursued by three police cars, *'they would have been going over 100km/h'*. These Police cars were AKI, GAI and AKQ. The Cortina returned past Mr Sugiyama some minutes later at the same speed, with the red and blue incident lights of the Police cars operating in each instance. It is therefore apparent that Mr Sugiyama was referring to the return of the Cortina and the pursuing Police cars through the same junction some minutes later.

The presence of three Police cars in the pursuit would contravene the provision of the Police General Instruction V8.2.c. This provides that, *'Controlling Officers shall limit the number of Police vehicles following the fleeing vehicle to not more than two unless there is good reason to authorise additional pursuit vehicles.'*

The Police investigation concluded, *'That there were only two Police patrols immediately pursuing the offender's car at any one time although two other patrols were actively involved at times. I do not believe there has been a breach of GI V8.2.c in the number of vehicles pursuing the offender.'* Whilst for a short period it would appear that three Police cars were in pursuit, and that for a brief period AKQ was the first Police car following Mr Barber, there is little doubt that the principal pursuing vehicle was AKI with AKQ to its rear. The part played by GAI in the pursuit was minimal after the encounter with Mr Barber's vehicle following its collision with the car of Mr Sugiyama and the issue implicit in Mr Sugiyama's statement has been satisfactorily resolved.

Second Collision

A second, albeit minor, collision, this time between the car driven by Mr Barber and the Police car driven by Constable F, occurred at the cul-de-sac end of Jervois Road when the former was driven back at the two pursuing Police cars that had attempted to box it in the cul de sac.

Constables F and C stated they were unaware of this contact until later when evidence of the contact was noted in the form of a black mark on the front fender of the Police car. That being so, it cannot be held with confidence that this minor contact between the two cars, taken in isolation, constituted a second indicator to the officers involved that the pursuit should have been abandoned.

External control of the pursuit

The procedures to be observed in the execution and control of motor vehicle pursuits by Police are contained in Police General Instructions V1 to V14. These instructions are explicit in setting out the parameters within which such pursuits are to be conducted. The separate but complementary responsibilities of Police drivers and of remotely located Controlling Officers are clearly specified.

The Controlling Officer is defined in the Instruction as, *'the despatcher or communications centre supervisor, or the officer's immediate supervisor'*. In the incident addressed in this report the despatcher was Mr L, the communications centre supervisor was Sergeant M and the immediate supervisor of the driver concerned, Constable F, was Sergeant R. The individual contribution to the management of the pursuit by each of these officers will be addressed below.

It is convenient at this point to consider the primary responsibilities of the driver and the Controlling Officer. They are set out at paragraph V4 in the Police General Instruction.

The first of the several responsibilities of the Police driver listed in the Instruction is:

'The primary responsibility for the initiation and conduct of a pursuit rests with the Police officer driving the primary pursuing patrol vehicle. The Police driver must exercise every care to ensure the safety risks of undertaking a pursuit are reduced as far as is possible in all the circumstances.'

In this instance Constable F was *'the Police officer driving the primary pursuing patrol vehicle'*.

The Controlling Officer's responsibilities are set out at paragraph V8 as:

'Controlling Officers shall monitor and supervise the pursuit, and where practicable co-ordinate other operational resources. At all times they should consider how the pursuit can be safely and successfully terminated.'

The controlling officer was Mr L, operating under the direct supervision of Sergeant M. Sergeant R's role also falls to be considered as a controlling officer.

In going on now to address the external control that was exercised over the pursuit from Comms it is to be noted that the transcript of the radio traffic generated during the pursuit contained no indication that either of the two collisions that occurred was reported by the participating Police officers to Comms.

Had the first of these collisions been reported to Comms, one could speculate that the pursuit might have been terminated at that point by the Controlling Officer, either the despatcher or the Comms supervisor. The commentary being broadcast by the pursuing Police was consequently defective in that important, indeed telling, respect. That being so, no criticism can attach to Comms staff for not requiring the pursuit to be terminated at an intermediate point.

However, aside from the deficiency in the commentary from AKI to Comms, the reverse communication between Comms and Constable F was defective in other respects. The Police General Instruction requires at V8.2.a that Controlling Officers shall – *'immediately establish with the officer/s in the pursuing Police vehicle the reasons for the pursuit and that its continuation is justified'*.

This did not occur. The transcript of the radio traffic generated during the pursuit and its aftermath shows that, although Mr L reminded Constable F of the requirement for the pursuit to be terminated should it become dangerous to police or public, the initial reason for the pursuit was not sought.

It was, however, sought at an intermediate point in the incident. Sergeant R, Constable F's immediate supervisor, was at the Police station when he heard the pursuit radio traffic

commence. The Sergeant left the Police station in a Police car. At one point in the commentary it is recorded in the transcript of radio traffic that Sergeant R, using call-sign AKS, broadcast the query *'Why was – um – he being stopped to start with?'*

The response by Constable F was a succinct, *'Ah, EBA'*. However, this is not entirely accurate as the initial stop was, according to Constable F's subsequent statement, *'more of a general turnover'*. This is not to say that the subsequent pursuit was therefore unjustified after Mr Barber's failed breath test after initially being stopped, and his abrupt departure from the roadside in Victoria Street West. This radio exchange perhaps goes to indicate the pressure Constable F was experiencing when the question was put.

Sergeant M at the shoulder of Mr L assisted in the exercise of control from an intermediate chronological point in the pursuit. He also was unaware of the collisions. Taking into account the sparse traffic conditions at that hour Sergeant M saw no need to instruct the participating Police units to terminate the pursuit prior to the intrusion of Mr Barber's car onto the motorway. It appears that during the pursuit Sergeant M was also updating himself on what had passed prior to his becoming aware of it.

The transcript of the radio traffic generated during the pursuit contains but little in the way of guidance from Comms, rather only brief acknowledgements of incoming comments from Constable F and others. This is not altogether a criticism, given the nature of the circumstances, and the comparative brevity of the pursuit. It perhaps reflects the provision of the Police General Instructions V4.1:

'The primary responsibility for the initiation and conduct of a pursuit rests with the police officer driving the primary pursuing patrol vehicle. The police driver must exercise every care to ensure the safety risks of undertaking a pursuit are reduced as far as possible in all the circumstances.'

Termination of the pursuit

The termination of the pursuit, and at what point in the course of the pursuit that the decision was taken to terminate, is the final point in the examination of this incident. The transcript of Police radio traffic is the clearest indicator of when, and why, the pursuit was terminated.

In the following extract from the transcription of Police radio traffic the broadcasting entities are Constable F as AKI, Mr L as the Comms despatcher and Constable F's supervisor,

Sergeant R as AKS. It reads:

AKI: *Yeah zero traffic? Intersection. Heading along Victoria Street now. He's just turned...ah taken a right, no. He's possibly going right here. Heading up towards ah Union Street way, heading towards the Cook Street on-ramp. Ah, Comms, he's heading ah the ah opposite way on the motorway. Do you want us to pursue? He's going the opposite way on the motorway, toward the harbour bridge Comms.*

COMMS: *Standby, I'll speak to Motorways Police.*

AKI: *No, I'm not following him at this stage unless he heads back South.*

COMMS: *Roger.*

AKS: *AKI from AKS*

AKI: *Yep.*

AKS: *Yeah I don't want you going on the Motorway at this stage, please.*

COMMS: *The City units stand down from that pursuit, we'll put it out onto Motorways, ah, get somebody to deal with it there.*

These exchanges go to show that the pursuit was terminated when Mr Barber drove onto the motorway. It is apparent that despite the absence of any instruction from Comms, Constable F took the unilateral decision to terminate his role in the pursuit when he said '*I'm not following him at this stage*', this being immediately endorsed by Sergeant R.

Training of Police Officers

The Authority records the training in pursuit policy of the two officers in the primary pursuit vehicle. Constable F had received training on pursuit policy as part of his recruit course in March 1996. Since that time he had participated in informal roll call training and attended formal District training in pursuits on 10 February 1999. Constable C underwent training in pursuit policy during a recruit course in April 1999.

Review by Police Complaints Authority

The pursuit that preceded the death of Mr Barber has been thoroughly investigated by officers appointed under arrangements made by the Commissioner of Police and that investigation has been scrutinised and reviewed in the Internal Affairs section in the Office of the Commissioner. An independent review of the enquiries that have been made and the conclusion consequently drawn has been made by this Authority. I am satisfied that appropriate attention has been directed to the issues brought into prominence by the tragic death of Mr Barber.

Concerning the pursuit itself, a number of operational deficiencies were identified both in the execution of the on-road pursuit and in the control of the pursuit being exercised from the Police Communications Centre. Clearly the Control Room staff were not in possession of the full details of the pursuit, most notably of the collision between the cars driven by Mr Barber and Mr Sugiyama. The responsibility for this reporting deficiency rests with Constable F.

Any deficiency attributed to the control by the Communications Centre of the pursuit must accordingly take into account the failure of either Constable F or one of the other Police cars that were in the immediate vicinity of the pursuit to report such a significant feature of the pursuit as the pursued car colliding with an uninvolved civilian vehicle.

This deficiency may be partly attributed to Constable F having to drive and at the same time maintain a commentary, rather than placing the responsibility for maintaining a commentary on the relatively inexperienced Constable C. In this respect Constable C's very recently qualified status and her dearth of experience to the point that she lacked the confidence to maintain a commentary is of significance.

On the question of abandonment, it is of interest to note Constable F's comments to the investigator, *'In hindsight and in the cold light of day, I accept that all of these factors combined provide sufficient information on which to find that the pursuit should have been discontinued earlier and I accept that.'* I would comment that such is a not unusual post-event reaction by Police drivers after involvement in pursuit situations of this nature. In this regard Constable F's comment that, *'this guy's not gonna stop Comms'* is significant.

Conclusions

The principal conclusions reached by the Authority are that:

1. While the initiation of this pursuit was justifiable, the pursuit should have been abandoned at an earlier stage, probably after the first collision in which Mr Barber was involved.
2. Had that collision been reported to Comms, as it should have been, then an earlier direction to abandon the pursuit may have been issued.
3. The obligation on the Police member who is a passenger in a patrol vehicle to make all radio calls during a pursuit was not met.

Comment

This tragic incident provides another opportunity to comment on the need for the Police organisation to continue to focus sharply on the education of Police officers in pursuit policy and the dangers inherent in a Police pursuit of another motor vehicle.

In 1997 Police promulgated new General Instructions, accompanied by Pursuit Policy & Guidelines. In the Authority's 1997 Annual Report to Parliament the Authority commented on the new Guidelines in the following terms:

'This Authority, while applauding the implementation of the new guidelines, has expressed the view to the Commissioner that the key to ensuring that dangerous and inappropriate pursuits do not occur in the future lies with Police administration putting in place comprehensive educational strategies for staff to ensure that there is an appropriate level of recognition in the policies and guidelines and adequate training in the implementation of them.'

It continues to be the view of this Authority that the issue is not so much the quality and effectiveness of the policy and guidelines, but rather the extent to which Police officers have been educated about and become experienced in the provisions they contain.

In the Authority's Annual Report to Parliament in 1999 I reported that during the year I had sought a report from the Commissioner on the extent to which not only Police recruits but also serving officers gain a proper appreciation and understanding of the 1997 General Instructions and Pursuit Policy & Guidelines.

The response from the Office of the Commissioner was recorded in that Report. While progress is being made each incident such as the one reviewed in this report serves to highlight the urgency and importance of an understanding and acceptance by all Police officers of the potential for tragedy when a pursuit is commenced.