



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Police pursuit of a vehicle that failed to stop at a Police checkpoint

December 2016

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Introduction

1. At around 2.43am on Thursday 3 September 2015, the driver of a silver Honda Accord (the Honda) failed to stop for a Police officer operating an excess breath alcohol checkpoint on Akoranga Drive, Northcote, Auckland. A pursuit (the first pursuit) was commenced but quickly abandoned when the Honda drove on the wrong side of the road.
2. About 15 minutes after the abandonment of the first pursuit, Police located the vehicle in the Mt Wellington area and 'followed' it at speed in a variety of circumstances (the second pursuit), including when the Honda was driven on the wrong side of the Southern Motorway. Officers involved in the second pursuit said that they abandoned it a short time later due to the fleeing driver's manner of driving. However, this was not communicated to the Police Communications Centre.
3. Following the recommencement, or continuation, of the pursuit (this phase of the event is referred to as the third pursuit), the Honda came to a stop on the wrong side of the South-western Motorway in the vicinity of Skipton Street. The officers in the pursuing Police vehicles abandoned their cars in the right-hand lane and crossed to the southbound carriageway on foot in order to apprehend the Honda's occupants.
4. During the course of the second and third pursuits, Police employed a variety of tactics to prevent the Honda from travelling the wrong way along the Southern and South-Western Motorways. On four occasions, Police officers intentionally drove their cars into the Honda and at various times a significant number of Police officers continued pursuing while driving on the wrong side of the road.
5. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.
6. This report explores whether Police were justified in pursuing the Honda after it had failed to stop at a checkpoint on Akoranga Drive, whether relevant policy was observed by those Police employees involved in the three pursuits, and whether the tactics employed by them were reasonable and lawful.

Index of officers

Communications Centre Staff	Roles/Comment
NorthComms Shift Commander	Inspector. Pursuit Controller
Police Staff	
Officer A	Sergeant. Gold class driver of category A marked Police car. Authorised to engage in urgent duty driving and pursuits. Commenced first pursuit before abandoning due to fleeing driver's manner of driving.
Officer B	Constable. Gold class driver of category A marked Police car. Authorised to engage in urgent duty driving and pursuits. Located the Honda on Sylvia Park Road, Mt Wellington after the first pursuit had been abandoned. Followed the Honda after it turned right from Roscommon Road and headed the wrong way up a motorway off-ramp. Made second contact with the Honda to prevent it continuing.
Officer C	Constable. Gold class driver of category A marked Police car. Authorised to engage in urgent duty driving and pursuits. Commenced second pursuit and made first contact with the Honda to prevent it heading the wrong way on the South-Western Motorway.
Officer D	Constable. Gold class driver of category B unmarked Police car. Authorised to engage in urgent duty driving and pursuits.
Officer E	Constable. A passenger in the car driven by Officer D. In charge of radio communications.
Officer F	Sergeant. Gold class driver of category A marked Police car. Authorised to engage in urgent duty driving and pursuits. Nudged Honda on two occasions before following it the wrong way along a motorway slip-road and re-joining the South-Western Motorway.
Officer G	Constable. Gold class driver of category A marked Police car. Authorised to engage in urgent duty driving and pursuits. Driver of marked Police car that travelled wrong way along motorway off-ramp in convoy with Officer B after contact had been made with the Honda.
Officer H	Constable. A passenger in the car driven by Officer G. In charge of radio communications.
Officer I	Constable. Gold class driver of category B unmarked Police car. Authorised to engage in urgent duty driving and pursuits but must be replaced with a category A vehicle as soon as possible. Driver of unmarked Police car that followed the Honda as it travelled a short distance against the flow of traffic on Cavendish Drive.
Officer J	Constable. A passenger in the car driven by Officer I. In charge of radio communications.

Background

SUMMARY OF EVENTS

The first pursuit

7. In the early hours of Thursday 3 September 2015, Officer A was operating an excess breath alcohol checkpoint at Akoranga Drive, Northcote, Auckland.
8. Shortly before 2.43am the driver of a Honda Accord (the Honda) continued through the checkpoint without stopping. Thinking that the driver might have made a genuine mistake and not seen the checkpoint, Officer A got into a marked Police car and followed the Honda for a short distance. When Officer A turned on the Police vehicle's red and blue lights, the driver pulled over and stopped near the junction with Northcote Road.
9. After coming to a stop, Officer A got out of his car and walked towards the Honda. However, the driver of the Honda suddenly accelerated away, performed a u-turn, and headed back the way he had come.
10. Officer A immediately returned to his Police car and commenced a pursuit by turning on its red and blue lights and siren, and following the Honda at speed. Officer A radioed the dispatcher¹ at the Police Northern Communications Centre (NorthComms) that the driver of the Honda was "*failing to stop*" and NorthComms issued the following pursuit warning in accordance with Police Fleeing Driver Policy:

"...if there is any unjustified risk to any person you are to abandon pursuit immediately. Acknowledge."
11. After acknowledging the warning, Officer A drove at speed along Akoranga Drive. He saw the Honda cross the centre median and continue on the opposite side of the road before heading south on the northbound carriageway of the Northern Motorway.
12. Officer A immediately decided to abandon the pursuit because he felt that: "*the risks outweighed [the fleeing driver's] apprehension*". He told NorthComms: "*going on the wrong side of the road. I'm pulling back Comms... Abandon pursuit. He's going the wrong way onto the motorway heading city-bound in the northbound lane*". About 50 seconds had elapsed since the commencement of the pursuit.
13. The pursuit controller² told the Authority that following the abandonment of the first pursuit the dispatcher: "*requested approval to go into search phase³ for the vehicle, which I approved*".

¹ A dispatcher is a Police employee whose primary role is to coordinate the Police response to an emergency. When a pursuit occurs, the dispatcher overseeing the event takes direction from the Pursuit Controller and relays information to Police units dealing with the incident.

² The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is undertaken by the shift commander in the Communications Centre.

However, authority for officers to go into search phase was not immediately broadcast over the Police radio by either the pursuit controller or dispatcher.

14. About 5 minutes after the abandonment of the first pursuit, NorthComms broadcast the following message:

"...City units, be aware of the following vehicle, just been involved in a pursuit on North Shore. Was seen going the wrong way on the motorway...Honda Accord, saloon, coloured silver, 2001 model".

Events following the abandonment of the first pursuit

15. About 10 minutes after the first pursuit had been abandoned, New Zealand Transport Agency's Joint Transport Operations Centre (JTOC⁴) cameras saw the Honda in the Mount Wellington area. JTOC, which has the ability to monitor Police radio and communicate with NorthComms, was aware of the first pursuit. Upon sighting the Honda, the JTOC operator told NorthComms via the main radio channel:

"Have obs on this vehicle. Parked up, lights off behind Pipers building...First street off Sylvia Park Road on the right from Mount Wellington Highway."

16. Officer B, who was driving a marked Police car, overheard the radio communications and drove to Sylvia Park Road. He advised NorthComms: *"It's just turned left on [Great South Road] heading to Otahuhu."* Several seconds later Officer B told NorthComms: *"They know I'm here...they're speeding up a bit now. I'm not pursuing at the moment."*
17. Officer B followed the Honda along Great South Road, a road governed by a 50kph speed limit. He told the Authority that the driver adhered to the speed limit until he reached the Otahuhu area where he accelerated to 70-80kph in a 50kph area. Officer B matched these speeds and tried to maintain a distance of between 100-150m between his car and the Honda. He did not activate the Police car's lights or sirens nor did he advise NorthComms that he was driving in excess of the speed limit.
18. After following the Honda onto Princes Street, Officer B saw it head the wrong way along the northbound carriageway of the Southern Motorway (SH1). Officer B radioed NorthComms: *"It's going on the wrong way heading south in the northbound lanes"*. Officer B joined the southbound carriageway of SH1 and followed the Honda as far as Highbrook Drive. He told the

³ At the time of this incident, when authorised by the pursuit controller to enter a 'search phase,' Police units were permitted to look for the vehicle that had evaded Police, but were not allowed to engage in urgent duty driving (to drive at speed with lights and sirens activated) while doing so.

⁴ JTOC plays a pivotal role in the management of Auckland city's traffic. JTOC operators are able to advise emergency services of developing incidents as well as assist in the management of emergency events. At the time of this incident, footage captured by JTOC cameras could not be viewed by staff at NorthComms. Footage was, however, visible to staff located at the District Command Centre (DCC). DCCs have oversight of and ensure that Police resources are deployed purposefully in order to achieve strategic goals identified by the New Zealand Police. Staff at these locations do not fulfil the role of Pursuit Controller in the event of a Police pursuit. Extremely limited information concerning what was visible via JTOC cameras was passed by the DCC to NorthComms during the second and third pursuits.

Authority that he was not in pursuit at this time because the Honda was on the other side of the motorway. Officer B's lights and sirens were not activated. JTOC footage of the Honda shows it travelling at what appears to be less than the posted speed limit.

19. At the junction with Highbrook Drive, the Honda performed a u-turn and joined traffic heading in the correct direction on SH1. Officer B, who had already left SH1 at Highbrook Drive, was unable to re-join the motorway and told NorthComms: *"He's just done a [u-turn], heading north in the northbound lane again."* JTOC cameras show the Honda continuing north before leaving the motorway and heading east at Princes Street. It then turns left into Frank Grey Place before again turning left and heading the wrong way along a SH1 off-ramp. Upon reaching the southbound carriageway of SH1, the Honda can be seen driving around oncoming traffic and then heading south.
20. The Honda continued south as far as Highbrook Drive before it was seen by a second marked Police car driven by Officer C, who was travelling about 600m behind in the same direction⁵. When asked by NorthComms to: *"Confirm he's going southbound in the southbound lane under Highbrook?"*, Officer C replied: *"Everything's kosher, we're going the right way on the motorway, he's in the inside lane...I haven't activated lights or anything yet, I can't quite confirm that it's even him but timing-wise it will be."* Several seconds later, when asked to confirm if the vehicle being followed was the Honda, Officer C told NorthComms: *"I'd say it will be. I haven't activated my lights and we're doing about one-fifty[kph]."* No pursuit warning was issued by NorthComms at this time. About 10 minutes had elapsed since the Honda had been seen by the JTOC operator behind the Pipers building.

The second pursuit

21. Almost 30 seconds later, after passing the junction with East Tamaki Road, Officer C confirmed that the car he was following was the Honda. Officer C told NorthComms: *"I'm going to have to light it up, we're going about one-forty[kph]."* The pursuit warning detailed in paragraph 10 was then issued by NorthComms and acknowledged by Officer C. Shortly after acknowledging the pursuit warning, Officer C told NorthComms that the vehicle: *"looks to be about five or six up"*.
22. Officer C reported the speed of the Honda as 136kph as it passed Te Irirangi Drive. By this time Officer B was approaching from behind at speed with lights and siren activated. Officer B undertook Officer C and the Honda and drove across the exit to Redoubt Road, successfully preventing the Honda's attempt to leave SH1. Officer B continued on the off-ramp to Redoubt Road before immediately re-joining SH1 behind Officer C.
23. Officer C continued in pursuit and reported the speed of the Honda as 130kph as it passed the South-western Motorway (SH20) interchange. As both vehicles approached a slip-road from SH20 the driver of the Honda slowed significantly and attempted to execute a sharp left turn

⁵ Officer C was notified of the initial pursuit undertaken by Officer A via a Waitemata Police radio channel and was asked to assist. Officer C then relayed information broadcast by JTOC on the Waitemata channel to east Auckland units after the vehicle had been located on Pacific Rise.

between flexible traffic control bollards, intending to head the wrong way towards SH20. Realising what the driver was trying to do, Officer C followed the vehicle onto the slip-road and made contact with the rear left side of the Honda, causing it to spin 180° anti-clockwise and face the right direction. Officer C came to a stop side-on and directly behind the Honda, preventing the driver from continuing along the off-ramp.

24. Thwarted in his attempt to leave SH1 via the off-ramp, the driver of the Honda re-joined SH1. Officer B continued the pursuit as the lead vehicle. Officer B told NorthComms that the Honda had *“rammed”* Officer C before describing the damage to the Honda: *“He’s losing his rear plastic bumper and there’s a few sparks so he might have popped a tyre.”*
25. Officer C, who was following Officer B and the Honda as they headed towards the junction with Hill Road, told NorthComms: *“he’s made deliberate action to go the wrong way on the motorway so I’ve tried to stop it and we’ve collided.”* The pursuit controller told the Authority that, based on these transmissions, he believed: *“we’ve now got a hostile driver as well as a speeding driver... my view was that this driver needs to be stopped.”*
26. By the time the Honda took the exit to Hill Road, about 13 minutes after JTOC had reported its location behind the Pipers building (see paragraph 15), Officer B and Officer C had been joined in pursuit by an unmarked Police car driven by Officer D, with Officer E as passenger.
27. After leaving SH1 at the Hill Road exit, the officers saw the Honda continue as if intending to re-join the motorway and head north. Officer B told NorthComms: *“Getting off at Hill now”*, just before Officer C said: *“If he shapes to go the wrong way I’ll nudge him again.”* However, prior to joining the northbound carriageway the driver of the Honda crossed a grass embankment and continued along SH1 in the wrong direction, turning off the Honda’s lights and narrowly avoiding three trucks travelling north. Officer B told NorthComms that the Honda had: *“gone straight across the grass and he’s going to head south in the northbound lane.”* Officer B told the Authority that he abandoned pursuit at this point: *“I just couldn’t get on the radio to say it.”*
28. Officer C told the Authority: *“we weren’t going to be able to follow it...no-one said it was abandoned, but...no-one’s going to be chasing it down there”*. He was unable to continue in any event due to damage sustained to his Police car as a result of the collision at the SH20 interchange. Officer C played no further part in this incident.
29. Despite both officers telling the Authority that they believed the pursuit had been abandoned, neither of them advised NorthComms of the abandonment, they did not reduce their speed and come to a stop, and they did not deactivate their lights and sirens (as required by the Fleeing Driver policy – see paragraph 164).
30. In the absence of any abandonment information, neither the pursuit controller nor Officers D and E considered that the pursuit had been abandoned. The pursuit controller believed that it was necessary to continue pursuing the driver of the Honda. He advised the Authority of his view that: *“if we don’t actually stop him, he’s going to kill somebody”*.

31. The second pursuit lasted about 5 minutes. However, as stated earlier, NorthComms had not been advised of the abandonment and from their perspective the second pursuit continued. For ease of reference, the Authority has referred to the continuation of the second pursuit, from this point, as the third pursuit.
32. The third pursuit
33. JTOC cameras followed the Honda as it continued the wrong way on SH1 for approximately two minutes before leaving the motorway at Takanini and heading north along Great South Road in the correct lane. The Honda's lights were still switched off at this time. As it was in the area, a further marked Police car intercepted the Honda immediately after it joined Great South Road. The driver of this vehicle told NorthComms: *"I'm in a D Class vehicle⁶...so if someone could get here quick. He's got no speed. Doing 60 in a 50."*
34. Officer B, whose Police car's red and blue lights and siren were already activated, approached from the opposite direction immediately following this transmission and again became the lead pursuit vehicle.
35. Despite there being opportunities to do so, Officer B provided no commentary on his movements for almost three minutes following his abandonment of the second pursuit (paragraph 27). Nor did he request permission to recommence pursuit. No updates or clarification of actions were sought by NorthComms.
36. Once Officer B took position behind the Honda, he provided regular updates to NorthComms, relaying that the vehicle had turned left onto Weymouth Road, travelling at 70kph in a 50kph zone, and then right onto Wordsworth Road, travelling at 68 kph in a 50kph zone. The Honda continued along Wordsworth Road, slowing to 60kph, before turning right onto Roscommon Road where its speed increased to 70kph in a 50kph zone. Officer B again told NorthComms that the Honda had possibly lost a tyre (see paragraph 24). JTOC footage shows that the Honda's lights were switched on by the time it reached Roscommon Road.
37. As they approached Wiri Station Road, Officer B told NorthComms that: *"if he goes down the wrong way of the motorway I'm going to have to try and stop him I think."* About 12 seconds later the following direction was issued by the Pursuit Controller: *"All units...In the event of him trying to get on the motorway section 39⁷ applies. He is to be arrested before he gets on the motorway. Action at your discretion as long as it's justifiable"*.

⁶ Drivers of category D vehicles are precluded from undertaking pursuits due to the limited capability of such vehicles. JTOC footage shows the category D vehicle travelling a short distance behind the Honda which appears to be gaining on it. The Police vehicle's lights are not illuminated and no sirens are heard during radio transmissions made by the driver.

⁷ Section 39 Crimes Act 1961 protects from criminal liability those who are justified in making an arrest and use such force as may be necessary to overcome any force used in resisting arrest, unless the arrest can be made by reasonable means in a less violent manner. See Applicable Laws and Policies section for further information.

38. In the meantime, the pursuit controller was endeavouring to deploy units equipped with road spikes⁸ to try to stop the Honda. Aware of the pursuit controller's intentions, Officer F parked his marked Police car at the end of a raised median strip, separating traffic either leaving SH20 or coming from Cavendish Road from traffic travelling in the opposite direction (the direction from which the Honda and Officer B were approaching).
39. Officer F advised NorthComms of his location and remained with his Police car where it was possible to deploy road spikes across the three lanes that continued beneath SH20 towards Cavendish Road, the route Officer F thought the Honda was most likely to take. Officer F's ability to cover two 'left turn only' lanes branching off Roscommon Road, as well as lanes on the opposite side of the raised median strip, was limited due to the size of the intersection. Officer F illuminated the Police car's lights as the Honda and Officer B approached.
40. Immediately before reaching Officer F's position, the driver of the Honda turned right, drove over the raised median strip and entered a SH20 off-ramp. Officer B followed the Honda before moving alongside it as the driver of the Honda attempted to veer left at a relatively low speed. Officer B made contact with the left side of the Honda and pushed it to the right in an attempt to take it off the road. However, the driver of the Honda braked causing Officer B to pass it and spin anticlockwise about 90°, the rear wheels of his Police car leaving the road. The driver of the Honda was then able to turn to the left and drive around the front of Officer B's vehicle before continuing along the off-ramp in the wrong direction.
41. JTOC footage shows Officer B continuing the pursuit as the lead vehicle, closely followed by four other Police cars, including cars driven by Officers D and H. The Honda appears to slow and meander in front of Officer B before its rear fishtails slightly to the left and then to the right allowing it to drive over a grass embankment and turn left onto SH20 (northbound in the correct direction). The vehicle then continues at a low speed with Officer B and the other Police cars close behind it. The Honda can be seen driving back down the grass embankment onto the off-ramp (again heading the correct way) leaving all five⁹ Police vehicles behind on SH20.
42. Officer B radioed NorthComms and said: *"I had to take him out. He was pretty dangerous and there was some oncoming traffic"* (no oncoming traffic is immediately visible at this time in footage captured by a nearby JTOC camera). NorthComms sought to clarify matters and asked Officer B: *"Is the vehicle stationary or still mobile?"* Officer B replied: *"Still mobile. I've lost sight of it now."*
43. None of the officers in any of the other four Police cars advised NorthComms of their involvement. The pursuit controller was therefore unaware that anyone other than Officer B was pursuing the Honda.

⁸ A Tyre Deflation Device.

⁹ The drivers/passengers of two of these Police cars have not been identified as part of Police enquiries nor during the course of the Authority's investigation into this matter.

44. In the meantime, Officer F had positioned his car at the intersection of Cavendish Drive and the off-ramp the Honda was travelling down. Using 'nudge bars' on the front of his Police car, Officer F drove into the driver's side of the Honda at relatively low speed as it went past causing it to spin in a clockwise direction. Officer F told the Authority that he used this tactic as a result of the pursuit controller's advice that the use of force was justified under section 39 of the Crimes Act 1961 (see paragraph 37).
45. After righting itself, JTOC footage shows that the Honda continued along Cavendish Drive in the wrong direction, narrowly missing a stationary vehicle waiting at a red light. It was followed on the wrong side of the road by another unmarked Police car, containing Officers I and J.
46. As the Honda passed a raised median and moved to the left, Officer F, who had shadowed the Honda on the correct side of the road, again made contact with the rear left of the vehicle with the Police car's 'nudge bars'.
47. In following the Honda on the wrong side of the road, Officer I told the Authority that his intention was to: *"get onto the driver's side of [the Honda]...to force him into a position that he couldn't open the door...or if he did do a runner...at least [Officer J] and myself would be in a position to...try and catch him"*.
48. JTOC footage shows that after being struck by Officer F for a second time, the driver of the Honda immediately turned left and continued the wrong way along Cavendish Drive where it runs parallel to SH20. The Honda was followed by Officer F, the vehicle with Officers D and E and two other Police cars¹⁰ before it drove over an embankment and joined the southbound carriageway of SH20 heading north. None of the pursuing Police cars followed the Honda over the embankment.
49. JTOC footage shows all Police cars, other than the car containing Officers I and J, following the Honda along Cavendish Drive and continuing towards the Puhinui Road intersection after the Honda joined SH20. When asked about his decision not to follow the other Police cars Officer I told the Authority: *"I wasn't prepared to put myself at risk in regards to going up the wrong side of the motorway"*.
50. NorthComms was not advised that the Honda had been hit twice or that several Police vehicles had followed it the wrong way along the slip-road. Officer F told the Authority: *"at this point, you know, you can't get on the radio... if you try and talk and someone else happens to talk at the same time your radio goes, 'beep'"*.
51. Officer F told the Authority that he continued along Cavendish Drive before joining the northbound carriageway of SH20 and shadowed the Honda as it travelled north on the opposite carriageway. JTOC footage shows two unmarked Police cars joining SH20 at the Puhinui Road intersection and travelling north, leading the pursuit. It has not been possible for the Authority to determine whether other Police vehicles joined SH20 at this location due to

¹⁰ The drivers of these vehicles have not been identified. See also footnote 9.

the movement of the JTOC camera as it follows the Honda. The footage shows a total of six Police cars with lights illuminated shadowing the vehicle as it travels north on the southbound carriageway. The flashing lights of another Police car that was positioned to block an exit further north are visible in the distance.

52. The pursuit controller was unaware of the number of Police cars involved in the pursuit at this time. He told the Authority: *“the communications on the channel are pretty much restricted to the unit that’s actually closest to the target and the dispatcher, and a lot of things happen in the background. People can’t tell you everything, there just isn’t the capacity to do that.”*
53. After continuing the wrong way along SH20 for a distance of about three kilometres, the driver of the Honda turned sharply to the right, crossed the hard-shoulder of the southbound carriageway and mounted a grass embankment behind residential properties located on Skipton Street. The Honda then came to a stop and footage from a JTOC camera shows five people leaving it and running on foot towards a wooden fence separating the motorway from the nearby residential properties.
54. When they saw the Honda stop, the drivers of all the following Police cars also stopped (with their emergency lights illuminated) in the right hand lane of the northbound carriageway. Officers D, E and J were among officers who left their vehicles on SH20 to chase the occupants of the Honda on foot¹¹. Officer F parked his Police car a short distance behind the rearmost stationary Police vehicle. Officer F’s Police car was equipped with a built-in merge left sign and this was activated to give advance notice to oncoming vehicles.
55. The third pursuit lasted just over eight minutes.
56. Police later established that the five occupants of the Honda were two 14-year-old females, and three males aged 14, 16 and 19. The 19 year old male was identified as the driver. All five occupants were arrested a short distance from the abandoned vehicle.
57. The driver of the Honda was subsequently charged with five offences arising from this incident: unlawfully taking a motor vehicle; failing to stop; reckless driving; failing to comply with a prohibition; and giving false details. Guilty pleas were entered in respect of all of these charges resulting in the driver being sentenced to three months’ imprisonment and disqualified from driving for six months. The other occupants of the vehicle were referred to Youth Aid.

¹¹ The pursuing officers had to cross a central barrier and negotiate the southbound carriageway of SH20 before reaching the Honda and its fleeing occupants. Officers G and H continued to the next junction where they left the motorway before re-joining the southbound carriageway. Officer I did not join Officer J in chasing the occupants of the Honda but remained with their Police vehicle.

The Authority's Investigation

THE AUTHORITY'S ROLE

58. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
59. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

60. In accordance with our Memorandum of Understanding¹² with Police, the Authority was notified of this pursuit on 4 September 2015.
61. In addition to reviewing information provided by Police and JTOC footage, the Authority interviewed 16 Police employees who were involved in the various pursuits of the Honda.

ISSUES CONSIDERED

62. The Authority's investigation considered the following issues:
- 1) Was the first pursuit of the Honda carried out in accordance with law and policy?
 - 2) Were Officers B and C authorised to undertake urgent duty driving after the Honda had been located by the JTOC operator?
 - 3) In relation to the second pursuit:
 - a) Was this commenced in accordance with policy?
 - b) Were Officer C's actions in preventing the Honda from entering SH20 the wrong way justified?
 - c) Were communications to NorthComms during the second pursuit appropriate?

¹² Under the 2014 Memorandum of Understanding between the Authority and Police, the Commissioner of Police may notify the Authority of any matter involving criminal offending or serious misconduct by a Police employee, where that matter is of such significance or public interest that it places or is likely to place the Police reputation at risk.

- d) Was the pursuit controller misled by information conveyed by Officer B?
- 4) Was the second pursuit correctly abandoned after the Honda joined SH1 heading the wrong way?
- 5) Was the third pursuit correctly recommenced following the second abandonment?
- 6) Were the tactics employed by Police during the third pursuit justified and reasonable?
In particular:
 - a) Was the pursuit controller's direction to arrest the driver of the Honda before it could re-join the motorway appropriate?
 - b) Were Officer B's actions in attempting to prevent the Honda from driving the wrong way along a SH20 off-ramp justified?
 - c) Were Officer F's attempts to immobilise the Honda justified?
 - d) Were the decisions to follow the Honda the wrong way along a motorway slip-road and then continue the pursuit on the opposite carriageway justified?
- 7) Did Police make reasonable efforts to identify all of the officers involved in this pursuit?

The Authority's Findings

ISSUE 1: WAS THE FIRST PURSUIT OF THE HONDA CARRIED OUT IN ACCORDANCE WITH LAW AND POLICY?

63. Officer A stopped the Honda after the driver failed to stop at a checkpoint on Akoranga Drive. Officer A had no concerns regarding the way the vehicle was being driven up to this point and thought that the driver was simply unaware that he was required to stop. Officer A told the Authority that there *"wasn't anything suspicious"* about the Honda or its occupants, none of whom were known to him.
64. Officer A was justified under section 114 of the Land Transport Act 1998 in stopping the Honda in order to establish the identity of the driver.
65. However, as Officer A walked towards the Honda, the driver unexpectedly performed a u-turn and accelerated away at speed.
66. Because the driver of the Honda failed to remain stopped and attempted to evade Police, Officer A was entitled under the Police Fleeing Driver policy to commence a pursuit. Officer A informed NorthComms that the Honda was *"failing to stop"*, and the dispatcher issued the pursuit warning as required by policy (see paragraph 10), which Officer A acknowledged.
67. The Fleeing Driver policy requires officers to make continuous risk assessments and to abandon the pursuit if the risk to the safety of the public and Police outweighs the immediate need to apprehend the driver. When the driver of the Honda crossed to the wrong side of the road, Officer A immediately recognised that the driving was too dangerous and decided to abandon the pursuit. He advised NorthComms that the driver was: *"going on the wrong side of the road. I'm pulling back Comms... Abandon pursuit. He's going the wrong way onto the motorway heading City-bound in the northbound lane"*.
68. As required by the Fleeing Driver Policy, Officer A reduced his speed and deactivated the lights and sirens of his Police car. Officer A then came to a stop before relaying his location.

FINDINGS

Officer A's pursuit of the Honda was justified and complied with law and policy.

Officer A appropriately abandoned the pursuit when the driving behaviour of the fleeing driver became too dangerous.

ISSUE 2: WERE OFFICERS B AND C AUTHORISED TO UNDERTAKE URGENT DUTY DRIVING AFTER THE HONDA HAD BEEN LOCATED BY THE JTOC OPERATOR?

69. As detailed in paragraphs 16-18, after the JTOC operator had located the Honda, Officer B followed it at speed until it performed a u-turn and continued north along SH1. His actions amounted to urgent duty driving, as defined by the Police Urgent Duty Driving policy¹³ (see Applicable Laws and Policies section for further information).
70. Police policy states that Police must: *“use flashing lights and siren at all times while undertaking urgent duty driving unless a ‘tactical approach’ is used”*. As detailed in paragraph 17, Officer B did not activate his flashing lights or siren at any time while following the Honda at speeds that exceeded the posted speed limit and therefore did not comply with policy.
71. In relation to his actions after the Honda joined SH1 (see paragraph 18), Officer B remained of the view that no pursuit was being undertaken because the Police car was *“on the other side of the motorway”*. Officer B did not therefore signal the driver of the Honda to stop by activating his lights and siren, and did not seek approval from the pursuit controller to commence a pursuit (see paragraph 165 for further information). Officer B did not radio NorthComms to advise he was driving at speeds in excess of the speed limit prior to the Honda joining SH1 (see paragraph 17).
72. From the pursuit controller’s perspective, and in the absence of further information, the Honda: *“was merely being observed by a Police unit”*. The pursuit controller also told the Authority that there was no suggestion that the Honda was being driven erratically or dangerously. Due to the limited amount of information provided to him, the pursuit controller had no idea of the speeds reached while the Honda was under observation by Officer B. He was also unaware of the Honda driver’s actions in response to the presence of Officer B.
73. Nevertheless, the Authority is of the view that the pursuit controller should have sought further information from Officer B to determine whether the driver of the Honda had been signalled to stop and, if refusing to do so, whether permission to commence a pursuit was sought, especially after Officer B radioed NorthComms and said: *“They know I’m here...they’re speeding up a bit now. I’m not pursuing at the moment”* (see paragraph 16).
74. As detailed in paragraph 20, after Officer B left SH1, the Honda was subsequently followed by Officer C as it headed south on SH1 (in the correct carriageway). Although Officer C was initially unable to confirm that it was the Honda, Officer C told NorthComms: *“I haven’t activated my lights or anything yet”* before disclosing: *“...we’re doing about one-fifty.”*

¹³ According to this policy, urgent duty driving can be summarised as: *“when a constable on duty is driving above the speed limit...and may not be complying with certain traffic rules and is...apprehending a fleeing driver”* (see Applicable Laws and Policies section for further information).

75. The Authority is of the view that during this time Officer C was also engaged in urgent duty driving. Officer C should therefore have complied with Urgent Duty Driving Policy and activated his Police car's flashing lights and siren. The pursuit controller should also have asked Officer C whether he had signalled the driver of the Honda to stop.

FINDINGS

Officers B and C did not comply with Urgent Duty Driving policy.

Officer B should have signalled the driver of the Honda to stop as soon as practicable after the Honda was re-engaged. Authority should then have been sought from the pursuit controller to commence a pursuit.

Based on information conveyed by Officers B and C (see paragraphs 16 and 20), the pursuit controller should have established whether the fleeing driver had been signalled to stop before considering whether further pursuit was justified.

ISSUE 3: THE SECOND PURSUIT.

Was the second pursuit of the Honda commenced in accordance with policy?

76. As detailed in paragraph 21, as soon as Officer C had identified that the car he was following was the Honda, he advised the dispatcher that he was commencing a pursuit and activated his lights and sirens. The dispatcher then gave Officer C the pursuit warning, which was acknowledged by him, as required by Police policy.
77. Although Officer C complied with Police policy, his decision to commence a pursuit was undesirable and did not take into account the fleeing driver's likely response and the increased level of risk this may have posed to other road users. The Police Fleeing Driver policy has since been changed to incorporate this consideration (see Subsequent Police Action at paragraph 145 for further information).

FINDING

Officer C complied with Police policy applicable at the time in commencing the second pursuit.

Were Officer C's actions in preventing the Honda from entering SH20 the wrong way justified?

78. As detailed in paragraph 23, the fleeing driver attempted to leave SH1 in the wrong direction, via a one way slip-road that would have taken him to SH20. Officer C realised what the driver of the Honda was trying to do, when he saw the driver slow significantly and attempt to turn sharply between traffic control bollards. Officer C followed the driver and drove his Police car into the rear left side of the Honda, causing it to spin 180° and come to a stop, facing the right direction.

79. When asked by the Authority why he felt it was so important that the driver of the Honda be stopped, Officer C said it was to prevent him from heading: *“the wrong way down the motorway again...it’s a really blind corner...he never would have known what was coming round there.”*
80. When asked by the Authority to justify his course of action, Officer C cited sections 39 and 48¹⁴ Crimes Act 1961 (see paragraphs 175 and 176 for further information) and said: *“because there’s a huge risk...and I see that as death or grievous bodily harm, because if you have a collision at 100k an hour no-one’s going to walk away unharmed.”*

FINDING

Officer C’s actions were well executed, reasonable and proportionate in the circumstances, eliminating any risk that may have been posed as a result of the Honda travelling the wrong way along the slip-road towards SH20.

Were communications to NorthComms during the second pursuit appropriate?

81. Following Officer C’s manoeuvre, Officer B radioed NorthComms advising that the driver of the Honda had *“rammed”* Officer C’s Police car. Officer B’s transmission was inaccurate. The pursuit controller told the Authority that he understood this to mean: *“we’ve now got a hostile driver as well as a speeding driver.”*
82. A few seconds later Officer C radioed NorthComms to clarify that the cars had collided as he tried to stop the Honda going the wrong way on the motorway off-ramp.

FINDING

Officer B’s comments were inaccurate and misrepresented the actions of the fleeing driver.

Was the pursuit controller misled by information conveyed by Officer B?

83. As detailed in paragraph 82, the pursuit controller told the Authority that he thought the driver of the Honda presented a significant risk and needed: *“to be stopped because...if we don’t actually stop him, he’s going to kill somebody.”*
84. The Authority is of the view that the pursuit controller’s assessment was formed in large part by Officer B’s comment that the driver of the Honda had rammed Officer C’s car (see paragraph 81). No consideration appears to have been given to Officer C’s comment that the

¹⁴ Section 48 Crimes Act states *“Every one is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”* See also footnote 7 and Applicable Laws and Policies section for further information.

collision was effectively the inadvertent result of his attempt to prevent the Honda travelling the wrong way on the motorway slip-road (see paragraph 82).

85. Notwithstanding the pursuit controller's assessment of the risk posed by the driver of the Honda, he should have considered that both the pursuit and close proximity of Police cars were causing the driver of the Honda to engage in increasingly risky behaviour. He should have therefore directed that the pursuit be abandoned as soon as it became apparent that the driver of the Honda had attempted to enter the slip-road the wrong way and had "rammed" Officer C's car.

FINDINGS

The pursuit controller's assessment of the risk posed by the driver of the Honda was incorrect as a result of misleading information broadcast by Officer B.

The pursuit controller should have directed that the pursuit be abandoned as soon as it became apparent that the driver of the Honda had tried to leave SH20 and had "rammed" Officer C's car.

ISSUE 4: WAS THE SECOND PURSUIT CORRECTLY ABANDONED AFTER THE HONDA JOINED SH1 HEADING THE WRONG WAY?

86. After leaving the motorway at Hill Road, Officer C advised NorthComms that it was his intention to "nudge" the Honda again if the driver demonstrated any intention to re-join the motorway against the flow of traffic (see paragraph 27 for further information). Officer C told the Authority: *"at that stage I thought...I might have been damaged, so I thought if I can get in a position to stop him getting on the wrong way on the motorway again...I will, to save other Police vehicles."*
87. However, according to Officer C the Honda: *"shaped...to do a u-turn, or to turn onto the wrong way onto the motorway, so I've followed him onto the grass thinking that I could get in front of him, but I've been too slow and then he's gone south in the northbound [lane]."*
88. Both Officers B and C felt the risk in following the Honda was too great and decided to abandon pursuit. Their decision to do so was in accordance with Fleeing Driver policy which says a pursuit must be abandoned when: *"the risks of continuing with the pursuit outweighs [sic] the need for immediate apprehension of the fleeing driver"* (see Applicable Laws and Policies section for further information).
89. As stated in paragraph 29, despite both officers telling the Authority that they believed the pursuit had been abandoned, neither of them advised NorthComms of the abandonment, they did not reduce their speed and come to a stop, and they did not deactivate their lights and sirens, as required by the Fleeing Driver policy (see paragraph 164).
90. Officer B told the Authority that he was not able to get on the radio to advise NorthComms he had abandoned pursuit. However, the NorthComms audio does not support Officer B's assertion that the radio was busy.

91. Due to this lack of communication and the actions of Officers B and C, the pursuit controller and Officers D and E believed the pursuit was ongoing. The pursuit controller told the Authority that he was of the view that the driver of the Honda needed: *“to be stopped because...if we don’t actually stop him, he’s going to kill somebody.”*

FINDINGS

Officers B and C correctly decided to abandon the pursuit.

Officers B and C breached policy by failing to pull over, stop and deactivate their Police cars’ lights and sirens.

ISSUE 5: WAS THE THIRD PURSUIT CORRECTLY RECOMMENCED FOLLOWING THE SECOND ABANDONMENT?

92. Officer B and the pursuit controller had different views of the status of the third pursuit. Officer B believed he had abandoned the second pursuit and therefore that the third pursuit was a new pursuit. However, the pursuit controller had been given no information regarding the abandonment and therefore thought the third pursuit was in fact a continuation of the second pursuit.
93. As outlined in paragraphs 33 and 35, Officer B began following the Honda again, about three minutes after he believed he had abandoned the second pursuit.
94. When Officer B recommenced following the Honda, he did not seek the approval of the pursuit controller to do so, as required by the Fleeing Driver policy following an abandonment (see paragraph 165).
95. For the reason outlined in paragraph 92, and in the absence of further information from Officer B, the pursuit controller had no cause to conduct a risk assessment or give his approval for the pursuit to recommence, as is also required by the Fleeing Driver policy (see paragraph 166).
96. The pursuit controller believed that, when Officer B started commentary on Weymouth Road (see paragraph 36) this was a continuation of the second pursuit, despite the fact that three minutes had elapsed between transmissions.
97. The Fleeing Driver policy requires a pursuit controller to abandon a pursuit when there is: *“a sustained loss of contact”* with the lead pursuit driver or where there is a failure: *“to provide critical information to Comms in a timely manner”* (see paragraph 170). Both of these situations occurred.
98. The pursuit controller gave no consideration to abandoning in these circumstances. This was a breach of policy.

FINDINGS

Officer B did not recommence the third pursuit in accordance with the Fleeing Driver policy, as he should have sought approval from the pursuit controller.

The pursuit controller breached the Fleeing Driver policy by giving no consideration to abandonment when information from Officer B was not forthcoming for three minutes.

ISSUE 6: WERE THE TACTICS EMPLOYED BY POLICE DURING THE THIRD PURSUIT JUSTIFIED AND REASONABLE?

99. When Officer B commenced the third pursuit, he initially provided regular updates to NorthComms. However, as the pursuit progressed, with a number of other Police cars joining in, the frequency of updates began to drop off. The Authority has had the benefit of viewing the JTOC footage, and it is clear that the pursuit controller was not aware of the number of vehicles involved or the tactics used by the officers. While the Authority has concerns about the entire third pursuit and believes that it should not have been undertaken, it has chosen to analyse four key tactical decisions, as set out below.

Was the pursuit controller's direction to arrest the driver of the Honda before it could re-join the motorway appropriate?

100. As detailed in paragraph 37, as Officer B approached Wiri Station Road, he told NorthComms: *"if he goes down the wrong way of the motorway I'm going to have to try and stop him I think."*
101. About 12 seconds later the pursuit controller broadcast the following direction: *"All units...In the event of him trying to get on the motorway section 39 applies. He is to be arrested before he gets on the motorway. Action at your discretion as long as it's justifiable"*.
102. Section 39 of the Crimes Act 1961 allows Police to use reasonable force to make an arrest, unless the arrest can be made by reasonable means in a less violent manner (see paragraph 175 for further information).
103. The pursuit controller told the Authority that he: *"made the decision that [the driver of the Honda] was not to get on that motorway again in the wrong direction and that was the point at which I reminded [Officer B] of his powers under section 39 to exercise certain appropriate force or justified force to make an arrest."*
104. Regarding Officer B's intentions, the pursuit controller told the Authority: *"he's proposing to go beyond the Police pursuit policy to do what needs to be done. I'm saying, yes I agree with that assessment and these are the boundaries in which you need to operate, at your discretion, as long as it's justifiable."*
105. As detailed in paragraphs 37 and 101, NorthComms audio shows that the pursuit controller's direction was in fact issued to *"[a]ll units"* and not merely directed at Officer B.

106. When asked what he understood by the pursuit controller's direction, Officer B told the Authority: *"I was starting to...fear death or grievous bodily harm to someone...and you think to yourself, right, you're justified to use force but there's a less violent means. What's the most less violent means you can use? Maybe just try and push his car off to the side of the road?"*
107. When some other officers were asked what they understood the pursuit controller meant, Officer D told the Authority: *"that's the [pursuit controller] telling us that we can stop the car using whatever force...As soon as that came on people were just crashing into it, trying to stop it".*
108. Officer J told the Authority: *"I believe that a direction like that could contribute to things like tunnel vision...[a]nd I think that that's a dangerous direction to be given under any circumstance."*
109. The Authority is therefore of the view that the pursuit controller's direction was interpreted by Police units involved as an authorisation to engage in driving behaviour that exposed the occupants of the Honda and the Police vehicles, as well as other road users, to unnecessary risk.
110. The Authority finds that while an individual officer may make an assessment under section 39 to use reasonable force to make an arrest. A general direction by a supervisor to one or all units that section 39 can be relied on has the potential to invite and encourage officers to use their vehicles to apply force in an inappropriate manner.

FINDING

The pursuit controller's direction was not appropriate in the circumstances.

Were Officer B's actions in attempting to prevent the Honda from driving the wrong way along a SH20 off-ramp justified?

111. Following the section 39 authorisation given by the pursuit controller, Officer B saw the driver of the Honda drive over a raised median strip and enter a SH20 off-ramp the wrong way (see paragraph 40).
112. Officer B followed the Honda and made contact with the left side of it in an attempt to push it off the road. However, the driver of the Honda managed to brake and outmanoeuvre Officer B, so that Officer B lost control of his Police car and it spun around.
113. Officer B told the Authority: *"I wanted to give it one more go before we got on the motorway to turn him around or stop him".* Officer B also expressed concerns regarding the safety of other road users and believed that pushing the Honda off the road was the least violent option available to him (see paragraph 106). As well as section 39 Crimes Act 1961, Officer B also cited section 48 Crimes Act 1961 as justification for his actions (see paragraphs 175 and 176 for further information).

114. The Authority is of the view that the initial manoeuvre attempted by Officer B was justified, but that he should not have continued pursuing the driver of the Honda the wrong way up the off-ramp when it became apparent that the tactic had not worked. Despite the pursuit controller's direction, the Authority believes that the risk involved in continuing to pursue the Honda was too high and could not be justified. Officer B should have abandoned the pursuit at this point.
115. As detailed in paragraph 41, JTOC footage shows the Honda continuing at low speed before crossing a grass embankment and joining SH20 facing the right way.
116. The Authority believes that the presence of Officer F, as well as numerous other Police cars (seen on the JTOC footage), most probably put significant pressure on the driver of the Honda to take extreme risks to try to get away.
117. The Authority is also of the view that the level of risk presented by the pursuit was compounded by the presence of the four additional Police cars that followed Officer B the wrong way along the SH20 off-ramp. The occupants of two of these Police cars have not been identified.
118. A large number of officers involved in this pursuit did not advise NorthComms of their presence. In terms of his involvement, Officer D told the Authority that: *"there wasn't really an opportunity"*. He also intimated that those joining a pursuit would be less inclined to broadcast information (such as their presence or if they were en route) if it was likely to disrupt the pursuit commentary.
119. In addition, the Fleeing Driver policy limits: *"the number of Police vehicles following to no more than two unless tactically appropriate (e.g. requirement of a dog handler in the vicinity)."* The Fleeing Driver policy also states: *"Other Police units...[m]ust not actively participate in the pursuit, unless they are responding to a direction or have received permission from the pursuit controller"*. Nor must they: *"tag along behind the pursuit if [they] have not been assigned as a primary or secondary unit"*. The pursuit controller told the Authority: *"Had I had access to video, had I seen those things and had I assessed them as being high risk, certainly I would have acted upon them. The reality was I didn't have access so it's pretty much hypothetical...I'm basically going by what I'm told, what I'm inferring and that's obviously only part of the story"*.

FINDINGS

Officer B's initial attempt to prevent the Honda from driving the wrong way along the SH20 off-ramp was reasonable in the circumstances. However, he should have immediately abandoned the pursuit after this attempt failed.

Other Police units should not have actively participated in the pursuit. Their failure to comply with the Fleeing Driver policy placed additional pressure on the driver of the Honda and increased the risk of harm to Police, the Honda's occupants and other members of the public.

Were Officer F's attempts to immobilise the Honda justified?

120. During the third pursuit, Officer F attempted to deploy road spikes and twice drove his Police car into the Honda, in attempts to stop it.
121. As detailed in paragraph 38, Officer F initially took up a position that would have enabled the deployment of spikes across Roscommon Road. As it happened, the driver of the Honda avoided these spikes. However, the Authority is satisfied that Officer F was authorised to deploy spikes at this location as part of a coordinated effort by NorthComms to bring the pursuit to a safe conclusion.
122. Officer F told the Authority that he heard the pursuit controller's direction that: "*section 39 applies*". Officer F feared: "*that [the driver of the Honda] was going to kill somebody 'cos driving on the wrong side of the motorway, if you have an oncoming collision you're guaranteed a fatality or very serious injury.*"
123. Acting on the pursuit controller's direction, and in order to stop the Honda, Officer F drove into the side of it as it went past causing it to spin in a clockwise direction (see paragraph 44).
124. As detailed in paragraph 45, Officer F made further contact with the Honda as it continued along Cavendish Drive.
125. Although Officers B and C had previously made physical contact with the Honda during attempts to stop its progress, the Authority is of the view that Officer F's actions were a significant departure from the tactics employed by Officers B and C.
126. Other than seeking to immobilise the Honda by causing significant damage to it, it is unclear to the Authority what Officer F hoped to achieve by driving into it. The Honda was in the middle of an intersection with other vehicles present both times contact was made with it; and the driver of the Honda gave no indication that he intended to drive against the flow of traffic immediately prior to the first contact, although the Authority notes that he did do so after being hit.
127. Officer F's actions did not have the effect of causing the driver of the Honda to stop or leave the road and did not reduce the level of risk the driver of the Honda posed to other road users. Officer F's actions also presented an unjustified risk to the safety and wellbeing of the occupants of the Honda, a factor that should have been considered as part of any risk assessment completed prior to contact being made with it (see paragraph 167 for further information).
128. The evidence supports the Authority's view that the driver of the Honda, knowing that Police were prepared to resort to physical contact, became increasingly willing to take risky action that would prevent his apprehension (see paragraphs 45 and 48).

FINDINGS

Officer F was authorised to deploy road spikes.

Officer F's actions in twice driving into the Honda were not justified in the circumstances and posed an unwarranted risk to its occupants, as well as other road users.

Were the decisions to follow the Honda the wrong way along Cavendish Drive and then continue the pursuit on the opposite carriageway justified?

129. As detailed in paragraph 45, following the second impact by Officer F, the driver of the Honda righted the vehicle and continued driving along Cavendish Road in the wrong direction. JTOC footage shows that Officers I and J pursued the Honda in the wrong direction and that they were joined by another four Police cars. One of these cars was driven by Officer F and another by Officer D¹⁵. As detailed in paragraph 26, Officer E was a passenger in the unmarked car driven by Officer D.
130. Describing the moment the Honda continued the wrong way on Cavendish Drive, Officer F told the Authority: *"I stopped because I saw he went on to what I thought was the off-ramp going on the wrong side of the motorway and I knew that everyone says don't follow them on the wrong side of the motorway so I'd stopped there and was hesitant and then I saw the other cars going down and I think I realised that it wasn't a motorway at that point because then I've gone down"*.
131. When asked whether the decision to pursue the Honda the wrong way on Cavendish Drive was communicated to NorthComms, Officer F stated: *"at this point, you know, you can't get on the radio... if you try and talk and someone else happens to talk at the same time your radio goes, 'beep'"*.
132. No other Police unit involved in the pursuit notified NorthComms of events detailed in paragraph 48. It is therefore unknown whether the pursuit controller would have permitted the pursuit to continue in the circumstances (see also paragraphs 50 and 96).
133. When asked whether the pursuit should have been abandoned after the Honda went the wrong way on Cavendish Drive, Officer E told the Authority: *"Yeah, I mean that's our policy, as soon as it goes on the wrong side of the road, but given direction from [the pursuit controller] saying this guy needs to be stopped and so obviously everyone's doing what they thought was required to stop him"* (see also paragraph 107).
134. Aware that they were travelling the wrong way on Cavendish Drive, Officer E told the Authority: *"I said to [Officer D], 'you need to get off the motorway or go the right way', and he did."* Officer D told the Authority: *"I knew it was the wrong side of the road before I went on...but I thought the risk was just too high to let him get back onto the motorway...Ideally I*

¹⁵ The drivers of other vehicles have not been identified. See also footnotes 9 and 10.

would have liked to have stopped him before he got onto the motorway but he was too far ahead so...carefully went to the end of the road...to get on the correct side of the motorway”.

135. Officers D, E and G told the Authority that they continued the wrong way along the length of Cavendish Drive before joining the northbound carriageway of SH20 at the Puhinui Road intersection. They then became part of a procession of Police cars that shadowed the Honda for a distance of about 3km before it came to a stop behind residential properties on Skipton Street, Mangere East.
136. When asked about the abandonment of Police cars in the right hand lane of the northbound carriageway, Officer E told the Authority: *“there was hardly any traffic. It is obviously not the safest parking in the middle of a motorway but yeah, all our cars had lights and sirens and there was five or six of them along the inside lane, so looking back at it, you know, it may seem unsafe but at the time you'd like to think that people would be able to see the six cars' lights and sirens in front of you when you were pulled over.”* This view was shared by Officer D.
137. As noted in paragraph 54, Officer F left SH20 at the next exit before looping around, parking a short distance behind the rearmost stationary Police vehicle and activating a merge left sign.
138. Police should not have continued the pursuit on the wrong side of the road due to the significant risk this presented to all road users. Due to the driver of the Honda demonstrating increasingly erratic driving behaviour, the pursuit should have been abandoned as soon as it became apparent that he was prepared to take extreme steps to evade capture.
139. All officers appear to have become fixated on preventing the driver of the Honda from driving along the wrong side of the motorway without recognition of the fact that their own behaviour in pursuing was generating this risk.
140. By leaving Police cars in the right hand lane of the northbound carriageway of SH20, an additional risk to Police staff and other road users was created, a situation that would not have eventuated if the pursuit had been abandoned.

FINDINGS

Police should not have continued the pursuit on the wrong side of the road as this exposed the officers involved and other road users to unnecessary risk.

Officers and other road users were exposed to further unnecessary risk when Police cars were left in the right hand lane of the northbound carriageway of SH20.

ISSUE 7: DID POLICE MAKE REASONABLE EFFORTS TO IDENTIFY ALL OF THE OFFICERS INVOLVED IN THIS PURSUIT?

141. As detailed in paragraph 117, the drivers of two Police cars have not been identified despite extensive enquiries by Police and the Authority.

142. During the course of the Authority's investigation it became apparent that Police do not have an adequate or consistent system in place to ensure that they know who is driving a Police vehicle at any particular time. When officers first log on with a Police Communications Centre at the start of their shift, they are expected to assign a car registration to their call sign if they have been allocated a vehicle. The Authority has found that this process is not consistently adhered to and that supervisors do not enforce it. Additionally, keys to Police vehicles may also be passed between Police drivers either during the course of a shift or between shifts with no formal record of the handover being maintained.
143. In addition (and for the reasons outlined in paragraphs 52 and 118) officers without a current tasking (from either within or outside the local area) may gravitate towards a pursuit without notifying NorthComms of their intentions or presence. It is therefore possible for a Police unit to join a pursuit, undertake questionable driving behaviour and remain anonymous, immune from any employment or criminal sanctions.
144. When this pursuit was undertaken, NorthComms (and therefore the pursuit controller) did not have access to the CCTV footage captured by JTOC cameras. The DCC did have access to this footage (see footnote 4) but played no role in the oversight of the pursuit. It may also be that some of the occupants of the unidentified Police vehicles did not notify NorthComms that they were on duty. The Authority accepts that the pursuit controller was reliant upon information that was relayed by units involved in the pursuit and did not know how many units were involved. Therefore he had no reason to either question the number of cars involved or seek the identities of unknown drivers (see Recommendations at paragraph 160).

FINDING

While Police made efforts to identify the Police drivers involved, the Authority has established that existing Police processes to identify who is driving a Police vehicle at a particular time are inadequate.

Subsequent Police Action

145. As detailed in paragraph 77, Police Fleeing Driver policy has been amended since this incident and now acknowledges that a withdrawal by pursuing Police units may reduce any perceived pressure on a fleeing driver and enable the deployment of other tactical options (such as Tyre Deflation Devices).
146. The amended Fleeing Driver policy also states that, where a pursuit has been abandoned, only the pursuit controller can determine whether the fleeing driver will again be signalled to stop. The pursuit controller will only grant permission to commence a new pursuit if satisfied that the situation that existed at the time of abandonment has changed, resulting in a reduced level of risk to the public, Police and the fleeing driver.
147. According to Police: *“all staff that were involved in this incident received a copy of a “Lessons Learned” incident review document which identified breaches of the Fleeing Driver Policy and gave them guidance and expectations in relation to being involved in future pursuit incidents.”*

Conclusions

148. The Authority finds that the pursuit undertaken by Officer A (the first pursuit) was conducted in accordance with law and policy. Officer A exercised sound judgement in abandoning the pursuit when the Honda drove on the wrong side of the road.
149. The Authority notes that there was nothing remarkable about the Honda's manner of driving when it was seen by JTOC cameras a short time later. The Authority is of the view that the absence of visible Police vehicles at this time was a major contributing factor to this.
150. The Authority finds that in the period between the first and second pursuits, Officer B's presence encouraged the fleeing driver to travel in excess of the posted speed limit. Officer B should have signalled the driver of the Honda to stop as soon as practicable before seeking permission from NorthComms to recommence the pursuit. Officer B had no justification to undertake urgent duty driving at this time and should have stopped shadowing the Honda as soon as it went south on the northbound carriageway of SH1.
151. The Authority is of the view that Officer B's comments that Officer C had been rammed were misleading and caused the pursuit controller to form an incorrect assessment of the risk posed by the driver of the Honda.
152. Officer C also had no grounds to undertake urgent duty driving while following the Honda and should have signalled for it to stop as soon as practicable. However, he complied with the Fleeing Driver policy when commencing the second pursuit, and his actions in preventing the Honda from leaving SH1 were justified.
153. The Authority is of the view that, although their decision to abandon the pursuit was correct, either Officer B or C should have notified NorthComms of the abandonment of the second pursuit. Their failure to do so was contrary to the Fleeing Driver policy, as was their failure to pull over, come to a stop and turn off their vehicles' lights and sirens. In the absence of any abandonment by these officers, the pursuit controller should have abandoned the pursuit as soon as it became apparent that the Honda had re-joined SH1 against the flow of traffic. His failure to consider abandoning the pursuit when no information was provided by Officer B for three minutes was also a breach of the Fleeing Driver policy.
154. The Authority finds that Officer B should have sought approval from the pursuit controller before undertaking the third pursuit. The pursuit controller's direction to arrest the offending driver before he reached the motorway was also inappropriate and caused a number of pursuing units to engage in behaviour that did not comply with relevant policy and increased their, as well as others', exposure to risk. Officer B should also have abandoned the pursuit when it became clear that his attempts to stop the driver of the Honda driving the wrong way along the SH20 off-ramp had failed. The active participation of other Police units in the pursuit was also contrary to the Fleeing Driver policy and exposed the public, Police and the occupants of the Honda to unnecessary risk.

155. Consequently, the actions of Officers B, D and H (as well as those of individuals who have not been identified) in continuing to follow the Honda along the SH20 off-ramp were misguided.
156. The Authority is satisfied that Officer F had implied authority to deploy spikes in the vicinity of Cavendish Drive but that his actions in ramming the Honda were excessive and presented an unjustified risk to the occupants of the Honda. There was also no justification for Police to follow the Honda along the slip-road adjacent to the northbound carriageway of SH20 and this action exposed other road users and Police to unnecessary risk.
157. The Authority is also of the view that Officers B and C should have considered the potential impact of their presence behind the Honda and how this was likely to influence the fleeing driver's behaviour. The Authority acknowledges that the Fleeing Driver policy has since been amended to make this consideration explicit. However, even under the policy that existed at the time, neither the second nor third pursuits should have been commenced in the circumstances as they presented.

Recommendations

158. It was not possible to identify the drivers of some Police cars involved in the pursuit of the Honda (see paragraph 117).
159. Existing Police processes to identify who is driving a Police vehicle at any particular time are not adequate or consistent.
160. The Authority therefore recommends that the New Zealand Police introduce a process that ensures both drivers and passengers of Police vehicles are readily identifiable both during and subsequent to significant events, such as the one detailed in this report.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

8 December 2016

IPCA: 15-0470

Applicable Laws and Policies

FLEEING DRIVER POLICY AT THE TIME OF THIS INCIDENT¹⁶

161. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender”*.
162. Officers are required to carry out risk assessments (see paragraph 167) before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.
163. If the identity of the offender becomes known, the pursuit must be abandoned, unless there is an immediate threat to public or staff safety.
164. Following the direction to abandon pursuit, all participating Police cars must immediately acknowledge the direction to abandon pursuit, reduce speed, deactivate the Police cars warning lights and siren and stop as soon as it is safe to do so.
165. An abandoned pursuit must not be recommenced without the approval of the Pursuit Controller.
166. Approval to recommence will only be considered if:
- the situation has changed following abandonment; and
 - the risk assessment criteria indicates that the risks involved in the pursuit have reduced, so that the need to immediately apprehend the offender is no longer outweighed by the risks posed by recommencing the pursuit.
167. Risk assessment criteria that should be considered both prior to initiating and during a pursuit are summarised in this table:

Risk factors	Including...
Speed and manner of driving	<ul style="list-style-type: none">• what is the speed limit?• what is the manner of driving of the Honda? Is it deteriorating or remaining the same?
Occupant characteristics	<ul style="list-style-type: none">• is the offender known? Is there an immediate threat to public or staff safety?• what offences have been committed or suspected of being committed?

¹⁶ Police Fleeing Driver policy was updated in July 2016. Policy references in this report relate to the policy in place at the time of the incident in September 2015.

	<ul style="list-style-type: none"> • is it a stolen vehicle? • how many occupants in the vehicle? • how old are the occupants (observation only)? • what is the condition of the offender's vehicle (observation only)? • are the occupants armed?
Weather conditions	<ul style="list-style-type: none"> • what are the driving conditions like? • is it raining with slippery roads? • is it dawn or dusk with a chance of sun strike?
Environment	<ul style="list-style-type: none"> • what is the location of the pursuit? Is it a built-up area, or near a school? • what type of road is it? • what potential hazards are there in the area?
Traffic conditions	<ul style="list-style-type: none"> • what are the traffic conditions like? • what is the volume of traffic? Is it peak hour traffic? • are there pedestrians around? • what time of the day is the pursuit occurring?
Officer and vehicle capabilities	<ul style="list-style-type: none"> • is the driver an experienced officer? What is their PPDP classification? • what type of Police vehicle is involved? What is the vehicle classification? • is it a single-crewed unit? • do they have hands-free radio? • is a secondary unit available to take over pursuit commentary? • are non-constabulary persons in the Police vehicle?

168. After considering the factors detailed above, Police drivers should: "*determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *the occupants of [the] Police vehicle.*

169. *If there is no need to immediately apprehend the fleeing driver or the risks are too great, a pursuit must **not** be initiated, or should be abandoned."*

Criteria for abandoning a pursuit

170. "A pursuit must be abandoned when any of the following criteria apply:

- *an offender's identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle's location is no longer known*

- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn other road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*
- *there is a sustained loss of contact between the primary and/or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- *when the siren and/or warning lights fail to operate*
- *any of the risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver.”*

URGENT DUTY DRIVING

171. Further to what has already been discussed in this report, the overriding principle of Urgent Duty Driving policy is that: *“Employees must drive at an appropriate speed and manner and bear in mind that they:*

- *are individually legally responsible for their actions*
- *must prioritise public and police safety.*

No duty is so urgent that it requires the public or Police to be placed at unjustified risk.”

172. Amongst the factors that must be taken into consideration by Police drivers when deciding to commence or continue urgent duty driving are:

- *“time of the incident (is it in progress)*
- *nature and seriousness of the incident*
- *proximity of other units to the incident*
- *environment, e.g. weather, traffic volume, road type, speed limit and pedestrians etc*
- *driver classification, vehicle classification and vehicle passengers*
- *whether warning devices are activated or a ‘tactical approach’¹⁷ is being used.”*

173. Drivers and passengers of Police vehicles are required to constantly re-assess the situation with reference to the above factors, adjusting their response as necessary.

¹⁷ A ‘tactical approach’ refers to urgent duty driving without the activation of either warning lights and/or sirens.

174. Urgent Duty Driving policy also states that: *“Police must use flashing lights and siren at all times (continuously) while undertaking urgent duty driving unless a ‘tactical approach’ is used.”*

USE OF FORCE BY POLICE

175. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. Specifically, it provides that officers may use “such force as may be necessary” to overcome any force used in resisting the law enforcement process unless the process “can be carried out by reasonable means in a less violent manner.”
176. Section 48 of the Crimes Act 1961 states: “Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”
177. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties.
178. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
179. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).
180. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
181. The policy states that any force must be considered timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

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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