
Police dangerous driving during pursuit on Auckland motorway

INTRODUCTION

1. At 01.08am on 23 October 2017, Police were conducting speed checks on the North Western Motorway when they observed a Volkswagen Golf travelling at 133kph in an 80kph speed limit. Police began following the vehicle at increasing speeds to catch up to it, before initiating a formal pursuit by activating their lights and sirens and reaching speeds of up to 200kph.
2. The driver, Mr X, exited the motorway at the St Lukes Road off-ramp and shortly after lost control of the vehicle and struck a tree at high speed on St Lukes Road. There were five people in the vehicle. Mr X and two of the passengers were seriously injured. The other two passengers died in hospital a few hours after the incident.
3. 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.

BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
 5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.
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Summary of events

6. At 1am on 23 October 2017, Officers A and B were conducting speed checks on the North-Western Motorway (State Highway 16) city-bound shoulder near Great North Road, in a marked Police patrol car. The weather was fine, the roads were dry, and the street lights provided good visibility. Officer A was seated in the driver's seat and Officer B was standing outside the front passenger's door operating a speed detection device.
7. At 01.08am a Volkswagen Golf drove passed the patrol car and Officer B recorded its speed at 133kph in an 80kph limit. Due to the speed at which the vehicle was travelling, neither officer was able to note the vehicle registration or identify the driver, Mr X.
8. Officers A and B decided to stop the vehicle because according to Officer A:

"I believed the driver posed a real threat to other motorists and the general public and himself. The speed he was travelling was excessive and the potential for a high speed vehicle collision was a possibility."

Urgent duty driving

9. Officer B got into the patrol car and they accelerated onto the motorway to catch up to the Golf. They noted the Golf was already out of sight and they activated their blue and red lights to warn other road users that they were approaching.¹
10. At 01.08:52am Officer A radioed the Joint Transport Operating Centre (JTOC) and requested that they track the Golf as it sped along the motorway towards the city.² When they approached the Carrington Rd overbridge, Officer A activated the Police siren as he began to exceed the speed limit.
11. Officer A could see approximately one kilometre ahead but was unable to see the Golf. He estimated that he increased his speed to 180 kph along this stretch of road as he tried to catch up to it and said that there were sporadic small groups of traffic that were *"relatively easy to negotiate past"*.
12. JTOC advised Officers A and B that the vehicle was *"really flying"* and that Mr X was exiting the motorway at the Newton Road off-ramp. Officer A could see the Golf in the distance braking heavily as it passed a vehicle to the left on the off-ramp.
13. At the end of the off-ramp Mr X turned right into Newton Road, proceeding through a red light as he did so. Officer A had now closed the gap with the Golf to about 50 metres and slowed down as he followed the Golf through the intersection.
14. Despite reducing the distance between the patrol car and the Golf, Officers A and B were still unable to note its registration number or a description of Mr X, who did not appear to show

¹ Officer A was a Gold class driver authorised to engage in urgent duty driving and pursuits. Officer B was also a Gold class driver and in this instance was responsible for providing radio communications.

² The Joint Transport Operating Centre monitors Auckland city's traffic via CCTV. It assists with optimising traffic flow and providing information to emergency services about road traffic incidents.

any intention of stopping. Officer A said *“At this point I believe the driver of the Golf knew we were behind him and was now actively trying to evade us.”*

Notifying the pursuit

15. Mr X drove across the Newton Road overbridge, narrowly avoiding a collision with another motorist, before taking the on-ramp back onto the motorway, now heading in the opposite direction. It was at this stage that Officers A and B considered themselves to be in pursuit of the Golf because, according to Officer B, *“we were now close enough to the Golf that the driver would have clearly been able to see us signalling for him to stop.”*
16. Officer B informed the Police Northern Communications Centre (NorthComms) that they were now in pursuit of the Golf to which NorthComms warned: *“If there is any unjustified risk to any persons you are to abandon pursuit immediately. Acknowledge.”*
17. Officer B acknowledged this warning as he and Officer A observed Mr X pull away to about 500 metres ahead of them. Officer A said he was *“astounded by the acceleration of the Golf”* and he wondered if it might be stolen, or if the driver had outstanding arrest warrants or other reason not to stop.
18. Officer A once again lost sight of the Golf as it accelerated away. CCTV footage shows Mr X and the patrol car several hundred metres apart, navigating their way between traffic across the four lane highway.
19. While on this stretch of motorway and attempting to catch up to Mr X, Officer A looked at his speedometer and noted he was traveling at 200kph. Officer A told the Authority that he only travelled at this speed for a very short time before slowing down after being advised by JTOC that the Golf was taking the St Lukes off-ramp. Officers A and B could see the Golf braking in the distance as it approached the exit and once again passed a vehicle to the left on the off-ramp.
20. In reviewing the actions of Officers A and B as they attempted to catch up to Mr X on this stretch of the motorway (from the Newton Road on-ramp to the St Lukes Road off-ramp), the Police speed analysis estimates Officer A’s average speed to have been 192kph.

Crash

21. Police followed the Golf onto the St Lukes off-ramp, having slowed to approximately 80kph. At the end of the off-ramp the Golf turned left into St Lukes Road by which time the patrol had closed the gap to about 50 metres. Mr X drove along St Lukes Road before slowing down as he approached a vehicle in front and the road narrowed. He then accelerated in order to overtake the vehicle by pulling out to the right onto a grass median strip.
22. As Mr X pulled back onto the road he lost control of the Golf. The rear right side of the vehicle hit a tree on the median strip and ricocheted off, coming to a halt on the left hand side of the road. At the time of the impact, Officer A estimated Mr X was travelling at 70-80kph.

23. Officer B immediately advised NorthComms of the crash and requested an ambulance.

Post-crash

24. Police provided emergency first aid until the ambulance arrived. All five occupants of the vehicle were then taken to hospital. Mr X and two of the passengers sustained serious injuries. The other two passengers died from their injuries a few hours after being transported to hospital.
25. Mr X was subsequently charged with two counts of reckless driving causing injury and two counts of reckless driving causing death. He pleaded guilty on all charges and was sentenced to three years imprisonment.

Police investigation

26. Police obtained a legal opinion before deciding whether to initiate a criminal investigation into this incident, and in the light of that opinion decided that only a policy review was required.³
27. However, the subsequent policy review found that the speeds reached by the Police patrol car on the motorway were excessive. It could not *“find any justification to travel at a speed nearing 200km/hr in an 80km/hr zone”* and concluded that the risk to the public and Mr X outweighed the need to apprehend him.
28. Police also found that if Officers A and B had accurately communicated their speed and Mr X’s manner of driving, it is likely that NorthComms would have directed that the pursuit be abandoned.

³ There are three types of Police investigation: criminal, employment, and policy, practice and procedure.

THE AUTHORITY'S INVESTIGATION

29. As part of its investigation the Authority interviewed Officers A and B. The Authority also reviewed all the documentation, including CCTV footage and NorthComms audio and event chronology.
30. In assessing the conduct of the officers, the Authority took into account the law on speed and dangerous driving.
31. The Land Transport (Road User) Rule 2004, 5.1 (3)(a) states that a driver must not exceed the speed limit unless the vehicle is being used by an enforcement officer engaged in urgent duty driving and compliance with the speed limit would likely prevent the execution of the officer's duty.⁴
32. Notwithstanding the exemption that permits officers to exceed the speed limit, they have a duty of care to members of the public when doing so. That duty is enhanced as speed increases, because the risk to the public correspondingly increases: *Holmes v Police*.⁵ This is reflected in Police's Urgent Duty Driving policy.
33. In determining whether driving in excess of the speed limit constitutes the offence of dangerous driving under section 7 of the Land Transport Act 1998 (in respect of which the Police have no exemption), the courts have held that the speed has to be looked at in the context of all the circumstances. The necessary element of danger may be the result of speed, the difference between the actual and the authorised speed, visibility, the number and location of other users of the road and the physical attributes of the road and its condition. The greater the speed and the greater the difference between the actual and the authorised speed the more compelling will be the inference of danger.⁶

⁴ See paragraph 61.

⁵ *Holmes v Police*, High Court Auckland, CRI 2008-404-268, 23 February 2009.

⁶ *Broderick v Police, High Court Whangarei*, CRI 2008-488-000020, 10 July 2008; *Duncan v Kelly*, HC Dunedin, Holland J, AP56/88, 22 November 1988.

THE AUTHORITY'S FINDINGS

34. The Authority identified and considered the following issues:

- 1) Did Officer A comply with the Urgent Duty Driving policy?
- 2) Was Officer A's speed of driving appropriate in the circumstances?
- 3) Did the Police take appropriate action to review compliance with law and policy in relation to this incident?

Issue 1: Did Officer A comply with the Urgent Duty Driving policy?

35. On the night in question the weather was clear and dry, the road was a wide four lane highway with a speed limit of 80kph and although it was dark the street lights provided good visibility.

36. Officers A and B were positioned on State Highway 16 to enforce the speed limit on city bound traffic. During the course of their duties, the Police's speed radar detected the Golf travelling at 133kph in an 80kph zone. Officers A and B decided to stop the Golf because of its excessive speed.

37. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop as soon as practicable and provide their details.⁷ In accordance with section 114, they had the lawful authority, and reason, to signal Mr X to stop.

Urgent Duty Driving policy

38. Police policy states that officers must use red and blue flashing lights and sirens at all times, continuously,⁸ while undertaking urgent duty driving in accordance with the exemption for speeding available to them under section 5.1 of the Land Transport (Road User) Rule 2004. CCTV footage shows that Police activated their lights once they were moving, shortly before weaving in between traffic. They then travelled approximately one and a half kilometres before also activating their siren as they began to drive above the speed limit.

39. Police are required to continuously assess a situation as it develops, by considering the threat posed to Police and the public, exposure to harm, the necessity to respond and the most appropriate response.⁹

40. Police policy specifies that while an enforcement officer may breach the posted speed limit in the course of urgent duty driving, they must prioritise safety and "*no duty is so urgent that it requires the public or Police to be placed at unjustified risk.*"¹⁰

⁷ See paragraph 60.

⁸ See paragraph 65 for relevant Police policy.

⁹ See paragraph 70 for relevant Police policy.

¹⁰ See paragraph 67 for relevant Police policy.

41. Officer B said he considered requesting the assistance of the Police helicopter, Eagle, but he believed it would have taken some time to arrive. He was also unsure as to whether other Police units were available in the vicinity to lay road spikes.¹¹ Because they had not obtained the registration number of the Golf (to assist in making follow-up enquiries) he felt the best option was to continue trying to catch up to it.
42. The Authority accepts that Officer A was justified in engaging in urgent duty driving and that he complied with Urgent Duty Driving policy. However, the speed he reached was excessive, as discussed below.¹²

FINDING

Officer A was justified in engaging in urgent duty driving pursuant to Police policy.

Issue 2: Was Officer A's speed of driving appropriate in the circumstances?

43. The overriding principle of the Police fleeing driver policy is that *"public and staff safety takes precedence over the immediate apprehension of the offender"* and fleeing driver incidents must be managed in the safest possible manner.¹³
44. As Police re-entered the motorway on the Newton Road on-ramp, Mr X again accelerated until he was several hundred metres in front, during which time Officer A reached a speed of 200kph attempting to catch up. Officers A and B once again lost sight of the Golf along this stretch of motorway.
45. Officer A told the Authority that this speed was short-lived because Mr X slowed down to exit the St Luke's off-ramp. As he did so, Officers A and B were able to close the gap to a distance of about 50 metres on the St Lukes off-ramp. Officer A said the speed he was travelling was not sustainable and he would have abandoned the pursuit had Mr X continued on the motorway beyond the St Lukes exit.
46. Both Officers A and B told the Authority that they felt comfortable with the speed they were travelling. Officer B said that had he felt unsafe, he would have told Officer A to abandon the pursuit.

Assessment of Officer A's speed

47. The Authority notes that from where Police first detected the Golf, to shortly before it exited the Newton Road off-ramp, Officers A and B were unable to see the Golf or catch up to it owing to the speed it was travelling and its distance ahead. It was along this stretch of motorway that Officer A drove at speeds reaching 180kph.

¹¹ A tyre deflation device.

¹² See paragraphs 47-48.

¹³ See paragraph 68 for relevant Police policy.

48. While the Authority is satisfied that Officers A and B had sufficient grounds to initially engage in urgent duty driving in an attempt to catch up to and stop the Golf, it is of the view that Officers A and B failed to adequately consider the risk of increasing their speed up to 180kph. The Authority considers that driving at more than twice the speed limit to catch up to the Golf was dangerous, as it put Police and members of the public at a level of risk that was disproportionate to the offence Mr X was detected committing (driving at 133kph).
49. Subsequently, Officer A drove at speeds reaching 200kph from the Newton Road on-ramp and the St Luke's off-ramp, two and a half times the authorised limit, and his average speed over the two kilometre stretch was approximately 192kph.
50. CCTV footage shows Police driving across the four lane highway and manoeuvring around other vehicles. While traffic was relatively light, there was still a significant volume of traffic on a busy stretch of Auckland motorway.
51. Police policy states that unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the distance between the primary unit and the offending vehicle is too great.¹⁴ Despite Mr X's speed and the nature of his driving, Officers A and B remained a significant distance behind Mr X and were unable to see him or keep up with him in either direction of travel.
52. While the Authority is satisfied that it was appropriate to initiate a pursuit, once it became evident that Mr X was not going to stop for Police, and was in fact accelerating away from them at very high speed, Officers A and B should have abandoned the pursuit.
53. Officer A felt that he had sufficient training and experience in pursuits to feel comfortable driving at speeds reaching 200kph. Notwithstanding Officer A's confidence, the Authority considers that the speeds at which he travelled on this occasion were clearly unjustified and constituted dangerous driving. Indeed, it is the Authority's view that rarely, if ever, would driving on a public road at a speed of two and a half times the posted speed limit not constitute dangerous driving.

FINDINGS

The speed reached in an attempt to catch up to Mr X was not justified, was excessive and the pursuit should have been abandoned.

Officer A's speed constituted dangerous driving.

Issue 3: Did the Police take appropriate action to review compliance with law and policy in relation to this incident?

54. Police requested a legal opinion before deciding whether to initiate a criminal investigation into Officer A's driving behaviour. As noted above (paragraph 26), a decision was then taken that no such investigation was required.

¹⁴ See paragraph 77 for relevant Police policy.

55. The Authority is of the view that this determination was premature. Officer A's actions clearly pointed to the possibility of criminality. In such circumstances, it would normally be the case that the District Categorisation Committee would direct a criminal investigation, at the conclusion of which a legal opinion might be obtained. That did not happen here. Good practice would have been for the legal opinion to be obtained after all of the relevant factual information had been gathered. The result was that the possibility of a prosecution for dangerous (or even careless) driving was not considered from the outset, even though the subsequent Police policy review strongly implied that this should have been considered.

FINDING

Police should have initiated a criminal investigation into the driving behaviour of Officer A.

SUBSEQUENT POLICE ACTION

56. Officers A and B have completed refresher training in urgent duty driving and the Fleeing Driver policy.

CONCLUSIONS

57. The Authority has determined that the speed Officer A reached constituted dangerous driving. While Police were initially justified in engaging in urgent duty driving they did not consider the risk they posed by driving at such high speeds.
58. The Authority also found that:
- 1) The speed reached in an attempt to catch up to Mr X was not justified, was excessive and the pursuit should have been abandoned;
 - 2) Police should have initiated a criminal investigation into the driving behaviour of Officer A.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

8 November 2018

IPCA: 17-0843

Legislation

59. Section 7 of the Land Transport Act 1998 states that a person must not drive a motor vehicle at a speed or in a manner which, having regard to all the circumstances is or might be dangerous to the public or to the person.
60. Under section 114 of the Land Transport Act 1998 Police are empowered to stop vehicles for traffic enforcement purposes.
61. The Land Transport (Road User) Rule 2004, 5.1 states that drivers must not exceed speed limits. Rule 5.1(3) provides a defence for enforcement officers to drive at speed while engaging in urgent duty driving with activated lights and siren. However, this Rule does not permit careless, dangerous or reckless driving, or driving at a dangerous speed.

Urgent duty driving policy

62. Urgent duty driving is when an enforcement officer on duty is driving above the speed limit or the natural flow of traffic, and may not be complying with certain traffic rules when responding to a critical incident, gathering evidence of an alleged offence or apprehending a fleeing driver.
63. Enforcement officers must be able to justify their manner of driving taking into account all of the circumstances that existed at the time. An enforcement officer who is a passenger in the vehicle is responsible for operating the radio if communications are required.
64. The policy acknowledges that urgent duty driving poses risks to public and Police safety and is always subject to considerable scrutiny. The overarching principle is that public and police employee safety takes precedence over the necessity to undertake urgent duty driving.
65. While undertaking urgent duty driving, Police must use red and blue flashing lights and siren at all times, continuously, unless making a 'tactical approach'. Police must not rely on road users to take evasive action when warning lights and sirens are activated. They do not guarantee safety.
66. In addition, enforcement officers:
 - must drive at a speed and manner appropriate to the circumstances, and will use a risk based assessment
 - are individually legally responsible for their actions
 - must conduct urgent duty driving in the safest possible manner
67. No duty is so urgent that it requires the public or Police to be placed at unjustified risk.

Fleeing driver policy

68. The overriding principle of the Police fleeing driver policy is that: “Public and staff safety takes precedence over the immediate apprehension of the offender”.
69. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).
70. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:
 - a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
 - b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
 - c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
 - d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
71. The TENR risk assessment must weigh up:

“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”
72. During a pursuit, warning lights and siren must be simultaneously activated at all times. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
73. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so). They must advise Police Communications of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.
74. Police Communications transmits pursuit warning to all vehicles involved: “{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”
75. Officers are required to carry out risk assessments 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.

76. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
77. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if:
- a) the identity of the offender becomes known,
 - b) the distance between the primary unit and the offending vehicle is too great,
 - c) any of the risk assessment conditions change,
 - d) there is a sustained loss of contact between the primary units and the Communications Centre.

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 Colin Doherty.

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.

This report

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



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