

Speed reached by Police officer during Lower Hutt pursuit

OUTLINE OF EVENTS

1. On the evening of 14 June 2018, Officer A was conducting a vehicular patrol in Lower Hutt when he witnessed an altercation outside a liquor store. Officer A observed two people involved in the altercation run into Porutu Street. He witnessed one of them get into a vehicle which drove off at speed.
2. Officer A pursued the vehicle onto Cambridge Terrace, and reached speeds of up to 112kph in a 50kph zone. In Leighton Avenue, where it intersects with Awamutu Grove, the fleeing vehicle attempted to overtake a turning civilian vehicle and collided with it. The pursuit lasted approximately two minutes.
3. Officer A arrested the three occupants of the fleeing vehicle and the civilian driver was taken to hospital for treatment of minor injuries.
4. Police notified the Independent Police Conduct Authority, and the Authority conducted an independent investigation into the officer's actions, particularly the speed reached during the pursuit. This report sets out the results of that investigation and the Authority's findings.

THE AUTHORITY'S INVESTIGATION

5. As part of its investigation the Authority interviewed Officer A and the pursuit controller.¹ The Authority also reviewed all the documentation produced by the Police investigation team.

¹ 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 taken on by the shift commander in the Communications Centre.

6. The Authority identified and considered the following issues:

- 1) Was Officer A justified in commencing the pursuit?
- 2) Did Officer A comply with Police policy during the pursuit?
- 3) Were the speeds reached by Officer A justified?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A justified in commencing the pursuit?

7. At approximately 9.20pm on 14 June 2018, Officer A was patrolling the Lower Hutt area in a marked patrol car.² As he neared a liquor store on Waiwhetu Road, Officer A observed a group of people in the middle of the road who appeared to be fighting. He drove towards the group and saw a man fighting with two others and a box being ripped open with cans of alcohol falling to the ground. He believed it was highly likely he had come across a robbery.
8. Officer A saw two men run away from the incident. He followed them in his car into Porutu Street and observed one of the men jump into a parked Toyota that already had a driver at the wheel. The second man ran alongside the Toyota as it drove away, attempting to get into it. He failed to enter the car, which sped off with the door open. Officer A was unable to determine the men's age or physical appearance except that he estimated the age of the person who jumped into the Toyota to be approximately 18 to 20 years, based on his size and build.³ He was not aware at the time of this incident that it was a 15-year-old male.⁴
9. Officer A told the Authority he decided to follow the Toyota, as opposed to speak to the person left behind, for the following reasons:
 - The Toyota had "*multiple*" people in it;
 - He hoped the driver of the vehicle, Mr X, would stop when signalled to do so;
 - He did not know whether the person left behind was a witness or co-worker of the shop owner and whether another Police officer could pick up that person;
 - If the person left behind was involved in the incident but exercised their right to silence, he would have had no means to identify the vehicle or its occupants;
 - If he did not pursue the Toyota he would have limited or no other lines of enquiry.

² Officer A is a Gold class driver authorised to engage in urgent duty driving and pursuits.

³ The Authority has seen a photograph of this person, taken the night he was arrested, and accepts that the officer's estimation of his age was reasonable.

⁴ The driver was 24 years old and the other passenger was 23 years old.

10. Section 9 of the Search and Surveillance Act 2012 states that a constable may stop a vehicle without a warrant to arrest a person if they have reasonable grounds to believe a person has committed an offence punishable by imprisonment and believe that the person is in the vehicle. Robbery is an offence punishable by imprisonment.⁵ In accordance with section 9, Officer A had the lawful authority, and reason, to stop the vehicle.
11. Officer A activated the Police car's lights and siren to signal the Toyota to stop (the siren can be heard on the Police Central Communications Centre (CentComms) audio recording), in accordance with Police policy. However, Mr X failed to stop and accelerated away. Officer A advised CentComms that the Toyota had failed to stop and commenced a pursuit. He also advised the vehicle registration details. The Authority accepts that Officer A was justified in starting a pursuit because:
 - He believed a serious offence (a robbery) had just taken place;
 - He believed one or more people in the vehicle had been involved in the incident;
 - The identity of the offenders was unknown;
 - Apprehension of the person left behind might not have led to the identification of the other suspects.

FINDING ON ISSUE 1

Officer A was justified in signalling the Toyota to stop and in commencing the pursuit.

Issue 2: Did Officer A comply with Police policy during the pursuit?

12. Officer A notified CentComms that he was in pursuit of a vehicle which had failed to stop. CentComms gave the pursuit warning, which Officer A acknowledged, as per Police policy.⁶
13. Officer A advised CentComms that:
 - He was travelling south on Cambridge Terrace at 90kph in a 50kph zone;
 - He was pursuing a vehicle he believed to be involved in a robbery;
 - There was no oncoming traffic, Mr X remained in the correct lane and (apart from speed) his manner of driving was good.
14. Officer A provided CentComms with his reason for the pursuit and direction of travel. During the pursuit he provided updates on his speed and location, including that at one point he was travelling at 112kph in a 50kph zone. He then observed Mr X collide with another vehicle while he was providing CentComms with an update on his location.

⁵ See paragraphs 32-34.

⁶ See paragraph 41 for relevant Police policy.

15. The Authority is satisfied that the communication Officer A provided was generally adequate and complied with Police policy.⁷ However, CentComms should have notified Officer A that the vehicle had not been reported stolen. Whether or not the vehicle was stolen was a matter pertinent to Officer A's assessment of the need to continue the pursuit.
16. During interview with the Authority, Officer A said he consistently travelled 100 to 150 metres behind the Toyota, giving him time to react to the incident unfolding. He assessed the risks throughout the pursuit and considered the following factors:
- The eastern side of the road was residential. The western side of the road had a wide grass verge with no residential properties (but railway tracks);
 - The weather conditions were good and the roads were dry;
 - The roads were well lit, relatively straight, and wide enough to allow good traffic flow;
 - He could see most of the length of the road ahead of him and his view of intersections along Cambridge Terrace was uninterrupted;
 - There were very few parked cars and no pedestrians;
 - There were no vehicles entering Cambridge Terrace from side streets;
 - On no occasion was there a vehicle between Officer A and the Toyota;
 - Officer A did not recall any oncoming traffic;
 - Until the approach at the White Lines East intersection, Mr X's manner of driving did not cause concern; and
 - The pursuit itself was uneventful.
17. The Authority notes that Officer A usually works in a different policing area and was unfamiliar with Lower Hutt. However, Officer A considered the evolving environmental and behavioural factors during the pursuit which contributed to his risk assessment, irrespective of his familiarity with the road. The Authority is satisfied that Officer A conducted an appropriate ongoing risk assessment.⁸ The speeds reached by Officer A are discussed in Issue 3.

⁷ See paragraph 36 for relevant Police policy.

⁸ See paragraphs 37-38 for relevant Police policy.

Should Officer A have abandoned the pursuit?

18. Police policy states that unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later. As Officer A did not know whether the vehicle was stolen, he did not know who the occupants were. He had reasonable grounds to suspect they had committed a serious offence and, as discussed in paragraph 9, had limited alternative lines of enquiry. Officer A was justified in continuing the pursuit along Cambridge Terrace.
19. As Officer A approached a bend in the road he could see the intersection with White Lines East ahead. He saw the Toyota's brake lights illuminate 100 to 150 metres ahead and he too slowed down, although they continued to drive in excess of the speed limit.
20. As Officer A came around the corner he decided he needed to "pull out" as he estimated Mr X's speed to be approximately 70kph which he perceived to be too high to travel through an intersection. However, he did not have the opportunity to abandon the pursuit because the Toyota went through the intersection and collided with a civilian vehicle. In spite of this, Mr X continued.
21. Following the collision, Officer A decided to carry on and try to stop the Toyota as it was a "substantial crash" and he believed Mr X would come to a stop shortly after. He considered it better to pursue the vehicle until they stopped so he could apprehend them, rather than abandon and enable the offenders to flee when he was close by.
22. Officer A told the Authority that, had Mr X continued without hitting the car, he would have abandoned the pursuit at the intersection anyway due to the speed. He also said he would have abandoned the pursuit earlier had there been pedestrians, vehicles at junctions or other traffic on the road. However, for the reasons set out in paragraph 21, Officer A proceeded slowly through the intersection onto Leighton Avenue. He observed the Toyota come to a stop so pulled over behind it and arrested all three occupants.
23. The Authority is satisfied that Officer A continually assessed the situation as it unfolded. It accepts Officer A's reasoning for continuing the pursuit and continuing through the intersection to apprehend the occupants.

FINDING ON ISSUE 2

Officer A complied with Police policy during the pursuit.

CentComms should have notified Officer A that the vehicle had not been reported stolen.

Officer A was justified in continuing the pursuit.

Officer A was justified in continuing through the intersection to apprehend the occupants.

Issue 3: Were the speeds reached by Officer A justified?

24. Cambridge Terrace is a predominantly straight road, a single-lane carriageway with wide lanes, a hard shoulder, and a median strip for turning at intersections. Visibility from intersections onto Cambridge Terrace is also good in both directions. Residential properties are set back from the road by approximately 10 metres, largely behind fences, separated from the road by wide public footpaths and grass verges. There is a blind bend approximately 100 metres before the Cambridge Terrace intersection with White Lines East. This intersection is controlled with traffic lights and has extra lanes to accommodate turning vehicles. The posted speed limit for Cambridge Terrace is 50kph.
25. During the pursuit, Officer A reported reaching speeds of 112kph in a 50kph zone. He told the Authority that he could not estimate how long he travelled at this speed but he accelerated and decelerated quickly so believed it was brief.
26. Officer A also said he had no preconceived idea of a speed that would have been too fast to continue but was certain he was not travelling at 112kph when approaching the intersection with White Lines East. He told the Authority that although he does not know the area well, he knows it well enough to be aware that there is a set of traffic lights at the intersection and believed he was slowing down from the Guthrie Street intersection, approximately 750m before.
27. Calculations of Officer A's average speed indicate a range from 65kph to 90kph.⁹ Given the total distance of the pursuit and the time within which the pursuit concluded (approximately two minutes), the Authority accepts that, while Officer A reports reaching a speed of 112kph, it would not have been possible for Officer A to have maintained this speed for a prolonged period and his general speed would have been lower.
28. Nonetheless, as the Authority has previously stated, driving at substantially more than twice the posted speed limit will almost always constitute dangerous driving. However, in the specific circumstances of this pursuit, the risks associated with travelling at high speed were mitigated by several factors, including Officer A's continual risk assessment (as set out in paragraph 16) and the limited time Officer A maintained a speed of 112kph.
29. Furthermore, Officer A has been driving in his capacity as a Police officer for 19 years and has completed advanced driver training, advanced braking and advanced driving skills. Officer A is also a qualified civilian driving instructor (and has been for five to six years). As part of this role, he teaches people about hazard perception and considers himself aware of hazards on the road.

⁹ Depending on the variables of the exact start and finish point of the pursuit, the total distance, and time.

30. The Authority is therefore satisfied that in the specific circumstances of this pursuit, the speed Officer A reached was justified.

FINDING ON ISSUE 3

Officer A's speed was justified in the circumstances.

CONCLUSIONS

31. The Authority has determined that the pursuit was properly commenced and conducted safely and in accordance with the law and Police policy. The speed Officer A reached was justified in the circumstances. However, CentComms should have notified Officer A that the vehicle had not been reported stolen.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

25 July 2019

IPCA: 17-2525

Law

32. Section 9 of the Search and Surveillance Act 2012 states that a constable may stop a vehicle without a warrant to arrest a person if they have reasonable grounds to believe a person has committed an offence punishable by imprisonment and believe that the person is in the vehicle.
33. Section 66 of the Crimes Act 1961 states that everyone is a party to, and guilty of, an offence who actually commits the offence or abets any person in the commission of the offence.
34. Section 234 of the Crimes Act 1961 states that robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen. Robbery is an offence punishable by a term of imprisonment not exceeding 10 years.

Fleeing driver policy

35. The overriding principle of the Police fleeing driver policy is that: “Public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver”.
36. 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).
37. 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.

38. 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.”
39. 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.
40. 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.
41. 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”
42. 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 car.
43. 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.
44. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to public or Police, and they can be apprehended later.
45. Officers who decide to abandon a pursuit must notify NorthComms and immediately reduce their speed to increase the distance between the fleeing vehicle and their own. They should deactivate their lights and siren once below the posted speed limit and stop as soon as it is safe to do so.

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 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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