

Pursuit in Christchurch leading to fatality not justified

OUTLINE OF EVENTS

1. Just before 4am on Tuesday 22 October 2019 a police patrol was travelling along Main North Road in Christchurch and saw a Toyota Caldina stop at the intersection with Grassmere Street. The officers were suspicious of the car given the time of morning and the fact that there were five occupants. The patrol turned around to get the car registration and the driver of the Toyota, Mr Z, drove past the patrol. The officers began following the Toyota, which had accelerated away and within 300 metres passed a van on the inside bus lane. The driver of the Police car, Officer A, signalled the driver to stop by activating lights and siren and when he failed to stop, commenced a pursuit.
2. The passenger in the Police car, Officer B, notified the Communications Centre (Comms) of the pursuit and the dispatcher acknowledged. Officer C heard the pursuit over the radio and prepared to lay road spikes on Papanui Road, however the road spikes malfunctioned.
3. The pursuit lasted for about 4 minutes 30 seconds, covering 7.7 kilometres, and the fleeing driver drove through eight controlled intersections on red lights. The pursuit ended when the fleeing driver drove through a red light at the intersection of Glandovey and Idris Roads and collided with another car, killing the driver and sole occupant of that car, Mr Kenneth McCaul.
4. Mr Z, the driver of the fleeing vehicle, is currently serving a sentence for manslaughter and reckless driving causing injury, the latter in relation to one of the occupants of the fleeing car. The Police Serious Crash Unit investigated the incident. Police are now conducting an employment investigation and a review of the initial criminal investigation.

THE AUTHORITY'S INVESTIGATION

5. The Authority has interviewed 10 Police employees in respect of this incident, including the officers involved on the ground, those involved in Comms and those working in the Serious Crash Unit. The Authority has reviewed the Police investigations, including those of the Serious Crash Unit.
6. Understanding the accuracy and synchronisation of the CCTV cameras in Christchurch was important to the Authority's investigation because it relied on data from the cameras when calculating the speeds during the pursuit. For this reason, the Authority consulted with a CCTV camera systems engineer to get a better understanding of their operation. The Authority is satisfied that the camera evidence can be relied on to portray an accurate record of the time it took the fleeing Toyota and the Police car to travel between cameras throughout the pursuit. We acknowledge that the average speeds that we have calculated are estimates only, but they are indicative of speeds travelled.
7. The methodology we used to calculate the average speeds referred to in this report is at Appendix 1.
8. The Authority identified and considered the following issues:
 - 1) Were Police justified in initiating the pursuit?
 - 2) Did Police comply with the fleeing driver policy?
 - 3) Did the deployment of road spikes comply with Police policy?
 - 4) The effectiveness of control and command during the pursuit
 - 5) Police representation of the incident in the media

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in initiating the pursuit?

Reason for signaling Toyota to stop

9. Officers A and B told the Authority that when they saw the Toyota Caldina stopped at the intersection of Main North Road and Grassmere Street in Papanui they were suspicious because of the early hour of the morning and the number of people in the car. This was the reason the Police car commenced a U-turn to record the registration of the car. After they did this, the Toyota, which had been signalling to turn right, instead indicated left and drove past the Police car.
10. As Officer A completed her U-turn, the Toyota accelerated away and within 300 metres passed a van on the inside bus lane on Main North Road. Officers A and B estimated that the Toyota

was travelling at about 80 kph in a 50kph zone. When they started following the car, the officers said that they could see there were five occupants making them suspicious that the car had been stolen.

11. Officer B told the Authority:

So initially when we've seen the vehicle I thought it was suspicious. It was indicating right. There were five people in the car. Then it changed and it turned left...toward us. So what made me suspect that it might be stolen as well, is we've got a lot of people in a car, it's changing its direction and it's 4am with a lot of people in there. Given the dangerous driving as well as what I'd seen it just kind of made me suspect that actually his vehicle's probably stolen as well.

12. Both the officers told the Authority that they felt they needed to stop the driver of the Toyota because of his dangerous driving in respect of speed and under-taking the van.¹ Officer A also said she would have conducted an excess breath alcohol test of the driver had he stopped when signalled.

13. Officer A activated her lights and siren after about 7 seconds of following the Toyota. The driver of the van that the Toyota passed when driving in the bus lane told the Authority that once the Police car activated its lights the Toyota “took off pretty soon after the mall becomes Papanui Road, takes a left-hand turn and they were gone into the distance very, very quickly”.

14. Police have a power under section 114 of the Land Transport Act 1998 to stop a car and speak to the driver for the purpose of enforcing or administering the Act. Officer A acted on that power and signalled for the driver of the Toyota (Mr Z) to stop because of the manner of his driving. He failed to stop and Officer A then started to pursue the Toyota.

Reason for commencing pursuit

15. Police policy requires that before pursuing a vehicle, officers conduct a risk assessment under the TENR framework.² Officers must consider the threat posed by the person or people they are pursuing, the necessity of responding, the exposure of Police and members of the public, and therefore the appropriate response in those circumstances. Policy states that the fact that a fleeing driver is fleeing does not in itself justify a pursuit. A pursuit should only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing.

16. Officers A and B both stated that the reason they decided to pursue the Toyota was its speed, which they estimated to be about 80kph in a 50kph zone, combined with its decision to pass the van by driving into the left-hand bus lane. Officer B told the Authority that while he always considers the age of the occupants of a fleeing vehicle when deciding whether to commence a pursuit, here it was not a factor because he could not see how old the Toyota's occupants were.

¹ The Toyota was allowed to be in the bus lane because the lane was only designated as such between 7.00am and 9.00pm.

² 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.

17. Officer A described the exposure as being the possibility of people delivering newspapers at that time of morning, for whom a car passing on the left-hand side could pose a danger. The Authority does not accept that this exposure constituted any more than a usual risk of which motorists must be aware.
18. Officer A signalled the Toyota to stop as it was entering the bus lane. The pursuit had commenced by the time the Toyota reached the end of the bus lane, about 150 metres further along. Because the incident occurred at 4am the bus lane was not operating, so cars were legally able to travel in that lane. It is legal to pass a car on the left where there are two lanes travelling in the same direction, so here it was legal for the Toyota to pass the van on the left. After the bus lane had ended and as the Police car was passing the Papanui Police station, Officer B gave the Toyota's registration over the radio.
19. Under Police policy the risk assessment when starting and continuing a pursuit must balance 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.
20. Officer B stated that they were concerned about the exposure of the public, occupants and Police to potential harm from the speeding Toyota. The Authority's view is that the threat posed to those groups by the fleeing driver before the pursuit started was lower than that posed by the conduct of the pursuit. Mr Z's only offence before being signalled to stop had been to travel at approximately 80kph with good lighting and no traffic apart from the van. He did this once he knew Police were following him. He then failed to stop, but Police policy is very clear that failing to stop is not of itself a reason to pursue.
21. While Officers A and B told the Authority that their reason for commencing the pursuit was the Toyota's dangerous driving, both officers mentioned their suspicion of a car driving around at that time of day with that many occupants in it. They both said that even once Comms told them that the Toyota was not reported as stolen, their experience told them that it might be. Likewise, as covered in paragraph 74, the pursuit controller was suspicious about what the car might have been involved in, even though there was no evidence of a link to car theft or aggravated robbery.³ This suggests that in assessing whether the threat was sufficient to justify the commencement or continuation of the pursuit, the officers were basing their judgment on little more than vague suspicion. Their decision to run the risks entailed by this pursuit was at odds with the risk-averse approach endorsed by both the Authority and Police.⁴
22. The Authority's view is therefore that Police were not justified in commencing the pursuit. Once they could see the Toyota's registration and it had failed to stop, they should have instead traced the car back to its registered owner to make subsequent inquiries. In this case, the registered owner was Mr Z.

³ During a pursuit, the shift commander in the Communications Centre takes on the role of pursuit controller, and responsibility for supervising a pursuit and coordinating the overall tactical response.

⁴ New Zealand Police and Independent Police Conduct Authority "Fleeing Drivers in New Zealand a collaborative review of events, practices and procedures", March 2019

FINDING ON ISSUE 1

Police were justified in signalling the Toyota to stop. They were not justified in commencing the pursuit.

Issue 2: Did Police comply with fleeing driver policy during the pursuit?

Pursuit progress

23. By 90 seconds into the pursuit Comms had told Officers A and B that the car was “*not flagged [in the database] as stolen at this stage*”.
24. The pursuit continued down Papanui Road. Officer C laid spikes between Merivale Mall and Bealey Avenue but these failed, as covered in paragraphs 56 to 66.
25. Shortly after, the Toyota went around a car stopped at a red light at the intersection of Papanui Road and Bealey Avenue. It, and the pursuing Police car, then went through the red light and continued along Victoria Street, a 30kph zone, toward the CBD. Officer B notified Comms that they had passed through this red light.
26. As it drove along Victoria Street, the Toyota indicated to turn right into Salisbury Road. It did not turn, however, and instead continued down Victoria Street through another red light.
27. The pursuit then passed through another red light at the intersection of Victoria and Durham streets. From Bealey Avenue to this point the Pursuit travelled at speed through a 30kph zone and the Police car drove the last 300 metres of this segment over three times faster than the speed limit.
28. The Toyota passed through a fourth red light at the intersection of Kilmore and Montreal Streets. At the intersection of Kilmore Street and Park Terrace the pursuit passed through a fifth red light. Here, a member of the public had to brake close to the intersection on a green signal to avoid colliding with the Toyota as it passed through the red light.
29. The Toyota continued through a sixth red light at the intersection of Park Terrace and Harper Avenue, still pursued by the Police car. The Toyota then overtook a taxi along Rossall Street by passing slightly onto the median strip, although it did not go onto the wrong side of the road. The pursuit then turned left into Glandovey Road by driving through a seventh red light. The final red light that the Toyota passed through was at the intersection of Glandovey Road and Idris Road, where it collided with the car of Mr Kenneth McCaul. Police called an ambulance to take Mr McCaul to hospital, but he did not survive his injuries. One of the occupants of the Toyota suffered serious physical injuries and the others suffered minor to moderate injuries.

Driving in the pursuit

30. The Authority’s own calculations, using distance travelled and times taken from CCTV cameras, estimated that the average speed during the pursuit was over 100kph, through 50kph and 30kph

zones.⁵ A breakdown of the average speeds of the Police car and fleeing Toyota through different segments of the pursuit is contained in tables at paragraph 116.

31. Officer B could not provide the Authority with his estimate of the average speed but said that he would be surprised if the average speed had been around 100kph, while Officer A estimated the average speed to be about 90kph, which was closer to the reality.
32. The driver and three occupants of the car estimated top speeds of between 115kph and 140kph and one of the passengers estimated that the speed was 120kph the whole pursuit. We acknowledge that the Toyota's speeds fluctuated, as illustrated in the tables at paragraph 116.
33. We have estimated that during one section of the pursuit speeds averaged as high as 137kph in a 50kph zone and at another point 100kph in a 30kph zone.
34. One of the fastest parts of the pursuit appears to have been over the last stretch on Glandovey Road between Rossall Street and Idris Road. Officer B told the Authority that after the Toyota crossed over the railway tracks the driver's behaviour suddenly changed and the car sped away. Officer F from the Police Serious Crash Unit conducted the scene examination at the intersection of Glandovey Road and Idris Road. As part of that examination he estimated that the Toyota's speed just before that intersection was approximately 127kph, and 116kph when it collided with Mr McCaul's car.
35. As the description at paragraphs 23 to 29 shows, the Toyota drove through seven red lights before the crash. There were other cars at two of these intersections. Officers A and B both told the Authority that the Toyota slowed down for intersections, going through the red lights as safely as it is possible to go through a red light. They described how the driver would then accelerate and speed along straight sections between intersections.
36. Officers A and B also told the Authority that compared to other fleeing drivers they had witnessed, Mr Z drove relatively cautiously. Officer A described the driving in this way:

“the vehicle's manner of driving apart from being at a high speed it stayed within its lanes, it wasn't doing stupid things. Like a lot of them will turn their headlights off which obviously increases the danger that much more. Wasn't on the wrong side of the road, wasn't even, like, weaving in its lane or anything stupid like that. Wasn't slamming its brakes on and starting up again or you know so obviously it was driving at a dangerous speed. But, in terms of its manner of driving compared to... the other pursuits was reasonably good.”
37. The pursuing officers said that Mr Z indicated to turn the wrong way down a one-way street but then changed his mind, presumably when he realised it was one-way. Officer B told the Authority that indicated *“this person isn't a reckless driver”*.

Calling the pursuit

38. Police policy requires that the passenger in the lead vehicle, in this case Officer B, undertake communications with Comms. Officer B immediately notified Comms that the Toyota was

⁵ We explain the method we used to calculate these speeds at Appendix 2.

driving dangerously, it had failed to stop, and they suspected the car was probably stolen. Comms gave the pursuit warning required by policy, and Officer B acknowledged it. Officer B then maintained a regular commentary reporting the progress of the pursuit throughout the journey.

39. Officer B told the Authority:

"I mean I was calling it as I saw it, calling all the red lights, calling the speed as best I could. I mean we were back and forth yoyoing between – you know Officer A was slowing quite significantly for those red lights".

40. Officer B reported the speed of the pursuit 14 times. The highest speed he reported was 90kph and the lowest was 40kph. The average speed he reported was 70kph. Officer B only reported a speed of 90kph once, and yet the average speed of the entire pursuit was over 100kph. Given that speeds, particularly through red lights, were often significantly lower, this average speed suggests that a substantial portion of the pursuit was driven at speeds well over 100kph, and yet Officer B did not report anything above 90kph.
41. Officer B called *"braking"* over the Police radio as the Toyota slowed to pass through various intersections. The Toyota went through seven red lights, before the last fatal intersection, and Officer B called four of these over the Police radio. Officer B also reported that there was not much traffic on the roads but at two of the red-light intersections before the fatal collision, Police were aware of another vehicle by the time they passed through.
42. The Authority acknowledges the high cognitive workload of the passenger in the lead vehicle in a pursuit, and that time pressures may not allow for all aspects of a pursuit to be communicated. Officer B explained to the Authority that during the pursuit he was doing a number of tasks, including receiving information from Comms and reporting what he was observing. The dispatcher in Comms told the Authority that in her extensive experience in dealing with pursuits it becomes apparent to her when there may be an under-reporting of actual speed because she can hear the Police car engine revving very high, which is an indication of excessive speed. She did not hear that noise during this incident and commented that *"the car is calling it well. They were calm. To me they weren't too excited by it all"*.
43. The Authority's view is that although Officer B appears to have reported speeds that were accurate at the time he called them, he did not inform Comms of the high speeds reached. The result was that his commentary did not give an accurate reflection of the pursuit. The pursuit controller in Comms relies on accurate speed and red light information in deciding whether to continue or abandon a pursuit. Officers A and B must have been aware of the very high speeds reached, given that occupants of the Toyota estimated top speeds well over 100kph and Officer A told the Authority that she drove *"just over 110"* to catch up after the attempted spiking.

Should the pursuit have been abandoned?

44. Under Police policy, the decision to commence, continue or abandon a pursuit must be continually assessed and reassessed in accordance with the Police risk assessment tool. The lead driver, passenger, pursuit controller or field supervisor can order the pursuit to be abandoned if

they believe the risk to the public, Police and/or the driver outweighs the seriousness of the offence and the necessity of immediate apprehension.

45. Officer B accepted that he thought the way the Toyota went through the major intersection of Papanui Road and Bealey Avenue was dangerous. The experienced dispatcher in Comms told the Authority that she did *“half expect it to be called off at that first red light. I remember looking up thinking that it would be called off because previous bosses have called them off very quickly at that red, first red light.”* She also said that it is very uncommon for a pursuit in Christchurch to travel through so many red lights without the pursuit being called off.
46. The Authority questioned the dispatcher about whether she felt that she was in a position to call the pursuit off, given her experience relative to the pursuit controller, who was quite new to the role. She said that she did not feel empowered to do so at the time, as she had always looked to the pursuit controller to abandon pursuits in situations like this.
47. Officer D told the Authority that he did not abandon the pursuit after the red light at Bealey Avenue because, although he had thought it was a dangerous intersection to go through on a red light, once the pursuit had passed through it there was no need to abandon.
48. Officers A and B both told the Authority that they would not hesitate to call a pursuit off if they felt that it was dangerous, but on this occasion the Toyota’s driving was such that they felt it was safe to continue, despite the speed and number of red lights the pursuit passed through. They both said that if Mr Z had switched off his lights, driven on the wrong side of the road or driven the wrong way up a one-way street they would have abandoned the pursuit without hesitation. Officer B explained the following in weighing up whether the danger of driving through several red lights outweighed the danger of allowing the Toyota to continue:

“So definitely appreciate if I was stopping him for a speeding infringement or a broken tail light well there’s no need to continue a pursuit at all. The risk pursuing him far exceeds what we’re trying to stop him for, but this vehicle was travelling dangerously and continued to travel dangerously and so unless we stop that vehicle it was going to keep driving dangerously and place members of the public and the passengers at risk.”
49. On the one hand, the officers justified continuing the pursuit because of Mr Z’s relatively safe manner of driving and on the other, justified the need to continue the pursuit by reference to Mr Z’s dangerous manner of driving. The fact that Mr Z was driving “safely” relative to many fleeing drivers the officers had seen should not have been a reason of itself to continue to pursuit. Furthermore, this assessment by Officers A and B is at odds with that of the dispatcher (with which the Authority agrees) that most pursuits would have been abandoned much earlier. The pursuit was reaching high speeds and passing through numerous red lights. The Toyota was driving dangerously.
50. Police fleeing driver policy states that if a fleeing driver was not driving in a dangerous or reckless manner prior to being signalled to stop, but is now, the officer must determine as part of their risk assessment if they should continue to pursue the fleeing driver due to the potential impact of their presence.

51. During the pursuit the Toyota drove through seven red lights before the intersection where the fatal crash occurred, and the Police car reached speeds up to three times the posted limit in the Christchurch CBD in order to keep up with it.
52. Officers A and B both told the Authority that if Police had abandoned the pursuit the Toyota would have continued to drive in the same manner, at speed and through red lights. Officer A said that she had seen Eagle footage of a previous pursuit where the fleeing driver continued to drive recklessly even once Police cars had stopped pursuing. Officer B said that *“from previous pursuits I’ve watched them carry on and do stupid stuff”*.
53. Their logic in reaching this opinion appears flawed to the Authority. As outlined in paragraphs 35 to 37 both officers went to great length to distinguish this fleeing driver from others they had seen, noting his relatively cautious approach to intersections, indicating, staying on the correct side of the road, reducing speed through the central business district and not travelling the wrong way down one way streets. The Authority therefore does not find it reasonable for them to have predicted Mr Z’s possible post-abandonment driving by reference to other fleeing drivers when they perceived that his driving during the pursuit was very different from many other fleeing drivers.
54. The Authority believes that at various points throughout the pursuit, the patrol car was travelling very close behind the fleeing driver at high speed. This observation is supported by CCTV footage from intersections the pursuit passed through, in which the Police car was only about one second behind the fleeing Toyota at some intersections.⁶ The evidence of two of the occupants of the Toyota who Police interviewed corroborates this. For example, Mr Y, a backseat passenger in the Toyota, when asked by Police how close the Police car was behind them, answered *“like two metres...they were like right up our arses”*. Mr X, another rear seat passenger when asked the same question by Police also noted how close behind the Police were. The driver, Mr Z, also told Police that, as he was approaching the intersection where the collision occurred, he saw that the Police were still behind him.
55. Applying the Police policy set out in paragraphs 15 and 47, the Authority finds that the risk of pursuing was greater than the seriousness of offence before the pursuit started, and once the Toyota increased its speed along Papanui Road, and especially once it passed through the first red light, this balance tipped even further in favour of abandoning the pursuit. Where the initial offence was speeding, the risk to the public, ultimately and tragically borne out, of travelling at speed through multiple red lights (including two where other motorists were present) was without question greater than the risk of letting the Toyota go and making inquiries to locate the registered owner afterwards.

⁶ The table at paragraph 116 illustrates this.

FINDINGS ON ISSUE 2

Police followed the correct procedures when commencing the pursuit. However, Officer B's commentary failed to reflect accurately the pursuit's progress. This hindered the ability of the pursuit controller to make a considered risk assessment.

Police should have abandoned the pursuit as soon as the Toyota increased its speed on Papanui Road, and certainly when it drove through the first red light.

Issue 3: Did the deployment of a tyre deflation device (spikes) comply with Police policy?

56. Officer C had been listening to the Police radio and knew:

- a pursuit was underway along Papanui Road;
- the vehicle had failed to stop and was driving dangerously; and
- the description and registration number of the fleeing vehicle.

57. He drove to Papanui Road, parked between Merivale Mall and Bealey Avenue and prepared to deploy spikes.⁷ As the Toyota approached, he pulled the rope to extend the spikes in front of the car, but it malfunctioned when the rope detached from the spikes and he watched the Toyota and the lead police unit (Officers A and B) pass by.

Legal grounds for deploying spikes

58. The legal ground for Police deployment of spikes is section 39 of the Crimes Act 1961, which provides for law enforcement officers to use reasonable force in the execution of their duties such as arrest. 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.*"

59. The Authority finds Officer C was justified in deploying spikes under section 39 because:

- he was aware the Toyota had been driving dangerously and failed to stop;
- there were no other immediate and less dangerous means available to stop the Toyota;
- his actions were proportionate to the threat the Toyota posed to the Police and public.

⁷ Tyre deflation devices, are an approved Police tool used by officers to deflate the tyres of fleeing vehicles. They are essentially an extendable cord with spikes embedded at regular intervals along its length. So as not to cause the spiked vehicle to immediately lose control, the spikes' construction ensures a slow but controlled rate of tyre deflation. This controlled deflation increasingly affects a vehicle's handling characteristics and traction and should force a fleeing driver to slowly reduce the vehicle's speed. When the tyre(s) are completely deflated, the vehicle can continue with compromised handling. At this point, the tyre will begin to heat and shred, leaving the fleeing vehicle operating only on its rim.

Police policy for deploying spikes

60. The overriding principle of Police policy when deploying road spikes is that public and Police safety takes precedence over immediate apprehension of the offender. Policy provides that they can be deployed where no other, less dangerous means of stopping a vehicle is reasonably available, and where they can be deployed without unjustified risk to any person. Prior to deployment of spikes, officers should advise Comms of the intended deployment location. However, deployment can be self-authorized if a TENR risk assessment has indicated that an immediate response is justified and prior approval from the pursuit controller cannot be obtained.⁸
61. Police policy requires that when Police deploy road spikes by pulling them across the road as Officer C did here, they are required to wear high visibility clothing. Officer C failed to do so, in breach of Policy.
62. Officer C told the Authority that he did not ask for permission because he had very limited time to drive to Papanui and position himself before the fleeing driver passed by. He also explained that he did not want to use the Police radio to ask for permission because he would have risked missing valuable information about the pursuit, given that only one person can use the radio channel at a time. The Authority considers that a desire to avoid using the radio is not a valid reason for failing to seek permission to deploy spikes. Where time permits, seeking permission keeps the pursuit controller aware of what is happening in the pursuit and also alerts officers in the pursuing cars to the possibility of spikes ahead. Both of these reasons contribute to the safety of the public and Police in a pursuit.
63. However, the Authority accepts that in this instance Officer C had very limited time to position himself to lay the spikes, given the pursuit had only just commenced. It was therefore reasonable that his TENR risk assessment justified an immediate response.
64. Officer C told the Authority that he discovered afterwards that the road spikes malfunctioned because a chain link screw fastener came undone, separating the rope from the spikes. He said that he normally did pre-operations checks on road spikes at the start of his shift, opening the case that the road spikes are kept in and visually confirming that the rope was present. He did not do this check on that day but said that even if he had done, he would not have known to check that the chain link screw was tight.
65. Police policy on tyre deflation devices does not contain any specific requirement to conduct checks of the serviceability of road spikes at the start of shifts. Officer C therefore did not breach policy in failing to do so.
66. Police policy requires officers to submit a Tyre Deflation Device report after they have deployed spikes. Officer D did not do this and told us that because he did not successfully deploy the spikes, he did not think the report was required.

⁸ The relevant Police policy is laid out at paragraph 133.

67. We accept that Police policy is ambiguous on this point because while it requires a report to be submitted when spikes are “*deployed*”, it is not clear whether this would cover this situation where the spikes failed to deploy as designed. Police’s view is that reports should be submitted whenever there is a deployment of spikes, or an *attempted* deployment. The reports are a mechanism for gathering important data on the effectiveness of spikes, including when they fail, so such failures can be prevented in the future. We support a change of wording in the Policy to make it clear that attempted deployments must also be reported.
68. Police advise the problem that caused the spikes to malfunction on this occasion has been rectified, with dual, heavy duty split rings replacing the carabiners which connect the pull rope to the spikes on all sets of spikes nationally.

FINDINGS ON ISSUE 3

Officer C’s failure to wear high visibility clothing was against Police policy.

Officer C was justified in self-authorising the deployment of spikes because he was in position very early in the pursuit route so did not have time to request permission from the pursuit controller.

Issue 4: The effectiveness of control and command during the pursuit

69. For the duration of the incident, Officer D was the shift commander at Comms and therefore responsible for managing the incident as the pursuit controller. Under Police ‘Fleeing driver’ policy the pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. Officer D was listening to the radio from at least before the Toyota passed through the first red light at Bealey Avenue, although he was not able to view camera footage until the pursuit was on Park Terrace.
70. The pursuit controller was silent throughout the pursuit and no instructions or identifiable plan to bring the pursuit to a conclusion were communicated to staff on the ground. He was not aware of the attempted deployment of spikes or the location of other units and did not give any commands over the radio to deploy staff. As detailed in paragraphs 38 to 43 Officer B was responsible for giving regular commentary throughout the pursuit, and there were significant gaps in the information he was providing, specifically in not calling every red light the pursuit passed through and not calling the higher speeds that the pursuit reached. The result was that the pursuit controller was basing his risk assessment on whether to allow the pursuit to continue on an incomplete picture.
71. Officer D told the Authority that he was comfortable with being silent throughout the pursuit because of the problems with units crowding the radio, also referred to by Officer C (paragraph 62), feeling that it was more important to receive uninterrupted commentary from Officer B than to interject. This shows the need for Police to adopt new technology to improve Comms’

access to real time information during a pursuit, to decrease reliance on radio commentary, thereby freeing up the radio for command and control purposes.⁹

72. The Authority accepts that the pursuit controller did not have a complete picture to inform his risk assessment based on the information relayed to him by Officer B. However, he did know that the pursuit travelled through several red lights, including the first one through a major intersection at the corner of Papanui Road and Bealey Avenue, as outlined in paragraph 25. The experienced dispatcher in Comms expressed surprise that the pursuit controller did not abandon the pursuit at that point.¹⁰
73. As established in Issue 2, the Authority considers that there were multiple points during the pursuit at which it should have been abandoned. While the pursuit controller did not have the complete picture, Officer B did report four of the red lights that the pursuit passed through, which the Authority considers should have been enough to cause the pursuit controller to abandon the pursuit.
74. In his Police statement, Officer D stated that in deciding whether to abandon the pursuit:
- “I was also thinking about the fact it could be a stolen car, there were five occupants, the time of night and the prevalence of aggravated robberies in Christchurch City that the occupants might be related to.”*
75. The Authority’s view is that given the dispatcher had stated on the radio that the car was not stolen, and that the only known offence the fleeing driver had committed before the pursuit was speeding, these other factors should have not played a role in Officer D’s risk assessment in deciding whether to allow the pursuit to continue.
76. The difficulties with radio crowding do not negate the need for a pursuit controller to formulate a plan to bring the pursuit to an end. Officer D told us that he would have abandoned the pursuit if it had continued into Christchurch’s CBD, but that because it appeared to be heading out of town, he allowed it to continue. We consider that a more proactive plan was needed, for example coordinating the other Police units with road spikes, and that this should have been communicated.

FINDING ON ISSUE 4

The pursuit controller did not have a complete operational picture due to the limited speed and red light information that Officer B was relaying.

The pursuit controller did have the information and the opportunity to abandon the pursuit early on as the Toyota passed through the intersection of Papanui Road and Bealey Avenue, but wrongly failed to do so.

⁹ The Authority, jointly with Police, undertook a collaborative review of Fleeing Driver events, practices and procedures and published a report in March 2019. That report set out eight high level recommendations and a detailed action plan for the implementation of those recommendations. One of those recommendations was for Police to explore ways of improving Communication Centre’s access to real-time information, including the potential adoption of new technology, and in partnership with their sector partners.

¹⁰ See paragraph 45.

The pursuit controller should have developed and communicated an adequate plan to bring an end to the pursuit.

Issue 5: Police representation of the incident in the media

77. Radio New Zealand's Lisa Owen interviewed Superintendent Lane Todd, who was acting as the Canterbury District Commander at the time, following the crash. When she asked him to confirm that the fleeing vehicle was not stolen, he responded, "*we did confirm after several hours that the vehicle was not stolen.*" He repeated this assertion later in the interview when explaining why the officers commenced the pursuit.
78. The Authority interviewed Superintendent Todd about this, because as established in paragraph 23, the dispatcher communicated over the radio by 90 seconds into the pursuit that the Toyota was not reported stolen. Superintendent Todd told the Authority that his recollection was that the senior sergeant in charge of the accident scene did tell him that the car was not reported stolen when he visited the scene at around 4.50am, although he seemed unsure about this.
79. The Authority believes that although Superintendent Todd did not intend to mislead the public during his interview, it had that effect. Even though he later recalled that he had been told that the car was not stolen, the way he presented the incident to the media was as a case of a suspected stolen car which then fled from Police. This was not an accurate indication of the threat level assessed by Police during the pursuit, and was completely at odds with the fact that the scene senior sergeant had told Superintendent Todd that the car was registered to the driver of the car, Mr Z. Superintendent Todd acknowledged that he found the interview difficult and has learned some lessons from it.

FINDINGS ON ISSUE 5

Police unintentionally misrepresented the incident in the media by stating that it took several hours after the accident to confirm that the Toyota was not stolen.

SUBSEQUENT POLICE ACTION

80. Police conducted an initial criminal investigation of the incident, but that investigation did not consider any culpability of the officers. Police have now ordered a review of that investigation to ascertain whether the officers' culpability should have been considered.
81. A review of communications during the incident identified potential under-reporting by the officers.
82. A Police Professional Conduct investigator completed a thorough investigation of the issues identified in the communications review.
83. The Police Serious Crash Unit completed a scene examination and produced a report.

84. A separate officer was subsequently assigned to conduct an employment investigation. This is ongoing.

CONCLUSIONS

85. The Authority's view is that this pursuit should never have been initiated. Once it started, there were multiple opportunities when Police could, and should, have abandoned it. The risk to the public and Police of starting and continuing the pursuit far outweighed the threat posed by the people they were pursuing. The risk to the public was ultimately borne out by the death of Mr McCaul, an innocent member of the public on his way to work.
86. The Authority also determined that:
- 1) by failing to report the high speeds reached during the pursuit, and all red lights passed through, Officer B did not provide an accurate picture on which the pursuit controller could make a considered risk assessment;
 - 2) Officer C's failure to wear high visibility clothing was against Police policy;
 - 3) Officer C was justified in self-authorising the deployment of spikes because he was in position very early in the pursuit route so did not have time to request permission from the pursuit controller;
 - 4) the pursuit controller should have developed and communicated an adequate plan to bring an end to the pursuit;
 - 5) by stating in a media interview that it took several hours to confirm that the Toyota was not stolen, Police unintentionally misrepresented the incident in the media.

RECOMMENDATION

87. The joint report by Police and the Authority into fleeing drivers (described in the footnote to paragraph 71), included the following recommendation and scoping:

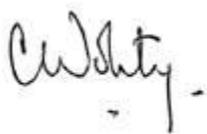
"Police will explore ways of improving Communication Centre's access to real-time information, including through the potential adoption of new technology, and in partnership with our sector partners"

with the aim of *"identify[ing] and explor[ing] opportunities to use technology to enhance the management of fleeing driver events"* by

- *"identify[ing] opportunities to livestream external CCTV footage into Comms Centres;*
- *explor[ing] the option of upgrading the down-link technology on the Air Support Unit to reduce current delays in video signals to Comms Centre;*

- *investigat[ing] the use of location technology for National Communications incident resource deployment and management during events; and*
- *investigat[ing] the availability of additional technology that could help strengthen the management of fleeing driver events (e.g. dash cameras)."*

88. While Police have introduced technology enabling them to locate individual officers, they have not yet introduced technology, such as Automatic Vehicle Location (AVL) or telematics, to enable the locating of Police vehicles in real-time.
89. We understand that telematic hardware is currently being introduced into all operational Police vehicles, but the software is not being fully utilised. If it was, it would enable Police to monitor vehicles by combining a GPS system with on board diagnostics measuring speed, direction of travel, mileage and gross movement. This would significantly improve the information available to the Pursuit Controller and free up the radio for officers on the ground and the Pursuit Controller to formulate a plan for how to end a pursuit. It would have been of considerable assistance to the Pursuit Controller in this case and, indeed in all cases.
90. Police have told us that they are currently preparing an options paper to inform the Strategic Leadership Board's consideration of the best technological option for this purpose. They are also using location technology in other ways, including in the Deployment and Safety Application, which enables Comms (including the pursuit controller) and District Command Centres to view location information about individual officers captured by Police iPhones. Police are working to improve the integration and ease of use of this information.
91. We remain confident Police have the intention and will to use technology to locate and monitor Police vehicles. We will continue to monitor their progress in this area.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

15 October 2020

IPCA: 19-1142

APPENDIX 1 - ACCURACY OF CAMERA SYSTEMS

92. In reaching our conclusions, we have been supported by the opinion and expertise of a CCTV camera systems engineer who has over 12 years' experience managing traffic and crime camera CCTV systems.
93. The 18 CCTV camera footage clips supplied to us by Police came from the Canterbury Transport Operations Centre (CTOC) FLIR Latitude System (Traffic cameras) and Christchurch City Council Milestone system (Crime cameras). The systems operate concurrently and are synchronised on the Christchurch City Council corporate domain.
94. The cameras record continuously. Footage from each is sent to a central Council server and each image is time and date stamped. This server is synchronised with Coordinated Universal Time (UTC). UTC is the primary international time standard which regulates clocks and time.
95. We established that the 18 cameras were variously connected to the servers by:
- Fibre data link directly from the camera (8 cameras)
 - Short wireless link to fibre to server (4 cameras)
 - VDSL copper connection to fibre to server (3 cameras)
 - Wireless to server (2 cameras)
 - Wireless to VDSL to fibre to server (1 camera)
96. The type of connection between a camera and server can affect the quality of the image and accuracy of the time stamp. For example, wireless connections operate across frequency bands, and interference from radio broadcasts and atmospheric conditions can impact upon camera responsiveness and performance.
97. Poor connection may result in a latency (delay) in the image arriving at the server. Visual indicators of latency can include an image freezing or drag pixelization on the recording.
98. The time of day may also impact on camera performance. Modern video compression technology is operating across both camera systems. When a camera detects movement (for example a car driving past), it will send frequent data updates to the server. When it detects little to no movement, less updates are sent. Therefore, at rush hour there would be significantly more data use than at 4am.
99. We had the camera systems expert consider each of the 18 video clips and tell us the type of camera connection. We obtained his opinion as to the reliability of each recording.
100. The expert examined each clip in turn, looking for signs of latency, interference or any other factors which might impact upon the reliability of the cameras or digital timestamps. Acknowledging that while the fibre, short wireless hop (link) to fibre and VDSL to fibre connections were the most reliable (in that order), he concluded that we could rely on all the

cameras. However, we decided to exclude those three cameras from our calculations that did not have those connections types.

101. The expert could not provide an estimate of how often there could be a delay in an image being timestamped due to potential environmental factors. He described any potential latency effect in terms of milliseconds on fibre connections and possibly seconds on solely wireless connections when operating at peak times.
102. Where multiple cameras covered the same point, we analysed the data from each camera to corroborate our estimate of where the cars in the pursuit were at a particular time.
103. We satisfied ourselves that we could rely on CCTV cameras to estimate average speeds using time and distance calculations along the pursuit route.

Pursuit start point

104. We chose a start point for our speed calculations on the boundary between 58 and 56 Main North Road, Papanui. This area is covered by Camera 3 (281 Main North Crossing), connected by a short wireless hop to fibre. The reason we chose that point is that before then, the Toyota had already demonstrated its intention to flee and had failed to stop for red and blue flashing lights.
105. The data from Camera 3 is corroborated by two other CCTV cameras, connected to fibre. For example, Camera 2 shows the Police car signalling the Toyota to stop by turning its blue and red flashing lights on.

Distance Calculations

106. Police drove the route from the start point to the penultimate intersection at Glandovey Road and measured 7.2 km. The certified speedometer display recorded 100 metre units and so this measurement has a margin of error of 100 metres.
107. Using the Government's Canterbury Maps website, we calculated the overall distance from the start point to the penultimate intersection to be 7.283 km.¹¹ We corroborated this using Google Maps which, between the same points, showed a total distance of 7.31km.
108. We are confident that these variations do not make a material difference to our average speed calculations.
109. To measure distances between points along the route, we identified the fleeing Toyota and the Police car on selected camera footage. We took screen shots of both as close to the same point on the road, as possible.
110. Once we were sure of the location, we marked it and, using the 'measure distance' feature on the Canterbury Maps website, we calculated the distances between points of interest along the

¹¹ <https://canterburymaps.govt.nz/>

route. The site was very responsive and allowed us to zoom in and identify road markings and features. Distances are measured from the location of the vehicle in the screen shot, not the centre of the intersection, because the location of the vehicles may be before, in the centre or after the intersection.

111. We recognise that our estimations have a margin of error. For example, there can be slight differences when plotting distances on a map, and we cannot account for all potential corners that were cut or movement within lanes during the pursuit.
112. Some cameras were recording across the road and others along them. The former allowed us more certainty of position and the latter required us to look for corroboration from other cameras, in making our estimations.
113. The tables at paragraph 116 shows the time the fleeing Toyota and the Police car passed specific locations and the respective distances between these locations.

Speed calculations

114. Using the distances obtained by the above method and the time stamps from the camera footage screen shots we calculated the speeds of both the Police car and the fleeing Toyota throughout the pursuit.
115. While we have referred to the footage of 18 cameras in our investigation, not all are included in these tables for the following various reasons:
 - two cameras were at points before the start of the pursuit;
 - three cameras had less reliable connection types;
 - the footage from one camera had an internal timer display transposed over the UTC timestamp;
 - other cameras because they were in close proximity to ones we did include, and therefore did not provide any further material data.
116. Speeds in our report are the indicative average of those travelled between points during this pursuit and are based upon the data contained in the following tables. Distance between cameras and estimated average speeds have been rounded to one decimal point in the tables.

Fleeing Toyota

Camera location	CCTV timestamp for fleeing Toyota at locations	Estimated driving time between cameras (seconds)	Estimated distance between cameras (metres)	Estimated average speed (kph)	Speed limit
(C3) Boundary of 56 and 58 Main North Road, Papanui	03:59:15.831				
(C7) Papanui Road/Chapter Street	04:00:07.570	51.7	1657	115.3	
(C8) Papanui Road / Innes Road	04:00:17.660	10.1	384.1	137	
(C10) Victoria Street / Salisbury Street	04:01:16.499	58.8	1923.7	117.7	
(C13) Victoria Street / Durham Street	04:01:29.456	13	310.6	86.3	
(C13) Kilmore Street / Montreal Street	04:01:39.756	10.3	183.7	64.2	
(C14) Park Terrace/ Kilmore Street	04:01:51	11.2	244.1	78.2	
(C17) Park Terrace/ Harper Avenue	04:02:17.125	26.1	642.7	88.6	
(C18) Rossall Street / Glandovey Road	04:03:23.927	66.8	1937.4	104.4	
Pursuit from camera 3 to camera 18	03:59:15.831 to 04:03:23.927	248.1	7283.3	105.7	

Police Patrol

Camera location	CCTV timestamp for Police car at locations	Est driving time between cameras (seconds)	Est distance between cameras (metres)	Estimated average speed in kph	Speed limit
(C3) Boundary of 56 and 58 Main North Road, Papanui	03:59:18.031				
(C7) Papanui Road / Chapter Street	04:00:08.570	50.5	1657	118	
(C8) Papanui Road / Innes Road	04:00:18.660	10.1	384.1	137	
(C10) Victoria Street / Salisbury Street	04:01:19.899	61.2	1923.7	113.1	
(C13) Victoria Street/ Durham Street	04:01:30.856	11	310.6	102.1	
(C13) Kilmore Street / Montreal Street	04:01:40.656	9.8	183.7	67.5	
(C14) Park Terrace/ Kilmore Street	04:01:54	13.3	244.1	65.9	
(C17) Park Terrace / Harper Avenue	No time recorded ¹²				
(C18) Rossall Street / Glandovey Road	04:03:25.927	91.9	2580.1	101.0	
Pursuit from camera 3 to camera 18	03:59:18.031 to 04:03:25.927	247.9	7283.3	105.8	

¹² The patrol was three to four car lengths behind the fleeing Toyota when the CCTV camera operator moved the camera to follow the fleeing Toyota, therefore no timestamp was taken from the patrol.

Law

117. Under section 114 of the Land Transport Act 1998 Police are empowered to stop vehicles for traffic enforcement purposes.
118. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. 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.”
119. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to “prevent the escape of that other person if he takes flight in order to avoid arrest.”

Fleeing driver policy

120. 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”.
121. 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).
122. 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:
- 1) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.

Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
 - 2) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
 - 3) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
123. 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.”

124. During a pursuit, warning lights and siren must always be simultaneously activated. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
125. 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.
126. 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”
127. 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.
128. A secondary vehicle may follow behind the lead vehicle at a safe distance to provide support and tactical options as required.
129. 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.
130. 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.
131. If the fleeing driver is not apprehended at the time of the fleeing driver pursuit, all viable lines of inquiry to identify and hold the fleeing driver accountable should be exhausted. An inquiry phase should be dealt with as a priority prevention activity.
132. If a fleeing driver was not driving in a dangerous or reckless manner prior to being signalled to stop, but now is, the Officer must determine as part of their risk assessment if they should continue to pursue the fleeing driver due to the potential impact of their presence.

Tyre deflation devices policy

133. Tyre deflation devices (TDD) can be used under section 39 of the Crimes Act 1961.
134. Deploying a tyre deflation device (TDD) is a tactical option to stop a fleeing driver in the safest possible manner, with the minimum force necessary.
135. Prioritising safety over the immediate apprehension of a fleeing driver is critical to ensuring the safety of all, reducing trauma, and ensuring the trust and confidence of the public.

136. Prior to deployment, officers should advise Police Communications of the intended deployment location. The site must always provide cover and an escape route for deployment staff to ensure safety. Police vehicles in the immediate deployment area should not be occupied in case the fleeing driver crashes into the Police vehicles.
137. Deployment staff who are fully certified as a primary or secondary responder may deploy a TDD:
- where no other, less dangerous means of stopping the vehicle are reasonably available;
 - where the deployment can be affected without unjustified risk to any person;
- and
- on the authority of the pursuit controller, as per the Fleeing Driver policy
- or
- by deployment staff who self-authorise a deployment, based on their TENR risk assessment, without approval from the pursuit controller – excludes deployment against heavy vehicles.
138. Staff can deploy a TDD at their own discretion, but only in accordance with the TENR risk assessment if that indicates that an immediate response is justified, and when they are unable to gain prior approval from a pursuit controller. Potential situations are where non-deployment could have the gravest consequences including immediate risk of serious injury or loss of life. Officers who self-authorise a TDD deployment may have to justify their decision. They must notify the pursuit controller as soon as possible of a self-authorised deployment including the outcome.
139. Although not the preferred method, the Stinger can also be placed on the roadway and pulled across the lane(s) of traffic using the attached rope. However, this method requires staff to cross the road and is not recommended as a deployment method. If this deployment method is used, staff **must** wear a high visibility jacket and be mindful of all traffic, not just the fleeing driver. Follow the steps in the table below to pull deploy the Stinger.

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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