

# **REPORT OF THE POLICE COMPLAINTS AUTHORITY INTO THE DEATHS OF ERIN BURGESS AND KURAN BRUNTON IN NORTHLAND IN MAY 2003**

## **INTRODUCTION**

Shortly before 9.00pm on Monday 12 May 2003 on State Highway 1 (SH1) at Otaika, 7 kilometres south of Whangarei, a collision occurred between a northbound Triumph motorcycle ridden by Kuran Brunton and a southbound Honda Civic car driven by Erin Burgess. Mr Brunton (aged 29) died at the scene. Ms Burgess (aged 18) died some hours later in Whangarei Hospital.

Immediately prior to the collision Mr Brunton had been the subject of a Police pursuit, and for that reason the fatal incident was notified to the Authority by the Police by telephone later that evening. Mr Brunton had been pursued by Police after he was detected exceeding the speed limit by 47kph and had failed to stop.

The reasons for Mr Brunton's speed and failure to stop for Police can only be speculative, but he was not licensed to be riding that class of motorcycle, he was unlawfully in possession of a firearm, and he had recently consumed methamphetamine and cannabis.

Following their immediate response at the scene, the Police undertook a crash investigation and an enquiry was also initiated under the provisions of section 13 of the Police Complaints Authority Act 1988 (in addition to the evidence obtained for the Coroner). These investigations, led by a Detective Inspector and an Inspector, were overseen and subsequently reviewed by a Detective Superintendent. A number of issues were addressed (including policy compliance), and the matter was then referred to the Crown Solicitor for an opinion on the issue of whether the actions or intervention of the Police had caused or contributed to the deaths of Kuran Brunton and Erin Burgess.

On 21 May 2003 two officers of the Authority went to Whangarei to travel the route of the pursuit and to view the scene of the crash.

Following the Inquest hearing in October 2003, and publication of the Coroner's findings in December of that year, members of the Burgess family met with senior Police and explained their concerns over the pursuit of the motorcyclist, the conduct of officers during and following the pursuit, the Police investigation into the tragedy, the conduct of some officers at the Inquest, and the evidence given at that hearing. A review by the Police of their initial investigation followed and is discussed later in this report.

Subsequently there was contact between the Burgess family and officers of the Authority. This included a meeting to discuss the fatal incident, its investigation by Police and the concerns of the family.

## **PART I**

The pursuit proceeded as set out in detail below. A map is attached to this report which may assist the reader; it is emphasised that the sites identified on it have not been precisely mapped.

The time, speed and distance calculations referred to throughout this report are not exact measurements and it is acknowledged by the Police, and accepted by the Authority, that they cannot be precise, for reasons which will become clear.

All phases of the pursuit involved a Police Northern Communications Centre (North Comms) dispatcher (a Constable) and the supervisor (a Sergeant). The supervisor (Officer 6) had the overall control of the pursuit. They were in radio communication with officers involved in the pursuit and with other officers in the vicinity as well as viewing a map of the area on the terminal at their work station as the pursuit was in progress.

## **INCIDENT**

At 8.43pm on 12 May 2003 a Senior Constable (Officer 1) was travelling south on SH1 in a Police patrol car in the vicinity of Shoemaker Road near Waipu, when the radar in the Police car detected the speed of an approaching northbound motorcycle to be 147kph, the applicable speed limit being 100kph. In response Officer 1 activated the red and blue

incident lights and siren of the Police car and turned to follow the motorcycle. He reported by radio to North Comms that the driver had failed to stop.

The North Comms dispatcher (Officer 5) acknowledged the pursuit and advised Officer 1 *"if the pursuit becomes a danger to yourself or to others you are to abandon the pursuit, acknowledge"*. Officer 1 acknowledged this instruction.

Officer 1 pursued the motorcyclist for approximately 23 kms. The route followed was mostly flat, straight road, and entirely on SH1. He reported that the motorcyclist had his lights on, the road conditions were *"good"*, *"dry"*, and traffic *"almost nil"*.

The pursuit was maintained at high speeds on the Ruakaka and Mata straights, and the speeds reported by Officer 1 in this phase included *"hundred and ninety five"* near Uretiti Road and again at Marsden Point Road, *"about two hundred and five k"* on the Mata straight, and *"hundred and eighty k's"* shortly before the Oakleigh Service Station.

At 8.49pm, about 6 minutes into the pursuit, Officer 1 asked North Comms for another Police unit to take over the pursuit, *"...If we can have a unit as far as Oakleigh please. I'd like somebody to take over when we get there, I'm having a few brake problems."* This transmission was also heard by Officer 2 who was driving a Police station wagon in the vicinity.

Officer 2, a Constable, took up the pursuit at 8.51pm at the Oakleigh Service Station. At 8.52pm he made the following transmission to North Comms which, part way through, showed a sudden deterioration in Mr Brunton's driving, *"...still driving alright. He's slowed it down to about a hundred and seventy k's. He's all over the road now Comms, he's on the wrong side of the road."*

The North Comms response is recorded as, *"Yeah [Officer 2] you are to abandon the pursuit. Over"* which was acknowledged by Officer 2, *"Yeah [Officer 2] pulling out."*

Seconds later Mr Brunton's speed was captured by another Constable, an acting Sergeant (Officer 7), who was in a stationary Police car on the south side of Smeatons Hill (about 10 kilometres south of Whangarei) near the brow of the hill and facing south in the direction of the oncoming motorcycle and Officer 2's vehicle. The speed detection device briefly caught the speed of the approaching motorcycle as 171kph and that of Officer 2 as 132kph.

Officer 2, who had about 17 seconds earlier acknowledged that he was *"pulling out"*, then asked *"What's your reason for the abandonment of the pursuit?"*. To which the North Comms reply was *"... the wrong side of the road's not really on. Ah, dangerous. Over"*.

Less than two minutes earlier a Whangarei incident car ("I" unit) driven by Officer 3 with a second officer, Officer 4, as a passenger, had taken up a stationary position near the Maungakaramea turn off on the north side of Smeatons Hill, ahead of the pursuit. The intention of these officers, both Constables, was conveyed to North Comms by Officer 4 as *"....we'll just wait for him and try and pull out in front"*.

The North Comms response to this transmission was *"Yeah Roger, we want someone stationary all lit up, hopefully we can slow this boy down and get him to try and turn ah around. Over."* The response was *"Copy"*. The misunderstanding between the officers in the Police car and North Comms, implicit in this exchange, will be addressed in this report.

As the motorcyclist approached the position of the stationary "I" unit, Officer 3 pulled out in front of him and other traffic, with the red and blue lights operating. The siren was activated by Officer 4. The motorcycle was seen to overtake two civilian cars and then the Police car. Officer 4 reported to North Comms at 8.53 pm that *"He just overtook us umm staying on the .... [unclear] side of the road... [unclear]."* This was about 45 seconds before the crash.

North Comms instructed *"Yeah ["I" unit], same thing ah abandon the pursuit umm, stay well back ah but continue ah north we'll try and pick him up further north. Over."* This was about 800 metres south of the crash scene at Otaika.

At 8.54:36pm Officer 3 reported *"Comms ["I" unit] he's crashed"*. A communication at 8.54.41pm from Officer 2 also reported *"He's crashed"*.

The motorcycle ridden by Mr Brunton had crossed the road's centre line and had collided with the Honda car driven by Ms Burgess.

Officer 3 told the investigation that after the pursuit was abandoned, and the Police car slowed down, the motorcycle had passed out of view as it went around a left bend after Portland Road, which is about 450 metres south of the point of impact. As they came around the bend Officer 3 saw smoke across the road. *"The smoke was across the whole road and I immediately braked hard as I could not see through it."*

Seeing the motorcycle on the left of the northbound lane and the rider on the ground further along the road on the right of that lane, Officer 3 drove to the right of the fallen rider and stopped in a layby on the right hand side of the road. Officer 3 reported the crash to North Comms as Officer 4 alighted from their vehicle.

Officer 4 later recalled that the motorcycle had, in a matter of "*mere seconds*" from their being instructed to abandon the pursuit, disappeared around the left hand bend. He was unable to estimate the distance between the Police car and the motorcycle when he lost sight of it. As soon as they had heard the instruction to abandon the pursuit he felt the car "*lurch forward*" and lose speed. The lights and siren of the Police car were still operating. "*Given the short time and the situation, I simply did not think of turning them off*", he explained.

Officer 4 stated that he then saw a cloud of smoke. He felt the Police car brake, they drove into the smoke and he saw the rider on the road. As the Police car came to a halt he got out to check on the motorcyclist. He recalled that a short time later Officer 2 arrived. Officer 3 told Officer 4 that there was a vehicle involved in the crash, that not being initially known or visible to him, the Honda car having been shunted into a ditch to the side of the southbound lane. This was the car driven by Erin Burgess in which Carmilo Manuyag, her boyfriend, was a passenger.

It was later established that, about 450 metres north of the Portland Road intersection, Mr Brunton had tried to negotiate a left hand bend at a speed subsequently estimated, by an independent analyst, as likely to have been 120kph with a plus or minus 10kph variation. This was at a point where SH1 traverses a small rise and then descends into the left hand bend. His motorbike crossed the centre line onto the wrong side of the road, and into the Honda car, which was considered by the Police crash analyst to have been near the middle of its own lane.

At that time the road at this point featured subsidence and undulations with a surface that was said to have been in disrepair. The curve of the bend is described by an independent engineer as "*modest*". A temporary speed restriction of 70kph was in force and clearly posted. Remedial work on this section of road had been scheduled to commence on the day after the crash.

## INVESTIGATION

This section of the report covers the various investigations and analyses of the incident (“the investigation”), including legal advice, prior to the Inquest into the deaths of Ms Burgess and Mr Brunton. The investigation was overseen by Detective Superintendent S J Shortland.

### Phases of the Pursuit

Three phases of the pursuit were identified with one Police vehicle being the primary pursuing vehicle during each phase. Based on the times shown in the communications transcript, the pursuit commenced at 8.43pm and the crash was reported to North Comms about 11 minutes later. The distances covered in each phase are not precisely known but the overall pursuit was about 29 kilometres.

#### Phase 1:

Officer 1 – commenced on SH1 on the Waipu straight to the Oakleigh Service Station - a distance of approximately 23 kilometres and between 8.43pm and about 8.51pm – approximately 8 minutes.

#### Phase 2:

Officer 2 – from Oakleigh Service Station to the southern side of Smeatons Hill - a distance of approximately 4 kilometres and between 8.51:29pm and 8.52:54pm – less than 1½ minutes.

At 8.52:48pm North Comms directed Officer 2 to “*abandon the pursuit*”. This was about 4 kilometres south of the crash scene.

#### Phase 3:

Officers 3 and 4 (the “1” unit) – from near the Maungakaramea turnoff at 8.53:38pm (Mr Brunton overtook them at about 8.53:51pm) until the crash - a distance of approximately 2 kilometres.

North Comms instructed the "I" unit to *"abandon the pursuit"* and at 8.54:36 pm Officer 3 reported *"He's crashed"*.

The Police officers who arrived at the crash scene from the south, immediately after the "I" unit, were Officers 2 and 7. Other Police officers and emergency services, and other motorists, were also shortly on the scene, or in the vicinity diverting traffic.

## **Witnesses**

Police made requests through the media for witnesses to come forward and a number of people did so, or they had already reported that they had witnessed the pursuit, and they were interviewed for the investigation. In addition to members of the public, members of Erin Burgess' family who were travelling just ahead of her vehicle were interviewed, as was Carmilo Manuyag, the passenger in her vehicle and the sole survivor of the crash.

A number of motorists and passengers in vehicles both northbound and southbound on SH1, as well as residents in the area, witnessed or heard some of the pursuit and what followed. There are some variations in what witnesses saw and heard, and that is to be expected given that witnesses were recalling observations from different vantage points over the lengthy route, and the incident took place at night. Some witnesses acknowledged their difficulty in estimating speeds, positions and the distances between vehicles, and between vehicles and the motorcycle.

Witnesses of the first phase of the pursuit, involving Officer 1, described seeing the Police vehicle in close pursuit of the motorcyclist. One driver who was overtaken by Mr Brunton and the Police vehicle estimated the Police vehicle was *"between 3-5 seconds behind the bike"*. He recalled thinking that the motorcyclist was *"flying"*. The same motorist saw Officer 2 ahead of the motorcyclist with his vehicle's lights flashing take up the pursuit from the forecourt of the Oakleigh Service Station.

His front seat passenger recalled the motorcycle overtaking them at a speed of *"about 150-160 kph"* on the straight before the service station and that *"he may have been going faster"*. The Police car (Officer 1) was *"about 3-4 seconds behind"*.

During the second phase of the pursuit witnesses recalled seeing Police vehicles with flashing lights, or hearing sirens, and seeing or hearing the motorcycle. During the third phase of the pursuit further witnesses saw or heard the events; some of those who

witnessed the earlier stages of the pursuit were heading north, in the same direction as the pursuit, and came across the crash scene, although the only witness of the crash itself was Mr Manuyag.

Other witnesses recalled being overtaken by the motorcyclist and Police vehicles, one saying that they were *“between 5 and 10 seconds apart”* north of Oakleigh, and another motorist estimated that the speed of the motorcycle was *“150 kph”* and that of the Police vehicles *“120-130 kph”*. Similar speeds and separations were estimated by other witnesses in the vicinity of Oakleigh and Smeatons Hill.

A witness who heard a siren from his home and looked to SH1 south of Portland Road saw the motorcycle *“going like the hammers of hell”*, and followed by a Police car at a distance of *“about 100 metres”*. He considered that the *“the bike and the Police car were speed for speed”*.

Mr Manuyag told the investigation that he and Erin Burgess were in a car travelling from Whangarei to Ruakaka. Ms Burgess was driving at about 80 kph and they were following another car driven by her mother. Leaving Whangarei their car had been overtaken by a Police car going in the same direction with its red and blue lights operating.

Whilst travelling south around a right hand bend, *“under 80 kph”*, Mr Manuyag saw a single headlight – *“I thought it was a motorbike light”* - coming towards them. He noticed red and blue lights as well and *“I definitely saw the lights flashing on top of the roof of the car when I saw the motorbike light approaching.”* This was seconds before Mr Brunton crashed into their vehicle. He did not hear sirens or other sounds.

Mrs Kathleen Burgess, Erin’s mother, recalled in a statement made on 26 May 2003 that while she was driving south she was overtaken by a Police car with flashing lights. She was travelling with two relatives in her vehicle, which was immediately ahead of Erin’s vehicle. Before reaching Portland Road she saw a motorcycle travelling in the opposite direction followed by two Police cars with their red and blue lights flashing. She did not hear any sirens, or the crash, as they were playing music in their car. Although unable to judge the speed of the approaching motorcycle or Police cars, Mrs Burgess recalled *“they just flashed past”*. She remembered pulling to the left as the motorcycle and the cars were approaching.

She recalled that:

*"In relation to the two Police cars following the motorbike, I can say that they were not right up behind the motorcycle but they were less than 2 seconds behind as I am always aware of it as that is how I drive. I recall that over the past two weeks, wondering how these guys avoided the accident as that is how close they were behind the bike."*

In a subsequent statement Mrs Burgess clarified that what she saw in relation to the gap between the motorcycle and the first Police vehicle was *"less than 2 seconds"*, and the second Police car was *"less than 2 seconds behind the first Police car"*.

A resident from a property near the crash scene told the investigation that she and her husband had heard a siren and then the sound of an impact. They ran to their fence and saw a Police car, travelling from the south, *"just arrive"*. In relation to the time between hearing the impact and the Police car arriving, the witness said *"As we got to the fence the northbound Police car was just stopping. I would say 4-5 seconds."*

Another couple living close to the crash scene heard the sirens and the sound of vehicles, and the husband heard a *"fast travelling motorcycle"*, seconds before the crash. They were seated in their lounge when they heard *"a bang"* and they ran through to their dining room window to view what had happened. As they made their way to the window they saw Police vehicles coming from the south and *"starting to stop"*, with their brake lights on as they passed the couple's driveway. Their driveway is approximately 270 metres from the point of impact. The husband then relayed to his wife what he was seeing of the crash scene through binoculars. At that stage smoke was coming from the motorcycle. The Police vehicles' lights and sirens were on and they were coming to a halt at the scene.

## **Kuran Brunton**

Mr Brunton was not licensed to drive the class of motorcycle (a 3 cylinder Triumph 955cc) which he was riding and he was carrying a firearm without a licence. Had Mr Brunton stopped for the Police prior to the crash he would have faced arrest and the impounding of his motorcycle, having on 16 April 2003, when stopped in Tuakau for speeding, been forbidden to drive that motorcycle and warned that further driving of it would lead to him being arrested and the machine being impounded for 28 days.

He would also have faced arrest for possession of a firearm. Mr Brunton's firearms licence had been revoked on 22 November 2002. This fact assumed significance in light of a .22 rifle, scope, silencer, and ammunition found in his possession at the crash scene.

The toxicology results for Mr Brunton showed evidence of the use by him of cannabis and methamphetamine a matter of hours prior to the crash. Both drugs, either individually or in combination, may have a dangerous effect on driving ability. According to the forensic toxicology report, the levels of both substances in his blood indicated that it was possible that he was affected by both at the time of his death.

Relatives who saw Mr Brunton on the day of the incident were unaware of his intention to travel north from South Auckland. He did not disclose his plans or that he had a firearm in his possession.

The investigation concluded that, had Mr Brunton survived the crash, *"the evidence would support a serious charge of either manslaughter or dangerous driving causing death."*

## **Crash Analysis**

The motorcycle and the Honda car, both of which were extensively damaged in the crash, were examined by a vehicle inspector. Although the registration and warrant of fitness of Mr Brunton's motorcycle had both expired, it was found by Vehicle Testing New Zealand Ltd to have been in good order prior to the crash. The Honda car was also found to have been in sound condition.

The investigation considered the scene of the crash and the relevant factors were that it took place at night, in fine weather, with dry road conditions, on a moderate bend, and with fair visibility. There was no street lighting. Traffic was light. As noted above, at the time of the crash the road at this point featured subsidence and undulations with a surface that was said to have been in disrepair and remedial work was due to be undertaken. This section of road had a temporary speed restriction in place of 70kph and signposts in place warning motorists of the uneven surface.

Following the impact of the crash the vehicles rotated away from each other and the Honda came to rest in a ditch on the left side of the southbound lane. The motorcycle rotated to the left of the northbound lane. Mr Brunton was thrown about 26 metres, and his pack about 49 metres.

The Police crash analyst measured the distance between where the pursuit commenced and the location of the crash and established a distance of 28.8 kilometres. He estimated that Mr Brunton's average speed for the entire pursuit was about 157kph.

An independent report was obtained from Transport Engineering Research of New Zealand Ltd who conducted a comprehensive analysis of the cornering performance of the motorcyclist, and concluded that:

*"...it appears that the motorcyclist was probably travelling at about 120 km/h through the curve in question. This was some 50 km/h higher than the temporary speed restriction that was in force at the time... Because the performance of the motorcycle in the curve depends not only on the vehicle and the road but also on the skill of the rider it is impossible to be certain of the exact speed but it seems unlikely that it was less than 110 km/h or more than 130 km/h."*

The Police crash analyst concluded:

*"Having taken into account all circumstances, I would suggest that the actions of the motorcyclist Brunton are responsible for the crash involving his death and the death of the oncoming motorist Burgess. Brunton was travelling at high speed whilst under the influence of drugs. This has caused him to lose control or make an error of judgement regarding his riding skills."*

### **General Instructions and the Police Pursuit Policy**

The responsibilities assigned to Police in pursuits at the time of this incident were contained in General Instructions and in the Police Pursuit Policy (October 2000). The General Instructions and the Policy changed in 2004, following this incident and a review which commenced in July 2003.

The investigation concluded that the pursuit had been lawfully initiated, in terms of the General Instructions and the Land Transport Act 1998. Officer 1 detected Mr Brunton speeding and he failed to stop for the officer when signalled to do so (through the activation of the red and blue lights). The officer had a lawful reason to stop Mr Brunton under the Land Transport Act.

The investigation found that Officer 1 fulfilled his responsibilities as the pursuing driver, as shown by the communications transcript, by advising North Comms of the pursuit and the reason for it, use of the warning lights and siren, maintaining communications, acknowledging the pursuit instruction given by North Comms, and providing updates on the speed and on the offender's driving.

The General Instruction then in force stated that:

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

Officer 1 told the investigation of the high speed that characterised the pursuit and the ability of the motorcyclist to manage this:

*"...I was watching the rider closely, apart from the excessive speed he seemed to have excellent control of the bike. He was cornering well and the few overtaking manoeuvres that he did were well executed. He appeared to be familiar with the bike and handling it well."*

In connection with the high speeds during this phase (1) of the pursuit, the investigation concluded that there was no evidence that the safety of any person was in jeopardy.

Under the General Instructions then in force, the controlling officer in a pursuit was *"the dispatcher or communications centre supervisor"*, and in this pursuit the controlling officer was the supervisor, Officer 6. His responsibilities were to monitor and supervise the pursuit, and to consider whether the pursuit was justified and whether it should be continued. Under the Policy his responsibilities required that he *"strictly supervise the officers involved"*.

Radio communications were maintained between North Comms and the Police officers who were engaged in the pursuit. Officer 5, and his supervisor, Officer 6, discussed whether or not the pursuit should be abandoned. The factors that they took into account during phase 1 of the pursuit were that the road was straight and traffic conditions good, the experience and training of the pursuing driver, and that he remained calm and in control during his radio

communications. Officer 6 said that they were not going to allow the pursuit to continue at high speed into the winding area ahead (to the north of Oakleigh).

In connection with Phase 2 of the pursuit, following Officer 2's report of the deterioration in the manner in which the motorcycle was being ridden, Officer 5 was instructed by Officer 6 to direct the abandonment of the pursuit and Officer 5 recalled that *"My intention was that all other units were going to remain static. In my mind there was only a need to direct the abandon pursuit to [Officer 2] as I believed there was no one else nearby."*

Officer 6 stated, in relation to the motorcyclist's deteriorating riding, that:

*"It was clear in both mine and [Officer 5's] minds that the pursuit had become dangerous and must be abandoned...It was my understanding at that point that [Officer 2] was the only unit in pursuit and he had been told to abandon, this meant the whole pursuit was abandoned."*

At an interview on 16 May 2003, Officer 3 stated that they had pulled out in front of the motorcycle:

*"To slow him down and to deter him from carrying on, we were hoping he was going to stop when he saw us. I also thought he might opt to turn off at the Maungakaramea turnoff and wouldn't end up getting to Whangarei city... I was also aware of a dangerous corner that I'd previously attended an accident involving a motorcycle, that corner being just north of the Portland turnoff."*

In terms of the policy, the "I" unit had taken on a '*moderator patrol*' role, that is when a Police patrol drives ahead of the pursued vehicle so as to warn oncoming vehicles, and it may slow or moderate the offender's speed or divert the offender away from a populated area. Officer 3 drove ahead of the motorcycle and intended to gradually reduce speed in anticipation that the motorcyclist would respond and also reduce his speed.

The intention of the "I" unit was to pull out in front of the motorcyclist with its lights flashing, but North Comms misinterpreted that intention and thought that the "I" unit would remain stationary. The North Comms officers did not intend to use the "I" unit as a moderator patrol.

The investigation was critical of the ambiguous exchange which led to this misunderstanding and concluded that there had been poor communication between the officers in the "I" unit and North Comms with neither recognising nor resolving the ambiguity. It was also observed that the officers in the "I" unit should have sought new instructions from the dispatcher when, having been overtaken by the motorcycle, the intention to slow it down was clearly no longer attainable.

Officer 3 related that, after Officer 4 had reported to North Comms that the motorcycle had overtaken the Police car, North Comms had instructed them to abandon the pursuit but to continue north. At this, Officer 3 stated "*I took my foot off the accelerator and braked*". Asked whether they had then stopped, the officer replied "*No*", and in response to a further question on whether the speed was decreased, "*Yes. I slowed down considerably*".

Officer 4 said that the intention was to get in front of the motorcycle and to slow the rider down. He then saw the motorcyclist overtake two cars behind them before overtaking the Police car, this "*on the straight past the Maungakaramea turnoff*". The Constable went on to relate that the Police car reached a speed of just over 130 kph with the motorcycle still accelerating away. This was about 45 seconds before the crash was reported.

There was no acknowledgement from the "I" unit of the instruction to abandon the pursuit but to continue north. As the passenger in the "I" unit, Officer 4 had the responsibility "*to make all radio calls and operate the warning devices as necessary*". The siren and the lights of the Police car were still operating, Officer 4 said, "*Given the short time and the situation, I simply did not think of turning them off*".

The investigation accordingly found that the Police car "*must be considered*" to have still been in pursuit at the time of the impact but that there was "*no evidence*" to suggest that the officers were not in the process of beginning to comply with the instruction to abandon the pursuit after being instructed to do so.

In the critical matter of the distances separating the motorcycle from the pursuing Police vehicles, the investigation concluded that "*the separation distance of [ the "I" unit] and the motorcycle at the time of impact is difficult to establish, however it was probably somewhere between 100 and 300 metres*".

It was also noted that Officer 2, after being instructed to abandon the pursuit, used the flashing lights on his vehicle to overtake traffic. The policy in force at the time required the

officer to make *“an obvious effort to signal that the pursuit had been terminated”*. Further, *“flashing lights and sirens must be switched off”* and the pursuing vehicle should pull over initially before proceeding in the direction of the offender, in order that the offender was left in no doubt that the pursuit had been abandoned. In this instance the officer did not fully comply with those requirements.

The performance of the officers in North Comms was considered by the investigation to have been satisfactory in the overall supervision of the pursuit, but it was concluded that there was poor communication and radio procedure; information regarding the owner / driver history of Mr Brunton was not provided to the pursuing units; poor communication led to the “I” unit attempting a moderator role that was not contemplated by North Comms; and the instruction to abandon should have been directed to all units involved in the incident (and not only those units actually in pursuit).

The investigation found that:

*“While the Police supervision and participation in the pursuit was not without errors, the mistakes made did not cause the offender to behave as he did. Kuran Brunton made a deliberate decision to overtake and accelerate away from [the ‘I’ unit] only to be undone by a combination of excessive speed and poor roading. That decision led to the death of Erin Burgess.”*

Detective Superintendent Shortland recommended that training issues for communication centres be addressed, and that regular training be given to all members likely to be involved in pursuits, particularly to address responsibilities and tactics, moderator vehicles, and judgement.

Further, he recommended that the Policy be reviewed so that instructions to abandon a pursuit must be acknowledged by all vehicles involved, and that vehicles not pursuing but in front of the pursuit, and likely to become involved, must be included in the stand down instructions unless there are other safety issues involved. Neither the General Instructions nor the Policy at the time clearly defined who is involved in a pursuit. Detective Superintendent Shortland recommended that where vehicles are involved in an incident but are not pursuing, instructions must be given to them that leave the offender in no doubt that the pursuit has been called off. He pointed out that the instruction to abandon this pursuit should therefore have been directed to all units involved.

Detective Superintendent Shortland was also critical of the absence of a commissioned officer attending at the scene on the night of the crash to provide leadership. He referred also to media statements released by the Police following the crash in which it was said that the pursuit had been abandoned *“before the collision”*. He said that this was incorrect and that media releases should not be made about facts which have not been confirmed.

### **Legal Opinion**

In July 2003 the matter was referred to the Crown Solicitor, Auckland, to obtain an opinion on the question:

*“Did the actions or intervention of the Police cause or contribute to the crash and/or the deaths of Kuran Brunton and Erin Burgess?”*

The Crown Solicitor agreed with the findings of the Police investigation.

It was however accepted that *“there were two misunderstandings during the course of the pursuit”*. These were identified as, firstly, the order by North Comms to abandon the pursuit being given only to Officer 2. The second misunderstanding was seen as *“an insufficiently clear direction”* being given to the “I” unit to remain stationary rather than to take up a moderator patrol role.

The Crown Solicitor concluded that the evidence shows that the “I” unit were *“under a misapprehension of their role rather than intentionally disobeying an order”*. He considered that there was no evidence of negligence in their driving and they appeared to have complied with the relevant policy, but that *“it was unfortunate rather than negligent that the crash had occurred before the process of disengagement could be completed”*.

In connection with North Comms, the Crown Solicitor concluded that although there was a lack of clarity in the order to abandon the pursuit, *“there is no negligence”* and that there was no evidence that any of the participants in the pursuit acted in breach of their professional or legal obligations.

### **INQUEST**

An inquest into the deaths of Ms Burgess and Mr Brunton was held at Whangarei in October 2003, and the Coroner’s findings were released in mid-December of that year. The Coroner

found that Erin Burgess died from multiple injuries caused when her car was driven into by a motorcycle, and that *“the primary cause of this tragedy is readily established as the grossly careless and dangerous driving of Kuran Brunton”*.

The Coroner referred to the circumstances in which the pursuit was initiated and to Mr Brunton’s behaviour; he was not licensed to ride that motorcycle and he had a few weeks earlier been forbidden by Police to ride it; he was not a licensed firearms holder and he had in his possession a dismantled .22 rifle, and ammunition; and he was found on subsequent analysis to have had methamphetamine (“speed”) and cannabis in his blood. The Coroner noted:

*“When first noticed by the police in the Waipu area he was checked travelling north at 147kph by a police car travelling south and therefore not already chasing him. It seems strange that he would be driving so fast without being pressured, when he had very good reasons for not wanting to be stopped. It does raise the possibility that he was still under the influence of “Speed” and was dangerously overconfident.”*

The Coroner examined how the pursuit had been managed and he was critical of some aspects of the Police management of it.

He considered the pursuit to have been a legitimate pursuit but in relation to the speeds during the first phase, it would have been proper for Officer 1 to exercise his discretion and to have abandoned it. The Coroner suggested that point to have been where the speeds being reported by Officer 1 were 200kph and 205kph, which was about 5–6 minutes into the pursuit.

In connection with Officer 2, the Coroner observed that the officer’s querying the reason for abandoning the pursuit was *“an inappropriate question as well as blocking the radio waves”*, and he went on to express the view that *“the pursuit policy surely requires an immediate and unquestioning obedience or else the integrity of the system is at stake”*.

The Coroner noted the *“serious communications failure”* that resulted in Officers 3 and 4 taking up the pursuit of the motorcyclist despite Officer 6, the North Comms supervisor, stating in his evidence that he had not wanted a moderator patrol. The relevant instruction had been transmitted in ambiguous terms allowing Officer 3, the driver of the “1” unit car, to

drive off. The Coroner noted that Officer 6 *“did not ‘strictly supervise the officers involved’ as required by the pursuit policy”*.

The finding also criticised Officer 4, the passenger in the “I” car, for not turning off the lights and siren following the abandon pursuit instruction, which the Coroner considered showed an urgent need for training in the pursuit policy.

In connection with the evidence on the speeds and the distances apart at which the vehicles were travelling, the Coroner says *“The evidence about the speeds and distances apart at which vehicles were travelling is so conflicting that it is difficult to establish the exact situation.”* He added that *“Although I was surprised by the varying accounts of speeds, numbers of vehicles arriving, and distance apart of vehicles, it is understandable up to a point, given the differing locations of all the witnesses and the trauma of the event.”*

He found that the period between Officer 2 being told to abandon, and the “I” unit taking up pursuit, was 50 seconds and therefore a *“second pursuit”* took place. He found that the second pursuit (Phase 3) should not have taken place and that it had not then been *“properly abandoned”* in terms of the pursuit policy. And, *“To all intents and purposes the pursuit was in full operation with the police cars following quite fast and reasonably close, both with flashing lights and the closest one with its siren sounding. The evidence both of civilians and police clearly establishes this.”*

In his recommendations the Coroner said that public safety should be deemed to be at risk on the grounds of high speed alone if a set speed is sustained for more than a set distance (he suggested that 2 kms might be appropriate) and that orders to abandon should be obeyed immediately. He recommended that officers undergo regular training and refresher courses, and that supervisors should *“strictly supervise the officers involved”*. Further, that once a pursuit has been abandoned, it should not be legitimate to start a new one without clear evidence that the reasons for abandonment no longer exist.

The Coroner in conclusion said:

*“The evidence does not clearly show whether or not the pursuit in fact contributed to the accident. As already stated, the accident resulted from a choice by Mr Brunton to drive his motorcycle in the way that he did. However, to better carry out this difficult and stressful work on behalf of the*

*public, there are lessons which the police can and must take from this tragedy.”*

The Coroner ended his findings with a reference to the “*complete review of the pursuit policy*” that was being undertaken by the Police at that time.

## **PART II**

Following the release of the Coroner’s finding the Commissioner of Police immediately reinforced the guidelines to staff on the conduct and management of pursuits. As already noted, a review of the vehicle pursuits policy was underway, having been recommended by Detective Superintendent Shortland at the conclusion of his investigation.

The following section covers the reviews that followed the initial investigation and the Inquest.

### **REVIEW BY DETECTIVE SUPERINTENDENT M J BURGESS**

As a result of the findings of the Coroner, and criticisms by the Burgess family which were raised in the meeting with the Police in December 2003, the Police administration directed a review of the investigation to be undertaken by a senior officer not previously connected with the matter. The review was to consider evidence gathered during the initial investigation and evidence given at the Inquest.

In January 2004 the Authority was notified by a member of the family that they were considering making a submission outlining concerns they held about the pursuit and the Police investigation.

The review of the investigation (“the review”) was allocated to Detective Superintendent Burgess who met with the family in February 2004 and they provided him with a submission which set out their concerns that:

- *The Police officers involved in the pursuit ignored and disobeyed instructions and in doing so contributed to the tragedy that was the end result;*
- *The Police officers then lied to cover up their actions;*
- *The investigation that followed was either incompetent or an attempt to cover up the actions of the Police officers involved in the pursuit.*

Following the review an amended submission covering the family's concerns was forwarded to the Authority and received on 1 October 2004.

On 26 February 2004 the Detective Superintendent accompanied the Burgess family along the pursuit route and discussed their view that the review should focus on distance and line of sight rather than time. Their submission asserted that some officers had lied about their distances behind the motorcyclist and their roles, and the speeds at which they had travelled.

During the review some witnesses and Police officers were re-interviewed and revisited the scene as necessary to establish more accurately their respective positions with reference to the transcript of the pursuit. Angles and sight lines were established photographically and measurements plotted. A series of distance/sight tests were performed by crash analysts. Enquiries included expert analysis of the pursuit and the crash. The review included analysis of the communications tape and its transcript, and viewing the scene at night.

A time and distance analysis was completed in respect of all of the vehicles involved and was based on witnesses' information. That analysis was reviewed and confirmed by an independent collision analyst based in Australia. Detective Superintendent Burgess pointed out, however, that to calculate speeds and distances the analysis relied on information provided by witnesses, and that *"some of the detail provided is at best an approximation and the conclusions reached as a consequence must be considered in that light"*.

One of the concerns expressed in the family's submission related to the high speeds attained in the initial stage of the pursuit by Officer 1 and that the family saw the motorcyclist's increase in speed as a response to being pursued.

The initial Police investigation had made reference to Officer 1's judgement and that of North Comms in continuing the pursuit, citing the officer's driving experience and competence, and the road and traffic conditions. Officer 1 was calm and he was monitoring the motorcyclist's driving behaviour. No speed limit was prescribed by the pursuit policy, the main test *"appears to be that if the speed of the pursuit places the safety of any person at risk then the pursuit must be abandoned"*. The investigation had concluded that, on the available evidence of Phase 1 of the pursuit, *"this was not the case"*.

The review reached a different conclusion and this has been accepted by the Police. It found that the pursuit should have been abandoned by the North Comms supervisor on speed alone. The pursuit was at night, the road was generally unlit, the speed of the Police vehicle

was above that which would allow for a safe stopping distance, and the speeds reported were in excess of the range of the headlights of the vehicle. The review pointed out that, not only should Police have abandoned the pursuit, the motorcyclist had a legal obligation to stop in response to the signals from the pursuing Police vehicle, and it was in his power to have brought the pursuit to a halt.

In the Burgess family submission it was alleged that Officer 2 had lied about his part in the pursuit. An example given was his estimate of his distance behind the motorcycle, and his distance behind the "I" unit, at various points in the pursuit. They questioned whether he could have seen the "I" unit or its lights (when the "I" unit pulled out from its stationary position ahead of the motorcyclist) if he had abandoned the pursuit as he had claimed.

Officer 2 had initially stated that the motorcycle was 400-500 metres in front of his vehicle when he abandoned the pursuit. At the Inquest he conceded that this was a guess. At a reconstruction for the review it emerged that the officer's vehicle would have been in the order of 224 metres behind the motorcycle.

While it became clear that Officer 2's initial claim about the distance between his vehicle and the motorcycle at the point when he abandoned the pursuit was incorrect, he rejected the suggestion that he had lied, instead putting the discrepancy down to his "*best*" recollection of an "*emergency situation*".

In connection with the criticism of Officer 2 that he had not abandoned the pursuit, he said in his original statement, and confirmed at the Inquest, that when instructed to abandon the pursuit he had turned off his vehicle's lights and siren and reduced his speed to 100 kph. The review found that it was extremely unlikely that he decreased his speed to 100 kph; the time and distance analysis put the average speed of his vehicle over the last 4 kilometres of the pursuit at about 134 kph. He acknowledged in the review that his original calculations were "*guesstimates*" and said that the evidence he had provided to the Coroner "*was to the best of my honest ability*".

In relation to whether he had turned off the Police vehicle's lights, Officer 2 recalled that he had turned them on again when overtaking other vehicles. During the review Officer 2 said "*I honestly thought I had deactivated the lights and sirens but I could be mistaken about that because it is possible in the emergency of the moment I mis-hit the manual buttons.*"

The review concluded that Officer 2 had *“failed to abandon the pursuit in the manner required by the then pursuit policy”*, in that the lights remained activated. In respect of the siren, other evidence corroborated Officer 2’s assertion that he had turned it off.

While Officer 2 did not comply with the existing pursuit policy there is no indication that this failure influenced the riding behaviour of the motorcyclist. The “I” unit officers reported that they were not aware of Officer 2’s vehicle behind them, and the review considered it *“unlikely”* that Officer 2 was within Mr Brunton’s sight.

It was also alleged in the family’s submission that Officers 3 and 4 (the “I” unit) had failed to remain stationary when directed by North Comms, that they had failed to abandon the pursuit, and that they had lied about their proximity to the motorcyclist.

The conclusions reached in the review for this phase (3) of the pursuit are consistent with those reached in the initial investigation. The relative positions of vehicles at the time of the crash could not be established beyond doubt. The reconstruction of the pursuit, as put forward by Detective Superintendent Shortland, was considered to be consistent with the review’s reconstruction.

In connection with its proximity to the crash, the review concluded that *“to any observer of these events”*, the “I” unit car was still in pursuit, and that technical reconstruction suggested its speed to have been higher than that estimated by Officers 3 and 4. At a reconstruction of the incident, Officer 3’s recollection was that their vehicle was in a position about 700-800 metres short of the crash site at the time they were told to abandon the pursuit. Officer 3 accepted that they continued to drive north but pointed out that they had been directed by North Comms to do so. The direction given by North Comms was inconsistent with the intent of the pursuit policy and was considered by the review to have been *“with the benefit of hindsight”*, *“ill judged”*.

The review concluded that the “I” unit was between 119 and 270 metres behind the motorcycle at the time of impact. The investigation by Detective Superintendent Shortland had reached a similar conclusion at 100-300 metres.

The officers in the “I” unit reported that they had reduced speed after being given the instruction to abandon the pursuit and that they had given up the pursuit. The review concluded that *“It is not possible to prove or disprove the contentions of the Police staff that*

*they had just abandoned the pursuit.*” That conclusion is consistent with that reached by Detective Superintendent Shortland.

In connection with separation, the independent collision analyst concluded that the “1” unit driven by Officer 3 would have been at a minimum distance of 119 metres behind the motorcycle at the moment of the collision. He also observed that:

*“..it must be remembered that the speed of the motorcycle over the last portion of the pursuit, from Smeatons Hill onward, is unknown. Obviously it was higher than the Police vehicles but how much higher is unknown. For this reason the maximum separation distance is not calculable on the information available.”*

Behind the car driven by Officer 3 was Officer 2’s car, estimated by the independent analyst to have been between 198 and 389 metres, or 5-10 seconds, behind the motorcycle. This estimate is consistent with the recollections of some witnesses but not with those of Mrs Burgess and Mr Manuyag who held that a far shorter distance separated the motorcycle and the Police cars.

The independent analyst further tempered his observations with a cautionary comment on the information on which his conclusions were based by noting that:

*“Because of the direct relationship between time, distance and velocity it takes only a second here or a metre there to completely change an analysis. For this reason any such analysis must be treated with caution.”*

The family’s submission contended that Officers 2, 3 and 4 “*contributed to the cause of the accident by ignoring instructions and continuing a pursuit that had been abandoned – twice.*” On this point the review concluded that Mr Brunton’ actions made a crash likely and the Police were endeavouring to reduce that risk. And, “*Whilst there may be justifiable criticisms of some actions by Police their actions were not the cause of the crash. The crash was caused by the grossly negligent riding of the motorcyclist, Brunton.*”

The review also considered the early media releases which were issued by Police following the crash. They incorrectly stated that the pursuit had been abandoned at the time of the crash. The Sergeant who made the first statement had based that assertion on his understanding of the communications tape of the pursuit. As is now known, and was known

within a short time after the crash, the release was inaccurate and the external indications were that the pursuit was still in progress. The Burgess family believe that the Police investigation that followed took a predetermined view based on these releases. The review has found no evidence to support that view; the Police sought witnesses to the crash and the investigation recorded that the media releases were incorrect.

The Burgess family contended that it can be proved that the Police investigation “*was either incompetent or an attempt to cover up the actions of the police officers involved in the pursuit.*” The review has found no evidence to support that allegation or that it “*ignored*” some witnesses’ accounts and placed “*emphasis*” on others to support a version of events favourable to Police. The submission was also critical of the weight given to the statements made by some witnesses. The account of one witness was said to have been disregarded. The review considered the statements and the evidence of all witnesses, including those named by the family, and they were interviewed for the review. The evidence gained during the review does not support the criticism. The review concluded that Detective Superintendent Shortland had considered all the available evidence and that his conclusions were consistent with the evidence.

### **Criticism of the Police in connection with the Inquest**

The Burgess family complained of not receiving in time two letters in connection with the Inquest hearing. The Police file records that they were notified by telephone of the date of the hearing, they had phone contact with the Inquest Sergeant, which they acknowledge, and as a witness Mrs Burgess received a summons (with the date, time and place of the hearing) on 10 October 2003, 19 days prior to the hearing. The letters contained the list of witnesses to be called at the Inquest, and advice that the family had the right to attend, to be represented and to cross-examine the witnesses. A similar letter went to Mr Brunton’s family and arrived on time but the two letters for members of the Burgess family, at two separate addresses, did not reach them until a fortnight after the Inquest. The review agreed that this was unsatisfactory but the reason why this happened could not be ascertained.

The family have complained that before the Inquest they were without copies of the evidence that was to be given. The Police response is that it is unusual for a request to be made for the disclosure of Inquest material, and copies were not therefore supplied to the family as a matter of course. When the family’s request was received on 28 October 2003, the day before the Inquest, a disclosure package was produced for them that day.

Further criticism was that a brief of evidence prepared for the Inquest did not contain all of the information provided by Mr Manuyag. The review established that in the preparation of briefs the removal from statements of non-factual material was consistent with standard practice; while witnesses could provide their reconstructions in oral evidence, their briefs covered their actual observations at the time. All relevant evidence was included in the briefs, and in addition the entire investigation file had been available to the Coroner.

The family submission expressed concern that the Police crash analyst had not been called to give evidence at the Inquest, that his evidence was not presented, and that *“he was taken out of the enquiry”*. The review found that his report, and his coordination of external agencies in their examination of the crash and of the vehicles, was part of the entire investigation. He determined the point of impact and reached a conclusion about the cause of the crash. He was not one of the witnesses whose attendance was required by the Coroner but his material was an important part of the evidence presented. In addition he contributed to the review subsequently conducted by Detective Superintendent Burgess.

The family further complained that at the Inquest an officer was reported to them to have been seen to be making notes which they believed were supplied to Officer 3, the driver of the “I” unit, who was waiting outside the Court to give evidence. The officer denied making notes or passing information to Officer 3, and other officers and witnesses present at the Court said that they did not observe such behaviour. This issue could not be further pursued.

Officer 3 gave evidence at the Inquest about the speed of the “I” unit when it came upon the crash, and when asked the speed said *“I’d say approximately 70 to 80.”* The Burgess family submission referred to a civilian witness having said in a statement that *“the police vehicles were going at 70-80 kph”*, and concluded that *“there has been a breach of the confidentiality of witness statements”*. The review did not find evidence of disclosure of statements to Officer 3 prior to the Inquest.

The Burgess family have indicated that they felt that they were *“intimidated”* by the presence of a number of *“young people”* in the Courtroom on the second day of the Inquest and who they established were Police officers present in support of one of the officers involved in the pursuit. Addressing this concern, the review established that some Police staff in civilian

clothes had attended the Inquest. No conduct that could be construed as intimidating was identified.

Members of the Burgess family were also surprised that no senior Police officer had been present at the Inquest. It was later established that the three commissioned officers who might have been expected to be available had each been prevented from attending by other commitments, in one case by family illness. The officer whose role was family liaison was overseas at the time of the Inquest. It is accepted by the Police that a commissioned officer should have attended the Inquest and that failure has been addressed.

A final matter connected with the Inquest concerns Officer 7. Through analysis of the communications tape, it was established that Officer 7 had been incorrectly identified in the transcript as being in a different location to that which he had given in his statement and in evidence at the Inquest. Because of that error, Officer 7 was criticised at the Inquest. It has subsequently been established that he was entirely correct in his evidence about his position. This is accepted by the Burgess family.

### **Discussion with the Burgess Family**

Detective Superintendent Burgess met with the family again at the completion of the review and, with the approval of the Authority, he presented the conclusions reached in the review. The meeting was in July 2004 and was of several hours duration.

### **Legal Opinion**

A further legal opinion was obtained from the Crown Law Office by the Police. The opinion, given in July 2004, noted inconsistencies in the evidence given to the Coroner and in other statements made by Officer 2. As to criminal liability, the opinion said that as concluded by the Coroner it is not possible to link in any causative sense the pursuit and the accident. The only criminal liability to be considered was therefore the possibility of perjury by the officer at the Inquest. In particular there were the officer's claims as to the speed at which he was travelling as against the evidence to the contrary. However, bearing in mind the substantial difference between on the one hand merely establishing inconsistency and on the other hand proving perjury, the difficulty in identifying clear statements that would support a charge of

perjury led to the conclusion that there was insufficient evidence to justify criminal prosecution.

### **Professional Standards Section at the Office of the Commissioner of Police**

A further review was then undertaken by the National Manager, Professional Standards, at the Office of the Commissioner of Police. The conclusions reached by Detective Superintendent Burgess were agreed with, and disciplinary sanction against two officers involved in the pursuit was recommended and imposed in connection with the failure to deactivate the lights and siren and in connection with the failure to fully comply with the pursuit policy.

Since the above reviews the Burgess family have raised a concern that they have not been provided with some Police documents requested by them. One document is the subject of legal privilege, and disclosure of another is prevented by the Police Complaints Authority Act 1988. The Authority has found no evidence of legally disclosable material being withheld from the family.

### **PART III**

Following the review the Burgess family forwarded to the Authority an amended submission dated September 2004, and received on 1 October. During the following month officers of the Authority travelled to Auckland to meet with Erin's parents and uncle. The family's concerns remained that *"the Police officers ignored and disobeyed instructions"*, *"the Police officers then lied to cover up their actions"*, and the investigation that followed was *"either incompetent or an attempt to cover up the actions of the Police officers"* involved in the pursuit.

The Authority has undertaken an independent review of the entire matter. It has had the benefit of substantial material from the initial Police investigation, the evidence given at the Inquest and the findings of the Coroner, the subsequent review of the investigation, the legal opinions, the independent expert reports on the pursuit and the crash, and the detailed submissions of the Burgess family.

As has been concluded by all of the enquiries, the Police pursuit was, from all external indications, still in progress at the time of the crash. The influence this may or may not have had on the actions of Mr Brunton is not known and cannot be ascertained. He displayed no acknowledgement of the Police presence other than to accelerate away. There is no evidence that the Police presence (either in pursuit or stationary) had any effect in moderating his speed or his riding.

Had Mr Brunton responded to the first signals from Officer 1 for him to stop, the incident would not have progressed to its tragic conclusion. He was driving at a speed of 47 kph in excess of the limit immediately prior to the pursuit, before awareness on his part that his speed had been detected, and it has been estimated that at the time of impact he was likely to have been driving at some 50 kph in excess of the limit.

I consider that the speeds attained by the Police officer during the first phase of the pursuit were excessive and the pursuit should have been abandoned. Officers 1, 5 and 6 could have individually or collectively reached that conclusion; Officer 1 could have elected to abandon the pursuit and Officer 6 could have directed that it be abandoned. The subsequent phases of the pursuit involved three other officers who were, in their respective phases, directed by North Comms to abandon it. The pursuit should not have entered into those succeeding phases nor should it have continued at high speeds.

It is clear that the officers were attempting to reduce the risk posed by Mr Brunton's driving and that they considered that they should attempt to stop him or slow him down.

There is in my view no evidence to support the assertion that the initial investigation was "*incompetent*" or a "*cover up*." The Police investigations and the review clearly show an openness on the part of the Police to involve external experts and civilian witnesses to achieve the best understanding of the pursuit and the crash, and to share that information with the Burgess family. The error in the early media releases, which said the pursuit had been abandoned, was identified early in the investigation and was acknowledged by the Police.

The Authority does not find evidence that supports the contention that Police officers lied about their involvement in the pursuit.

The family contended that if the Police *“had not been pursuing the accident would not have happened”*. And it is clear that the family believe that the “I” unit was closer to the motorcycle than either the initial investigation or the review have found. In connection with the belief that the “I” unit was *“was less than 2 seconds”* behind the motorcycle, I accept the view of the independent expert who considered that issue and concluded:

*“If the vehicle was less than 2 seconds behind the motorcycle immediately prior to the impact it is reasonable to suggest that it would most likely have been involved in the crash itself. [Officer 3] would not have had sufficient time to react and avoid some components of the crash.”*

I also accept his opinion, already quoted above, that:

*“Because of the direct relationship between time, distance and velocity it takes only a second here or a metre there to completely change an analysis. For this reason any such analysis must be treated with caution.”*

Since this incident, and following the investigation of it, a formal pursuit abandonment procedure has been incorporated into Police policy for the conduct and management of pursuits. Effective from March 2004, it provides that following the direction to abandon a pursuit all participating Police vehicles must immediately:

1. *Acknowledge the direction to abandon.*
2. *Immediately reduce speed to increase the distance between the offender’s vehicle and their own.*
3. *Deactivate warning devices once below the speed limit.*
4. *Stop as soon as it is safe to do so.*
5. *Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.*

The policy now requires that the direction to abandon a pursuit given by the pursuit controller is to be a direct order that *“all vehicles abandon pursuit now”*. These procedures were not in the policy at the time of this incident. Had they been in force at that time, the misunderstanding resulting in the second pursuit (Phase 3) being commenced, when North Comms understood that the Police vehicle was stationary, would not have arisen.

The Authority's review has confirmed that the management and execution of the pursuit was defective in respects that have been identified during the Police investigation, at the Inquest, and through the subsequent Police review.

In my clear view the speeds attained by the Police vehicles were excessive and the pursuit should have been abandoned.

The close proximity of the "1" unit to Mr Brunton is acknowledged by the Police, although the exact times and separation remain in contention. It is not known, and cannot be ascertained, what influence if any this had on Mr Brunton's driving. He approached and entered the bend at speed. Had the Police vehicles in all phases of the pursuit come to a complete halt that may or may not have led Mr Brunton to decrease his speed to a sufficient degree to enable him to negotiate the bend without losing control.

It is not possible to determine whether the pursuit contributed to the accident. Mr Brunton was driving at high speed prior to his being observed by the Police and prior to any awareness on his part of their presence. He was engaged in a journey the purpose of which is unknown; that purpose may or may not have been relevant to his decision to travel at speed. One cannot say at what speed he may have continued his journey had there been no Police involvement at all, or had the pursuit been abandoned at an early stage, or had it been abandoned at some later point. He may have increased his speed along the lengthy straights of highway in that area, or he may have continued at his already high speed, or he may have slowed to some degree. And at such speeds, whatever they may precisely have been, he may obviously have become involved in an accident, of one description or another. These possibilities can be no more than speculation. It can however be said that abandonment of the pursuit may have prevented this accident but, because of Mr Brunton's driving, abandonment could not have ensured a safe outcome either for him or for any other user of the road on that evening.

The Authority agrees with the Coroner who found that *"the primary cause of this tragedy is readily established as the grossly careless and dangerous driving of Kuran Brunton"* and that *"the accident resulted from a choice by Mr Brunton to drive his motorcycle in the way that he did"*. The Authority also agrees with the Coroner that *"the evidence does not clearly show whether or not the pursuit in fact contributed to the accident"*.

All of the enquiries into the matter have been consistent in stressing the need for decisive leadership and effective control of Police pursuits. In my view this is the central lesson to be learnt from this incident.

In concluding this report the Authority expresses its sympathy to the families of Ms Burgess and Mr Brunton, and to Mr Manuyag.

Judge I A Borrin  
POLICE COMPLAINTS AUTHORITY  
12 September 2005