



Report on a serious injury crash in Auckland on 3 August 2007

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 4.46pm on 3 August 2007, an unmarked Police car being driven at speed struck a light standard on Richardson Road, Owairaka, Auckland. The light standard fell, striking 14-year-old Farhat Buksh on the head, knocking him unconscious and causing serious injuries.
2. As required under section 13 of the Independent Police Conduct Authority Act 1988, the Police notified the Authority of the incident. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. At approximately 4.30pm on 3 August 2007, Constable Aaron Holmes and another officer were manning a checkpoint on Hendon Avenue, Owairaka.
4. A van approached the checkpoint, executed a u-turn, and drove off at speed in the opposite direction. The Constable left the checkpoint in an unmarked Police car, with his red and blue grill lights activated, intending to stop the van. He drove along Hendon Avenue, then turned right into Harlston Road where he saw the van about 200-300 metres away as it turned right into Richardson Road.
5. By the time he reached the intersection of Harlston and Richardson Roads the van had disappeared from sight. The Constable drove along Richardson Road at a speed of 70–80kph, looking up side streets for the van. The speed limit along Richardson Road is 50kph.

6. When he was about 30-40 metres away, he saw two vehicles stopped at a pedestrian crossing near the intersection of Richardson Road and Owairaka Avenue, outside Owairaka District School. Though he braked, his car collided with the rear of the two vehicles and then slewed to the right where it knocked over a light standard on a raised traffic island. The light standard struck Farhat Buksh on the head, knocking him unconscious and causing serious head injuries.

Relevant factors — Police car, Constable Holmes, road, conditions

7. The Police car was found to have no mechanical defects that would have contributed to the crash. It had a current warrant of fitness.
8. Visibility to the pedestrian crossing was affected by a slight rise in the road. Under normal driving conditions for a driver travelling at 50kph visibility would not be an issue. The black and white striped poles identifying the pedestrian crossing are visible from a distance of approximately 166 metres. There were no other obstructions to visibility.
9. The road was dry and in good condition.
10. The Police Crash Investigation Report concluded:

“Neither the environment nor the vehicles were the causative factors in this crash. The only remaining option is the human elements.

The [Police car] has crashed into two stationary cars and then into a light pole.

HOLMES was traveling at least 57km/h.”

Police action after the crash

11. The Police charged Constable Holmes with aggravated careless driving causing injury. He was convicted, ordered to pay \$3,000 to Farhat Buksh, and disqualified from holding or obtaining a driver licence for a period of 12 months and one day.
12. Constable Holmes appealed to the High Court, which upheld the conviction and sentence. Justice Priestley agreed with the findings of the District Court Judge, that the primary duty of a driver must be to ensure a vehicle is being driven safely and that to travel at speed, particularly at that time of day and near a school, was *“beyond what a reasonable prudent driver would engage in”*.

LAWS AND POLICIES

13. Section 114 of the Land Transport Act 1998 and sections 314B and 317A of the Crimes Act 1961 empower a police officer in uniform or in a vehicle displaying flashing lights and sounding a siren to stop a vehicle for traffic enforcement purposes, to conduct a statutory search, or if there are reasonable grounds to suspect the vehicle contains a person who is unlawfully at large or has committed an offence punishable by imprisonment. When such a vehicle fails to stop as lawfully directed, a pursuit may be commenced.
14. Police General Instruction (GI) V001 governs Police Pursuits and Urgent Duty Driving. The GI states that all staff must be aware that urgent duty and pursuit driving can pose risks to the safety of both police staff and the public, and that the driving conduct of police is subject to considerable public scrutiny for this reason. It also states that the special role of police and the risks involved in these activities require officers to demonstrate a high standard of professionalism and care when carrying out these duties.

15. Annexe one deals with Police pursuits and states:

"A pursuit occurs when the driver of a vehicle which has been signalled by a police officer to stop, fails to stop and attempts to evade apprehension, and police take action to apprehend the offender."

16. Annexe two deals with urgent duty driving, and states that the overriding principle of the Police urgent duty driving policy is:

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

17. Urgent duty driving is defined as:

"Urgent Duty Driving occurs when:

A police officer is driving on duty and compliance with speed limits, traffic signals or stop or give way signs would be likely to prevent or hinder the execution of that duty; and

The driver is:

Responding to a critical incident; or

Apprehending a driver for a traffic or criminal offence; or

Engaged in a pursuit."

THE AUTHORITY'S FINDINGS

Was Constable Holmes in 'pursuit' of the van, as defined in the pursuit policy?

18. To be engaged in a pursuit Constable Holmes must have signalled to the van driver to stop, the van driver must have failed to stop and then attempted to evade apprehension, and the Constable must have subsequently taken action to apprehend the van driver.
19. Constable Holmes followed the van because the driver did a u-turn just prior to a checkpoint. He activated his red and blue flashing lights but not his siren, and drove at speed looking for the van. The Constable only saw the van, at distance, on one occasion prior to the crash. The Constable was trying to locate the van; he was not following the van. There is no indication that he undertook the required risk assessment when he started to look for the van. It is not known if the driver of the van was attempting to evade apprehension. The Constable had no communication with the Northern Communication Centre (NorthComms), as required in a pursuit situation, prior to the crash.

FINDING

At the time of the crash, Constable Holmes was not in pursuit of the van, as defined in the Police pursuit policy.

Was Constable Holmes engaged in 'urgent duty driving', as defined in the urgent duty driving policy?

20. To be engaged in urgent duty driving, Constable Holmes must have been apprehending the van driver for a traffic or criminal offence, and compliance with the speed limit would have likely prevented or hindered the execution of that duty.
21. The Constable did not know why the driver of the van had completed a u-turn at speed. There is no evidence as to the actual speed at which the van drove away. The Constable was looking for the van; he was not actively following or 'apprehending' it.
22. There is no evidence that exceeding the speed limit would have increased the Constable's ability to find the van, as he did not know where the van was.

FINDING

At the time of the crash, Constable Holmes was not engaged in urgent duty driving, as defined in the Police urgent duty driving policy.

The manner of driving by pursuing Police

23. Constable Holmes was driving between 70kph and 80kph in a 50kph area. The area was residential, and a school was adjacent to the crash site. He was driving an unmarked Police car, with flashing red and blue grill lights operating.
24. The Constable did not see the cars stopped at the pedestrian crossing until he was about 30 metres away, despite the black and white poles being visible to him for 166 meters.
25. The Constable should have seen the cars stopped at the pedestrian crossing much earlier than he did. The evidence establishes that he was paying insufficient attention to the road in front of him, and was looking down side streets for the van.

FINDING

In driving in the manner that he did, Constable Holmes put the public at unjustifiable risk. Constable Holmes drove contrary to both law and Police policy insofar as they relate to the manner of his driving.

CONCLUSION

26. Constable Holmes drove in a manner that was contrary to law. As he was not engaged in a pursuit or in urgent duty driving, there was no justification for him exceeding the speed limit.
27. In driving in the manner that he did, Constable Holmes put the public at unjustified risk, and was solely responsible for the crash and the resulting serious injury to Farhat Buksh.
28. Police appropriately charged Constable Holmes with aggravated careless use of a motor vehicle and the matter has been subject to due process.



Hon Justice L P Goddard
Chair
Independent Police Conduct Authority

May 2009

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 chaired by a High Court Judge and has two other members.

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 has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement 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;
- 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 can make findings and recommendations about Police conduct.



IPCA

Independent Police Conduct Authority
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