



Report on the fatal pursuit of David Fowler on 29 October 2008

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At approximately 11.19pm on 29 October 2008, a Yamaha 600cc motorcycle ridden by David Fowler crashed into a vehicle parked on the side of River Road, Christchurch following a short Police pursuit. Mr Fowler, 52, sustained head injuries and died at the scene.
2. As required under section 13 of the Independent Police Conduct Authority Act 1988, the Police notified the Authority of the pursuit. 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 about 11.10pm on 29 October 2008, a two-person uniform Police patrol saw a motorcyclist riding at high speed on Gloucester Road, Christchurch.
4. The officers executed a u-turn with the intention of stopping the motorcycle. They saw the motorcycle go through a red light but then lost sight of it.
5. The officers did not have the registration number of the motorcycle but provided the Southern Communications Centre (SouthComms) with a general description of it and the rider.
6. Sergeant A, the patrol supervisor, left the Police station and drove to the area, where he saw a motorcycle fitting the general description go past him in the opposite direction on Stanmore Road. Although its speed was not excessive, the sergeant reasoned that this was probably the motorcycle concerned and activated his lights and siren with the intention of stopping and speaking to the rider.

7. As the Sergeant executed a u-turn the motorcyclist accelerated away, reaching speeds of between 60kph and 70kph in a 50kph area and travelling through a red light, onto North Avon Road where he accelerated to about 100kph.
8. Sergeant A advised SouthComms of a 'failure to stop' and that a pursuit was being commenced. The SouthComms operator gave the following warning required under the Police pursuits policy: *"If there is any unjustified risk to any person you are to abandon pursuit immediately. Do you understand?"*
9. The motorcycle turned into River Road, which runs alongside the Avon River. By the time the sergeant reached the intersection he could see the motorcycle's lights 500-600 metres ahead, around the sweeping curve of the road.
10. The sergeant began to form the view that the pursuit was futile. He turned in to River Road and slowed down, and was making a decision to formally abandon the pursuit when he came upon the rider lying injured on the road. The pursuit had lasted for approximately 47 seconds.
11. Sergeant A called for an ambulance and on its arrival the motorcyclist was declared dead.
12. Whilst there were no witnesses to the crash, several people looked out from their houses after hearing it. They estimated that the Police car arrived 30-40 seconds later.

Environment

13. The area where Mr Fowler crashed was dark, as large trees obscured street lights. The weather was fine. The road surface, while sealed, is uneven and there are a number of large potholes in the area immediately before the crash site. The road surface was covered with leaves.

Police crash analysis

14. Mr Fowler's motorbike did not have a current warrant of fitness and the Vehicle Inspector established that the presence of water in the brake fluid had a bearing on the efficiency of the brakes.
15. The Police Serious Crash Investigator calculated that the Yamaha's speed was between 69kph and 75kph (in a 50kph area) at the time of the crash.
16. The investigator concluded that Mr Fowler lost control of the motorcycle as a result of his speed and the poor condition of the road and the leaf material on it. The motorcycle had struck the kerb, dislodging Mr Fowler who landed with considerable force on the road, losing his crash helmet in the process.

17. The investigator reported that the motorcycle's faults may have contributed to the crash, and in addition Mr Fowler was under the influence of drugs which were likely to affect his ability to control the vehicle. He also concluded that it is likely that his helmet strap was too loose.

Mr Fowler

18. Although Mr Fowler's identity was not known during the pursuit, it was later established that he was a disqualified driver and faced active charges, including driving offences, dishonesty and drugs.
19. Mr Fowler had a full driver's licence and a motorcycle licence suitable for the motorcycle he was riding.
20. He had previously received medical advice that if he continued to take drugs and drive, he would not only be doing so illegally and against medical advice but would put himself at risk of a "*grossly impaired reaction time or falling asleep while operating a vehicle*".

Cause of death

21. A post-mortem examination of Mr Fowler concluded that his death was the result of head injuries sustained in the crash.

Toxicology

22. Tests indicated Mr Fowler had methadone, Ritalin, morphine and oxycodone in his system at the time of death. Ritalin, morphine and oxycodone tablets, along with hypodermic syringes, were found in his possession. Alcohol was not detected in his blood or urine.
23. The tests could not conclusively determine the extent to which Mr Fowler was affected by drugs at the time of the crash. However, a psychiatrist concluded that "*...in light of the ongoing drug use, it is likely that his ability to ride a motorcycle safely was impaired*".
24. Sergeant A underwent an evidential breath test at the crash scene which returned a nil result.

LAWS AND POLICIES

25. Under section 114 of the Land Transport Act 1988, the Police are empowered to stop a vehicle for traffic enforcement purposes.
26. The Police pursuits policy requires an officer who commences a pursuit to undertake a risk assessment. This involves consideration of: speed and other behaviour of the pursued vehicle; traffic and weather conditions; the identity and other known characteristics of those in the pursued vehicle; the environment; and the capabilities of the Police driver and vehicle. The officer must then determine whether the immediate need to apprehend the offender outweighs the risk to the public, the occupants of the pursued vehicle, and Police.
27. The policy also sets out requirements for communication between the pursuing vehicle and the relevant Police communications centre, roles and responsibilities of all staff involved, tactics that may be used, and procedures for abandoning and restarting pursuits.
28. Under the policy, the driver of the Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit, and the pursuit controller at the Police communications centre is responsible for coordinating the overall Police response.
29. Throughout a pursuit, police must continue to assess the risks involved, and they must abandon the pursuit if the risks to safety outweigh the immediate need to apprehend the offender.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

30. Sergeant A and his patrol vehicle were appropriately classified to undertake pursuits under the Police Professional Driver Programme.
31. Mr Fowler was signaled to stop for traffic infringements under section 114 of the Land Transport Act Act 1988. The pursuit commenced when Sergeant A located the motorcycle, which had previously not stopped for a Police patrol, and saw it go through a red light.
32. Before commencing the pursuit, Sergeant A considered the risks, including road and weather conditions, and formed the view that the level of risk was

acceptable. The pursuit controller was also satisfied that the appropriate risk assessment had been undertaken and the risk was acceptable.

FINDING

Based on section 114 of the Land Transport Act 1988 and on the Police pursuit policy, the officer was justified in commencing the pursuit.

Communication between the pursuing officer and SouthComms

33. Sergeant A correctly advised SouthComms of the commencement of the pursuit.
34. The only other communications were the required warning then given by SouthComms, followed shortly afterwards by Sergeant A requesting an ambulance as Mr Fowler had crashed.
35. The event of the crash was so proximate to the commencement of the pursuit that Sergeant A did not have time to acknowledge the warning given by SouthComms.

FINDING

Police complied with the pursuit policy's communication requirements.

The pursuing officer's manner of driving

36. Sergeant A reported that his speed reached no more than 80kph and that he slowed for a red light, checked the road was clear, and continued through.
37. His speed was not excessive under the circumstances, and nor did it place undue pressure on Mr Fowler who at times travelled considerably faster than 80kph and had opened up a large gap at the time of the crash.

FINDING

Sergeant A complied with the pursuits policy in the manner of his driving.

Oversight of the pursuit by SouthComms

38. The Pursuit Controller was informed of the pursuit and ensured that the required warning was given by the dispatcher. Before he could monitor the pursuit, it had ended.

FINDING

The Authority is satisfied that this short pursuit was properly overseen by SouthComms.

Consideration of abandonment

39. When a large gap opened up between himself and the motorcycle, Sergeant A formed the view that pursuit was most likely futile. When questioned on this point, he said that having lost the motorcycle the pursuit "*naturally abandoned or stopped*". He was making a decision to formally abandon the pursuit when he came across the crash scene.

FINDING

Sergeant A complied with the pursuit policy requirements for ongoing consideration of whether this pursuit *should be continued or abandoned*.

Given its short duration it is accepted that the Sergeant did not have the opportunity to notify SouthComms that he was abandoning the pursuit.

CONCLUSIONS

40. The pursuit complied with policy. There is no evidence of misconduct or neglect of duty on the part of the Police officers involved, and their actions did not cause Mr Fowler's death.



Hon Justice L P Goddard

Chair

Independent Police Conduct Authority

July 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

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