



Deaths of Norman Fitt and Deidre Jordan following Police pursuit

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 8.00pm on 26 August 2010, a car driven by Phillip Bruce Ray Bannan, aged 22, crashed into a car driven by Norman Richard Fitt, aged 73, at an intersection in central Christchurch following a short Police pursuit. Mr Fitt died at the scene and his passenger Deidre Valerie Jordan, aged 67, died shortly after arriving at hospital.
2. The Police notified the Independent Police Conduct Authority of the pursuit, and 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 8.00pm on Thursday 26 August 2010, Mr Bannan was driving a Ford Mondeo westward on Ferry Road in central Christchurch. He had spent much of that afternoon drinking alcohol and had previously been disqualified from driving..
4. Officer A and Officer B were on patrol in Ferry Road at this time, driving eastward in a class A uniform patrol car.¹ Officer A was the driver, and Officer B was responsible for operating the radio. Both are experienced officers, having served with the New Zealand Police for 12 and 17 years respectively.
5. As the Ford approached the patrol car, Officer A recorded its speed on his radar equipment as 89 kph in a 50 kph area. The officers decided to pull the Ford over and speak to the

¹ Class A vehicles are authorised to conduct pursuits.

- driver. Officer A did a U turn, and Officer B activated the patrol car's warning lights. The officers followed the Ford, which had turned right onto Fitzgerald Avenue.
6. The patrol car pulled up behind the Ford as it was stopped for a red light at the St Asaph Street intersection. While waiting for the traffic lights to change, Officer B turned off the patrol car's warning lights so as not to confuse the other drivers waiting at the intersection.
 7. When the traffic began to move forward, Officer B reactivated the warning lights and briefly sounded the siren to signal that the officers required the Ford's driver, Mr Bannan, to stop. Mr Bannan initially appeared to be pulling over to the side of the road, but then swerved through the traffic, scraping past another car as he did so, and accelerated away northward on Fitzgerald Avenue through the Tuam Street intersection.
 8. The officers decided to pursue the Ford. Officer B quickly activated the siren and attempted to contact the Southern Communications Centre (SouthComms) intending to advise the dispatcher that the officers were initiating a pursuit. The dispatcher was delayed from answering Officer B's radio call for about 15 seconds while he finished up another work-related phone call.
 9. Meanwhile Mr Bannan continued to accelerate and increase the distance between him and the patrol car, until he was about 120 metres ahead of the officers. He drove through three intersections (Lichfield Street, Cashel Street, and Hereford Street) all with green traffic lights, reaching estimated speeds of between 80 and 90 kph. As Mr Bannan arrived at the intersection with Worcester Street, the traffic signal was showing red.
 10. Officer A followed the Ford along Fitzgerald Avenue, but quickly realised that its driver was taking extreme risks to avoid apprehension by driving at high speeds through the intersections. When he saw the Ford approaching the red traffic lights at Worcester Street at speed, he decided to slow down and abandon the pursuit because of the dangerous nature of Mr Bannan's driving. The patrol car's warning lights and siren remained activated as Officer A began reducing the patrol car's speed to the limit of 50 kph.
 11. Mr Bannan braked as he approached the Worcester Street intersection, but accelerated again when the lights turned green. He then sped towards the next intersection with Gloucester Street, where the traffic lights were still red. At this point the SouthComms dispatcher responded to Officer B. During this exchange Mr Bannan reached the intersection, drove through the red light and collided with a Daihatsu Terios travelling east on Gloucester Street.
 12. Mr Bannan's car struck the Daihatsu near the driver's door, and the force of the impact caused the Daihatsu to roll sideways several times before landing upright. The Ford then crossed over a raised island separating the northbound and southbound lanes in Fitzgerald Avenue, narrowly missing oncoming traffic before crashing into a fence.

13. The patrol car was about 150 metres behind the Ford at the time of the collision. Officer B immediately advised the SouthComms dispatcher of the crash and asked for ambulances to be sent to the scene.
14. The pursuit had lasted approximately 30 seconds over a distance of 500 metres.
15. The Daihatsu's driver, Mr Fitt, died at the scene. The front seat passenger, Mrs Jordan, sustained serious injuries and died soon after arriving at Christchurch Hospital.
16. Mr Bannan survived the crash but received injuries that required hospitalisation for several days.

Crash analysis

17. Fitzgerald Avenue is a main road in central Christchurch with good street lighting and a well sealed road surface. During the pursuit the weather was clear and the roads were dry. There was light traffic in the area.
18. Mr Bannan's car did not have a current warrant of fitness or registration. An independent vehicle inspector found no mechanical defects in either the Ford or the Daihatsu that would have contributed to the cause of the crash.
19. The Crash Investigator determined that the principal causes of the crash were speed and driver error (by Mr Bannan).

Cause of death

20. A Forensic Pathologist concluded that the deaths of Mr Fitt and Mrs Jordan were caused by *"high energy impact injuries"*.

Phillip Bannan

21. Blood taken from Mr Bannan approximately one hour and 20 minutes after the crash was found to contain 174 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver in New Zealand aged 20 years and over is 80 milligrams per 100 millilitres.
22. At the time Mr Bannan had a number of convictions, including two for driving with excess breath alcohol and was a disqualified driver.
23. He pleaded guilty to the manslaughter of Norman Fitt and Deidre Jordan and, was sentenced to nine years' imprisonment on 15 December 2010. He was also disqualified from driving for seven years.

LAWS AND POLICIES

Legislative authority for pursuits

24. Under the Land Transport Act 1988, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.

Police pursuit policy

Definition

25. A pursuit occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver.

Overriding principle

26. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*
27. The driver of a Police vehicle has the primary responsibility for the initiation, continuation and conduct of a pursuit. Further, before commencing a pursuit an officer is required to first undertake a risk assessment. The driver must then determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.

Communication requirements

28. When a pursuit commences, the communications centre must be notified as per the communications procedure contained in the pursuit policy. That procedure states that the words to be used by a patrol when calling in a pursuit are *“Comms Centre [call sign], in pursuit.”* Once the dispatcher acknowledges this radio call, the patrol must give details of location, direction of travel, description of vehicle and reason for pursuit.
29. The communications centre must then provide the following warning to the patrol: *“If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge.”*

Abandonment

30. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. When abandoning a pursuit, the driver must (i) immediately reduce speed to increase the distance between the offender's vehicle and their own, (ii) deactivate the warning lights and siren once below the speed limit, (iii) stop as soon as it is safe to do so, and (iv) report abandonment to the pursuit controller (i.e. the shift commander at the Police communications centre), confirming that they are stationary and giving their position.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

31. Officer A's radar equipment recorded that Mr Bannan was driving at a speed of 89 kph in a 50 kph area. The officers were empowered to stop him for traffic enforcement purposes and were justified in doing so.
32. Once Mr Bannan had failed to stop for the officers (see paragraph 7), Officer A considered the risks involved in initiating a pursuit. Since the weather, lighting, road and traffic conditions were good, he decided to follow the vehicle.
33. Officer A and the patrol vehicle were certified to conduct pursuits under the Police Professional Driver Programme. Officer A was a 'gold' rated driver.

FINDING

The officers complied with the law and Police policy in commencing this pursuit.

Communication

34. Once the pursuit had begun, Officer B attempted to notify SouthComms over the radio but was unable to reach the dispatcher immediately, because the dispatcher was busy with another call (see paragraph 8). By the time the dispatcher responded, Officer A had begun the process of abandoning the pursuit.
35. Officer B only had time to inform the dispatcher that a vehicle had failed to stop for them before the crash occurred. The dispatcher did not have an opportunity to give the officers the safety warning required by pursuit policy (see paragraph 29).

FINDING

In the circumstances, there was no opportunity for the officers to comply with the pursuit policy in respect of communication.

Speed and manner of driving

36. In a statement Officer A said:

"I know the speed I got up to from Tuam Street was a maximum of 90 kph. I consider that speed safe in those conditions of light traffic, dry road, almost a one way street with a traffic island, no pedestrians, commercial area until Hereford/Worcester Street areas."

37. The patrol car's warning lights and siren were activated at all times during the pursuit, and the patrol car was over 100 metres behind the Ford for most of that time.

FINDING

Officers A and B complied with the pursuit policy in relation to speed and manner of driving.

Ongoing risk assessment/abandonment

38. The pursuit only lasted for about 30 seconds. Officer A continually assessed the risks involved, and decided to abandon the pursuit when he saw that the Ford was speeding towards a red light at the Worcester Street intersection.

39. Officer A was still reducing the patrol car's speed to the limit of 50 kph when the crash occurred at the Gloucester Street intersection. He had not had time to deactivate the warning lights and siren and stop the patrol car, as required by policy (see paragraph 30).

40. The officer's inability to meet the full requirements of the pursuit policy with regard to abandonment was a consequence of the short nature of the pursuit, rather than any failure on his part.

FINDING

Due to the short duration of the pursuit, Officer A did not have the opportunity to fully comply with pursuit policy in respect of abandonment.

CONCLUSIONS

41. In the circumstances, Officers A and B had a duty to take steps to apprehend the driver of the Ford and were justified under law and Police policy in commencing the pursuit. The officers had begun the process of abandoning the pursuit when the crash occurred.
42. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that none of the actions of the officers involved were contrary to law, unreasonable, unjustified, unfair or undesirable.
43. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

FEBRUARY 2011

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 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 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 must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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