



Fatal Police collision with Paul Brown

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 4.15pm on 18 April 2010, motorcyclist Paul Brown, aged 37, collided with a Police car whose driver was attempting a u-turn on Waerenga Road, approximately seven kilometres east of Te Kauwhata. Mr Brown was thrown from his motorcycle and died at the scene.
2. The Police notified the Independent Police Conduct Authority of the death, and the Authority conducted an investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. At about 4.15pm on Sunday 18 April 2010, Officer A, a Highway Patrol officer with approximately 35 years service with the Ministry of Transport and Police, was travelling east on Waerenga Road in a marked Police patrol car. Officer A was certified as a Police gold licence holder. With him in the patrol car was an approved 'ride-along' observer.
4. As Officer A was driving along a straight section of the road approaching a hill, a westbound utility vehicle came over the brow of the hill. Officer A recorded the utility's speed on his radar equipment as 154 kph in a 100 kph area.
5. Officer A decided to pull over the driver of the utility due to the excessive speed. He flashed his headlights at the utility as it passed him and then activated the patrol car's warning lights, signalling to the driver to stop. After checking in his rear view mirror, Officer A started to brake and pulled over to the left side of the road near the top of the hill, preparing to do a u-turn.
6. When asked about his thoughts regarding the safety of that location for conducting a u-turn, Officer A said in a statement: *"At that time I thought it was okay – I thought it was*

alright". He also said: "I thought I had plenty of room. Plenty of visibility.... Some of these manoeuvres – sometimes it's a split second decision that you make."

7. Officer A turned his vehicle as far to the right as he could without mounting the kerb, but was unable to complete the u-turn in one movement. He then put the patrol car into reverse gear so he could complete a three-point turn.
8. As the officer looked to his left, he saw a motorcycle coming over the brow of the hill *"very quickly"*. The motorcyclist, Mr Brown, appeared to be steering right in order to drive around the patrol car, which was blocking the westbound lane.
9. Mr Brown was unable to avoid the patrol car and collided with the rear-left side of the vehicle. The force of the collision propelled him over the patrol car and approximately 70 metres down the hill. He sustained serious injuries and died at the scene.
10. The 'ride-along' observer in the patrol car suffered minor injuries.
11. The utility driver did not witness the collision between the Police car and Mr Brown.

Crash analysis

12. At the time of the crash, the weather was fine and the road surface was dry and well sealed. There was little traffic.
13. Officer A was breath tested at the scene and returned a negative result. Mr Brown's blood contained 56 milligrams of alcohol per 100 millilitres of blood. The legal limit is 80 milligrams of alcohol per 100 millilitres of blood.
14. The Police crash investigator determined that Mr Brown's estimated pre-braking speed was between 118 and 143 kph, and that the estimated impact speed was between 93 and 99 kph. The total time from Mr Brown's first sighting of the Police car to the collision was in the range of 3.5 to 3.8 seconds. The crash investigator concluded: *"Calculations show any speed above 101 km/h may have been too fast for Mr Brown to stop his vehicle within the distance between first viewpoint and impact area."*
15. In relation to the actions of Officer A, the crash investigator found that a three-point turn in that location would take 9 – 10 seconds to complete, and concluded that:

"The driver [Officer A] has made an error in judgment regarding his decision to u-turn at the location; the turn was never able to be completed in one movement, meaning the manoeuvre has developed into a three-point turn resulting in a much lengthier time that the vehicle is impeding traffic flow."

16. A further review of the initial speed of the motorcycle was carried out at the request of Police by an expert Engineering Consultant, Dr J.K. Raine¹. Dr Raine supported the views of the Police crash investigator, saying his report was: *“a thorough and comprehensive analysis of this crash and in my view is sound.”* Dr Raine did however find that the Police report erred a little on the conservative side in estimating the range of the initial speed, or pre-braking speed, of the motorcycle. He formed the view that it was most likely that the *“initial speed for the motorcyclist would have been in the range 145 ± 10km/h prior to braking skid marks appearing on the road.”*

Prosecution

17. Following a Police investigation, Officer A was charged with dangerous driving causing death and dangerous driving causing injury. At the time of preparing this report a trial date had not yet been scheduled.

LAWS AND POLICIES

Police pursuit policy

18. 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.

THE AUTHORITY’S FINDINGS

19. Officer A’s radar equipment recorded that the utility was travelling at 154 kph in a 100kph speed zone. Officer A was therefore justified in deciding to stop and speak to the driver for traffic enforcement purposes.
20. The circumstances did not meet the criteria for a pursuit, as that is defined (see paragraph 18), at the time of the collision between the Police car and Mr Brown’s motorcycle.
21. While Officer A had turned on his flashing lights to signal to the utility driver to stop, it cannot be said that the driver failed to stop and attempted to evade apprehension. The utility driver said in interview that whilst he suspected the officer was going to turn around and pull him over for speeding, he did not remember seeing the Police car’s warning lights flashing, and as the Police car never pulled up behind him, he kept on driving. Due to the crash, Officer A was unable to take any other steps to apprehend the driver of the utility.

¹ A Professor of Mechanical Engineering and Head of the School of Engineering at AUT University, Auckland.

22. In relation to the question of whether Officer A exercised proper care when he attempted the u-turn, the Authority notes that Police officers are held to the same standard of care expected of all road users – that of the reasonable and competent driver. They must not use their vehicles *“in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to a person”*².
23. Officer A has been charged with dangerous driving causing death and injury. As due process on those matters is pending, the Authority makes no finding as to whether Officer A’s actions were contrary to law. The Authority notes the findings of the Police crash investigator and the Engineering Consultant, and the facts, including the fact that Officer A decided to do a u-turn just below the brow of a hill in an area where the speed limit is 100 kph. By the time the Police car would have become visible to westbound drivers coming over the hill; it would be only 120 metres away. Oncoming traffic had very little time to react to the fact that the Police car was blocking the lane (see paragraph 14 for details).
24. Tragically in this case, Mr Brown was not able to avoid a fatal collision with the Police car.
25. The Authority notes Officer A also misjudged the space available for him to complete the u-turn. He then had to carry out a three-point turn, which significantly increased the length of time the Police car was impeding traffic.
26. Despite his need to catch up with the speeding utility driver, Officer A should have found a safer and more convenient place to turn his vehicle around.

² Section 7(2) of the Land Transport Act 1998.

CONCLUSIONS

27. Officer A was not in pursuit of the utility driver when the crash occurred.
28. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), the Authority has formed the opinion that:
- Officer A's decision to attempt a u-turn just below the brow of a hill and in an area where the speed limit was 100 kph was highly undesirable and notes its lawfulness is subject to adjudication by the Court; and
 - the Police decision to lay criminal charges against Officer A was justified and appropriate.
29. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

APRIL 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.



IPCA

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