



Fatal Pursuit of Chase Glen Neary in Picton

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 11.48pm on Saturday 20 February 2010, a motorcycle driven by Chase Glen Neary (also known as Chase Buckton), aged 23 years, crashed into a wooden railing on Waikawa Road in Picton following a short Police pursuit. Mr Neary died at the scene and the pillion passenger, his mother, was seriously injured.
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. On the evening of Saturday 20 February 2010, Officer A was the sole officer on duty in Picton.
4. At around 11.45pm, the officer was driving a class A marked patrol car south on Waikawa Road.¹ Waikawa Road is a two-way road (one lane in either direction) with a flush median strip painted down the middle. It has a speed limit of 50 kph.
5. As he was passing Queen Charlotte College, Officer A was startled by a motorcycle coming towards him out of a dip in the road. The motorcycle was being ridden at high speed and was travelling along the median strip near the centre of the road.
6. Officer A immediately decided to pull over the rider of the motorcycle. When interviewed a few days after the pursuit he said:

¹ Class A vehicles are approved for use in pursuits.

“The [motorcycle’s] speed at the time was such that I wholeheartedly believed that the vehicle had to be stopped. I was satisfied and I still am satisfied that the speed it was doing at the time was dangerous. The position of the bike on the road led me to believe the rider was possibly drunk.”

7. As the motorcycle went past Officer A, he saw that the rider had a pillion passenger but was unable to see the registration number or identify the people riding it.
8. The rider of the motorcycle, a 1988 Kawasaki ZX 400cc road bike, was Mr Neary. The pillion passenger was his mother. Both Mr Neary and his mother were wearing helmets and protective clothing.
9. After completing a u-turn, Officer A activated the patrol car’s siren and red and blue warning lights to signal that he required Mr Neary to stop. The motorcycle was already 400-500 metres ahead of the officer at that point and was accelerating away. According to Officer A, the motorcycle continued to pull away from the patrol car throughout the pursuit.
10. Witnesses later confirmed that the motorcyclist appeared to be driving excessively fast, and that there was some distance between the motorcycle and the Police car during the pursuit.
11. At 11.47pm, Officer A radioed the Southern Communications Centre (SouthComms) to advise the dispatcher that he was in pursuit of a motorcycle carrying two people which had failed to stop. He provided the dispatcher with details of his location (northbound on Waikawa Road), speed (120 kph), and driver and vehicle classification (Gold and A). He also stated that the road was clear. When prompted he gave the reason for the pursuit as *“Dangerous driving, 1K [intoxicated] driver.”*
12. Police pursuit policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning, *“If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge.”* The SouthComms dispatcher gave this warning to Officer A and he immediately responded: *“Roger, road is still clear, weather conditions fine.”*
13. By this stage Officer A had decided that if the motorcycle went past the intersection of Waikawa Road and Waimarama Street he would abandon the pursuit. This was because after that point:
 - the road becomes much more dangerous and it would be too risky to continue the pursuit; and

- there were no more side roads to use as escape routes, which meant the motorcyclist would be contained in the Waikawa Bay area.
14. Immediately after Mr Neary had passed the Waimarama Street turn-off, he failed to negotiate a right-hand bend. The motorcycle drifted left and hit the kerb, causing it to flip onto its side and throw Mr Neary and his passenger onto the pavement.
 15. Mr Neary crashed through a wooden guard rail and fell into a culvert 2.5 metres below the roadway. The motorcycle collided with the railing and bounced off, landing on the road. Mr Neary's mother came to rest on the pavement beside the guard rail.
 16. Officer A witnessed the crash from a distance, later saying: *"As I entered onto that stretch of road I saw the motorcycle coming out of the second dip. The distance then was considerably further than it was at any other stage during the pursuit. I watched the motorcycle come up out of that dip, the next thing I saw was that the bike had failed to take the corner."* The distance between Officer A and the motorcycle, at the time of the crash, is estimated by the Authority to be about 450 metres.
 17. Officer A immediately advised SouthComms that the motorcyclist had crashed after failing to take a corner and asked for an ambulance to attend. With the help of bystanders, the officer then provided first aid to Mr Neary and his mother until the paramedics arrived.
 18. The pursuit had lasted approximately 39 seconds and covered a distance of about 1.4 kilometres.
 19. Mr Neary died at the scene. His mother suffered serious injuries.

Crash analysis

20. On the night of the crash, the weather was fine and Waikawa Road was dry and in good condition. The road was well-lit and there was very little traffic.
21. A vehicle inspector found that the motorcycle's registration and warrant of fitness had expired, and that its front brakes were ineffective due to a leaky brake hose. The motorcycle was not up to warrant of fitness standard.
22. The speed of the motorcycle, on Waikawa Road, as Mr Neary approached the intersection with Waimarama Street is unknown. However Officer A has stated that he was unable to reduce the distance between his patrol car and the motorcycle, which suggests that Mr Neary reached speeds in excess of 120 kph (the speed of the patrol car) during the pursuit.
23. The crash investigator calculated that the motorcycle was travelling at between 60 and 65 kph immediately after going past the Waimarama Street intersection, and at approximately 46 kph when it hit the kerb at the apex of the right-hand bend. He also determined that,

prior to the crash; Mr Neary had positioned the motorcycle to turn right into Waimarama Street rather than preparing to negotiate the bend ahead.

24. The crash investigator found that there were a number of possible contributing factors which may explain why Mr Neary failed to make the turn into Waimarama Street and then failed to negotiate the right-hand bend, including:
- speed;
 - the faulty front brakes;
 - the distraction of attempting to evade the Police;
 - inexperience with the motorcycle, which he had obtained only two days earlier; and
 - unfamiliarity with the road.

Chase Neary

25. Mr Neary and his mother had arrived in Picton on the morning of 20 February 2010. They were staying at the Waikawa Bay Holiday Park on Waimarama Street.
26. Mr Neary had an extensive criminal history, including 11 convictions for driving while disqualified and 2 convictions for failing to stop for Police. At the time of the incident he was a disqualified driver and there were active warrants for his arrest.
27. Trace amounts of alcohol (less than 5 milligrams per 100 millilitres of blood) were found in Mr Neary's blood. His blood also had a tetrahydrocannabinol (THC) level of 2.5 micrograms per litre of blood. This is consistent with Mr Neary having smoked one cannabis cigarette within about 4.5 hours prior to his death. Due to the small amount, it was not possible to determine whether he was affected by the drug at the time of the crash.

Cause of death

28. A post mortem examination concluded that Mr Neary died from "*severe head injuries with basal skull fracture*".

Officer A

29. Officer A was breath-tested at the scene of the crash and returned a negative result.
30. Although Officer A told the SouthComms dispatcher that he had a Gold driver classification, it had actually expired more than five months before. For various reasons, including the officer suffering a serious injury and the limited availability of the Professional Police Driver Programme (PPDP) assessors, he had not been reassessed.

31. When an officer's Gold or Silver driver classification expires, it reverts to a Bronze classification until reassessment. Officers with a Bronze classification are not permitted to undertake pursuits.
32. At the time of the pursuit, the PPDP policy did not clearly explain what happened when an officer's driver classification expired. Officer A did not know his classification had been downgraded to Bronze, and believed that he was still authorised to conduct pursuits as a Gold classified driver.
33. In June 2010 the PPDP policy was amended in order to clarify the driver classification expiry policy and procedure.

LAWS AND POLICIES

Legislative authority for pursuits

34. 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

35. 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

36. 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."*
37. 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

38. 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.”
39. The communications centre must then provide the pursuit warning referred to in paragraph 12, which the pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender’s manner of driving and identity, and the pursuing officers’ driver and vehicle classifications.

Roles and responsibilities

40. The driver of a Police vehicle must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.

THE AUTHORITY’S FINDINGS

Commencement of pursuit

41. Officer A attempted to pull over Mr Neary because he considered the motorcycle’s speed and its position on the road posed a danger to other road users. He also suspected the driver was intoxicated (see paragraphs 5-6).
42. The officer was empowered to stop the vehicle for traffic enforcement purposes, and was justified in attempting to do so. He initiated the pursuit after Mr Neary failed to stop despite the officer signalling him with his siren and warning lights.
43. Officer A conducted a risk assessment and concluded that the need to apprehend the motorcyclist was not outweighed by the risks involved in the pursuit. Some of the factors considered in this assessment were that:
 - Officer A had not been able to identify the people on the motorcycle or obtain the motorcycle’s registration number;
 - Officer A was familiar with the road, and considered it to be in good condition;
 - Officer A had just driven through the area where the pursuit was to take place, and had seen almost no traffic and no pedestrians; and

- the weather was fine, and the road was dry and well-lit.
44. As discussed in paragraphs 30-32, Officer A was unaware that his Gold driver classification had reverted to a Bronze classification when it expired. This misunderstanding was due to a lack of clarity in the PPDP policy, which has since been amended (see paragraph 33).
 45. As a Bronze classified driver, Officer A was not authorised to undertake pursuits, however, the officer believed, reasonably, that he held a Gold classification.

FINDINGS

Officer A was not aware that his driver classification had been downgraded from Gold to Bronze.

Officer A otherwise complied with the law and Police pursuit policy in commencing this pursuit.

Communication

46. Once Mr Neary had failed to stop, Officer A quickly advised SouthComms that he had commenced a pursuit of the motorcycle. He gave the dispatcher details of his location, speed, road conditions, and driver and vehicle classifications. He also explained the reason for the pursuit.
47. The dispatcher then provided the safety warning required under the pursuit policy (see paragraph 12). Officer A immediately acknowledged the warning and stated that the road was still clear and the weather was fine.
48. The pursuit lasted about 39 seconds. There was not enough time for the pursuit controller (the SouthComms shift commander) to become involved in directing the pursuit.

FINDING

Police complied with the pursuit policy in respect of communication.

Ongoing risk assessment/abandonment

49. Officer A continually assessed the risks involved in the pursuit. When interviewed, he said:

“I didn’t see any other vehicles during the pursuit. When I initiated the pursuit, I positioned my vehicle more towards the centre of my lane to give myself ample opportunity if something was to arise as I come over these rises, as I round these corners, so that I am not startled by someone backing out, or a pedestrian that has emerged from their house and is walking.”

50. As discussed in paragraph 13, Officer A decided that he would abandon the pursuit if the motorcyclist continued past the intersection of Waikawa Road and Waimarama Street. However Mr Neary crashed almost immediately after passing this intersection. There was not enough time for Officer A to begin the procedure for abandoning the pursuit.
51. Due to the brevity of the pursuit, there was no time for the pursuit controller to consider the option of abandonment (see paragraph 48).
52. The issue of the speed reached during this pursuit is addressed in paragraphs 53 to 56.

FINDING

Given the brevity of the pursuit, Officer A complied with the pursuit policy, insofar as he was able, in relation to ongoing risk assessment and abandonment.

Speed and manner of driving

53. Pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff. In accordance with this policy, Officer A kept the patrol car's warning lights and siren activated at all times during the pursuit.
54. While attempting to catch up to Mr Neary's motorcycle the officer reached a speed of around 120 kph (see paragraph 11). When interviewed the officer said:

"I knew it was a 50 kph speed limit. Given the speed he was going I was in no doubt I would need to exceed the speed limit simply to close the distance between myself and him, if not to effect the stop of the vehicle but to at least achieve some form of identification of the vehicle to allow me to follow up the matter at a later stage."
55. Officer A was familiar with the road, and knew from having just driven through the area that it was almost deserted. He was not close behind the motorcycle during the pursuit.
56. Notwithstanding the brevity of the pursuit, and the officer's on-going assessment (see paragraph 49), the Authority is of the view that the speed Officer A reached during the pursuit, whilst lawful, was nevertheless undesirable.
57. The following factors increased the risk associated with this pursuit:
 - the pursued vehicle was a motorcycle with a pillion passenger;
 - Officer A was alone, which meant he had to communicate with SouthComms as well as concentrate on his driving; and

- it was night-time and there were bends in the road, leaving Officer A little time to react to sudden hazards.

FINDING

The speed at which the patrol car was driven was undesirable.

CONCLUSIONS

58. Officer A was justified under law and the pursuit policy in commencing the pursuit.
59. Although Officer A's Gold driver classification had expired, the officer reasonably believed that he was authorised to conduct the pursuit; and the officer's classification did not affect the conduct of the pursuit.
60. The PPDP policy has been updated to clarify the driver classification expiry policy.
61. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that the speed reached by Officer A during the pursuit, whilst lawful, was nevertheless undesirable.
62. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

MAY 2011

About the Authority

WHAT 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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