



Police pursuit resulting in serious bodily harm to two youths

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 2.20am on 24 August 2010, a stolen car driven by a 15 year old youth crashed into a tree following a Police pursuit in Parnell, Auckland. The driver and his two 14 year old passengers were all injured, two of them seriously.
2. The Police notified the Authority of the pursuit as required under s.13 of the Independent Police Conduct Authority Act 1988, which applies to incidents where serious bodily harm results from Police actions. 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 2.15am on Tuesday 24 August 2010, three youths were in a stolen Nissan Bluebird driving through Newmarket in Auckland. They had earlier run away from a Child Youth and Family home in Te Atatu.
4. Officers A and B were on patrol in Newmarket in a category 'A' uniform patrol car when they saw the Nissan fail to stop for a red light at the intersection of Great South Road and Market Road, and nearly collide with a truck.
5. A category A car is authorised to be the lead car in pursuits. Officer A was the driver of the Police car. She is certified as a Gold licence holder, having been trained under the Police Professional Driving Program (PPDP) and therefore competent to engage in pursuits as the lead driver. Officer B was responsible for operating the radio and communicating with the Police Northern Communications Centre (NorthComms).
6. Officers A and B decided to stop the Nissan and speak to the driver. They followed the car into Market Road and Officer B activated the Police car's warning lights and siren to indicate to the driver of the Nissan that he was required to stop.

7. The driver of the Nissan pulled over and stopped just outside Dilworth School. The Police car then pulled up behind the Nissan.
8. As Officer B started to get out of the Police car, the driver accelerated heavily and drove away along Market Road.
9. Officer B immediately got back into the Police car and radioed NorthComms advising that they had a *"Failing to stop – Market Road"*. Officer B also advised NorthComms of the Nissan's registration number and that he thought there were about five people in the car.
10. 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."* In this pursuit the dispatcher immediately gave the warning and Officer B acknowledged it.
11. The dispatcher then asked for the reason for pursuit and the location. Officer B advised that the driver of the Nissan *"went through a red light and we pulled him over"* and that the pursuit was on Remuera Road, heading towards Newmarket. A few seconds later, Officer B advised that his speed was about 100kph, that Officer A was a Gold class driver and the Police vehicle was category A.
12. The dispatcher then asked for the traffic and road conditions, which Officer B provided (*"fairly light, red light coming up"*). He then told the dispatcher that the driver of the Nissan had gone through the red light, turning right onto Broadway.
13. The NorthComms pursuit controller, who had joined the dispatcher at her console about a minute earlier to monitor the pursuit, immediately directed the dispatcher to abandon pursuit, saying: *"[call sign] abandon pursuit immediately as per North Comms Alpha"*. This order was acknowledged by Officer B. For more on the roles of the pursuit controller and dispatcher see paragraphs 39 and 40.
14. However, instead of stopping and reporting abandonment as required by policy (see paragraphs 36, 55 and 56), Officer A continued to follow the Nissan at a slower speed and turned off the lights and siren, while Officer B kept up commentary with the dispatcher.
15. Following the order to abandon the pursuit controller left the dispatcher's desk (see paragraphs 57 - 62 for further detail on this issue).
16. Officer B advised the dispatcher that the Nissan was *"still on Broadway. Heading up towards Parnell"*, the varying speeds at which it was travelling (30kph and 70kph), and the direction of travel. The dispatcher responded to this information and at the same time ran a check on the registration details and the registered owner. In interview later, the officers estimated that the Nissan was about 400 metres ahead on Broadway and Parnell Road and that they were the only two vehicles on the road.

17. About 20 seconds later, Officer B advised the dispatcher that *“we’re still following here he went onto the wrong side of the road. He looked like he almost lost it there....ah going down Parnell Rise towards the city now”*, he then advised that the Nissan driver’s speed had picked up to 90kph, and that they had lost him.
18. After continuing through Parnell to The Strand without sighting the Nissan, the officers turned the car around and asked a woman standing at the intersection of Parnell Road and Parnell Rise if she had seen the Nissan. The woman pointed out the car which had collided with a tree, across the road in Fraser Park.
19. When interviewed the woman said she had been walking along Parnell Road when the Nissan went past her at a speed she estimated to be over 100kph. She saw the car go out of control and crash into the tree. She confirmed that the Police car drove past 5 or 10 seconds later at a much slower speed.
20. Officer B immediately radioed NorthComms saying that the Nissan had crashed on the corner of Parnell Rise and Gladstone Road (actually Parnell Rise and Parnell Road) and asked for an ambulance and a dog unit to attend; followed shortly by a request for the fire service to attend as one of the males needed to be cut from the car. Officer B also advised that they had three males in custody.
21. The front seat passenger was admitted to intensive care with severe injuries, whilst the driver and rear seat passenger suffered serious and minor injuries respectively.

Environment

22. The Nissan mounted the pavement at the junction of Parnell Rise and Parnell Road and then continued into Fraser Park where it collided with a tree. At the point of intersection, Parnell Road has four lanes with two lanes running in each direction and Parnell Rise has two lanes with one lane running in each direction. Both Parnell Road and Parnell Rise are subject to a 50kph speed restriction.
23. The road surface was wet; however, it was not raining at the time of the crash. The road was in good condition and the road markings were clearly visible. It was dark at the time; however, street lightening was illuminated. There were no obstructions to visibility on the approach to Fraser Park.

Police crash analysis

24. A vehicle inspection carried out on the Nissan found that it was operating in a normal manner prior to the crash and had a current warrant of fitness.

25. The crash investigator's report determined that:

- The bend at the junction of Parnell Road and Parnell Rise is moderate and is easily negotiable in wet conditions when travelling at the posted speed limit of 50kph.
- Friction marks found at the scene indicate that the Nissan first began braking and sliding prior to hitting the directional arrow at the top of Parnell Road.
- A speed of between 77 and 79kph was calculated for the Nissan as it mounted the footpath bordering Fraser Park. It is likely that the Nissan then became airborne before hitting the tree.
- None of the three occupants of the Nissan were wearing seatbelts.

26. The crash investigator concluded that the main cause of the crash was excessive speed.

The driver of the Nissan

27. The driver of the Nissan was 15 years of age at the time of the crash. He was an unlicensed and inexperienced driver who had come to the attention of Police on numerous occasions previously, primarily for crimes involving vehicles.

LAWS AND POLICIES

Legislative authority for pursuits

28. 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

29. 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

30. 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.”*

Risk assessment

31. Under the Police pursuit policy, before commencing a pursuit an officer is required to first undertake a risk assessment. This involves consideration of the speed limit and manner of driving by the offending vehicle, identity and other characteristics of the occupants of the offending vehicle, weather conditions, the environment, traffic conditions, and capabilities of the Police driver and vehicle. The officer must then *“determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

32. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
33. Throughout a pursuit, Police must continue to assess the risks involved and they must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.

Communication requirements

34. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 10, 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.

Abandonment

35. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit controller must then give the direct order *“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”*

36. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
1	<i>Acknowledge the direction to abandon pursuit</i>
2	<i>Immediately reduce speed to increase the distance between the offender's vehicle and their own</i>
3	<i>Deactivate warning devices once below the speed limit</i>
4	<i>Stop as soon as it is safe to do so</i>
5	<i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i>

Roles and responsibilities

37. Under the policy, the driver of a Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver 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.
38. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.
39. The dispatcher at the Police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 10, and communicate instructions from the pursuit controller.
40. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

THE AUTHORITY'S FINDINGS

Commencement of pursuit

41. Officer A and her patrol car were authorised to conduct pursuits under the Police Professional Driver Programme. Officer A was a 'Gold' rated driver.
42. The officers saw the Nissan fail to stop for a red light at the intersection of Great South Road and Market Road, and nearly collide with a truck. They were empowered under the Land Transport Act 1988 to stop the Nissan and speak to the driver for traffic enforcement purposes.

43. The driver initially complied when the officers signalled for him to pull over to the side of the road. He then decided to flee, which prompted Officers A and B to begin a pursuit. Because the driver failed to remain stopped, Officer A was acting within her authority in commencing a pursuit.

FINDING

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

Communication

44. Officer B immediately notified NorthComms that the Nissan had failed to stop, and confirmed that they were in pursuit. He also provided the dispatcher with the Nissan's registration number and the likely number of occupants.
45. The dispatcher then provided the safety warning required under the pursuit policy (see paragraph 10).
46. In the first minute of the pursuit the dispatcher asked Officer B for details of the reason for pursuit, location, speed and traffic and road conditions. Officer B provided all of this information as well as direction of travel, class of driver of Officer A and category of vehicle (see paragraphs 11 and 12).
47. As soon as Officer B advised the dispatcher that the driver had driven through a red light, the pursuit controller instructed the dispatcher to abandon pursuit.

FINDING

Officer B and the dispatcher complied with pursuit policy in respect of communication.

Speed and manner of driving

48. The Police car's warning lights and siren were activated during the pursuit.
49. Officer A considered the risks involved in the pursuit and decided that there was limited danger due to the time of night and the good road and weather conditions.
50. Prior to the order to abandon, the speed of the pursuit as reported by Officer B, was 100kph. Following the order to abandon, the reported speed varied between 30 – 90kph. The posted speed limit throughout was 50kph.

FINDING

Officer A complied with the pursuit policy in respect of her speed and manner of driving.

Abandonment

Was the decision to abandon pursuit justified?

51. The order to abandon pursuit was made by the dispatcher, following instruction from the pursuit controller, at 2.17:08am; one minute and 16 seconds after the pursuit was first called in (see paragraph 13).
52. Officer B immediately acknowledged the order.
53. In interview with the Authority, Officer A said that she had also come to the conclusion that the risks to safety outweighed the immediate need to apprehend the driver (see paragraph 33).
54. The pursuit was being conducted at high speed, on wet roads, through residential streets and a shopping centre. Although there was little traffic at the time, the prospect of encountering traffic or pedestrians remained a possibility. The Nissan driver had demonstrated a propensity for risk-taking and the decision to abandon the pursuit was the correct one.

FINDING

The decision to abandon pursuit was justified and appropriate in the circumstances.

Was correct abandonment procedure followed by the pursuing patrol and NorthComms?

55. Following an order to abandon, Police pursuit policy requires Police patrols to immediately reduce speed, deactivate warning devices once below the speed limit, stop as soon as it is safe to do so, and report abandonment to the pursuit controller confirming that they are stationary and giving their position (see paragraph 36).
56. In this case, Officer A slowed down and turned off the lights and siren. However, Officer A did not stop the patrol car, and abandonment was not reported. Instead Officer A continued to follow the Nissan, while Officer B kept up commentary with NorthComms clearly stating that he was still “*following*” (paragraphs 16 and 17). In interview with the Authority Investigator, both officers accepted that they had not followed correct abandonment procedure.
57. The pursuit controller left the dispatchers desk to get pen and paper soon after giving the direction to abandon pursuit and once he had heard Officer B advise another unit that the Nissan was heading up towards Parnell. In interview, the pursuit controller said:

“From the units comments I assumed they had abandoned the pursuit and pulled over. I also thought they had abandoned the pursuit because I could hear that they had turned off their siren when they transmitted.”

58. The pursuit controller did not remain at the dispatchers desk to hear the Police patrol *“report abandonment to the pursuit controller, confirming that they are stationary and giving their position”* – step 5 of the abandonment procedure.
59. When the pursuit controller returned to the dispatcher’s desk, the dispatcher had turned off the loud speaker and was listening to her channel through her headset. The pursuit controller could not hear any radio transmissions on the channel. The pursuit controller said that: *“the first thing I was told was that the vehicle had crashed. I had no idea that the patrol vehicle was still following.”*
60. The pursuit controller said further:
- “Obviously if I had known there was a continuing commentary after I had ordered the abandonment I would have ordered the unit again to abandon straight away.”*
61. He said in hindsight he should have got the dispatcher to confirm with the unit that they had the lights and siren off and had pulled to the side of the road.
62. The dispatcher did not alert the pursuit controller to the ongoing communication or question Officers A and B regarding their compliance with the pursuit policy. In interview the dispatcher said that during the time the pursuit controller had left her desk she was busy completing vehicle and registered owner checks on the Nissan vehicle and was also dealing with another incident. She said from the wording used by Officer B, she assumed that the Police patrol was following the Nissan at a distance.

FINDING

Officers A and B did not comply with pursuit policy in relation to abandonment.

The NorthComms pursuit controller and dispatcher did not ensure that the Police patrol complied with the abandonment policy and the pursuit controller did not take adequate control of the abandonment stage.

The cause of the crash

63. Following the order to abandon, the officers estimate that the Nissan was about 400 metres ahead (see paragraph 16). Officer B clearly advised NorthComms that they were *“following”* the Nissan.
64. The patrol car and the Nissan were the only two vehicles on the road. The officers stated that they could keep observations on the Nissan as the tail-lights were visible in the distance. If the officers could see the Nissan, it is reasonable to assume that the occupants of the Nissan were also able to observe the Police car as it followed them.

65. The Police crash investigator concluded that the main cause of the crash was excessive speed (see paragraph 26).
66. All three youths have declined to be interviewed by either the Authority or the Police. Therefore, it is not known whether the presence of the Police car prompted the driver of the Nissan to speed up.

FINDINGS

It is not known whether the driver of the Nissan was influenced by the presence, at some distance, of the Police patrol.

CONCLUSIONS

67. Officers A and B were justified in law and under Police policy in commencing this pursuit, and Police complied with policy during the pursuit. However, neither the pursuing officers nor staff at NorthComms complied with Police policy in the abandonment stage of the pursuit.
68. The actions of the pursuing officers in continuing to follow the Nissan were contrary to the pursuit policy.
69. The primary cause of the crash, and serious bodily harm to the two youths, was the excessive speed at which the Nissan was driven in the wet and the driver's failure to negotiate a corner.
70. It is not known whether the driver of the Nissan was influenced by the presence, at some distance, of the Police patrol.
71. In terms of section 27(1) of the Act, the Authority has formed the opinion that:
 - Officer A and B's failure to comply with the abandonment procedure was undesirable;
 - the failures of the NorthComms pursuit controller and dispatcher to control and supervise the abandonment were undesirable.

RECOMMENDATIONS

72. In terms of section 27(2) of the Act, the Authority recommends that the Commissioner of Police considers whether Officers A, B, the pursuit controller and the dispatcher should be the subject of disciplinary, training or other remedial action.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

MAY 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.



PO Box 5025, Wellington 6145

Freephone 0800 503 728

www.ipca.govt.nz