



Fatal pursuit of Troy Peter MacKay

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 12.30am on Sunday 20 June 2010 a Subaru Impreza motor vehicle driven by Troy Peter MacKay collided with a tree on Halswell Road, Christchurch, following a short Police pursuit. Mr Mackay died on the way to hospital. His two passengers suffered serious injuries.
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 12.20am on Sunday 20 June 2010, Troy MacKay, aged 22, was driving a Subaru Impreza on Blenheim Road, Riccarton, Christchurch. With him in the vehicle were two female passengers.
4. At the same time, Officers A and B were on patrol in Riccarton in a 'category A' marked police car when they saw the Subaru make a sudden lane change and accelerate towards them.
5. A category A car is authorised to be the lead car in pursuits. Officer A was the driver. He is certified as a gold licence holder having been trained under the Police Professional Driver Programme (PPDP) and is therefore competent to engage in pursuits as the lead driver. As his passenger, Officer B was responsible for operating the radio and communicating with the Police Southern Communications Centre (SouthComms).
6. Officer B recorded the Subaru's speed on the radar as 72kph in a 60kph speed zone. The officers decided to stop the Subaru and speak to the driver.

7. The officers had to travel a short distance along Blenheim Road before they could execute a u-turn and by the time they turned, the Subaru was several hundred metres ahead of them.
8. Immediately after he turned, Officer A activated the red and blue warning lights, but not the siren, indicating to the driver of the Subaru that he was required to stop. However Mr MacKay did not stop and continued accelerating away, overtaking several other vehicles in the process.
9. In interview after the pursuit, both Officers A and B said that they assessed the following risk factors before making the decision to commence a pursuit:
 - i) The speed limit was 60kph.
 - ii) Mr MacKay was driving at 72kph and accelerating.
 - iii) That part of Blenheim Road has two lanes in each direction and there was very little traffic. The drivers of those vehicles on the road had pulled over on seeing the police lights.
 - iv) Officer A is a gold category police driver and the police vehicle was category A.
 - v) There was clear visibility, with no fog, mist or rain.
 - vi) The road was damp but not slippery.
 - vii) Blenheim Road and Curletts Road are in an industrial area. There were no pedestrians or cyclists and it was unlikely there would be any at that time.
10. Officers A and B concluded that the driver was deliberately attempting to evade apprehension and at 12.20:58am, as required under the Police pursuit policy (see paragraph 49), Officer B notified SouthComms that they were *"In pursuit on Blenheim Road heading out of town. Just passed Hansons Lane. Gold driver. Category A vehicle."*
11. 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.
12. In interview, Officer A estimated that by the time SouthComms were notified of the pursuit, the Subaru was about 500 metres ahead of them. The officers later estimated that their speed on Blenheim Road at that time (speed limit 60kph) had reached a maximum of 90 – 100kph.

13. The dispatcher was quickly joined by a supervisor who assumed the role of 'pursuit controller' as required under the pursuit policy. For more on the roles of dispatcher and pursuit controller see paragraphs 52 and 53.
14. The officers followed the Subaru as it turned left onto Curletts Road, (State Highway 73). The speed limit in this area is initially 70kph, but increases to 100kph just past a rail over-bridge. In later interviews, the officers said that because of the rail over-bridge, the Subaru disappeared from their view briefly, but from the top of the rise, the officers saw it once more, nearing the intersection with Lunns Road.
15. Once in the 100kph speed zone, Officer B advised SouthComms that there was no other traffic and that the speed was about 150kph. The officers fell further behind the Subaru, although they did not advise this to SouthComms.
16. About 1.4 kilometres along Curletts Road the road splits. The Southern Motorway veers left as a continuation of SH73, whilst Curletts Road (SH75) continues straight on. Mr MacKay continued down Curletts Road (speed limit still 100kph). Officer B advised SouthComms of the direction of travel.
17. Shortly after this, Officer A realised that the siren of the police car had not been activated, and so switched it on just before the intersection of Curletts Road and Halswell Road.
18. At about the same time, the officers observed that the lights of the Subaru appeared to be turned off, and at 12.22:21am Officer B notified SouthComms of this. A few seconds later Officer B advised SouthComms that the driver was: *"stopping for the red lights. Turning right towards Halswell."* In fact, whilst the driver slowed for the red light, he did not stop. The officers believed that, in slowing for the lights, the driver was checking for approaching vehicles and on seeing none he did not stop. The fact that Mr MacKay did not actually stop was not communicated to SouthComms, and the pursuit controller was under the impression that he had stopped.
19. Twenty-five seconds later, when the pursuit was on Halswell Road (speed limit 50kph), Officer B reported to SouthComms that Mr MacKay was overtaking traffic and the speed was about 130kph. SouthComms was not advised that the area was now residential and that the speed limit had changed from 100kph to 50kph, nor was it clear that 130kph was an estimate of Mr MacKay's speed, and that the speed of the police car was then about 70kph. A short time later Officer B reported that there were about four cars on the road and then that they had lost sight of the Subaru.
20. The pursuit controller later reported that when he heard that the patrol had lost sight of the Subaru he decided to direct it to abandon the pursuit. Before he could do so he heard Officer B advise that the Subaru had crashed.

21. Officer A said that, on turning in to Halswell Road, he did not see the Subaru and began reducing his speed to below 70kph while checking side streets. The officers had not turned off their lights or siren, although Officer A said that he felt the pursuit had been terminated at that point. About 10 seconds after Officer B advised SouthComms that they had lost sight of the Subaru, the officers came across the crash scene.
22. Mr MacKay had lost control of his vehicle when it struck a raised pedestrian haven (see paragraph 34 for details) and became airborne briefly, then began sliding and rotating a further 64 metres before it struck a kerb. The car then slid a further 38 metres along the grass verge before colliding with a tree. A Serious Crash Unit Investigator calculated the approximate speed of the Subaru when it struck the pedestrian haven as 151kph and when it struck the tree, 105kph.
23. The officers radioed the crash details to SouthComms and asked for the immediate attendance of ambulance.
24. A nearby resident, who is a St John Ambulance paramedic, heard the crash and rendered immediate medical assistance to the occupants of the crashed vehicle. Mr MacKay however died on the way to hospital. His two female passengers required hospitalisation for their injuries.
25. The pursuit travelled a distance of 5.8 kilometres in just under 3 minutes. Witnesses confirm that the patrol car driven by Officer A was some distance behind the Subaru when the crash occurred.

Passengers in the Subaru

26. In interviews following the pursuit, both passengers of the Subaru confirmed that they and Mr MacKay were aware of the police car behind them, and had first seen it when the patrol passed them on Blenheim Road. They both recalled seeing the red and blue flashing lights.
27. The front seat passenger said: *“Troy immediately accelerated away once he saw the Police and their flashing lights.”* She stated further that when Mr MacKay first *“took off”* from police she told him to slow down, but he told her to *“shut up”*. A little while later she said she started to panic, and said: *“He put his hand on my leg and squeezed it harder and harder, maybe to reassure me. I have the bruises on my leg where he grabbed me. I recall going around a corner and hearing the tyres skid and him having his hand on my leg holding it tighter. That was it. I don’t remember braking.”*
28. The rear seat passenger said: *“Troy was driving fast on Blenheim Road and swerved about twice in and out of traffic.”* She said further: *“It would be fair to say that Troy’s driving drew the attention of Police.”* In relation to the distance between the Subaru and police car, she said: *“The Police were a long way behind us when they did a u-turn...The Police car*

was not right behind us. I knew Troy was wanted by Police. There was no chance of the Police catching Troy."

Civilian witnesses

29. A taxi driver, driving along Halswell Road saw the Subaru overtake him at speed. He said: *"The car occupied the middle of the road and was using the white median strip prior to the pedestrian traffic island."* He said that he could see the raised pedestrian haven in the middle of the road in front of him and was about 20 metres away from it when the Subaru sped past him and hit the haven.
30. Two other witnesses who were overtaken by Mr Mackay in the seconds before the crash, described the Subaru's speed as: *"His speed blew me away...If you said 140km/h I would not be surprised."* And: *"I said to others in the car that it was doing at least 140km/h as it passed us and was accelerating."*
31. The witnesses confirmed that Mr MacKay overtook four vehicles on Halswell Road, using the painted road markings in the centre of the road as an overtaking lane.

Environment

32. At the time of the pursuit the weather was fine with high cloud. The road surface was slightly damp from previous rain. Visibility was good and the area was well lit by street lights on both sides of the road.
33. Blenheim Road and Curletts Road (SH73 and SH75) are major thoroughfares and have several lanes in each direction. All of the roads were well sealed, with street marking in good condition.
34. Halswell Road, where the crash occurred, is a wide sealed road with one lane in each direction. The lanes are separated by a 2.1 metre wide, painted median strip in which a number of raised pedestrian havens are placed. The pedestrian havens are nearly 5 metres long. They consist of two raised island sections with a pedestrian 'walk through' section in between. Against the walk through area there is a raised hand rail, painted red. At the leading edge of the two islands there are reflective yellow 'cats eyes' and blue directional signs on which are painted a white arrow indicating motorists should keep to the left of the haven.
35. There are cycle-ways adjacent to each lane and a marked parking strip adjacent to the cycle-way on the eastbound lane. On each side of the road is a 6 metre wide grass verge and 2 metre wide footpath. Numerous trees of varying size and description line the verges. The speed limit is 50kph and it is largely a residential area.

36. There are three pedestrian havens between the intersection of Curletts Road and Halswell Road and the haven struck by Mr MacKay.
37. The haven struck by Mr MacKay had been struck by another vehicle two days before, damaging the arrow sign and bending over the handrail. The damage had not been repaired at the time of the pursuit and this made the haven less visible to oncoming traffic.

Police crash analysis

38. A Police Serious Crash Unit investigator attended the scene while the Subaru was still in situ. He found that the causative factors were:
 - 38.1 The previous damage to the pedestrian haven (see paragraph 37 above).
 - 38.2 Mr MacKay was travelling at 151kph in a 50kph area and was using the painted traffic island as an overtaking lane.
39. Additionally, he found other relevant factors were:
 - 39.3 The vehicle was inspected and no faults were found that directly contributed to the crash. However there were a number of faults with the vehicle that would have prevented it obtaining a warrant of fitness. These include different tyre size, brake hoses not mounted correctly, no high stop light, and black painted tail lights. The identification plate was removed from the vehicle and there was no warrant of fitness label displayed.
 - 39.4 Mr MacKay had a history of running from Police and driving at high speed to evade apprehension.
 - 39.5 At the time of his death, Mr MacKay was a disqualified driver and there was a warrant for his arrest.

Toxicology

40. An analysis of Mr MacKay's blood and urine was later conducted to determine whether there were any traces of alcohol and drugs. No trace of alcohol was detected.
41. Traces of methamphetamine and cannabis were located however the exact effects of these drugs on Mr MacKay cannot be accurately determined since there are wide variances of these according to the individual concerned.

Cause of death

42. A Forensic Pathologist found that Mr MacKay's death was due to: *"High energy impact injuries to chest and head indicative of road vehicle crash."*

LAWS AND POLICIES

Legislative authority for pursuits

43. Under the Land Transport Act 1998, 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 policy¹

Definition

44. 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

45. 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

46. 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:*

¹ The Police policy in place at the time of this incident was called the pursuit policy. On 18 October 2010 the pursuit policy was replaced by the fleeing driver policy. All references to Police policy in this report relate to the pursuit policy unless otherwise stated.

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

47. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
48. 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

49. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 11, which the pursuing officers must acknowledge. The pursuing officers 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

50. 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.
51. 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.
52. 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 11, and communicate instructions from the pursuit controller.
53. 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.

Abandonment

54. 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.”*
55. 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>

THE AUTHORITY’S FINDINGS

Commencement of pursuit

56. Officers A and B and their marked patrol car were appropriately classified to undertake pursuits under the PPDP (see paragraph 5).
57. Troy MacKay was signalled to stop for a traffic infringement under section 114 of the Land Transport Act 1998. Because he failed to stop, the officers had the authority to commence a pursuit.
58. The reaction of Mr MacKay, once he saw the police patrol on Blenheim Road, was to accelerate away in an attempt to avoid apprehension.
59. Officers A and B carried out a risk assessment, as required by policy, prior to pursuit, and considered that the risk was low (see paragraph 9).

FINDING

Officers A and B complied with the law and with Police pursuit policy in commencing the pursuit.

The officers considered the relevant risk factors and formed the view that the immediate need to apprehend the offender outweighed the risks.

Communication

60. Once Mr MacKay had failed to stop, at 12.20:58am, Officer B quickly advised SouthComms that they had commenced a pursuit on Blenheim Road; he gave the direction of travel and advised details of the driver and vehicle classification (see paragraph 10).
61. The dispatcher then provided the safety warning required under the pursuit policy (see paragraph 11). Officer B immediately acknowledged the warning and gave an update on the direction of travel.
62. The communications between Officer B and the dispatcher continued for the duration of the pursuit and included the speeds involved; vehicle description; the road and traffic conditions; that the lights of the Subaru were switched off; and, about 10 seconds before the officers came across the crash scene, that they had lost sight of the Subaru.
63. The issue of communication of risk factors while the pursuit was on Halswell Road is addressed in paragraphs 69 - 72.

FINDING

Police generally complied with the pursuit policy in respect of communication.

Speed and manner of driving of Police

64. Pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff. In accordance with this policy, Officers A and B kept the patrol car's warning lights activated at all times during the pursuit. The siren was not activated until the officers turned into Halswell Road. It is accepted by the Authority that the failure to activate the siren at the beginning of the pursuit was an oversight that was corrected at an early stage and had no bearing on the outcome of the pursuit.
65. While attempting to catch up to Mr MacKay, Officer B reported speeds of around 150kph in 100kph and 70kph speed zones; and 130kph in a 50kph speed zone. The changes in posted speed limit were not notified to SouthComms by Officer B.² The pursuit controller advised the Authority that he was not aware that the posted speed limit had changed at all during the pursuit. Mr MacKay was driving at a speed of around 151kph in a 50kph speed zone when he crashed.

² Under the pursuit policy, current at the time of this pursuit, officers were not required to notify the communications centre of the posted speed limit of a road when giving a speed report. The fleeing driver policy amends this, and requires officers to notify the communications centre of the speed of the fleeing driver as well as the posted speed limit of the road in question.

Curletts Road (speed limit 70kph then 100kph)

66. The speed of 150kph notified by Officer B to SouthComms on Curletts Road, just over a minute into the pursuit, was high, but was justified in the Authority's view because: there was no other traffic on Curletts Road; the road was well lit, wide and straight with only one feeder road; it was not a residential neighbourhood; and the officers were familiar with the area.

Halswell Road (speed limit 50kph)

67. Once on Halswell Road the pursuit travelled through a residential neighbourhood (see paragraphs 34 - 35 for detail); the speed limit was 50kph, and there were four cars travelling in the same direction that were overtaken by Mr MacKay. About 30 seconds before the officers came across the crash scene, Officer B reported to SouthComms that the speed was "about 130kph". Officers A and B have told the Authority (see paragraph 19) that 130kph was Officer B's estimate of Mr MacKay's speed, not the speed of the police car. Officer A said that within 5 – 10 seconds of turning into Halswell Road, as he could not see the Subaru ahead, he reduced the speed of the patrol car to about 70kph.

68. It is evident, both from the officers' accounts, and Mr MacKay's speed at the time of the crash, that Police actions in slowing down had no influence on Mr MacKay's driving.

FINDING

With the exception of not activating the patrol car's siren at the commencement of the pursuit, police complied with the pursuit policy in relation to speed and manner of driving.

Ongoing risk assessment and the option of abandoning pursuit

69. Officers A and B continually assessed the risks involved in the pursuit. There was satisfactory communication between Officer B and SouthComms in relation to risk factors whilst the pursuit was on Blenheim Road and Curletts Road.

70. The Authority has no issue with the risk assessments during this pursuit, until it reached Halswell Road. Once on Halswell Road the risk factors known by the officers were:

- the Subaru's tail lights appeared to be off;
- Mr MacKay had slowed for but driven through a red light at the intersections of Curletts Road and Halswell Road;
- it is a residential area with a speed limit of 50kph;

- Mr MacKay had not modified his driving upon reaching the residential area, but was briefly seen by Officer B, some 500 – 600 metres ahead, driving at an estimated speed of 130kph; and
 - other traffic was encountered.
71. These risk factors were not all reported to SouthComms by Officer B. Nevertheless, when the officers reported that they had lost sight of the Subaru (see paragraph 20), the pursuit controller decided to direct the abandonment of the pursuit. He had not actioned this decision when, shortly afterwards, the crash occurred.
72. In the Authority's view, it would have been appropriate for Officers A and B to abandon the pursuit once they turned onto Halswell Road, in light of the increased risk.

FINDING

On Blenheim Road and Curletts Road, Officers A and B continually assessed the risks involved in the pursuit as required by policy and communicated these to SouthComms, however on Halswell Road, Officer B did not report all relevant risk factors to SouthComms.

Did the actions of the officers, in searching for the Subaru, amount to abandonment?

73. About 5 – 10 seconds after turning onto Halswell Road, as he could not see the Subaru, Officer A began slowing the police car. He reduced speed through 70kph, checking driveways and side roads with the patrol car's lights and siren activated.
74. Officer B saw the Subaru some 500 – 600 metres ahead, and advised SouthComms that the speed was 130kph and that the Subaru was overtaking traffic. A few seconds later, when Officer B could no longer see the Subaru, he reported this fact to SouthComms. Officer A has advised the Authority that, at this stage, he estimates that he was travelling at less than 70kph, but still above the speed limit of 50kph. In Officer A's view, this amounted to a termination of the pursuit (see paragraph 21).
75. Accepting that the officers had moved towards abandonment, they did not then follow prescribed procedures (see paragraph 55). They continued to drive above the speed limit, with their lights and siren activated, and did not have any communication with SouthComms regarding abandonment.

FINDINGS

The actions of Officers A and B did not amount to abandonment under the pursuit policy.

CONCLUSION

76. Troy MacKay demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
77. Officers A and B were justified in law and under Police policy in commencing this pursuit, and police largely complied with policy during it, other than in relation to the communication of risk factors once on Halswell Road.
78. After entering Halswell Road, the officers should have abandoned the pursuit in full accordance with policy,.
79. The Authority accepts that the officers' abandonment process had no bearing on the tragic outcome.
80. In terms of section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), the Authority has formed the opinion that the failure of Officers A and B to abandon the pursuit in full accordance with policy was undesirable.
81. The Authority makes no recommendations pursuant to section 27(2) of the Act.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

AUGUST 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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