



# Fatal Police pursuit of Timoti Mohi

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At about 12:55am on 5 January 2011, a Nissan Silvia driven by Timoti Mohi, aged 15, collided with a power pole on Mount Hobson Road, Remuera, following a short police pursuit in Central Auckland. Timoti Mohi died at the scene and his passenger was seriously injured.
2. 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

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### Summary of events

#### *Prior to pursuit*

3. At about 12.25am on 5 January 2011, police Northern Communications Centre (NorthComms) dispatched a patrol car to Cooper Street, Grey Lynn, in response to reports that the occupants of a grey or silver Subaru were interfering with another car.
4. At about 12.45am, NorthComms dispatched another patrol car to Waima Street, Grey Lynn, in response to a report that the occupants of a Nissan Silvia were acting suspiciously around a car parked on that street.
5. The details of both incidents were broadcast over the police radio.

#### *Pursuit*

6. At 12.45am, Officer A, a police dog handler, was on general patrol in Symonds Street in Central Auckland. He heard the radio communication about the Waima Street job and decided to drive in that direction to see if he could assist.

7. Officer A was driving a 'category A' marked police station wagon. A category A car is authorised to be the lead car in pursuits. Officer A is certified as a gold licence holder and is trained under the Police Professional Driver Programme (PPDP), and therefore is competent to engage in pursuits as the lead driver. Officer A was also responsible for operating the radio and communicating with NorthComms as he was the sole occupant of the police car.
8. Officer A activated the warning lights and siren on his police car as he drove from Symonds Street to Grey Lynn. As he drove along Great North Road he noticed a silver Subaru Legacy (the Subaru) preparing to exit from Nixon Street.
9. As the Subaru matched the description of the vehicle involved in the Cooper Street incident (paragraph 3) Officer A decided to stop it and speak to the occupants.
10. Officer A was required to drive further down Great North Road before he could safely turn around. As Officer A drove slowly in front of the Subaru he briefly made eye contact with the driver. In his interview with the Authority Officer A said: "*he [the driver] had that sort of look on his face...wide eyes hell it's the cops*". He also saw a Nissan Silvia (the Nissan) matching the description of the vehicle involved in the Waima Street incident (paragraph 4) pull in immediately behind the Subaru. Officer A did not recognise the occupants of either vehicle.
11. Officer A performed a u-turn on Great North Road and headed back towards Nixon Street. He saw the Subaru, followed closely by the Nissan, turn right out of Nixon Street and head off at speed along Great North Road towards the intersection with Ponsonby Road. The two vehicles momentarily slowed as they approached red lights at the Ponsonby Road intersection. However, both continued through the intersection without stopping. After this intersection Great North Road becomes Karangahape Road; both roads have a 50kph speed limit.
12. Officer A followed the two vehicles with his lights and siren activated, indicating to the drivers that they were required to stop. In response, both drivers continued accelerating down Karangahape Road. Officer A concluded that the drivers were not going to stop for him and were deliberately trying to evade apprehension. He carried out a risk assessment noting the speed of the two cars (70-80kph in a 50kph speed zone), manner of driving (slowing, but not stopping for red lights), traffic volume (low) and concluded that the risks involved in commencing pursuit were justified. Officer A estimated that the Nissan was about 20 metres ahead of him, and the Subaru about 40.
13. As required under the police fleeing driver policy (see paragraph 51), Officer A immediately attempted to advise NorthComms that he was in pursuit. However, other radio traffic on the NorthComms channel prevented him from communicating. At 12.53:41am, as the two vehicles drove through the intersection with Pitt Street (see paragraph 14) Officer A

managed to get onto the radio channel and advised the dispatcher that he had a “priority”. He then advised the dispatcher that he was in pursuit of two vehicles on Karangahape Road, heading towards the motorway, and gave the registration number of the Nissan. He could give only a general description of the Subaru (silver) because the Nissan was obscuring his view of the Subaru’s number plate.

14. The pursued vehicles drove along Karangahape Road towards Symonds Street, failing to stop for red lights at the intersections with Howe Street, Pitt Street and Queen Street. When later interviewed by the Authority, Officer A said that although the Nissan and the Subaru drove around other vehicles that were stationary in lanes for a red light at the Howe Street intersection, the manoeuvres were completed safely and no other road users were required to take evasive action. In his police interview, Officer A said he saw the two vehicles again slow for the red light at the intersection of Pitt Street and then drive at speed through the red light at the intersection of Queen Street, crossing the centre line to avoid slower traffic.
15. Officer A said to the Authority that he was continually assessing the risks at each red light. He said that the traffic was light, roads and lighting good and that the two drivers were not putting other road users at undue risk. He was also able to slow and negotiate these intersections safely.
16. Police policy requires that once a pursuit has 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 NorthComms dispatcher gave this warning to Officer A and he immediately responded: “[y]ep acknowledge copy”. He also provided his licence classification (gold), vehicle category (A) and his location and direction (entering motorway southbound).
17. As the two vehicles entered the motorway at the Symonds Street on-ramp, the Subaru sped ahead while the driver of the Nissan had some difficulty and slowed to about 20kph before quickly increasing speed again. Officer A was able to get close enough to the Nissan for a short time to see that the vehicle had two occupants.
18. The dispatcher then asked Officer A for a further update on speed, manner of driving and road and traffic conditions. Officer A replied: “Manner of driving 120...changing lanes rapidly. I can only keep an eye on one car at a time, 140 plus.” Following a prompt regarding his location, Officer A then advised that he was passing Gillies Avenue. A few seconds later he reported that: “[s]peed got to be 180 plus, I’m losing sight of him.”
19. In his police interview Officer A said his top speed reached during the pursuit was 150kph on the southern motorway. He said further that once the pursued vehicles were on the motorway the drivers accelerated away from him rapidly. At the Gillies Avenue interchange he estimated that the two cars were about 400 metres ahead of him and were increasing

their speed. Due to the high speed, erratic driving and the distance between the police car and the pursued vehicles, both Officer A and the pursuit controller independently decided that the risk factors involved in continuing the pursuit were too high.

20. In addition, major construction work had temporarily closed the motorway between Market Road and Greenlane. All southbound traffic was required to exit the motorway at Market Road. A temporary speed limit of 70kph was in place well in advance of the construction work.
21. Officer A was just about to abandon the pursuit himself when the pursuit controller instructed the dispatcher to give the order to abandon. The pursuit controller had been called over by the dispatcher and was sitting at the dispatcher's desk, listening to the commentary from the time the pursuit entered the motorway. For more on the roles of pursuit controller and dispatcher see paragraphs 57 and 58.
22. Officer A was on the Newmarket flyover and could no longer see the two vehicles when he received the order to abandon. As required by police policy (see paragraph 54) he immediately acknowledged the order, reduced his speed to 70kph and switched off the warning devices on his patrol car. Officer A was unable to bring the vehicle to a complete stop, as required by policy as there was nowhere he could safely do so.
23. Officer A radioed the dispatcher advising of his actions and said that he thought the pursued vehicles would get caught up in traffic as they tried to exit the motorway at Market Road. The dispatcher instructed Officer A to go into search mode (see paragraph 55 for an explanation) and advise if he saw the vehicles again. In interview with the Authority, Officer A stated that the traffic volume increased in the 70kph temporary speed zone due to all vehicles having to exit the motorway at Market Road.
24. The pursued vehicles continued driving at extremely high speed along the motorway until they reached the Market Road off-ramp. A witness subsequently told Police that the two vehicles drove past him, one of either side of his car, as he entered the off-ramp. This motorist estimated the vehicles to be travelling at 180kph.
25. The driver of the Nissan lost control of the car at the top of the Market Road off-ramp (Mount Hobson Road) and collided with a power pole on the left side of the road. The impact killed Timoti Mohi and seriously injured his passenger.
26. The motorway phase of the pursuit was monitored by Auckland Traffic Management Centre (ATOM). The centre uses strategically placed cameras on Auckland motorways to manage traffic flows and its operators are in radio communications with police via NorthComms.

27. An operator at ATOM followed the pursuit along the motorway using their camera system and informed NorthComms that one of the vehicles had crashed on the Market Road off ramp. This was then relayed by the dispatcher to Officer A.
28. The video footage recorded by the ATOM operator showed Officer A's vehicle arriving on the scene 30 seconds after the accident, followed by a second police car. It also recorded a higher volume of traffic, with a queue of about ten vehicles slowly exiting the motorway.
29. When Officer A arrived at the scene, the Nissan was on fire. He immediately retrieved the fire extinguisher from the patrol car and put out the fire. He then checked the vehicles' occupants and found Timoti Mohi had died and his passenger was in a critical condition. Officer A contacted NorthComms to advise that an ambulance was urgently required.
30. Police enquiries confirmed that the Nissan had been stolen sometime between 1 January 2011 and 5 January 2011, from a Grey Lynn address.
31. The driver of the Subaru did not stop.
32. The total distance covered from where Officer A first saw the Subaru on Nixon Street to the accident scene on Mount Hobson Road is 4.6 kilometres. The pursuit was abandoned approximately one kilometre before the accident scene. The radio transmission of the pursuit lasted 1 minute and 17 seconds; from Officer A calling in a priority until the pursuit controller ordered abandonment.

### Environment

33. At the time of the pursuit the weather was fine and the road surface was dry and in good condition. The pursuit took place at night; however, visibility was good, with street lighting along both sides of the road at regular intervals.
34. The pursuit began on Great North Road. After 200 metres it becomes Karangahape Road, at the intersection of Ponsonby Road. Karangahape Road is a major inner city roadway with two lanes in either direction. Both roads have a posted speed limit of 50kph.
35. After about 1.26 kilometres, the pursuit entered the Southern Motorway at the Symonds Street on-ramp heading south. This section of the motorway has a posted speed limit of 100kph, between three and five lanes in both directions, and good street lighting. The road closure at Market Road was well signposted in advance and drivers were given adequate warning to slow their speeds and to prepare to exit the motorway. At the Newmarket flyover, where the pursuit was abandoned, the temporary posted speed limit was 70kph, in advance of the Market Road exit about one kilometre ahead.
36. Officer A said in interview, that there was little traffic on the roads although it is clear there was some traffic built up at some of the red lights along Karangahape Road and on the

motorway prior to the Market Road exit. Officer A said the low traffic volume was a factor leading to his continuation of the pursuit, as normally Karangahape Road would be too busy to contemplate a pursuit.

37. The accident scene was on Mount Hobson Road at the top of the Market Road motorway off-ramp. Mount Hobson Road is a two lane, one way road, with two approaches, one coming from the motorway off-ramp. The posted speed limit is 50kph. The road surface was dry, sealed and boarded by raised concrete kerbing. The area was well lit.

#### **Police crash analysis**

38. 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.
39. The crash investigator concluded that the main cause of the crash was excessive speed.

#### **Timoti Mohi's driving history**

40. Timoti Mohi, aged 15, had never held a driver's licence. He had previously come to the attention of Police in relation to crimes involving motor vehicles.

#### **Toxicology**

41. Blood samples taken from Timoti Mohi did not detect the presence of alcohol but tested positive for cannabis.
42. Officer A was not breath tested following the crash. He subsequently told the Authority he had not consumed any alcohol and the Authority has no reason to believe he may have consumed any alcohol.

#### **Cause of death**

43. Timoti Mohi died of injuries consistent with a high speed impact.

#### **Passenger**

44. Timoti Mohi's passenger suffered serious injuries as a consequence of the accident. When questioned by Police, he said he had no recollection of what took place that evening.

## LAWS AND POLICIES

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### Legislative authority for pursuits

45. 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.

### Fleeing driver policy

#### *Definition*

46. Under the policy, a fleeing driver incident 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 police tactic to apprehend is referred to as a pursuit.

#### *Overriding principle*

47. Under the Police fleeing driver 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*

48. Under the Police fleeing driver policy, the pursuing officer[s] must carry out a risk assessment **both prior to initiation and during a pursuit** (emphasis added). The policy states that *“assessing the risks must be a continuous process until the pursuit is resolved or abandoned.”* The officers involved in the pursuit must provide situation reports to the pursuit controller in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit including whether to direct the abandonment of the pursuit.
49. The assessment must be based on the following: 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, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to *“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*



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

50. The policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must **not** be initiated, or should be abandoned (emphasis in Police policy).

#### *Communication requirements*

51. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 16, which the pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender’s manner of driving and identity, and the police driver and vehicle classifications as well as confirmation that warning devices are activated on the police car.

#### *Abandonment*

52. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The police driver, passenger (if senior in rank or service) and the pursuit controller are all authorised to abandon pursuit. 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.”

53. The policy states that: “A pursuit must be abandoned when any of the following criteria apply:

- *an offender’s identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle’s locations is no longer known*
- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*



- *there is a sustained loss of contact between the primary and / or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- *when the siren and / or warning lights fail to operate*
- *any risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver.”*

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

<b>Step</b>	<b>Action</b>
1	<i>Acknowledge the direction to abandon pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing 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>
6	<i>Undertake a search phase if authorised by the pursuit controller.</i>

### *Search phase*

55. On formal abandonment of the pursuit, the communications centre may authorise units to undertake a search to locate the offending vehicle. The units must not exceed the posted speed limit and must not have warning devices activated during search phase. If the offending vehicle is located during the search phase, the unit is permitted to signal the driver to stop. If the driver fails to stop and attempts to evade Police, approval from the pursuit controller to recommence the pursuit must be sought and received before the pursuit can continue.

### *Roles and responsibilities*

56. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with the communications centre and comply with all directions from the pursuit controller (i.e the shift commander at the Police communications centre).

57. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 16 and communicate instructions from the pursuit controller.
58. 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

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### Commencement of pursuit

59. Officer A and his marked patrol car were appropriately classified to undertake pursuits. Officer A was a gold rated driver.
60. Officer A had reasonable cause to suspect that the occupants of the Nissan and the Subaru had committed offences punishable by imprisonment. Under section 317A of the Crimes Act 1961 Officer A was justified in signalling Timoti Mohi and the driver of the Subaru to stop. Because they failed to stop, Officer A had the authority to commence a pursuit.
61. Officer A carried out a risk assessment prior the pursuit as required by policy, and considered that the risks involved in pursuing the drivers of the Nissan and the Subaru was justified (see paragraphs 12, 14, and 15).

#### FINDING

Officer A's commencement of the pursuit was compliant with the law and the police fleeing driver policy.

### Communication

62. When the pursuit began, Officer A attempted to notify NorthComms over the Police radio but was unable to transmit as the radio was busy (see paragraph 13).
63. Officer A managed to advise NorthComms that he was in pursuit as he approached the intersection with Pitt Street, approximately 500 metres after the pursuit had commenced.
64. The dispatcher gave Officer A the safety warning required under the pursuit policy and Officer A acknowledged the warning (paragraph 16). Officer A went on to provide the dispatcher with details such as the location and direction of pursuit, registration number of the Nissan and a description of the Subaru, and his licence and car classification.
65. As the risks increased on the southern motorway, Officer A advised NorthComms of the increasing speed, manner of driving and location.
66. The pursuit controller properly ordered the abandonment of pursuit in accordance with policy. Officer A acknowledged the order and advised NorthComms of the steps he had taken to abandon.

#### FINDING

Officer A and NorthComms complied with policy in respect of communication.

### Speed and manner of driving of Officer A

67. The police car's warning lights and siren were activated during the pursuit as required by policy.
68. Officer A has stated that the maximum speed reached along Karangahape Road by the pursued vehicles and his vehicle was 70-80kph. In interview with the Authority he said he slowed to about 20kph at each red light. In the Authority's view this speed was acceptable because the traffic volume was low, weather conditions were clear, and the road was wide and well lit.
69. Officer A said in police interview that his top speed reached during the pursuit was 150kph on the southern motorway. At about the same time as Officer A reached the temporary speed zone of 70kph, the pursuit was abandoned. The Authority finds that a speed of 150kph in an 100kph speed zone whilst high, was justified because: traffic volume was low; the road was straight, wide (between 3 and 5 lanes southbound) and well lit; the only feeder roads were the motorway on-ramp at Khyber Pass Road and off-ramp at Gillies Avenue; it was not a residential neighbourhood and there were no pedestrians or parked cars. Regardless of this, the Authority finds that this speed would not have been acceptable had it continued for any length of time or had it continued well into the 70kph construction area.

#### FINDING

Officer A complied with policy in relation to speed and manner of driving.

### Ongoing risk assessment and Abandonment

70. Officer A carried out ongoing risk assessments throughout the pursuit, as required by policy.
71. Due to the increase in risk factors when the pursuit reached the Newmarket flyover, the pursuit controller correctly decided to order the abandonment of the pursuit. It is noted that Officer A had also decided to self-abandon at this point (paragraphs 18 and 21).
72. Officer A correctly followed the prescribed abandonment procedure as far as he was able given the construction work taking place in the area at the time. It was not practicable or safe for Officer A to bring his vehicle to a complete stop before undertaking search phase (see paragraphs 22 and 54).

#### FINDING

Officer A complied with policy in relation to abandonment.

## CONCLUSIONS

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73. Timoti Mohi demonstrated by his actions that he was prepared to take great risks to avoid being caught by police.
74. Officer A was justified in law and under the fleeing driver policy in commencing the pursuit. The pursuit was conducted in accordance with policy.
75. The pursuit controller correctly decided to abandon pursuit when the risks involved no longer justified its continuance.
76. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), the Authority has formed the opinion that no police actions were contrary to law, unreasonable, unjustified, unfair or undesirable.
77. Pursuant to section 27(2) of the Act the Authority recommends, as it has done so in the past, that Police develop, as a matter of urgency, policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

MARCH 2012



# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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?

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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**

Independent Police Conduct Authority  
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