



Serious Bodily Harm to Four Youths during Police Pursuit

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 11.08 pm on 3 March 2013, the 16 year old driver of a stolen Subaru legacy lost control of her vehicle and crashed into a concrete block wall while fleeing from Police during a short pursuit in Kohimarama, Auckland. The driver and her three teenage passengers were all 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

Summary of events

3. On the evening of Sunday 3 March 2013, Police received reports that the occupants of a silver Subaru station wagon had attacked another group of youths and damaged property at a café on Tamaki Drive, Mission Bay, Auckland.
4. It was also reported to Police that immediately preceding this altercation, the driver of the Subaru had been seen attempting to run down the group attacked. Police were further aware the Subaru had been involved in the theft of petrol earlier that evening.
5. Officers A and B were on patrol nearby. They responded to these reports and located the Subaru on Tamaki Drive at 11.01 pm.
6. Officers A and B were in a category A marked patrol car, which is authorised to be the lead car in pursuits. Officer A, the driver of the patrol car, was certified as 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).
7. After Officer A began following the Subaru on Tamaki Drive, Officer B notified NorthComms of the vehicles' location and speed (50 kph), and that the Subaru was being

driven in an ordinary manner. Officers A and B followed the Subaru, travelling at the speed limit, for several minutes without activating their patrol car's warning lights and siren.

8. During this time, Officer B and the pursuit controller at NorthComms conducted a thorough assessment of the risks involved in a potential pursuit. This included the clear dry weather and suburban road conditions, low traffic volume and the absence of pedestrians.
9. Both Officer B and the pursuit controller also considered the occupants' previous criminal conduct, and concluded that Police needed to take action to apprehend the driver and that the risks involved in pursuit of the Subaru were justified. The pursuit controller decided that Officer B should signal the driver of the Subaru to stop once they reached Kepa Road.
10. Whilst considering the above risks, the pursuit controller had also directed Officer C to set up road spikes at the beginning of Kepa Road in order to try to bring the driver to a stop. However, in the event there was insufficient time for Officer C to deploy the spikes before the Subaru reached her position.
11. At 11.06 pm, as the vehicles entered the roundabout connecting Ngapipi Road and Kepa Road, Officer B activated the patrol car's warning lights and siren to signal to the driver of the Subaru to stop.
12. The driver failed to do so and accelerated along Kepa Road. As the Subaru accelerated, Officer B radioed NorthComms information concerning the patrol car's increasing speed (73 kph to 89 kph), and the Subaru driver's overtaking of another vehicle and location on Kepa Road. Officer B later reported in interview that the Subaru was driven smoothly throughout the pursuit.
13. Shortly after passing Kupe Street the driver hit a concrete island while overtaking another vehicle and lost control of the Subaru. The Subaru crashed into a concrete block wall on the corner of Kepa Road and Colenso Place, resulting in serious injury to the driver and her three teenage passengers. Officer B immediately reported the crash to NorthComms, and requested ambulances and the fire service to attend.
14. The pursuit lasted 53 seconds and covered approximately 1.4 km. Immediately prior to the crash, the driver of the Subaru was travelling at around 100 kph. Officer A's top speed, as reported by Officer B to NorthComms, was 115 kph. The speed zone throughout the pursuit was 50 kph.

Police Crash Analysis

15. The Police crash investigator estimated the Subaru driver's speed was between 90 kph and 103 kph just before the crash. The investigator concluded that the main causal factors in the crash were the driver's excess speed and blood alcohol level.
16. Analysis of a sample of the driver's blood showed alcohol in their blood at a level of 73 milligrams per 100 millilitres. The legal blood alcohol limit for a New Zealand driver under 20 years old is zero.
17. The investigator concluded that no environmental or mechanical factors contributed to the crash.

THE AUTHORITY'S FINDINGS

Commencement of the Pursuit

18. Officers A and B were justified under section 114 of the Land Transport Act 1998 and section 9 of the Search and Surveillance Act 2012 to attempt to stop the Subaru in order to speak to the driver. The Police fleeing driver policy authorised the officers to commence a pursuit when the driver failed to stop and attempted to evade apprehension.
19. The fleeing driver policy requires Police to conduct a risk assessment prior to commencing a pursuit. The Authority is satisfied Officer B and the pursuit controller conducted a thorough risk assessment for several minutes before deciding that the immediate need to apprehend the driver outweighed any risks involved in commencing a pursuit.
20. Officer B and the pursuit controller also considered that Kepa Road was a suitable location to try to stop the Subaru based on the proximity of the supporting Police units and rural nature of the surrounding area.

FINDING

Police complied with law and policy in commencing this pursuit.

Communication

21. In accordance with Police policy, Officer B notified NorthComms that the driver had failed to stop, and confirmed that he and Officer A were in pursuit. NorthComms provided the safety warning required by policy upon a pursuit's commencement.
22. Prior to the commencement of the pursuit, there had been thorough communication of relevant risk factors between Officer B and NorthComms.

23. After the pursuit commenced, Officer B continued to provide NorthComms with information regarding traffic conditions, and the Subaru's speed and manner of driving.

FINDING

Police complied with the fleeing driver policy in respect of communication.

The communication between the pursuit controller and Officer B, especially in relation to risk, was excellent.

Police Speed and Manner of Driving

24. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with the policy, Officers A and B kept the patrol car's warning lights and siren activated at all times during the pursuit.
25. Immediately preceding the crash, Officer A was travelling at 115 kph in a 50 kph zone. This speed was only reached for a few seconds before the crash occurred, and Officer A later stated there was little traffic on Kepa Road during the pursuit.
26. Though high, the Authority is satisfied this speed was justified in the circumstances because: it was short in duration; there were no pedestrians; traffic volume was low to moderate; the surrounding area was not residential. 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 into the residential neighbourhood further along Kepa Road.

FINDING

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

Ongoing risk assessment and the option of Abandonment

27. As required by the fleeing driver policy, and as detailed above, the pursuing officers and pursuit controller carried out a thorough risk assessment process both before and during the pursuit.
28. The pursuit controller considered the speed reached just before the crash, 115 kph as reported by Officer B, to be the upper limit in the circumstances. Due to the pursuit's short duration, the opportunity to consider abandonment did not arise.
29. The pursuit controller's decision to try to deploy road spikes at the beginning of Kepa Road was preceded by a thorough risk assessment of that location's suitability. As noted

above, Officer C did not have enough time to deploy the spikes before the Subaru passed through.

FINDING

Police complied with the fleeing driver policy in respect of the ongoing risk assessment. The pursuit's short duration meant the option of abandonment did not arise.

CONCLUSIONS

30. Section 27(1) of the Independent Police Conduct Authority Act 1988 requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable. Section 27(2) enables the Authority to make recommendations.
31. Pursuant to section 27(1) the Authority has formed the opinion that the actions of Police in this case were justified and complied with applicable law and Police policy.
32. The Authority makes no recommendations.

ONGOING DISCUSSIONS WITH POLICE

33. While in this instance the Authority has not found any breaches of policy, the Authority wishes to confirm that it has begun discussion with Police about a review of policies connected with the pursuit of fleeing drivers. This is due to the conflict between the often prescriptive nature of the relevant polices and the reality of a fast-paced, time-pressured situation.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

8 August 2013

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 overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

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