



Serious injury to Akshay Fenn and another during Police pursuit

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 5.18pm on Saturday 28 July 2012, a motorcycle ridden by Akshay Fenn collided with another vehicle during a short Police pursuit in Mt Albert, Auckland. Mr Fenn and his 16-year-old pillion passenger were seriously injured. The driver of the vehicle received minor injuries.
2. The Police notified the Independent Police Conduct Authority of the crash, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. On the evening of Saturday 28 July 2012, Officer A was on traffic enforcement duty, operating a stationary radar speed detector on Mt Albert Road, Auckland.
4. At 5.16pm, the radar detected a motorcycle travelling at high speed. Officer A saw that the rider was travelling in the bus lane and passing other vehicles on the left. The radar locked the motorcycle's speed at 80 kph in a 50 kph zone.
5. Officer A decided to pull over the motorcycle so he could speak to the rider. He activated his patrol car's warning lights and siren and waited for passing traffic before pulling onto Mt Albert Road. His initial attempts to advise the Police Northern Communications Centre (NorthComms) of the event were blocked by other radio traffic.
6. The motorcyclist failed to stop and turned left onto New North Road against the red light, driving between two lines of waiting traffic. After turning onto New North Road, Officer A accelerated to about 100 kph in order to close the gap with the motorcycle, which was about 350 metres ahead.

7. About 1.4 kilometres into the pursuit, at the intersection of New North Road and Woodward Road, Officer A managed to radio NorthComms. He notified the dispatcher that he was in pursuit of a motorcycle carrying two people that had failed to stop. He also advised his location and driver and vehicle classification. The dispatcher then provided the safety warning required by Police policy upon a pursuit's commencement, which Officer A acknowledged.
8. The rider continued along New North Road. At the Richardson Road intersection he slowed through green lights and then accelerated. When Officer A reached the intersection, he slowed to a stop and then continued through the now red lights at 20 kph. At the New North Road and Hendon Avenue intersection the rider again drove between waiting traffic, turned left against the red light and accelerated rapidly down Hendon Avenue.
9. Just after Officer A turned into Hendon Avenue, in response to a request from NorthComms, he informed the dispatcher of his location, speed (80 kph) and the traffic volume (light). In interview with the Authority, Officer A said that he considered abandoning the pursuit at this stage due to the motorcycle's increasing speed, and would have done so had the collision not occurred a few seconds later.
10. As Officer A overtook a light truck, the motorcycle, about 300 metres ahead, collided with a vehicle turning right out of Hargest Terrace. Mr Fenn and his passenger were thrown from the motorcycle. Mr Fenn suffered several fractures to both legs and his passenger suffered a severe head injury. The driver of the vehicle suffered minor injury.
11. The pursuit lasted about 80 seconds and covered approximately 2.9 kilometres. However, the radio transmission only lasted 59 seconds due to the delay in Officer A being able to notify NorthComms. Officer A estimated the motorcycle rider was travelling at over 120 kph immediately prior to the collision. Officer A's top speed was approximately 100 kph, although his speed as reported to NorthComms was 80kph. The speed zone throughout the pursuit was 50 kph.
12. In interview with the Authority, Officer A stated the motorcyclist drove in a controlled manner and maintained an average speed of 90 to 120 kph between each intersection while travelling along Mt Albert and New North Roads. He also stated he deliberately stayed over 100 metres behind the motorcycle to avoid pressuring the rider into taking further risks.
13. Throughout the pursuit, Officer A experienced radio difficulties and was at times prevented by other radio traffic from communicating with NorthComms.
14. Officer A did not know Mr Fenn's identity or that of his passenger at the time of the pursuit.

Officer A

15. Officer A was in a category A marked patrol car, which is authorised to be the lead car in pursuits. Officer A was certified as competent to engage in pursuits as the lead driver. Officer A is an experienced road traffic law enforcement officer.

Akshay Fenn

16. At the time of this incident Mr Fenn held a restricted motorcycle licence. Mr Fenn has subsequently pleaded guilty to charges of reckless driving causing injury.

LAWS AND POLICIES

Legislative Authority for Pursuits

17. Under the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, 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 pursuit.

Fleeing Driver Policy

18. 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.
19. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit. This must be based on 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.
20. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the pursuit controller (i.e. the shift commander at Comms) 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.
21. 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 Comms and comply with all directions from the pursuit controller.

THE AUTHORITY'S FINDINGS

Commencement of the Pursuit

22. Officer A was justified under the Land Transport Act 1998 to attempt to stop the motorcyclist for riding above the speed limit. The fleeing driver policy authorised Officer A to commence a pursuit when the motorcyclist failed to stop after being signalled to do so.
23. Officer A conducted a risk assessment and concluded that the need to apprehend the motorcyclist outweighed the risk in commencing pursuit. The factors he considered included the clear and dry weather, the dry road surface and the medium to light traffic volume on Mt Albert Road.

FINDING

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

Communication

24. Officer A notified NorthComms he was in pursuit of a motorcycle carrying two people as soon as the radio was clear. He also informed the dispatcher of his location and vehicle and driver classification. The dispatcher provided the warning required by policy which Officer A acknowledged.
25. At Hendon Avenue, in response to a request from NorthComms, Officer A provided information regarding his location and speed. The collision occurred before Officer A was able to provide further information.
26. Officer A did not notify NorthComms that the motorcyclist travelled through two red traffic lights. However, the Authority is satisfied Officer A considered the risk posed by this aspect of the rider's driving, and that this was not communicated due to the radio communication issues Officer A experienced during the pursuit.
27. The pursuit covered 1.5 kilometres and lasted about 69 seconds from the point Officer A notified NorthComms. Due to the pursuit's short duration, there was insufficient time for the pursuit controller to become involved in directing the pursuit.

FINDING

Police complied with the fleeing driver policy in respect of communication as best they were able to given the short duration of the pursuit and the radio difficulties experienced by Officer A.

Police Speed and Manner of Driving

28. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with the policy, Officer A kept the patrol car's warning lights and siren activated at all times during the pursuit.
29. Throughout the pursuit, Officer A accelerated to a speed of 90 to 100 kph after slowing at each intersection. Though high, the Authority is satisfied this speed was justified in the circumstances because: the weather was clear and dry; there was little traffic on the pursuit route; and the speed was not sustained for significant periods of time.
30. The Authority notes that a sustained speed of 100 kph along Hendon Avenue, a 50kph zone, would not have been acceptable had it continued for any length of time.

FINDING

Officer A's speed and manner of driving complied with law and Police policy.

Ongoing Risk Assessment and Abandonment

31. Prior to Hendon Avenue, Officer A considered the low traffic volume and motorcyclist's controlled manner of driving meant that the risk involved in pursuit did not outweigh the need to apprehend the rider.
32. As discussed in paragraph 9, just before the collision Officer A had decided to abandon the pursuit if the motorcyclist had continued to accelerate on Hendon Avenue.

FINDING

Officer A complied with Police policy in relation to the ongoing assessment of risk and abandonment.

CONCLUSIONS

33. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that no decision, act, omission, conduct, policy, practice or procedure which has been the subject of the Authority's investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
34. The Authority makes no recommendations.

ONGOING DISCUSSIONS WITH POLICE

35. While in this instance the Authority has not found any breaches of policy, the Authority notes 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

29 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.



IPCA

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