



Fatal pursuit of Rocky Joe Kohatu Hepi

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At approximately 1.48am on Wednesday 6 February 2013, Rocky Joe Kohatu Hepi, aged 17, lost control of his vehicle and crashed into a stone retaining wall while fleeing from Police following a short pursuit in Nawton, Hamilton.
2. Mr Hepi died at the scene from the injuries he received as a result of the crash. His front seat passenger, a 14 year old male, was seriously injured. Another 15 year old female passenger suffered minor injury.
3. 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

4. At about 1.48am on Wednesday 6 February 2013, Officer A was driving in his patrol car on Breckons Avenue in Nawton, Hamilton.
5. Officer A was in a category A marked patrol car, which is authorised to be the lead car in pursuits. He was a gold rated driver certified as competent to engage in pursuits.
6. At the intersection of Breckons Avenue and Rotokauri Road, Officer A saw a Nissan Maxima with three occupants travelling east on Rotokauri Road with its lights off. Officer A suspected that the driver was intoxicated and decided to stop the vehicle in order to speak to him.

7. Officer A turned left into Rotokauri Road and followed the vehicle for a short distance, travelling at approximately 40kph. He then activated his patrol car's lights and siren to signal to the driver to stop.
8. The driver of the Nissan initially slowed down before rapidly accelerating away. In interview with the Police, the rear passenger stated that before accelerating the driver, Mr Hepi, *"looked back and just said 'fuck this' and started speeding off"*.
9. Officer A concluded that the driver was attempting to evade apprehension and decided to initiate a pursuit. Before commencing pursuit, Officer A carried out a risk assessment, taking into account the absence of other vehicle or pedestrian traffic, the clear weather, and good road conditions, and concluded the risks involved in pursuing did not outweigh the need to stop the driver.
10. As he accelerated Officer A notified the dispatcher at the Northern Communications Centre (NorthComms) that he had a vehicle failing to stop on Rotokauri Road. In response the dispatcher requested the registration number or a description of the vehicle.
11. As these radio transmissions were occurring, Mr Hepi's vehicle crossed into the opposite lane on the left-hand bend leading into Baverstock Road, a 50kph zone, while travelling at about 90kph. Officer A saw this and decided that he would abandon the pursuit if the driver maintained this manner of driving and speed.
12. Officer A drove at 60kph around the corner and briefly accelerated to 80kph. Mr Hepi's vehicle was now 60 metres ahead and travelling in the centre of the road over the rise in Baverstock road at increasing speed, later estimated by Officer A to be about 100 to 120kph.
13. Based on Mr Hepi's speed and continued unsafe manner of driving Officer A considered the risk in pursuit was now too great and decided to abandon the pursuit.
14. As he drove out of the corner Officer A radioed the vehicle's registration number and indicated that he was going to abandon the pursuit, stating that the vehicle was *"Really going for it on the wrong side of the road. I am going to pull out of this."*
15. A witness who saw the pursuit later described in a statement to Police that Officer A drove well around the corner into Baverstock Road. They also believed that *"the Police car was definitely pulling out of the chase as it was slowing down as he went past me."*

16. Officer A had slowed to about 30kph at the top of the rise on Baverstock Road and was in the process of abandoning the pursuit when he saw Mr Hepi lose control of his vehicle, which then crashed into a stone retaining wall on the corner of Baverstock Road and Wexford Rise.
17. Officer A immediately reported the crash to NorthComms. The dispatcher then provided the pursuit warning required by Police policy at the commencement of a pursuit. In interview with the Authority, the dispatcher explained that she did not hear Officer A's first report of the crash, which was why she initially provided the pursuit warning in response.
18. As he drove up to the crash scene Officer A repeated that the vehicle had crashed and requested ambulances and the fire service to attend. A short time later, other Police officers arrived and provided first aid to the passengers.
19. Mr Hepi died as a result of the injuries he suffered in the crash. The 14 year old male passenger suffered serious multiple fractures. The 15 year old female passenger suffered minor injury.
20. The pursuit lasted 43 seconds and covered approximately 1.1 km. The pursuit began in a 50kph zone which merges into a 70kph zone on Baverstock Road prior to Lloyd Drive, about 190 metres before the crash site. Officer A's maximum speed during the pursuit was about 90kph; however this was only sustained for a short time.

Rocky Joe Kohatu Hepi

21. At the time of the incident Mr Hepi was a learner driver. Police inquiries following the pursuit determined that Mr Hepi had stolen the Nissan on the evening of 5 February 2013.

Cause of Death

22. Mr Hepi's death was due to injuries consistent with a high speed impact.

Police Crash Analysis

23. The Police crash investigator estimated that Mr Hepi's speed was no less than 94kph immediately before he lost control of the Nissan. The investigator concluded that the main cause of the crash was excessive speed leading to Mr Hepi's loss of control.
24. Analysis of a sample of Mr Hepi's blood tested positive for cannabis use. Due to the small amount, it was not possible to determine whether he was affected by the drug at the time of the crash.

25. The investigator concluded that no environmental or mechanical factors contributed to the crash.

LAWS AND POLICIES

Legislative Authority for Pursuits

26. Under the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes. Where such a vehicle fails to stop, the Police may begin pursuit.

Fleeing Driver Policy

27. 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.
28. 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.
29. 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.
30. 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.
31. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. 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, 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>

THE AUTHORITY'S FINDINGS

Commencement of the pursuit

32. Due to Mr Hepi driving at 1.48am with his lights off, Officer A was justified under section 114 of the Land Transport Act 1998 to attempt to stop the Nissan in order to speak to him. The Police fleeing driver policy authorised Officer A to commence a pursuit when Mr Hepi failed to stop and attempted to evade apprehension.
33. The fleeing driver policy requires Police to conduct a risk assessment prior to commencing a pursuit. As discussed in paragraph 9, Officer A considered relevant risk factors before commencing pursuit and concluded that the need to apprehend the driver outweighed any risk involved in pursuing.

FINDING

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

Communication

34. The fleeing driver policy requires an officer initiating pursuit to notify the communications centre that they are in pursuit. Whilst not using the words *'in pursuit'*, Officer A advised the dispatcher of the pursuit by stating, *"Failing to stop on Rotokauri"*.
35. Police policy requires the dispatcher to provide a safety warning at the commencement of a pursuit. In this instance, the dispatcher asked Officer A for the vehicle's registration and description. From this point until the crash, Officer A provided the dispatcher with a constant flow of information about the pursuit, including the vehicle's registration number and description, as well as the driver's manner of driving and his decision to abandon the pursuit.

36. The safety warning was not given until after Officer A reported the crash, which the dispatcher did not initially hear. While best practice would dictate that the pursuit warning be issued sooner, the Authority is satisfied that the circumstances of this short pursuit, and constant communication by Officer A, prevented the dispatcher from providing the warning at an earlier stage.
37. The pursuit lasted 43 seconds. There was not enough time for the pursuit controller (the NorthComms shift commander) to become involved in directing the pursuit.

FINDING

Police complied with fleeing driver policy in respect of communication as best as they were able to during the short pursuit.

Police Speed and Manner of Driving

38. 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 his patrol car's warning lights and siren activated at all times during the pursuit.
39. Officer A's speed on the corner leading into Baverstock Road was 60kph and his maximum speed during the pursuit was about 90kph. A witness described Officer A as driving well prior to abandoning the pursuit.
40. Though high, the Authority is satisfied that Officer A's speed was justified in the circumstances because it was short in duration; there was no other vehicle or pedestrian traffic; the weather was clear; and the road conditions were good.

FINDING

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

Ongoing Risk Assessment and the option of abandonment

41. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of public and the Police outweighs the immediate need to apprehend the driver.
42. Officer A carried out ongoing risk assessments during the short pursuit as required by policy. Due to Mr Hepi's continued acceleration and unsafe driving manner he decided to abandon the pursuit.

43. Officer A was in the process of abandoning the pursuit when the crash occurred.

FINDING

Officer A complied with the fleeing driver policy in respect of his ongoing risk assessment and decision to abandon the pursuit.

CONCLUSIONS

44. 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.
45. 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.
46. The Authority makes no recommendations.

ONGOING DISCUSSIONS WITH POLICE

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

10 October 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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