



# Allegation of excessive force following Police pursuit in Taupo

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. On 3 July 2013 the driver of a Mercedes complained to Police that he had been stomped on by a Police officer after being pulled from his vehicle following a long Police pursuit in Taupo earlier that day.
2. The Police notified the Independent Police Conduct Authority of the driver's complaint 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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### First pursuit

3. At 2.11pm on 3 July 2013 Officer A, a Cambridge Commercial Vehicle Investigation Unit (CVIU) member, was heading home from Taupo in his unmarked Police utility vehicle when he saw a late model silver Mercedes with no licence plates travelling along Palmer Mill Road in Taupo.
4. Officer A saw that the Mercedes was being driven by a male and that a female was in the front passenger seat. There were no other occupants. The female was the driver's girlfriend.
5. Officer A activated his lights and siren and did a U-turn to try to stop the Mercedes to speak to the driver. The driver did not stop and drove off at speed on State Highway 5 (SH5) towards Rotorua. When the driver failed to stop Officer A commenced a pursuit.
6. Officer A is a gold class driver and was in a category C unmarked utility. The Police Vehicle Management Policy states that a category C vehicle can only be used in a pursuit if the incident is life threatening and no other vehicle is available. A pursuit controller must replace a category C vehicle with a category A vehicle as soon as possible.

7. As Officer A was alone in his vehicle, he was responsible for both driving and operating the radio to communicate with the Police Northern Communications Centre (NorthComms).
8. As required by Police policy, Officer A notified NorthComms that the driver of the Mercedes had failed to stop and confirmed that he was in pursuit with lights and siren activated. The NorthComms dispatcher provided the safety warning required by policy, which was acknowledged by Officer A.
9. As Officer A pursued the driver of the Mercedes along SH5, he advised the reason for the pursuit, the speed and the conditions. He also advised the dispatcher, 24 seconds into the pursuit, that he was in a category C vehicle and requested assistance from another patrol.
10. The fleeing driver turned off SH5 onto Tutukau Road and travelled at speeds of up to 150-160 kph (in a 100kph speed zone) on sealed and gravel roads. Officer A told the Authority's investigator that he continued to pursue the driver at such speed as he could see that the driver would slow down when there was oncoming traffic, and then speed up again, and he assessed that the driver did not want to crash. He told the Authority that the driver "*took some risks*" but "*nothing he couldn't get himself out of*" and they were travelling on quieter back roads with few other cars on the road.
11. Throughout the pursuit Officer A conducted risk assessments and provided regular updates to NorthComms on the speed and manner of driving of the fleeing driver. The NorthComms dispatcher was also constantly trying to position vehicles to take over as lead vehicle.
12. At one point the driver stopped his vehicle and Officer A stopped behind him. As Officer A approached the Mercedes, the driver accelerated away. The pursuit then continued until Officer A lost sight of the fleeing vehicle at the intersection of Tutukau Road and Te Kopia Road. The pursuit had lasted 17 minutes.
13. At this stage, in accordance with policy, the NorthComms Pursuit Controller ordered Officer A to abandon the pursuit and directed that the units in the area go into 'search mode' to try to locate the fleeing vehicle. Police policy states that units in search mode must not exceed the posted speed limit.
14. Officer A acknowledged the abandonment order and advised that he had reduced his speed to 50 kph and turned off his lights and siren. The officers in the other Police vehicles, who had been following some distance behind, did the same.
15. Officer B, a Tauranga dog handler who was in the area driving a category A vehicle and had heard the pursuit on the radio, offered, during search phase, to assist in searching for the Mercedes.

### Resumption of the Pursuit

16. At approximately 2.30pm Officer A located the Mercedes on Te Kopia Road and requested permission to recommence the pursuit. The NorthComms Pursuit Controller granted permission to recommence after a further risk assessment was carried out. The safety warning was again given and acknowledged.
17. Whilst driving to the scene, Officer B heard over the Police radio that the pursuit had recommenced. Officer B drove up Te Kopia Road and waited for the fleeing driver to come towards him. He advised NorthComms that he would be in a position to take over.
18. At about 2.40pm, 12 minutes into the recommenced pursuit, Officer B took over from Officer A as lead pursuit vehicle. Officer B was given the pursuit safety warning by NorthComms and acknowledged it. Officer A continued to follow the pursuit at a distance.
19. Officer B pursued the Mercedes for a further five minutes, during which he reported that the fleeing vehicle reached speeds of up to 150 kph, in a 100 kph zone, on both sealed and gravel rural roads. The pursuit lasted a total of 33 minutes.

### The use of road spikes

20. Under the Police Tyre Deflation Devices (TDD) policy, tyre deflation devices (road spikes) may be used by Police where there is no other, less dangerous means of stopping a vehicle reasonably available, and deployment does not create an unjustified risk. The deployment of road spikes must be approved by the pursuit controller and they must only be deployed by officers trained in their use.
21. In this pursuit, the NorthComms pursuit controller twice directed that road spikes be deployed to safely end the pursuit and stop the fleeing driver. Both NorthComms and the officers involved in both deployments complied with the TDD policy in that they were trained, they communicated with Northcomms on the deployment site and risk factors and they had cover for themselves.
22. Whilst Officer A was the lead patrol, Officers C and D set up road spikes at the intersection of Te Kopia and Waikite Valley Roads, as directed by NorthComms. When Officer B was the lead vehicle the pursuit reached this location. The driver tried to drive around the spikes, however his front left tyre was deflated by two prongs.
23. Despite this, the driver continued travelling along Waikite Valley Road towards SH5. Officers E and F deployed a second set of road spikes in consultation with NorthComms. However, about three minutes later, the driver stopped 150-200 metres short of the second set of spikes in the middle of Waikite Valley Road.

24. Officers A and B parked their vehicles around the Mercedes to prevent the driver from driving from the scene.

#### **Extraction from the car**

25. When the driver stopped, Officer B saw him lean over and kiss his girlfriend. Officer B then ran to the car, opened the driver's door, grabbed the driver by the shoulders, pulled him from the car and took him to the ground.
26. Officers A and B used force to handcuff the driver. During this process, the driver sustained an injury to the left side of his face.

#### **Excess Force Allegation**

27. The driver and Officers A and B have a different version of events regarding the force used during arrest. However, all of them agree that there were three knee strikes delivered to the driver's upper body by Officer B and a knee strike to the driver's knee delivered by Officer A. The issues in contention are whether the driver was resisting arrest and whether the force used by the officers was reasonable.

#### *Driver's version of events*

28. The driver said that the officers dragged him out of his car and pulled his arms up behind his back and tried to "pop his shoulders out". In his initial complaint he alleged that Officer B "stomped on his head", although he later told the Authority investigator that this was more like a "knee drop".
29. He told the Authority that once he was on the ground Officer B used "his knee on the side of [his] head several times". He said that his body "came up and went down three times".
30. The driver said that he was kicked in the ribs after he was handcuffed. He said further that another officer attempted to dislocate his knee.
31. He said that it took about "five, six minutes" from the time he was taken out of his car until he was placed in the patrol car and that he was not resisting Police, at any stage.
32. The driver initially thought that "four or more officers" dragged him out of the car but now accepts, as stated in his Police interview, that it was only two officers who dealt with him.

#### *Officer B's version of events*

33. Officer B said that when he saw the driver lean over and kiss his girlfriend, he was not sure if the driver was saying goodbye or was reaching for a weapon in the footwell. Because of this Officer B had concerns about the driver's intentions. He told the

Authority's investigator that he thought the interaction with his girlfriend was *"pretty fatalistic, it's like, I'm not going to see you again"*.

34. Officer B said that the driver had been pursued for over 30 minutes and had taken *"extreme risk to himself and passenger in an attempt to evade arrest"*. In his Tactical Options Report, completed the day after the incident, Officer B noted that he *"was unsure of weapons he [the driver] had access to"*.
35. Officer B said that, due to the above, he opened the driver's door without warning, reached in and grabbed the driver around the shoulders and pulled him from the vehicle. He said that the driver offered no resistance and when he yelled at the driver to get on the ground, he did.
36. Officer B said that it was as he tried to get the driver's arms behind his back to handcuff him that the driver began resisting and tucked his arms in beneath him. Officer B reported that he gave the driver repeated verbal commands to release his arms which were ignored. Officer B was still not sure if the driver had any weapons, and so he used a knee strike to the driver's right shoulder to gain compliance. Officer B said that he used his knee as he did not want to let go of the hold he had on the driver's arms.
37. Despite repeated requests, the driver still would not put his arms behind his back so Officer B said that *"as I took him into an arm lock, I drove my right knee in between his shoulder blades"*. As he did this the driver's face was pressed into the gravel road. Officer B said that the driver released his arm for handcuffing after the third knee strike and that the handcuffing process would have lasted less than a minute.
38. Officer B denies stomping on the driver's head or kicking him in the ribs, as alleged, or seeing any other officer do this.
39. Officer B, who has experience as a registered nurse, assessed the driver's injuries as minor and considered that he could have treatment for the gravel rash to his face once he was back at the Police station.

#### *Officer A's version of events*

40. Officer A reported that the driver was pulled out of the car face first and was taken to the ground. He told the Authority that, despite requests to do so, the driver would not release his second arm to be handcuffed and because of this he was concerned about what the driver had in his hand. Officer A said, *"I was thinking what's he got in his hands, we need to see hands 'cos that's where the threat's going to come from"*.
41. Officer A said he was able to apply the handcuffs after Officer B's third knee strike to the driver. Officer A said that he also applied his knee to the driver's leg during the struggle to handcuff him. He told the Authority's investigator that it took about 20 seconds to get the driver's hand out from underneath him and handcuff him.

42. During interview with the Authority, both Officers A and B explained how it is very difficult to get hold of a person's arms if they are tucked in beneath them.

#### *Other officers*

43. Officer E, who arrived after the driver had been pulled from the car, and handcuffed, arrested the driver for failing to stop and escorted him to the patrol vehicle. Officer E said that on the way back to Rotorua the driver was complaining about his handcuffs, not of other injuries.
44. Officers C, D, E, F, G, H and I arrived at the scene after the driver had been handcuffed and did not see the force used during arrest.

#### **Driver**

45. The driver later told Police that he did not want to stop for Police as he and his girlfriend were going to see somebody from the Children and Young Persons service regarding care of their baby. The driver said that he knew he would go to jail if he was apprehended, as he was already a suspended driver, and he wanted the time he spent fleeing the Police to talk to his girlfriend.
46. The driver was charged with reckless driving, driving whilst suspended, failing to stop for red and blue flashing lights and failing to comply with a Police Safety Order in relation to this incident. He was convicted on all charges and sentenced to ten weeks imprisonment.
47. As a result of the injuries to the driver's face, custody staff at the Rotorua Police station called the Police doctor to examine him. The doctor directed that the driver be taken to hospital for a CT scan. His injuries turned out to be superficial and amounted to a cut above his left eye which was swollen and tender, a tender left mandible and tenderness to his legs and spine.

#### **Driver and Passenger's Identity**

48. The officers involved did not know the driver's or passenger's identity during the pursuit. However, another officer following the pursuit over the radio notified NorthComms that the driver was possibly a named well-known offender, who was wanted for multiple offences including previous Police pursuits and violent offending. This turned out to be correct.

## THE AUTHORITY'S FINDINGS

**Should the pursuit have been commenced?**

49. Officer A was justified under section 114 of the Land Transport Act 1998 to attempt to stop the Mercedes in order to speak to the driver about having no licence plates on the car. The Police fleeing driver policy authorised the officer to commence a pursuit when the driver failed to stop and attempted to evade apprehension.
50. In accordance with Police policy, Officer A notified NorthComms that the driver had failed to stop and confirmed that he was in pursuit. NorthComms provided the safety warning required by policy upon a pursuit's commencement. Officer A acknowledged the warning.
51. Just after the commencement of the pursuit, Officer A and NorthComms conducted a very thorough communication of the relevant risk factors. The officer had advised the reason for the pursuit, the speed, the conditions and that he was in a category C vehicle.
52. As stated in paragraph 6, the Police Vehicle Management Policy says that category C vehicles *"can be used for pursuit to a **life threatening incident**, if no other vehicle is available. A pursuit controller must replace the vehicle with a category A vehicle as soon as possible"* [Authority emphasis].
53. As the original reason for this pursuit was 'no licence plates', under the Police Vehicle Management Policy, Officer C should not have been permitted to commence the pursuit. However, the Authority notes that the policy on the various categories of vehicles that can be used for pursuits and urgent duty driving appears to be outdated. For example, the policy states that a category D vehicle, which presumably is less capable than a category C vehicle, is able to engage in a pursuit if no other vehicle is available. There is no requirement for the incident to be life threatening in the case of category D vehicles.
54. As a result of the breach of policy by Officer A, the Authority suggests that a review of the policy is required.
55. The Authority accepts that Officer A was a very experienced CVIU officer and was well aware of the capabilities and limits of his category C vehicle. The Authority also accepts that Officer A would have abandoned the pursuit, at any stage, had his vehicle not been able to manage.
56. The Authority is also satisfied that the dispatcher did her best to try and find another vehicle to take over from Officer A. Officer A has advised the Authority that he believed *"a category A vehicle was nearby and almost there [to take over] throughout the entire pursuit"*. However, given the rural location of the pursuit there were no other patrol vehicles close enough to do so until Officer B took over, on Te Kopia Road.

57. Whilst the commencement of this pursuit in a Category C vehicle was a breach of policy, in fact, the categorisation of Officer A's utility had no impact on the pursuit at all.

**FINDING**

Other than the category C issue, Police complied with law and policy in commencing this pursuit.

**Did the pursuit comply with the Police Fleeing Driver Policy?**

58. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. In accordance with policy, Officer A kept his vehicle's warning lights and siren activated at all times during the pursuit. Officer A conducted an ongoing risk assessment and provided regular updates to NorthComms on the speed and manner of driving of the fleeing driver. The dispatcher was in constant contact with other vehicles trying to get them to take over.
59. Speeds of up to 150-160 kph (in a 100 kph speed zone) were reached on, at times windy, rural roads. Officer A told the Authority's investigator that he continued to pursue the driver at this speed as he could see that the driver would slow down when there was oncoming traffic or bends in the road, and then speed up again, and he assessed that the driver did not want to crash.
60. The dispatcher told the Authority that, based on the information provided by the pursuing unit, she was satisfied that it was safe to continue the pursuit.
61. The Authority is satisfied that the speeds of 150-160 kph though high, were justified in the circumstances because of the absence of pedestrians, low traffic volume and primarily rural area. In addition, both the driver and Officer A slowed for other traffic or corners. Officer A and the dispatcher remained in constant communication regarding risk factors and tactics throughout this 17 minute phase of the pursuit. This communication was of a very high standard.
62. When Officer A lost the Mercedes, the pursuit controller directed that the pursuit be abandoned and directed that all units go into 'search mode'. When Officer A heard the order to abandon pursuit, he complied with Police policy by deactivating his lights and siren and stopping at the side of the road prior to going into search mode.

**FINDINGS**

Police complied with law and policy with regards to communication, manner of driving, on-going risk assessment and the abandonment of the pursuit.



The communication between the dispatcher, the pursuit controller and Officer A, especially in relation to risk, was of a very high standard.

### **Were Police justified in recommencing pursuit and did the recommended pursuit comply with policy?**

63. When Officer A later located the driver on Te Kopia Road the pursuit was recommenced in accordance with Police policy. The safety warning was given and acknowledged.
64. Officer A has advised the Authority that when he recommenced pursuit, he believed that the dog handler and other units with road spikes had almost caught up with him to take over as the lead vehicle.
65. When Officer B took over as the lead vehicle, 12 minutes into the recommenced pursuit, the standard warning was again given and acknowledged. Officer B then provided commentary to NorthComms, advising his speed was 150 kph, in a 100 kph zone, the weather and traffic conditions.
66. NorthComms authorised two deployments of road spikes in an attempt to stop the Mercedes. These deployments both complied with the requirements set out in Police policy.

#### **FINDINGS**

Police complied with the fleeing driver policy in relation to the recommencement of pursuit.

Following recommencement, Police complied with the fleeing driver policy with regards to communication, manner of driving and on-going risk assessment.

Police complied with the tyre deflation devices policy in respect of the use of road spikes.

### **The force used by Officer B**

67. Section 39 of the Crimes Act 1961 provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of the force is necessary to overcome any force used in resisting.
68. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of empty hand tactics to the use of batons, OC spray, Tasers and firearms.

**Extraction from the car**

69. The driver said that the officers dragged him out of his car and pulled his arms up behind his back.
70. Officer B agrees that he opened the driver's door, reached in and grabbed the driver on the shoulders and pulled him from the vehicle with no resistance. He said that he did this as he did not know the driver's intentions after such a long pursuit and seeing him kiss his girlfriend "good bye".
71. The Authority considers that the actions taken by Officer B to extract the driver from the car without warning were reasonable in the circumstances.

***Did the driver resist arrest?***

72. The driver said that he did not resist Police at any stage.
73. Both Officers A and B reported that he would not release his hands for handcuffing and refused to comply with Police instructions.
74. Officer B said that when the driver did not comply with instructions to put his hands behind his back, he thought it could be because the driver was concealing a weapon. Officer B said that he then used a knee strike to the driver's right shoulder to gain compliance.
75. After considering the evidence, and interviewing all parties, the Authority prefers the Police version of events and has concluded that the driver was resisting arrest.

**Was the force used to handcuff the driver reasonable?**

76. The Crimes Act (see paragraph 67) allows Officer B to use force to handcuff the driver given that he was resisting arrest.
77. As stated in paragraph 27, the driver and both officers agree about the use of knee strikes.
78. Despite repeated commands to release his arms, the driver still would not put his arms behind his back so Officer B said that he drove his right knee into the driver's shoulder blades three times before Officer A was able to apply the handcuffs. He said that he used his knee as he did not want to let go of the hold he had on the driver's arms.
79. In considering reasonableness, the Authority has looked at other tactical options available to Officer B when trying to handcuff the driver. These options included OC spray and the use of a baton.

80. Officer B decided against using OC spray and baton because in order to do so he would have had to let go of the driver's arm to retrieve them from his implement belt. In addition, due to the proximity of Officer A and himself to the driver, the use of OC spray would likely have also affected them.
81. Officer B dismissed these options and assessed that his best tactical option was to quickly extract the driver from the vehicle and take him into custody using empty hand tactics.
82. The Authority accepts that when the driver resisted the handcuffing procedure, the officers believed he might be concealing a weapon and their fear was justified after such a prolonged pursuit. This belief was strengthened when the driver continued to resist following the first two knee strikes.
83. The Authority has concluded that using empty hand tactics was reasonable in the circumstances and there is no evidence indicating that the force used by Officer B was deliberately inflicted to cause injury. As required by Police policy, Officer B completed a Tactical Options Report in respect of the force used.

#### FINDINGS

Officer B's extraction of the driver from the car was reasonable in the circumstances.

The driver of the Mercedes resisted the handcuffing procedure. Officer B was entitled to use reasonable force to overcome this resistance.

The degree of force used by Officer B to arrest the driver was reasonable and justified in the circumstances.

#### The force used by Officer A

84. The driver also complained that an officer attempted to dislocate his knee.
85. Officer A reported putting his knee into the driver's knee during the struggle, and after he had been asked to surrender his arm, in order to get him to release his arm and so he "*couldn't move his legs or kick out*".
86. Officer A told the Authority's investigator that it took about 20 seconds to get the driver's hand out from beneath him and handcuff him.
87. The Authority is satisfied that this was an appropriate tactic in order to get control of a resisting offender and get the driver to release his hand.

FINDING

The force used by Officer A to assist with the arrest process was reasonable and justified in the circumstances.

## CONCLUSIONS

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88. The Authority has concluded on the balance of probabilities that the force used by Officers A and B was reasonable and justified in the circumstances, and other than the category C issue, the officers complied with law and policy throughout the pursuit.
89. The Authority recommends that Police update the policy on the use of various categories of vehicle for Police pursuits and urgent duty driving.

## ONGOING DISCUSSIONS WITH POLICE

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90. As expressed in other reports, the Authority wishes to confirm that it is working with Police on a process of discussing and improving policies connected with the pursuit of fleeing drivers. This is due to the conflict between the often prescriptive nature of the relevant policies and the reality of a fast-paced, time-pressured situation. This process is well advanced.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

14 August 2014



# 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 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 staff who have worked in a range of law enforcement and related 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 can make findings and recommendations about Police conduct.



**IPCA**

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