

Summary Report

Serious injury to Hugh Foster during Police pursuit in Auckland

INTRODUCTION

1. At about midday on 2 September 2013, the Police Northern Communications Centre (NorthComms) received multiple reports of an armed robbery at the Westpac Bank in Pukekohe.
2. Two men fled the scene in a stolen BMW. Police soon located the BMW, but the driver failed to stop when signalled to do so, and Police commenced a pursuit.
3. The pursuit proceeded at high speed along the Southern Motorway for about six kilometres, before the driver of the BMW hit a ute, driven by Hugh Foster, from behind.
4. The impact of the collision caused Mr Foster's ute to veer off the motorway. Both the ute and the BMW rolled several times. Mr Foster and the passenger of the BMW were seriously injured.
5. The Police notified the Independent Police Conduct Authority of the incident, 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

6. At about midday on 2 September 2013, NorthComms received multiple reports of an armed robbery at the Westpac Bank in Pukekohe. Two men, Michael Rai and Joshua Baker, had entered the bank armed with a hammer. They threatened bank staff and demanded cash, which they were given, before running from the bank towards their vehicle.

7. Witnesses described the vehicle to NorthComms as a maroon BMW convertible. Mr Baker had stolen the BMW earlier that morning from a Penrose property, but it had not been reported stolen at the time of the robbery.
8. Witnesses also told NorthComms the direction in which the BMW was travelling, and provided descriptions of Mr Rai and Mr Baker as well as a partial registration number of the BMW.
9. Officer A attended the scene of the robbery. He did not enter the bank, but was told by witnesses outside that the offenders had fled in a dark red or black BMW. The witnesses were unsure which way the BMW had headed, so Officer A told NorthComms that he was going to head north along Paerata Road towards Drury in an attempt to locate the BMW. Paerata Road forms part of State Highway 22 (SH22) north of Pukekohe and is one of the main exits from the town centre.
10. A few minutes later, NorthComms received two reports from other drivers that a dark coloured BMW was being driven at a “*phenomenal speed*” and overtaking dangerously while heading north on Paerata Road. The registration number provided by one of the drivers matched the partial registration number of the BMW given by witnesses at the scene of the robbery.
11. At this stage Officer A was approximately two kilometres behind the BMW. NorthComms updated other Police units in the area with information regarding the BMW’s location and direction of travel. Officer B had been patrolling the Papakura area when the robbery was reported. He headed towards the Southern motorway interchange at Drury (‘the interchange’) as it was expected that the BMW would pass through this area. He parked and waited at a weighbridge on SH22, about 200m before the interchange.
12. Officers C and D had also been patrolling the Papakura area when the robbery was reported, and they also headed towards the interchange. As they approached the weighbridge where Officer B was parked, Officer C told Officer D to stop the Police car on a raised median strip directly opposite the weighbridge, with its red and blue warning lights activated. The raised median strip divided the road into a single lane in each direction.
13. Officer C, who was certified in the use of tyre deflation devices (TDDs), got out of the car and prepared a set of road spikes for deployment when the BMW approached. Both Officers C and D told the Authority that they believed a pursuit was underway at this point, but neither informed NorthComms of their location nor sought permission from NorthComms to use the spikes, as required by Police policy. Officer C told the Authority that “*it wasn’t practical to get permission what with the information that was coming in*” and that they were unable to contact NorthComms because radio traffic was so heavy.
14. Officer E, who had been following events over the radio and was north of the BMW, initially waited for the BMW at the intersection of SH22 and Victoria Crescent, directly opposite the weighbridge. However, when Officers C and D arrived, Officer E drove south along SH22 towards Pukekohe. He stopped at the intersection of SH22 and Great South Road, about 450m away from the weighbridge, and waited for the BMW to drive past. As the BMW passed he pulled in behind it and radioed NorthComms. Officer E did not activate his lights and sirens or

attempt to stop the vehicle as he did not want the driver of the BMW, Mr Rai, to “*know that we were on to them.*”

15. Around this time the Police helicopter Eagle advised that they were at least 12 minutes away from the area. This meant that the Police units on the ground had responsibility for continuing to update NorthComms as to the actions and location of Mr Rai and the BMW.
16. Officer E told the Authority that, initially, the BMW was being driven at a normal speed. However, as the vehicles rounded a bend approaching the weighbridge Mr Rai dangerously passed a truck on the truck’s left hand side. At this point, Officer E activated his lights and sirens, signalling Mr Rai to stop.
17. Officer C told the Authority that as the BMW came into view he ran to the side of the road where he placed the spikes before running back towards the Police car. He was holding the draw rope and intended to deploy the spikes by pulling the rope towards him. However, the BMW veered onto the wrong side of the road and did not pass through the area where the spikes had been set. As the BMW passed on the wrong side of the road Officer C pulled the draw rope in an attempt to remove the road spikes from the road, but the draw rope became detached from the spikes.
18. CCTV footage from a camera positioned at the interchange clearly shows Officer C run across the east bound lane towards the weighbridge, holding a set of road spikes, as the BMW comes into view. He then places the road spikes on the ground before picking them up again and running back towards the Police car on the raised median strip. He stops partway across the lane, where he throws the spikes towards the side of the road. The BMW avoids the road spikes by swerving onto the opposite side of the road. As the BMW passes Officer C takes cover behind the front of the Police car, where he pulls the draw rope attached to the road spikes towards him. In the Authority’s view Officer C’s actions amounted to an attempted deployment of the road spikes.
19. Mr Rai avoided the road spikes by driving onto the opposite side of the road. As Officer E told NorthComms that the BMW had “*dodged the spikes,*” Officer B pulled out from the weighbridge, activated his lights and sirens, and advised NorthComms that he was in pursuit of the BMW. Officer E followed behind with lights and sirens activated. The Police did not know the identity of either of the BMW’s occupants at this time.
20. Officer B then advised NorthComms of the vehicles’ location, speed (90kph in a 70kph zone), and that the BMW was being driven on the wrong side of the road. NorthComms acknowledged this and issued the standard pursuit warning that “*if there’s any unjustified risk to any person you are to abandon pursuit immediately.*” Officer B acknowledged the warning.
21. Both Officer B and E were gold class response drivers and therefore authorised to engage in pursuits. Officer B was driving a category A marked patrol car, which is authorised to be the lead car in pursuits.
22. Mr Rai drove on the wrong side of the road for a further 400m, between two lanes of oncoming traffic on several occasions. He also drove through two sets of red traffic lights. Both

officers remained on the correct side of the road and slowed down to navigate the intersections and negotiate traffic.

23. Officers B and E both told the Authority that they knew the BMW was being driven on the wrong side of the road, but Officer B said that his view of the BMW was blocked by a barrier between the east and west bound lanes, so he couldn't see what the car was actually doing. Neither officer thought it was necessary to abandon the pursuit at this point.
24. After crossing back onto the correct side of the road, Mr Rai headed towards the Drury roundabout, 500m away. He went right around the roundabout and started going around again before turning off into a side street. Here Mr Rai made a U-turn before proceeding the wrong way through the roundabout and back onto SH22, heading back towards the motorway interchange at speeds of up to 115kph in a 50-70kph area.
25. As the lead driver in the pursuit, Officer B kept NorthComms informed of what the BMW was doing and the direction of travel.
26. Officers C and D overheard Officer B's transmissions and followed the vehicles towards Drury. Near Firth Street, Officer C told Officer D to stop the car so that he could attempt to deploy the spikes a second time. Again, Officer C was unable to contact NorthComms so did not request permission to use the spikes.
27. Officer D stopped on the left hand side of the road, opposite the intersection with Firth Street. Officer C took the spikes from the back seat of the car and found that part of a rope had detached from the spikes during the first deployment. The spikes were tangled and were unable to be deployed properly. However, Officer C still attempted to use the spikes to stop the BMW, throwing the spikes onto the road in a large clump which Mr Rai easily avoided. From this point Officers C and D did not continue to take part in the pursuit.
28. Just before the BMW and the pursuing officers reached the interchange, Officer A – who had been keeping track of the pursuit via radio and intended to provide support for Officers B and E - passed the vehicles in the opposite direction. He turned around and followed them but did not take an active role in the pursuit, instead acting as a support vehicle.
29. At the interchange Mr Rai turned right, onto the northbound SH1 motorway on-ramp, where he temporarily lost control of the BMW and swerved across the road. He quickly regained control and continued along the on-ramp and onto the motorway. CCTV footage shows that, at this point, Officer B was only a car's length behind the BMW.
30. For the next four kilometres Officer B continued to sporadically update NorthComms, although his communication was hindered by the heavy radio traffic. Officer B reported his speed and location. He added that traffic was light and road conditions were good. Officer B reported that he was travelling at 162kph in a 100kph zone. A Serious Crash Report later analysed the speed that the BMW had been travelling on the motorway. It confirmed that, at three different points on the motorway, the BMW had been travelling at 160kph, 168kph and 152kph respectively.

31. Officer B told the Authority that he did not believe these speeds were excessive, and that the Police units were following at a safe distance.
32. Police later analysed CCTV footage to determine the distance between the BMW and the closest Police vehicle at two separate points during the pursuit. The analysis showed that, at these two points, the distance between the vehicles was about 40 metres and 52 metres respectively. Further analysis showed that, at a speed of 160kph, the pursuing vehicle would need to be at least 44 metres away from the BMW to avoid a collision if it stopped suddenly.
33. The NorthComms Pursuit Controller told the Authority that he did not hear Officer B report his speed as 162kph, mistaking it for 106kph, but added that this would not necessarily have led him to call the pursuit off.
34. Officer E told the Authority that the BMW was being driven steadily and wasn't weaving or overtaking dangerously. He did not think that the risk of the pursuit outweighed the need to capture the offenders. Officer A told the Authority that, while the decision to abandon the pursuit was not his to make, he didn't see anything that made him think the pursuit was dangerous.
35. The pursuit continued north along the motorway, towards Papakura. Just past the Beach Road overbridge the BMW came up behind a silver ute being driven by Hugh Foster. The BMW was travelling at such a speed that Mr Rai was unable to avoid hitting Mr Foster's vehicle. The collision caused both vehicles to roll several times. The pursuit had lasted about three minutes and covered a distance of about six kilometres.
36. Officer A immediately contacted NorthComms to report the crash and location, while Officer E contacted NorthComms to request an ambulance before attending to Mr Foster. Officer B stopped his car and approached the BMW where he ordered Mr Rai, who was conscious, to get out of the BMW before handcuffing him.
37. Mr Foster received serious injuries, including a broken neck, in the crash. Mr Baker, passenger in the BMW, also received serious injuries, including a head injury. Mr Rai received superficial injuries.
38. As a result of this incident, Mr Rai was charged with aggravated robbery, dangerous driving causing injury and failing to stop for Police. He pleaded guilty and was sentenced to a term of imprisonment. Mr Baker was charged with aggravated robbery and unlawfully taking a motor vehicle. He also pleaded guilty and was also sentenced to a term of imprisonment.

CCTV Footage

39. As part of its investigation the Authority reviewed the footage recorded by several CCTV cameras, operated by the Joint Transport Centre and positioned throughout the pursuit route. This footage captured key aspects of the pursuit, including its commencement, the first use of the road spikes, and the crash.

40. The footage showed that the weather during the pursuit was clear and dry, that visibility was good, and that traffic was free flowing both on SH22 and on the motorway.

Camera at Drury interchange

41. Footage from the CCTV camera at the interchange shows Officer C's and D's Police car parked on the raised median strip while Officer C prepares the road spikes for deployment. The BMW can be seen approaching from a westerly direction, closely followed by Officer E who turns his car's red and blue lights on as the BMW dangerously passes a truck on the truck's left hand side.
42. The footage then shows Officer C's attempted deployment of the road spikes and Mr Rai driving onto the wrong side of the road to avoid them. The camera then tracks the BMW as it travels through two sets of red traffic lights, on the wrong side of the road, and between lanes of traffic. Officers B and E can be seen following the BMW, but remaining on the correct side of the road.
43. The camera then tracks the cars as they travel towards Drury, but clear sight of the vehicles is blocked by various buildings and trees. The footage does not show the second use of the road spikes.
44. The BMW reappears on the footage as it is driven west from Drury back towards the interchange, followed by Officers B and E. When it reaches the interchange the BMW is seen turning right onto the northbound on ramp, where Mr Rai momentarily loses control before recovering and proceeding onto the motorway. The footage shows Officer B coming within a metre of the BMW at this point.

Camera at Slippery Creek

45. Footage from the CCTV camera positioned at Slippery Creek, approximately one kilometre from the interchange, shows the BMW travelling north along the motorway with Officers B and E following behind it. Officer A can be seen behind them.
46. While the BMW appears to be travelling at a high speed, its manner of driving is consistent and rational.

Camera at Park Estate overbridge

47. Footage from the CCTV camera positioned near the Park Estate overbridge, about one kilometre from Slippery Creek, shows the BMW overtaking a vehicle by driving onto the hard shoulder adjacent to the outside lane. The Police vehicles are about 40 metres behind the BMW, but remain in the outside lane.

Camera at Rushgreen Avenue

48. In the footage reviewed by the Authority, the CCTV camera positioned near Rushgreen Avenue is pointed south towards the overbridge at Beach Road. It shows several hundred metres of the northbound lanes. The Rushgreen Avenue camera is about two kilometres from the Park Estate overbridge.

49. The footage shows Mr Foster's vehicle in the outside lane, heading north. It is being driven in a normal manner, at a normal speed. The BMW appears in the same lane about eight seconds later, still followed by the Police vehicles which were about 52 metres behind.
50. The BMW quickly catches up to Mr Foster's vehicle. It appears that the BMW tries to pass Mr Foster on the outside shoulder, but clips the rear right hand corner of his vehicle. This causes Mr Foster's vehicle to veer left across the motorway and out of the view of the camera.
51. The footage shows the BMW flip over at least three times before coming to rest in the outside lane. The Police vehicles quickly stop, with one blocking the motorway so that traffic cannot proceed past the crash site. Various officers then exit their vehicles in order to attend to the scene.

Police Policy Procedure and Practice Review

52. Following this incident, Police undertook a review to assess whether the actions of all the officers involved complied with relevant Police policies, procedures and practices.
53. The review found that:
 - Officers C and D did not comply with aspects of the TDD policy, and both should receive refresher training with regard to the deployment and use of TDD.
 - The decision of Officer E to allow the pursuit to begin once Mr Rai had crossed onto the wrong side of the road was incorrect, and he should receive mentoring in relation to this.
 - Officer B should have abandoned the pursuit when Mr Rai dangerously overtook another vehicle at the Park Estate Road Overbridge, and should receive training and mentoring in relation to this.
54. Police have confirmed to the Authority that all officers involved in this event have been advised of the result of this review, and its recommendations. Some officers have received remedial training as a result.

Legislative Authority for Pursuits

55. Under the Search and Surveillance Act 2012, Police may stop a vehicle to arrest a person they have reasonable grounds to suspect is unlawfully at large or has committed an offence punishable by imprisonment. Section 114 of the Land Transport Act 1998 also empowers Police to stop and speak to the driver of any vehicle.

Fleeing Driver Policy

56. 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.
57. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit, and to abandon the pursuit if the risks of continuing outweigh the need for immediate apprehension of the fleeing driver. 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.
58. 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.
59. 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.

Tyre deflation devices (TDDs)

60. Under the Police Tyre Deflation Devices Policy, tyre deflation devices – commonly known as road spikes - may be used by Police during a fleeing driver incident where there is no other, less dangerous means of stopping a vehicle reasonably available, and deployment does not create an unjustified risk. TDDs must be deployed by officers trained in their use.

61. The deployment of TDDs must be approved by the Pursuit Controller, except in exceptional circumstances where non-deployment would have grave consequences, such as immediate risk of serious injury or loss of life. In this case, the deploying officer must notify the Pursuit Controller of the deployment and its outcome as soon as possible.
62. TDDs must not be deployed if there is a likelihood of injury to members of the public, Police or the offender(s). They also must not be deployed from a centre median on a multi-lane road.
63. Prior to deployment, officers must choose a suitable deployment site that will ensure the safety of themselves and others and notify Comms of the location. When officers select a location to deploy spikes, the site must:
 - always provide cover and an escape route for deployment staff;
 - not be on or immediately before a bend in the road;
 - provide a clear view of the road in all directions, to allow officers to observe the fleeing vehicle and other traffic as it approaches;
 - not rely on the use of Police vehicles or any other vehicles to provide cover, unless operational circumstances require such in the interests of officer safety;
 - allow the safe deployment of the spikes;
 - provide enough space to deploy the spikes but not enough that the offending vehicle can easily evade them; and
 - be far enough away from the target vehicle to give time for selecting and assessing the site and deploying the spikes.
64. Cover is any material that will stop or at least deflect the fleeing vehicle without causing harm to the deployment officer. Fixed objects such as overpass pillars, buildings, guardrails and bridge abutments provide the most solid protection.
65. There are two ways to deploy road spikes, either by the kerbside deployment method or pull deployment method. The pull deployment method (used by Officer C) involves the road spike unit being placed on the roadside opposite to where the officer intend to stands during the deployment. The officer then unwinds the draw rope and walks it across the roadway, where it lies flat so that other traffic can pass over it unimpeded. When the roadway is clear, and just before the target vehicle arrives, the officer pulls the actual road spikes across the road using the draw rope.
66. Police policy states that the pull deployment method is not the preferred method of deployment as it requires the deploying officer to cross the road. The policy also states that, if this method is used, the officer must wear a high visibility jacket.

THE AUTHORITY'S FINDINGS

67. As part of its investigation, the Authority has considered whether Police complied with law and policy in respect of all aspects of the pursuit and in relation to the deployment of TDDs.

Commencement of the Pursuit

68. Based on the reports of witnesses at the scene of the bank robbery, Police had reasonable grounds to suspect that the occupants of the BMW had committed aggravated robbery, an offence punishable by imprisonment. Under the Search and Surveillance Act 2012 Police were therefore entitled to attempt to stop the BMW to arrest the occupants.
69. The first officer to get into a position to try to stop the BMW was Officer E. Officer E followed the BMW from the intersection of SH22 and Great South Road. However, he did not signal the BMW to stop and was driving at a normal speed. His intention was to observe the BMW and provide a situation report to NorthComms and the other Police units that he knew were positioned about 500m ahead. The Authority is satisfied that Officer E was not in pursuit of the vehicle at this stage.
70. As the BMW approached the weighbridge it dangerously passed a truck on the truck's left hand side, before dodging the road spikes and driving onto the wrong side of the road into oncoming traffic. Officer E activated his lights and sirens as the BMW passed the truck, signalling it to stop. At the same time Officer B, who did not see the BMW pass the truck but did see it dodge the spikes and drive onto the wrong side of the road, pulled out of the weighbridge and followed the BMW on the correct side of the road with his lights and sirens activated. He informed NorthComms that he was in pursuit of the BMW.
71. In isolation, the crime of aggravated robbery is a good reason to commence a pursuit. In addition, the Police did not know the identities of the occupants of the BMW. Although they knew the registration of the BMW, it was stolen, so this information would not have helped Police to locate the offenders at a later time.
72. However, Police policy requires that officers conduct a thorough risk assessment before commencing a pursuit. Such an assessment should include rigorous consideration of the manner in which the offending vehicle is being driven.
73. The actions of the Mr Rai – dangerously passing a truck, dodging road spikes, driving the wrong way through an intersection against a red light, and driving at speed into oncoming traffic - prior to commencement of the pursuit showed that he was willing to take serious risks to avoid apprehension. While Officer B did not see the BMW passing the truck, he did see it dodge the spikes and drive onto the opposite side of the road, and knew that there was a significant amount of oncoming traffic on that side of the road.

74. Mr Rai's actions posed a serious risk to other road users, which the Authority believes outweighed the need to apprehend the offenders at that point. The Authority is of the opinion that, on balance, the decision to commence a pursuit in these circumstances did not comply with Police policy.

FINDING

Officer B did not comply with Police policy with regards to commencement of the pursuit.

Communication

75. As required by policy, Officer B notified NorthComms that he was in pursuit of the BMW after the driver had failed to stop. The NorthComms dispatcher then provided the standard pursuit warning which was acknowledged by Officer B.
76. As lead driver in the pursuit, Officer B was responsible for maintaining communication with NorthComms and informing them of relevant risk factors, including the manner in which the BMW was being driven.
77. Officers B and E said that, because their view was obstructed by the barrier between the east and west bound lanes, neither were able to see what the BMW was doing as it drove along the wrong side of the road towards Drury so Officer B was unable to inform NorthComms of Mr Rai's manner of driving at this point.
78. However, CCTV footage clearly shows the BMW travelling between two lanes of oncoming traffic. It also shows that the barrier between the two lanes was no more than kerb height, so it would not have created a visual obstacle between the officers and the BMW.
79. During the pursuit Officer B communicated some relevant aspects of his risk assessment to NorthComms, such as traffic and road conditions and the class of vehicle he was driving, but these communications did not take place until almost two minutes into the pursuit.
80. However, other than reporting its estimated speed on two occasions, Officer B did not provide any information to NorthComms regarding the BMW's manner of driving during the rest of the pursuit, which lasted three minutes. This meant that the Pursuit Controller was unaware that the BMW had gone the wrong way around the roundabout at Drury, or that it had dangerously overtaken a vehicle on the motorway. If this information had been available to the Pursuit Controller it may have influenced his decision as to whether or not the pursuit should continue.

FINDING

Officer B did not tell NorthComms about the most dangerous aspects of Mr Rai's driving. This prevented the Pursuit Controller from making an adequate assessment of the risks involved in the pursuit.

Ongoing risk assessment and option of abandonment

81. In accordance with Police policy, all officers involved in the pursuit kept their warning lights and sirens activated at all times.
82. Police policy requires officers to drive in a manner that prioritises public and Police safety.
83. The Police Serious Crash Report stated that the BMW was travelling at speeds between 152kph and 168kph at three separate points along the motorway.
84. The actions of the BMW throughout the pursuit showed that Mr Rai was willing to take serious risks to avoid apprehension, including driving on the wrong side of the road, travelling at very high speed, and dangerously passing a vehicle on the hard shoulder. His driving posed a serious risk to other road users and, in the Authority's view, outweighed the need to apprehend the offenders.
85. Despite this, Officer B did not abandon the pursuit, as required by Police policy.
86. The Pursuit Controller, who could also have abandoned the pursuit, did not receive sufficient information to enable him to conduct a full risk assessment or to make a decision to abandon the pursuit.

FINDING

Officer B should have abandoned the pursuit when it became clear that Mr Rai's driving was going to pose an ongoing and serious risk to other road users.

Use of Tyre Deflation Devices

87. Officer C was trained in the use of TDDs. He attempted to deploy road spikes twice in order to stop the BMW. Each attempted deployment is considered below.

The first attempted deployment

88. Police policy only authorises the deployment of road spikes during a pursuit where there is no other, less dangerous means of stopping a vehicle. The use of road spikes is only permitted as part of a pursuit. When Officer C first attempted to deploy the road spikes, both he and Officer D were under the misapprehension that a pursuit was underway.

89. Officer C did not seek approval to deploy the spikes. He told the Authority that the situation amounted to “*exceptional circumstances*,” given the seriousness of the offence, the risk posed to the public by Mr Rai’s driving, and the fact that he could not contact NorthComms. As such, he believed that his decision to deploy the road spikes without obtaining the authority of the Pursuit Controller was justified.
90. The Authority is of the opinion that the situation faced by Officer C did not amount to “*exceptional circumstances*” that would have justified a discretionary deployment.
91. Officer C chose a deployment site that failed to meet the standard set out in Police policy in the following ways:
- It did not provide sufficient cover or an escape route to protect Officer C.
 - The only available cover to Officer C was a Police car. This was parked on the raised median strip of a multi-lane road, a position from where deployment is prohibited.
 - The layout of the road was such that the driver of the BMW was able to identify the deployment site and was able to easily evade the spikes.
92. Officer C’s decision to attempt a pull deployment meant that he had to cross the road at least twice. CCTV footage shows that his attempted deployment was indecisive and haphazard, which placed him at greater risk of harm. He also failed to wear a high visibility jacket, as required by Police policy.
93. Neither Officer C nor D communicated to other Police units that Officer C was intending to deploy road spikes. There was no communication regarding their deployment until Officer E reported that the BMW had “*dodged the spikes*.”
94. The decision of Officer C to deploy the road spikes put himself and Officer D at risk of harm.

The second attempted deployment

95. By the time of the second attempted deployment of road spikes by Officer C a pursuit of the BMW had been initiated. However, once again, Officer C did not seek permission from the Pursuit Controller to deploy the spikes, nor communicate his intention to other Police units.
96. The Authority has been unable to establish the exact location of the second attempted deployment, so is unable to make a finding as to whether the site was suitable.
97. Prior to the second attempted deployment of the spikes, Officer C realised that they had malfunctioned during the first attempted deployment. However, he still attempted to deploy them a second time.
98. Because the road spikes were not working properly, Officer C was unable to get them to extend and threw them onto the road in a large clump. This created an obstacle in the road that posed a risk to other road users, including the occupants of the BMW and the pursuing officers.

FINDINGS

Officer C failed to comply with Police policy in relation to communication and site selection during the first attempted deployment of the road spikes. He also failed to wear a high visibility vest.

Officer C failed to comply with Police policy in relation to communication during the second attempted deployment of the road spikes.

The haphazard nature of both attempted deployments placed Officer C, Police staff and other road users at risk of harm.

SUBSEQUENT ACTION BY POLICE

99. 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 polices and the reality of a fast-paced, time-pressured situation. This process is well advanced.
100. The Authority also notes that Police are currently reviewing the Tyre Deflation Devices policy and as part of that review are considering how issues regarding communication in relation to the deployment of TDDs should be addressed.
101. In addition, Police have advised the Authority that they are currently actively considering options for the implementation of CCTV feeds from the existing motorway camera network into the Northern Communications Centre.

CONCLUSIONS

102. The Authority has concluded that:

102.1 Officer B failed to comply with Police fleeing driver policy with regards to commencement, communication, risk assessment and abandonment of the pursuit.

102.2 Officer C failed to comply with Police TDD policy with regards to the attempted deployment of placement of the road spikes on both occasions.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

27 November 2014

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 employs 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?

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 in a personal capacity;
- 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 form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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