

## Summary Report

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# Police actions during and after a pursuit in Auckland

## INTRODUCTION

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1. Just before 9am on 22 September 2014 Police officers in Mangere, Auckland, commenced a pursuit of a stolen Mazda motor vehicle. A short time later, the officers abandoned the pursuit when the vehicle entered the South-Western Motorway and travelled in the wrong direction. Following abandonment, the officers performed a U-turn and drove the wrong way up the motorway on-ramp to an overbridge. From the overbridge the officers saw the driver of the Mazda stop the car on the side of the motorway. The officers then drove to the vehicle using the motorway off-ramp breakdown lane.
2. A member of the public witnessed part of this incident and made a complaint to the Independent Police Conduct Authority about whether the officers were justified in driving the wrong way on the motorway on-ramp, after they abandoned the pursuit, and again on the off-ramp, when they drove to the Mazda.
3. 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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### Summary of events

4. At 8.55am on Monday 22 September 2014 Officers A and B were on general patrol in Mangere, Auckland. That day Police had received reports that a number of vehicles had been stolen in the area.
  5. The officers were in an unmarked Police car. Both Officer A and the Police car were appropriately certified to engage in pursuits.
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6. On Imrie Avenue the officers saw a yellow Mazda coming toward them that appeared to be speeding. The driver and passengers looked quite young. Officer A performed a U-turn, and Officer B used his mobility device to do a vehicle check using the Mazda's registration number. Officer B found that the age and description of the Mazda's registered owner did not match that of the driver.
7. When the Mazda driver turned left onto Massey Road the officers saw that the Mazda's rear quarter light window was broken, indicating to them that the vehicle had been stolen. The officers decided to stop the Mazda to speak to the driver.
8. Officer A followed the Mazda onto Massey Road at a distance of about 20 metres. At the intersection with Tidal Road both cars stopped for a red light. There were about three or four cars between the Police vehicle and the Mazda. The road was wet from rain earlier that morning. There is a school on Imrie Avenue, and there was medium traffic and a number of pedestrians in the area.
9. When the traffic light turned green, Officer A activated the lights and sirens on the patrol car to signal the Mazda driver to pull over and stop. Instead, the driver accelerated around the other cars at the intersection and drove toward the South-Western Motorway overbridge. Due to the driver's actions, Officer A decided to commence a pursuit. Before doing so he conducted a risk assessment, taking into account that there was medium vehicle and pedestrian traffic, that the road was wet but it was not raining, and that the Mazda was suspected to be stolen. He considered that the need to apprehend the driver outweighed the risks involved in pursuit.
10. Officer B radioed the Police Northern Communications (NorthComms) Centre that he had a priority transmission to make. This was acknowledged by the NorthComms dispatcher, and Officer B responded, *"Yeah, just following a stolen vehicle, [registration], just heading over Manukau motorway, over."*
11. Immediately before the overbridge the Mazda driver travelled through a red light. Officer A followed at about 20kph. There was no other traffic on the overbridge.
12. At about this point the NorthComms dispatcher asked Officer B if the officers were in pursuit. Officer B confirmed that they were and the dispatcher provided the pursuit safety warning required by Police policy.
13. After the overbridge the Mazda driver turned right through a second red light onto the motorway on-ramp, heading southbound. Still travelling at less than 20kph, Officer A followed the Mazda through the second red light and onto the on-ramp.
14. At the bottom of the on-ramp the Mazda driver performed a U-turn onto the motorway and began driving northbound in the wrong direction. At about the same time, Officer B acknowledged the dispatcher's pursuit warning and said that the Mazda had *"gone the wrong way up the motorway."*

15. At this stage Officers A and B were about half way down the on-ramp. Officer A said that he immediately decided to abandon the pursuit, and told Officer B that he was going to pull over. Officer A said that as he was pulling over he discussed the situation with Officer B and they decided to turn around and head back up the on-ramp to Massey Road, where they would be able to monitor the Mazda from the overbridge.
16. After stopping on the side of the on-ramp, Officer A checked for other vehicles and performed a U-turn. He then drove back up the on-ramp, in the breakdown lane, at about 20kph with the patrol car's emergency lights and sirens still activated. Other drivers had pulled over to the side of the on-ramp.
17. In a statement to Police, Officer A said that he knew that when a pursuit is abandoned, Police policy requires officers to turn off their patrol car's lights and sirens and pull over to the side of the road. However, he said, *"This did not happen in this instance because of where we were situated and the seriousness of what the offending car was doing."*
18. As they returned to Massey Road, the NorthComms dispatcher asked Officer B to confirm that the Mazda was being driven on the wrong side of the motorway. Officer B did so and the dispatcher asked if the officers were behind it. Officer B replied, *"Negative, we have abandoned the vehicle, over."* Officer B said in a statement to Police that he and the NorthComms dispatcher had trouble communicating at this point because they *"were just clipping over on each other"*.
19. A motorist who saw this part of the incident told the Authority that the Police vehicle performed the U-turn at the bottom of the on-ramp, and then drove back to Massey Road at about 80kph. In contrast, a second motorist told the Authority that they saw the Police car about 20 metres behind the Mazda, but not following at speed, and then saw the Police car subsequently turn around and drive slowly back to Massey Road. In an interview with the Authority, Officer A reaffirmed that he drove at no more than 20kph when returning to Massey Road. Officer B said he recalled turning around halfway down the on-ramp.
20. When the officers were back on the Massey Road overbridge the dispatcher asked for confirmation that they had abandoned the pursuit. Officer B replied, *"Yeah, Comms we can see the vehicle is abandoned on the side of the road, over."*
21. The officers could see that the Mazda had stopped about 500 metres from the overbridge. In an interview with the Authority, Officer A said that when he saw the Mazda he became concerned that the occupants would leave it and try to walk on or across the motorway, endangering both themselves and other motorway users. He said that as a result he wanted to reach the Mazda as quickly as possible.
22. The officers decided that the best way to get to the Mazda quickly was to travel down the motorway off-ramp. Officer A drove to the top of the off-ramp and, when it was safe to do so, he drove down the grass verge beside the off-ramp continuing on to the motorway shoulder until they reached the Mazda. As they approached the officers saw the Mazda occupants run up the grass incline beside the motorway. Both officers said that from Massey Road to the

Mazda, Officer A travelled at 10–15kph, and the emergency lights on the Police car were activated.

23. Officer B did not notify NorthComms that they were approaching the Mazda by travelling in the wrong direction down the off-ramp. In explanation he said that there were a number of Police units trying to transmit over the radio at the time.
24. By the time the officers reached the Mazda all the occupants had left the car.
25. The incident, from the point Officer B notified NorthComms of the pursuit until the officers reached the Mazda on the motorway, lasted about two minutes.

## THE AUTHORITY'S FINDINGS

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### Were the officers justified in commencing pursuit of the stolen vehicle?

26. When the officers first saw the Mazda, both considered that it was travelling well above the speed limit. They suspected that the Mazda was stolen because the driver did not match the description of the registered owner, and the rear quarter window was broken. As a result the officers were justified under section 114 of the Land Transport Act 1998 and section 9 of the Search and Surveillance Act 2012 to signal the driver to stop.
27. When the Mazda driver failed to stop and attempted to evade apprehension by accelerating on Massey Road, Officers A and B commenced a pursuit in accordance with the Police fleeing driver policy.
28. Officers are required by the fleeing driver policy to conduct a risk assessment prior to commencing a pursuit. As discussed above in paragraph 9, before commencing the pursuit Officer A considered relevant risk factors and decided that the need to apprehend the driver of the Mazda outweighed any risk involved in pursuing.

### FINDING

Officers A and B complied with law and Police policy in commencing pursuit of the Mazda.

### Did communication between the officers and NorthComms during the pursuit comply with Police policy?

29. The Police fleeing driver policy requires officers who commence a pursuit to provide notification of this to the communications centre. The policy requires the dispatcher to provide a safety warning. After acknowledging this warning officers must provide information about their location and direction of travel to the dispatcher.

30. Comms is required to then request certain information from the pursuing officers about the reason for pursuit, vehicle description, posted speed limit, road and traffic conditions, weather, the offender's manner of driving and identity, and the Police driver and vehicle classifications, as well as confirmation that warning devices are activated on the Police car. When officers abandon a pursuit they are required by the policy to notify the dispatcher of this, confirm that they are stationary and state their location.
31. After Officer A commenced pursuit Officer B transmitted to the NorthComms dispatcher, *"Yeah, just following a stolen vehicle, [registration], just heading on Manukau motorway, over."* When the dispatcher queried whether the officers were in pursuit, Officer B said, *"Affirm, Comms"*. The dispatcher then provided the safety warning. Officer B acknowledged this and stated that the Mazda had *"gone the wrong way up the motorway."*
32. After the dispatcher asked if the officers were driving on the wrong side of the motorway, Officer B responded, *"Negative, we have abandoned the vehicle, over."* The dispatcher then sought clarification whether the officers had abandoned the pursuit and Officer B replied that they could *"see the vehicle is abandoned on the side of the road, over."*
33. While Officer B generally complied with policy in respect of communication during this pursuit, he did not notify the dispatcher that the Mazda driver ran two red lights or that the officers had abandoned the pursuit until prompted by the dispatcher. The Authority acknowledges that this pursuit was short in duration, but Officer B should have been proactive in providing this information to NorthComms.

## FINDING

During the short duration of this pursuit Officer B generally complied with the fleeing driver policy in respect of communication during the pursuit. However he did not provide as much information about risk and abandonment as he should have.

### **Did the officers comply with Police policy in relation to their speed and manner of driving during the pursuit?**

34. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. Clause 11.18 of the Land Transport (Road User) Rule 2005 allows officers to proceed against a red light if they slow down to 20kph, have the emergency lights and sirens activated on their patrol car and take due care to avoid collisions with pedestrians and other traffic.
35. Officer A drove through two red lights during the pursuit. At each he slowed down to less than 20kph and the emergency lights and sirens on his patrol vehicle were activated.

## FINDING

Officer A complied with law and Police policy in relation to his speed and manner of driving throughout the pursuit.

### **Did the officers comply with Police policy in relation to their ongoing risk assessment and the option of abandonment?**

36. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver. Pursuing officers and the Communications Centre pursuit controller must conduct an assessment of relevant risk factors to determine this.
37. When officers abandon a pursuit they are required to advise the pursuit controller of this, deactivate their emergency lights and sirens and stop the Police car when it is safe to do so. The pursuit controller may then authorise the officer to begin searching for the fleeing driver.
38. Officer A decided to abandon the pursuit as soon as the Mazda driver entered the motorway and began travelling in the wrong direction because he believed it was too dangerous to continue the pursuit. He stopped the Police car, performed a U-turn and drove back up the motorway on-ramp with the emergency lights and sirens still activated. He said that he did not stop and deactivate the lights and sirens, as required by Police policy, because of their location on the on-ramp and the nature of the Mazda driver's suspected offending.
39. A witness to this part of the incident complained to the Authority that Officer A drove at excessive speed up the on-ramp. Officers A and B both denied this and said that Officer A drove at no more than 20kph. A second witness confirmed this to the Authority.
40. The Authority is satisfied that it was impractical and unsafe for Officer A to stop in order to comply with the abandonment procedure while on the motorway on-ramp. In addition, based on the statements of Officers A and B, and the second witness, the Authority accepts that Officer A did not drive at excessive speed when returning to Massey Road.
41. The Authority's findings in relation to communications during abandonment are discussed above in paragraphs 32–33.

## FINDINGS

Officers A and B complied with Police policy in relation to abandonment of the pursuit after determining that continuing it on the wrong side of the motorway would create an unjustifiable risk to themselves and other drivers.

Officer A's actions in driving slowly up the on-ramp, with the patrol car's lights and sirens activated, were justified in the circumstances.

## Did Police actions following abandonment comply with Police policy?

42. When the officers were stopped on the Massey Road overbridge they noticed that the Mazda had stopped about 500m away. Due to the possible danger to the Mazda occupants and other road users, the officers decided they needed to reach the Mazda as soon as possible. Officer A crossed Massey Road and drove down the motorway off-ramp shoulder to reach the Mazda. He drove at about 15kph with the Police car emergency lights and sirens still activated. A witness to this complained to the Authority about whether Officer A was entitled to do this.
43. Police policy permits urgent duty driving when an officer would be prevented from apprehending a driver for a traffic offence (amongst other things) if required to comply with the traffic rules and regulations, for instance compliance with the speed limit.
44. Under Police policy, the overriding principle of urgent duty driving is that, *“No duty is so urgent that it requires the public or Police to be placed at unjustified risk.”* Officers must consider several factors when deciding to commence or continue urgent duty driving, including the environment, the urgency of the situation, and whether warning devices should be used.
45. There is always a degree of risk inherent in driving in the wrong direction on a motorway shoulder lane. However, the Authority is satisfied that Officer A’s manner of driving, in these particular circumstances, did not present an unjustified degree of risk to other drivers.
46. Officer B did not notify NorthComms that the officers drove the wrong way on the motorway shoulder to reach the Mazda (see paragraph 23). The last thing Officer B had communicated to the dispatcher was that the Mazda had been abandoned on the side of the motorway. In a Police statement Officer B said that other Police units trying to use the radio prevented him from notifying NorthComms that officers drove down the motorway shoulder.
47. Having listened to the Police communications tape of this incident, the Authority considers that Officer B had time to notify the dispatcher of the officers’ actions. This information was especially critical for the awareness of the dispatcher, who was trying to organise other officers to respond to the abandoned car, and for the approaching Police units.

### FINDINGS

Officer A’s actions following the abandonment of the pursuit complied with the Police urgent duty driving policy and were justified given the particular circumstances of the case.

Given the inherent risk involved, Officer B should have provided critical information to NorthComms about the officers’ actions after they abandoned the pursuit and drove to the Mazda.

## CONCLUSIONS

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48. The Authority has concluded that:

- 1) Officer A's and B's commencement of the pursuit, and Officer A's speed and manner of driving during the pursuit complied with law and Police policy.
- 2) Officer A's ongoing risk assessment and decision to abandon the pursuit complied with Police policy.
- 3) Officer A's actions in driving on the wrong side of the motorway shoulder lane complied with Police policy and were justified in the particular circumstances of this case.
- 4) Officer B generally complied with Police policy during the pursuit. However, he should have provided more information to NorthComms both during the pursuit and following abandonment.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

10 April 2015



## ABOUT THE AUTHORITY

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### 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?

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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 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.







Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

[www.ipca.govt.nz](http://www.ipca.govt.nz)

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