

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

# Police handling of Shane Cribb prosecution

March 2014



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March 2014

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. On the morning of 14 July 2005 a car crash occurred on a country road on the outskirts of Alexandra involving an unmarked Police Holden Ute driven by Senior Constable Neil Ford and a Honda car driven by Shane Cribb, aged 17.
2. Constable Dairne Cassidy was appointed to investigate the crash. Mr Cribb was charged with careless driving causing injury and was convicted in March 2006. However in January 2008 a rehearing was ordered on the basis of new evidence, and in May 2008 Police advised that they would not be offering any evidence at the rehearing. Mr Cribb's conviction was subsequently overturned.
3. Since 17 January 2006, the Independent Police Conduct Authority (the Authority) has received a number of letters from Stephen Potter (the father of Mr Cribb's girlfriend at the time of the crash) alleging, amongst other things, that Police unfairly and unjustly attached the blame for the crash to Mr Cribb – either to pervert the course of justice in order to protect a fellow officer, or through an incompetent investigation that lacked thoroughness.
4. Police were notified of Mr Potter's complaints and ultimately carried out criminal investigations which resulted in Senior Constable Ford being convicted of perjury and Constable Cassidy being convicted of attempting to pervert the course of justice.
5. In addition to the criminal investigations, Police undertook a number of reviews into their handling of this incident which are set out in more detail below.
6. This report sets out the results of the Authority's investigation and the Authority's findings. The Authority acknowledges that although the crash occurred over eight and a half years ago, some of the officers involved in overseeing the crash investigation have only recently been questioned regarding their actions and subsequently have had difficulty recalling exactly what took place. The Authority has taken this into account when reaching its conclusions.

### Index of officers involved in the Ford/Cribb crash investigation

Officer	Comment
Senior Constable Neil Ford	Involved in car crash with Shane Cribb Convicted of perjury
Constable Dairne Cassidy	Assigned to investigate the crash Convicted of perverting the course of justice
Senior Sergeant Michael Cook	Sub Area Supervisor (and Acting Area Commander: Otago Rural at the time of the crash) Responsible for overseeing the crash investigation
Sergeant Aaron John Priebee	Highway Patrol officer Offered to conduct the crash investigation but was turned down
Senior Sergeant Andrew Burns	Sergeant Priebee's supervisor Later became Road Policing Manager: Southern District
Senior Constable Trevor Buchanan	Crash analyst – Dunedin based
Sergeant Colin Stevenson	Relieved for Senior Sergeant Cook as the Officer in Charge of the Alexandra Police Station
Inspector Carey Griffiths	Road Policing Manager: Southern District at the time of the crash
Senior Sergeant Alan Grindell	Tactical Co-ordinator at Dunedin (overseeing Youth Aid, Tactical section, Intel, the Strategic Traffic Unit, and Senior Constable Buchanan)
Sergeant Tom Scouller	Dunedin Police Prosecution Section
Inspector Phillip Jones	The Area Commander: Otago Rural at the time of the crash investigation
Sergeant Mark Stables	Wellington District Serious Crash Unit

### Index of officers involved in the Police criminal investigations and reviews

Officer	Comment
Superintendent Paula Rose	National Manager: Road Policing
Inspector Ian McKeown	Professional Standards
Inspector Patricia O'Shaughnessy	Reviewed the crash investigation file and recommended further action
Inspector Dave Parsons	Conducted an investigation and completed a report addressing Mr Potter's complaints
Detective Sergeant Rob Hanna	Conducted enquiries for the criminal investigation of Senior Constable Ford
Senior Constable Alistair Crosland	Reviewed and analysed the crash reports and experts' opinions
Superintendent Robert Burns	Southern District Commander
Detective Inspector Chris Bensemenn	Investigated Constable Cassidy's allegation that she had advised Senior Sergeant Cook about Senior Constable Ford's admission
Detective Inspector Steve Vaughan	Conducted a review of the initial crash investigation and subsequent Police actions
Inspector Trevor Pullen	Reviewed Detective Inspector Vaughan's report, interviewed the officers involved and identified 'lessons learnt'



# Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

## **Authority conclusions**

7. The Authority has examined the Police's handling of this crash investigation and its aftermath, and has determined that there were failures to:
  - i) critically examine Senior Constable Ford's account of the crash and the physical evidence;
  - ii) comply with policy and best practice;
  - iii) provide adequate supervision and leadership; and
  - iv) remedy the deficiencies that had been identified in the investigation.
8. Furthermore Police failed to address Mr Potter's concerns about the crash investigation in an appropriate way or in a timely manner.
9. These failures resulted in Police not uncovering the truth about the crash for over two years and caused much undue stress to Mr Cribb and his supporters – primarily Mr Potter. The mishandling of this crash investigation also greatly damaged the reputation of Police.
10. However the Authority has not found that there was a conspiracy amongst the Police officers overseeing the crash investigation.

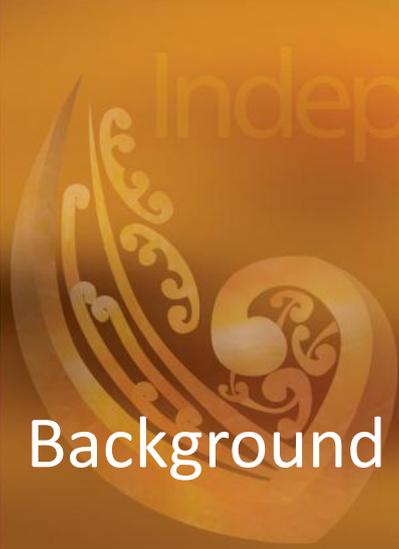
## **Section 27(1) opinion**

11. 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 which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.

12. In terms of s.27(1) of the Act the Authority has formed the opinion that:
- i) The failure of Senior Sergeant Cook to ensure that an NCO (a sergeant or senior sergeant) was assigned to investigate the Ford/Cribb crash was unjustified.
  - ii) Senior Constable Buchanan's failures to: (a) identify the inconsistency between the crash scene evidence and Senior Constable Ford's account of the crash, and (b) carry out a full analysis of the crash scene evidence, were unjustified.
  - iii) Senior Constable Buchanan's actions in providing his opinions on the Piercy and Marks reports, when he had not properly investigated the crash himself, were unjustified.
  - iv) Senior Sergeant Cook's failures to: (a) address the concerns raised by Constable Cassidy and Sergeant Stevenson before the District Court hearing, (b) investigate the reasons behind Senior Constable Buchanan's reluctance to offer an opinion on the crash, and (c) ensure that a sufficiently thorough analysis of the crash evidence was undertaken, were unjustified.
  - v) The failure of Sergeant Stables to recommend that the U-turn possibility be examined in depth was undesirable.
  - vi) The inappropriate comments made by Senior Sergeant Cook (in respect of defence experts) and Inspector Griffiths (when requesting a review of the crash file) were undesirable.
  - vii) The individual and collective failures of Police in addressing Mr Potter's concerns about the crash investigation caused unacceptable delays that were unjustified.

### **Section 27(2) recommendations**

13. The Authority notes that the conduct of the officers involved in this case predated the Code of Conduct procedure introduced by Police in the Policing Act 2008 and therefore the former twelve month time limit on instituting disciplinary proceedings applies.
14. The Authority makes no recommendations.



# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### The crash

15. At around 7.55am on 14 July 2005, Senior Constable Neil Ford was driving an unmarked Police Holden Ute in the northbound lane of Earnsclough Road near Alexandra. He worked in the Commercial Vehicle Investigation Unit (CVIU), but at this time was responding to a report of a wandering cattle beast on the road.
16. Mr Cribb was also driving north on Earnsclough Road, some distance behind Senior Constable Ford. He was driving a Honda car which belonged to his girlfriend.
17. Senior Constable Ford saw a cattle beast beside the road near the Fraser River Bridge. He drove further down the road and, according to the statement he later gave to Police, decided to turn into a driveway and park his Ute. He was in the process of turning right across the southbound lane towards the driveway entrance when the Honda car driven by Mr Cribb collided with the driver's side of his Ute.
18. It later became a point of contention as to whether Senior Constable Ford was turning right into the driveway from within the northbound lane, beside the centre line of the road (as he claimed), or was making a U-turn from a position on or over the left edge of the road (in which case he had failed to give way to Mr Cribb who was not turning and was about to drive past him).
19. Both Senior Constable Ford and Mr Cribb were injured in the crash and their vehicles were extensively damaged. The senior constable suffered bruising, shock and possible kidney damage; and Mr Cribb suffered bruising to his face, a broken collar bone, and lacerated knees and gums that required stitching.

### The Police crash investigation

20. Constable Dairne Cassidy was the first officer to attend the scene of the crash involving Senior Constable Ford and Mr Cribb. She had been driving towards the area to assist

Senior Constable Ford with the wandering cattle beast and arrived within about five minutes of the crash occurring.

21. The Sub Area Supervisor (and Acting Area Commander: Otago Rural), Senior Sergeant Michael Cook, was called to the crash scene while off duty. He arrived about ten minutes after Constable Cassidy and took a series of photographs. He told Constable Cassidy to mark up the scene for measuring.
22. Sergeant Aaron John Priebee, a Highway Patrol sergeant, also attended the crash and assisted Police and the Fire Service at the scene. Sergeant Priebee was stationed in Alexandra but reported to Senior Sergeant Andrew Burns who was based in Dunedin.
23. No Serious Crash Analyst or Serious Crash Investigator was called to attend the scene immediately after the crash. The scene was not attended by a crash analyst until almost three weeks later (see paragraph 40).
24. Despite policy in place at the time which required a sergeant or senior sergeant to investigate crashes involving Police vehicles (see paragraphs 177-181 for policy), Senior Sergeant Cook assigned Constable Cassidy to investigate the crash and prepare the traffic crash report. At the time of this incident she was a Strategic Traffic Unit officer.
25. Senior Sergeant Cook also ensured that the Police Complaints Authority (as it was then known) was notified of the crash. His email stated:

*“Initial investigations indicate that S/Const Ford (driving a police vehicle) was attempting to turn Right off Earnsclough Rd into a driveway, when a vehicle came from behind, locked up and T-Boned the Police car. At this stage fault appears to lie with the other driver (pending both drivers being interviewed).”*

26. On 15 July 2005 Constable Cassidy inspected the Honda’s headlight bulbs and confirmed they had been working at the time of the crash. However there is no record of her checking the Holden Ute’s headlights.
27. On 18 July 2005, Constable Cassidy interviewed Mr Cribb and Sergeant Priebee interviewed Senior Constable Ford (as he needed to be interviewed by a higher-ranking officer).
28. In his statement Mr Cribb said he was positive that he had been driving under the speed limit of 100 kph. He was asked about when he first saw “the truck” (i.e. the Holden Ute), and he said:

*“I remember seeing it when I was right up near it. I didn’t see it till I slammed on my brakes. I don’t even remember seeing it on the side of the road or anything.”*

29. When asked where the truck was, he said: *"I'm not too sure at the time. I remember seeing him in the middle of the road and then braking. ... As soon as I hit my brakes I shut my eyes."*
30. Senior Constable Ford said in his statement that he had checked for traffic behind him as he drove over the Fraser River Bridge, and saw a set of headlights which he believed were about 200-300 metres away. As he approached the driveway which he was about to turn into:
- "... I moved to the centre of the road and just before I turned I checked in the inside mirror, I saw a set of headlights coming up behind me. They appeared to be on the wrong side of the road. Something didn't seem right. At this point I had started my turn into the driveway."*
31. Sergeant Priebee asked Senior Constable Ford whether he thought Mr Cribb was driving at excessive speed, and he replied:
- "Yes. I believe the other driver was at fault because I was indicating, he should have seen my indicator, if he didn't see my indicator he should have seen my brake lights or tail lights of the vehicle or the vehicle itself, as it was not pitch black."*
32. He also said: *"I have no doubt in my mind that I was in the right on this occasion, as I was indicating and pulling into a driveway and I was hit on the wrong side of the road."*
33. Sergeant Priebee later told the Authority's investigator (in July 2011) that:
- i) He had concerns about Senior Constable Ford's statement at the time, but Senior Constable Ford was a colleague and he had no reason to mistrust him.
  - ii) He considered Constable Cassidy to be a *"good cop"* but she was not an NCO (non-commissioned officer – i.e. sergeant or senior sergeant) and had limited traffic knowledge. It did not seem fair to be putting all that pressure (of the crash investigation) on her given that two people were injured, there was a Police car involved and they were looking at charging somebody.
  - iii) He and Constable Cassidy were uncomfortable with the situation, so he approached Senior Sergeant Cook and said that the investigation should be done by an NCO. He also said that he would be happy to take over the investigation. Senior Sergeant Cook told him it was not his business and to stay out of it.
  - iv) He was not happy with Senior Sergeant Cook's decision not to have an NCO investigate the crash, so he went to his supervisor, Senior Sergeant Burns. He thinks he told Senior Sergeant Burns that he and Constable Cassidy were

uncomfortable with the situation. Senior Sergeant Burns also told him to stay out of it. He was not given a reason.

34. On 19 July 2005, Constable Cassidy sent a report about the crash to the Officer in Charge of the Alexandra Strategic Traffic Unit. She wrote that she had seen Mr Cribb that day and he had told her he now remembered seeing Senior Constable Ford's vehicle stationary on the left hand side of the road before the crash. She commented: *"By this I would assume he is going to allege Ford u-turned in front of him at the last minute and this is completely different from his original statement."*
35. Constable Cassidy also reported that she had consulted Senior Constable Trevor Buchanan, a crash analyst based in Dunedin, who advised her it would be difficult to obtain *"an exact estimate of [Mr Cribb's] speed from the skid marks and vehicle compression"*.
36. Sergeant Colin Stevenson was relieving for Senior Sergeant Cook as the Officer in Charge of the Alexandra Police Station at the time. On 20 July 2005 he forwarded Constable Cassidy's report to the Officer in Charge of Road Policing: Dunedin.
37. On 21 July 2005 Inspector Carey Griffiths, the Road Policing Manager for the Southern District, reviewed the file and sent a memorandum to the Officer in Charge of the Dunedin Strategic Traffic Unit, Senior Sergeant Alan Grindell, suggesting that Senior Constable Buchanan may need to visit the crash scene to check the measurements of the skid marks.
38. In the memorandum to Senior Sergeant Grindell, Inspector Griffiths commented that:
  - i) from his reading of the statements there was no reason to disbelieve that Senior Constable Ford had commenced his turn from the centre of the roadway;
  - ii) he *"found nothing on the file to indicate any carelessness on the part of Sergeant [sic] Ford"*;
  - iii) Mr Cribb's statement that he did not see Senior Constable Ford's car until he braked, along with evidence of late braking (the skid marks), implied a lack of attention on his part, and supported one of two propositions:
    - a) Mr Cribb was inattentive for some reason (because he had not seen a vehicle that was clearly there to be seen) and came upon Senior Constable Ford's car so quickly that he was forced to swerve and brake, thus ending up in the opposing lane; or

- b) Mr Cribb had attempted to overtake a vehicle turning right, in breach of Rule 2.6(1)(a) and (b) of the Road User Rule (Inspector Griffiths stated that he believed this scenario was most likely).

39. Inspector Griffiths went on to say that he was not a trained crash investigator and asked that Senior Constable Buchanan review his conclusions. He also stated:

*"I understand that defence counsel are trying to allege that Sgt Ford turned unexpectedly in front of Mr Cribb, and that the "actual" skid marks are longer than measured by Constable Cassidy. For this reason, the scene should be checked – in fact longer skid marks may well support a theory that not only was Mr Cribb inattentive, but speeding."*

40. Senior Constable Buchanan visited the crash scene with Constable Cassidy on 2 August 2005 and she walked him through it, showing him the measurements she had marked. He did not inspect or view the vehicles involved in the crash.

41. On 4 August 2005, Senior Constable Buchanan submitted a seven-page document (referred to as Senior Constable Buchanan's report) to Senior Sergeant Grindell after reviewing the file to date, concluding:

*"It appears that CRIBB was the cause of this crash, as he did not see the Holden of Senior Constable FORD ahead. Had CRIBB braked, stayed in the northbound lane and had not closed his eyes, then this collision would not have occurred."*

42. Senior Constable Buchanan stated in this report that he had personally known and worked with Senior Constable Ford since 1982, but had had less contact with him over the past 10 years. The report included a description of Senior Constable Buchanan's visit to the scene with Constable Cassidy, various speed calculations based on the tyre friction marks, summaries of the statements from Senior Constable Ford and Mr Cribb, and an analysis of driver perception/reaction time and possible distances between Mr Cribb and the area of impact when he first saw Senior Constable Ford's Ute, based on potential speeds of 80 kph, 100 kph and 120 kph.

43. Senior Constable Buchanan commented that if further enquiries were required to be carried out, including extensive profiling of the damage to the Holden, forwarding the crash file to a "Crush Qualified Analyst", and conducting a 360° momentum calculation, he may be able to establish the "impact speed" of the Honda. These enquiries were never undertaken.

44. Inspector Griffiths sent the report together with a memorandum to Senior Sergeant Cook, advising that he had asked Senior Constable Buchanan to review the file and assist Constable Cassidy. He noted "the good job that Constable Cassidy has done in dealing

*with the scene and enquiries*”, which Senior Constable Buchanan had commented on in his report. Inspector Griffiths said there was no evidence of culpability by Senior Constable Ford, and that the evidence supported a charge of *“careless driving at the least”* for Mr Cribb, but the final decision regarding the charge rested with Senior Sergeant Cook after an assessment of the injuries and discussion with Senior Constable Ford.

45. Police charged Mr Cribb with careless driving, and he pleaded not guilty. The Police prosecutor, Sergeant Tom Scouller, later upgraded the charge to careless driving causing injury after he examined the file (including Senior Constable Ford’s Victim Impact Statement) and discovered that injury had occurred.

#### **Expert engaged by the defence – Mr Piercy**

46. In September 2005, Mr Cribb’s lawyers engaged Mr A.H. Piercy from Longford Consulting to evaluate the available information (such as job sheets, statements, photographs and scene diagrams) and to clarify and comment on the circumstances of the crash. Mr Piercy did not, at that time, visit the scene or examine the cars involved.
47. Mr Piercy is a former Police officer with a high level of experience in crash investigation. In his report, he stated that he had previously investigated over 500 serious injury/fatal crashes and over 1,500 minor/non-injury crashes.
48. Mr Piercy concluded that the evidence did not support Senior Constable Ford’s assertion that he turned into the driveway from the centre of the lane; instead it indicated that the senior constable had started his turn *“from closer to the left edge of the road, providing a greater turning radius for his vehicle while placing his vehicle at the angle identified at impact.”*
49. Mr Piercy stated that the evidence was more consistent with Senior Constable Ford initially moving left, in order to give himself space to complete a U-turn, than with him making a right turn into the driveway from beside the centre line of the road. He also suggested that Mr Cribb may have thought Senior Constable Ford was allowing him to pass when he moved towards the left side of the road.
50. Mr Piercy calculated that Mr Cribb was travelling at 83-100 kph before he began braking. He stated that Senior Constable Ford *“is likely to have misjudged both the speed and distance of the Honda and despite seeing the Honda moving into the southbound lane he has continued to turn in front of it.”*
51. Mr Cribb’s lawyers provided Police with a copy of Mr Piercy’s report (the Piercy report).

### Police response to the Piercy report

52. On 27 October 2005 the Police prosecutor, Sergeant Scouller, noted on the hearing notification form for this case: *“See attached expert report from defence counsel. Ensure our own expert gets a chance to look at this and be prepared to give evidence.”*
53. On 14 November 2005, Constable Cassidy sent an email to Senior Sergeant Cook and Inspector Phillip Jones, the Area Commander: Otago Rural,<sup>1</sup> advising them of the Piercy report. She requested that Professor John Raine (an independent crash investigation expert) review the file, because supporters of Mr Cribb had alleged Police bias and *“if an independent person/agency were to give an opinion, that would take some of the onus off Police as well as offer a good expert opinion towards the case.”*
54. This email does not appear to have been answered by either Senior Sergeant Cook or Inspector Jones, but the decision was made not to seek the independent review.
55. Senior Sergeant Cook later said that he discussed the matter with Inspector Jones who pointed out, rightly in Senior Sergeant Cook’s view, that Police already had an expert involved (Senior Constable Buchanan) and there did not seem to be a need for an independent review. He said he supported the decision of Inspector Jones and conveyed the result to Constable Cassidy. Inspector Jones also recalled discussing the matter with Senior Sergeant Cook and said: *“... the Senior Sergeant was satisfied that Constable Cassidy’s concerns were unfounded and that Buchanan should remain our expert.”*
56. On 15 November 2005, Senior Constable Buchanan sent an email to Constable Cassidy, expressing disagreement with Mr Piercy’s findings. He provided Professor Raine’s email address and stated: *“It is better not to involve me any further, as I have known Neil for well over 20 years, and that may be construed as being biased towards him by the defence.”*
57. Constable Cassidy forwarded that email to Senior Sergeant Cook, and expressed concern that Senior Constable Buchanan was trying to distance himself from the hearing as he was her only expert witness.
58. On 22 November 2005, Senior Sergeant Cook emailed Constable Cassidy with advice about actions to take regarding the investigation. At the end of the email he stated:

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<sup>1</sup> Inspector Jones had been away on duties outside the Southern District from June to mid-September 2005 (Senior Sergeant Cook was the Acting Area Commander: Otago Rural during this time). Inspector Jones returned about two months after the crash had occurred – by which time Mr Cribb had been charged.

*“The more I think about this – the more confident I am becoming – Don’t be scared of “EXPERTS” – most are failed Cops being paid for by the defence – concentrate on the issue – CRIBB as the following vehicle was either not paying attention, or following too close to stop ....”*

59. On 15 December 2005 Constable Cassidy went to the crash scene with Senior Constable Ford and reconstructed the turn he said he had been making at the time of the crash. The crash analyst, Senior Constable Buchanan, had no knowledge of or involvement in this reconstruction.
60. On 9 January 2006 Senior Constable Buchanan returned to the crash scene to conduct forensic mapping, from which he later produced a scale plan. The senior constable did not, and was never asked to, carry out a full forensic analysis of the crash himself.

#### **Mr Potter’s first letter of complaint to the Authority**

61. On 17 January 2006, the Authority received a letter from Stephen Potter (the father of Mr Cribb’s girlfriend at the time) stating that:
- i) Police had unfairly and unjustly attached blame for the accident to Mr Cribb, either to pervert the course of justice to protect a fellow officer, or through an incompetent investigation that lacked thoroughness.
  - ii) Constable Cassidy had behaved unprofessionally and denied Mr Cribb the sort of support he required by refusing to allow Mr Potter to be present at the Police interview (though she did say Mr Cribb’s stepmother could attend). Mr Potter also said that Constable Cassidy was evasive about whether Mr Cribb would be informed that he was allowed to have a lawyer present.
  - iii) Mr Potter had identified a number of inconsistencies between Senior Constable Ford’s version of events and his own observations of the crash scene, and concluded that: *“... for Senior Constable Ford’s vehicle to be in the position it was at the time of the accident he either had to be making a “U” turn, making a three-point turn or else reversing out of a driveway.”* He had also engaged an independent expert who had verified these findings.
  - iv) He had met with Senior Sergeant Cook and explained his concerns regarding the Police investigation, but the senior sergeant responded that Mr Cribb was at fault because he was on the wrong side of the road at the point of impact (regardless of whether he was trying to avoid another vehicle that had failed to give way to him).
62. Mr Potter asked for:
- i) Police to drop the charges against Mr Cribb and apologise for the way they had treated him.

- ii) A thorough investigation of Constable Cassidy's handling of the case and appropriate disciplinary action and/or professional development to be applied.
  - iii) Police to pay restitution for the damage and loss of his daughter's car.
  - iv) Senior Constable Ford to receive professional help, counselling and advice on how to maintain standards of professionalism, honesty and integrity when reporting traffic incidents.
  - v) An investigation into the management and operations of the Alexandra Police Station.
63. The Authority wrote back to Mr Potter on 17 January 2006 and explained that it did not have the power to intervene in the prosecution process. The letter advised that the issues he had raised were for the Court to decide, and that:

*"Following the completion of proceedings at Court Shane, or you on his behalf, may return to the Authority in respect of any issue which has not been addressed, and which could not have been addressed, in court."*

64. For further discussion of the Authority's initial decision not to take any action on Mr Potter's complaint, see paragraphs 272-276.

#### **Police actions leading up to the hearing**

65. On 19 January 2006 Senior Constable Buchanan submitted a report on Mr Piercy's findings to assist the Police prosecutor, Sergeant Scouller. He described parts of the Piercy report as *"conjecture"*, disagreed with Mr Piercy's attribution of blame to Senior Constable Ford, and noted that the suggestion that Senior Constable Ford had started the turn closer to the left side of the road was *"to be disproved by Ford"*.
66. Constable Cassidy has claimed that she sent an email to Sergeant Scouller on 30 January 2006. This email was supplied to the Authority's investigator by Constable Cassidy in June 2011 and was never provided to the Authority as part of the Police files. In the email she stated that:
- i) Senior Constable Buchanan had advised her he was not an expert and could only present the scale plan that he had prepared in court *"but can't give evidence on speeds etc."* He had been *"totally unhelpful"* and was stressing her out.
  - ii) She was concerned about what sort of witness Senior Constable Ford would be under pressure because he had yelled at her for putting something in his brief of evidence which he claimed he did not say, and she had to show him his statement to prove that he had said it.

- iii) *“Somebody within this station has also told me that Neil is lying, is in the wrong and that he needs to come clean and own up and that we need to withdraw the charges.”*
67. Sergeant Scouller later denied that he ever received this email, and there is no record of him receiving or replying to it. He said that none of those issues were brought to his attention by Constable Cassidy or anyone else, and if they had been, he would have addressed them.
68. On 1 February 2006, Senior Constable Buchanan emailed Constable Cassidy and told her he had discussed the matter with his supervisor who agreed that *“the mapping is as far as I should go, with figures and such like being left to the defence expert to bore the judge with.”*
69. On 3 February 2006, Constable Cassidy sent an email to Senior Constable Ford saying that she was going to try and have the evidence independently assessed by an expert and that Senior Constable Buchanan could be deemed to be biased as he had known Senior Constable Ford for a while.
70. On the same day she sent an email to Sergeant Stevenson (who was again relieving for Senior Sergeant Cook as the Officer in Charge of the Alexandra Police Station), Senior Sergeant Cook and Inspector Jones, outlining her concerns about the Ford/Cribb crash investigation as follows:
- i) she had previously requested and been denied a review by an independent expert;
  - ii) Mr Cribb’s defence team had engaged an independent expert (Mr Piercy) and supplied Police with his report;
  - iii) Mr Cribb’s defence team were aware that Senior Constable Ford and Senior Constable Buchanan were long-term friends and were likely to raise that issue in court;
  - iv) Police credibility may be called into question because the original crash scene measurements had produced an inaccurate map and as a result Senior Constable Buchanan had to forensically map all measurements;<sup>2</sup>

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<sup>2</sup> Constable Cassidy’s measurements were later found to be correct. Senior Constable Buchanan told the Authority that the measurements may have been correct but they were not able to be used for producing a scene plan using the triangulation method as supplied.

- v) at the start of the investigation Senior Constable Buchanan had requested that he be excluded from offering an opinion due to his long association with Senior Constable Ford, his concern being that it would be seen as biased;
  - vi) Senior Constable Buchanan had been reluctant to offer any opinion on the crash;
  - vii) a Police officer was involved and *“we need to be seen ... to be unbiased and having an independent review of the Police scene analysis would show that”*;
  - viii) she wondered if Senior Constable Buchanan’s qualifications were enough to consider him an expert, but noted that an independent review by an expert would enhance his evidence, if they agreed with his finding;
  - ix) her biggest concern was that Mr Cribb had an expert to assist his case and Police were not in a position to offer expert evidence to rebut his views; and
  - x) she again requested that Professor Raine or someone else he recommended independently review the file.
71. On 4 February 2006 Sergeant Stevenson replied to Constable Cassidy’s email. He copied his response to Senior Sergeant Cook and Inspector Jones and stated, amongst other things, that:
- i) he was unaware that Senior Constable Buchanan had asked not to be involved due to his friendship with Senior Constable Ford; and
  - ii) it would be prudent to have the scene examination reviewed by an expert like Professor Raine or another highly qualified person/officer, in the interests of:
    - a) producing the best evidence to the court;
    - b) assisting the prosecutor with technical information for cross-examination;
    - c) being seen to be totally independent;
    - d) avoiding Senior Constable Buchanan stating during cross-examination that he wished to be excluded from offering an opinion but Police failed to get another opinion;
    - e) removing the opportunity for criticism of *“friend investigating another friend without review”*;
    - f) supporting Police actions in light of any pending complaint to the Police Complaints Authority; and
    - g) negating possible defences with certainty.

72. Sergeant Stevenson asked Senior Sergeant Cook to review the matter because there were *“some benefits in obtaining the services of an independent expert.”*
73. Sergeant Stevenson later told the Authority’s investigator that he recalled getting a memo back from Senior Sergeant Cook with the words *“Not required”* in his handwriting. Underneath that Inspector Jones had written *“I agree”*. Sergeant Stevenson gave the file back to Constable Cassidy and said *“What more can we do?”*
74. On 6 February 2006 Constable Cassidy prepared a report for the Officer in Charge of the Alexandra Strategic Traffic Unit, setting out the prosecution’s case against Mr Cribb. She noted that she had expressed her concern about the lack of an independent report or opinion. However she also said:

*“I have driven Ford’s replacement Holden Rodeo and at a speed no greater than 50km/h, been able to put the vehicle on a similar angle as that of the crash. There was still plenty of room for the vehicle to be driven into the driveway and it did not require me to ‘swing left’ to do this.”*

#### **The District Court hearing**

75. The defended hearing was held before Judge O’Driscoll at the Dunedin District Court on 15 February 2006.
76. Senior Constable Ford, Senior Constable Buchanan and Constable Cassidy gave evidence for the prosecution. Constable Cassidy said that she had been able to reconstruct Senior Constable Ford’s turn into the driveway from within the northbound lane, in a similar vehicle, without difficulty.
77. Senior Constable Buchanan was asked about the Piercy report and said: *“Most of it appears to be conjecture.”* He also disagreed with the defence lawyer’s assertion (based on the Piercy report) that the crash scene evidence was more consistent with a U-turn than with a *“pure turn to the right”*.
78. Mr Cribb, Mr Piercy, and two witnesses who had recently come forward gave evidence for the defence. One of the witnesses said that he had seen Senior Constable Ford’s car parked off the left side of the road near the Fraser River Bridge shortly before the crash. He also said he was *“pretty sure”* Senior Constable Ford’s headlights were off.
79. Mr Piercy said that he had visited the crash scene after he completed his report, and this visit had made his opinion (that Senior Constable Ford was at fault) more firm.
80. On 9 March 2006, Judge O’Driscoll delivered his reserved decision. He accepted Senior Constable Ford’s evidence that he had not veered to the left and commenced a U-turn,

and concluded that the crash occurred due to the inattention of Mr Cribb. Mr Cribb was convicted of careless driving causing injury, fined \$600 and ordered to pay costs. He was also disqualified from holding or obtaining a driver's licence for six months.

### **Mr Potter's second letter of complaint to the Authority**

81. On 30 May 2006 the Authority received a second letter from Mr Potter, stating that he wished to continue with his complaint regarding Senior Constable Ford, Constable Cassidy and Senior Sergeant Cook. He wrote that Mr Cribb had been convicted in spite of independent crash analysis and two witnesses who had come forward to give evidence supporting him, and that he was considering lodging an appeal.
82. He also said that a third witness had come forward after the court hearing because she had seen an item about the case on the TV programme "Close Up" which aired on 2 May 2006. This witness said that on the morning of the crash she was driving on Earnscleugh Road and saw Senior Constable Ford's vehicle parked off the road with its headlights off opposite the driveway near the Fraser River Bridge. After she drove past him, she looked in her rear view mirror and saw him turn to the centre of the road without indicating. She then saw the car lurch into the air (as Mr Cribb's car collided with it).
83. On 31 May 2006 the Authority wrote back to Mr Potter, advising that the issues he had raised may be submitted to the High Court for its consideration on appeal, and referring him to the explanation of the Authority's role in its letter dated 17 January 2006.

### **Second expert engaged by the defence - Mr Marks**

84. On 14 August 2006, Christopher Marks, an expert in the field of vehicle crashes, received instructions to complete an analysis of the relevant available evidence and to prepare a detailed report into the crash. This was completed on 10 November 2006.
85. Mr Marks concluded (amongst other things) that:
  - i) his simulations of the pre-impact movement of Senior Constable Ford's Holden Ute showed that the most likely start location for the right turn was at least between halfway and completely off the western (left) edge of the road;
  - ii) Senior Constable Ford's recollections of turning right from the centre of the road were "*completely inconsistent with the damage evident on the vehicles and the turning capability of the Holden*"; and
  - iii) the collision was extremely likely to have been unavoidable for Mr Cribb (or any other normal attentive driver).

86. Mr Cribb's lawyers sent this report (the Marks report) to Police on 17 November 2006 and advised that new witnesses had come forward. They indicated that they would seek a rehearing.

#### Police response to the Marks report

87. On 21 November 2006, a senior sergeant from the Dunedin Police Prosecution Section wrote to Mr Cribb's lawyers stating that he would have the Marks report reviewed and inviting them to provide details of the witnesses.
88. On 19 December 2006, Senior Sergeant Cook wrote a note about the Marks report to Senior Sergeant Burns (the Acting Road Policing Manager: Southern District) and stated: *"Police need to undertake an analysis of this report and determine whether there are grounds to have the case re-called. This may be a case for some independent advice."*
89. On 21 December 2006, Senior Constable Buchanan reported to Senior Sergeant Burns on his view of the Marks report. He said he could not comment on Mr Marks' simulations because he had used computer analysis software that Police do not use. The senior constable was also of the view that although the calculations he had checked were "OK", the angles and distances used were *"of Mr Marks' making."*
90. Senior Constable Buchanan concluded:
- "Essentially, this is a rehash [of] Mr Piercy's report that I described as conjecture in court, and in Judge O'Driscoll's reserved decision was also described by him as conjecture. Mr Marks is well known in crash circles and I understand his findings have been discredited on numerous occasions by members of the judiciary."*
91. On 27 December 2006, Senior Sergeant Burns asked Inspector Griffiths (now the Operations Manager, Road Policing Support at Police National Headquarters) to conduct a review of the Marks report, due to his prior involvement in the case.
92. On 15 January 2007 Inspector Griffiths sent a memorandum to Senior Sergeant Doug Rowan (Highway Patrol, Wellington). He noted that the National Crash Advisor was on leave until 5 February 2007 and that this matter needed to be progressed. He asked for Sergeant Mark Stables of the Wellington District Serious Crash Unit to consider the Marks report and provide him *"with sufficient information as to whether a re-hearing should be opposed or not"*.
93. In the memorandum Inspector Griffiths explained the circumstances of the crash and stated that:
- i) an *"experienced traffic constable"* had conducted the crash investigation under the supervision of the Sub Area Supervisor, Senior Sergeant Cook;

- ii) the assistance of a Serious Crash Analyst (Senior Constable Buchanan) from Dunedin had been obtained;
  - iii) he had reviewed the file in his capacity as Road Policing Manager: Southern District on 21 July 2005;
  - iv) the District Court Judge had decided in favour of the prosecution, finding that the crash occurred because Mr Cribb was inattentive, and he should have seen the Police vehicle and not approached it at the speed that he did;
  - v) he was satisfied that the Judge's decision was factually correct;
  - vi) Mr Piercy and Mr Marks had commented on the case on the "Close Up" programme and both "drew their conclusions from the erroneous conclusion that the Senior Constable was attempting to "U" turn in the road" – and there was nothing to support this fact in terms of the available evidence;
  - vii) Mr Piercy's media interview was "inappropriate, speculative, and factually incorrect";
  - viii) "... Mr Marks has little credibility with Police, having been criticised by the Court in R v Brooks (2001) Hamilton District Court October 2001, Spear DCJ, where the Judge commented that Mr Marks 'failed to demonstrate the professionalism and objectivity that the Court should expect of an expert witness'"; and
  - ix) he (Inspector Griffiths) did not have the level of training to comment further on the Marks report.
94. In an undated report Sergeant Stables reviewed the Police file, including the Piercy and Marks reports and Judge O'Driscoll's decision. He also discussed the matter with an Australian crash expert. Sergeant Stables accepted that it was possible Senior Constable Ford had been making a u-turn, but went on to say:
- "It is apparent that the Holden has commenced its turn from some point within the confines of the northbound lane, therefore presenting a significant sized object for following motorists to see. The conspicuousness of the Holden is further enhanced by the tail lights and right hand indicator light being displayed at the time."*
95. Sergeant Stables' opinion was that Judge O'Driscoll's finding was appropriate and a rehearing would not produce any new physical evidence that may have had a bearing on Mr Cribb's conviction.

96. On 23 February 2007 Inspector Griffiths sent Sergeant Stables' report to Inspector (formerly Senior Sergeant) Burns, the Road Policing Manager: Southern District. In a memorandum he stated that:
- i) it was *"more likely than not"* that Senior Constable Ford was turning into the driveway from the middle of his lane, but a U-turn could not be ruled out;
  - ii) the best evidence on this issue was Senior Constable Ford's;
  - iii) in any event the crash was caused by the inattention of Mr Cribb;
  - iv) the issue of whether the Police vehicle was doing a U-turn was certainly a *"red herring"*; and
  - v) if there was a rehearing, Sergeant Stables should give evidence *"as Mr Marks can be a plausible witness, albeit one who has been severely criticised in the past by a Judge for his failure to look impartially at the facts."*
97. On 15 March 2007, Inspector Burns sent Sergeant Stables' report to Mr Cribb's lawyers and advised that Police would oppose any application for a rehearing.

#### **Mr Potter's third letter of complaint to the Authority**

98. On 15 April 2007 the Authority received another letter from Mr Potter, asking what was happening with his original complaint and stating that he had received no correspondence as to the outcome of the Authority's investigation.
99. In fact the Authority had previously declined to investigate his complaint on the basis that the matter was being dealt with in court.
100. On 20 April 2007 the Authority wrote back to Mr Potter, referring to its letters of 17 January 2006 and 31 May 2006, and restating that the Authority has no power to intervene in court proceedings.

#### **External review sought by Police - Professor Raine**

101. Mr Potter and other members of the Alexandra community continued to express dissatisfaction with the Police's handling of the Ford/Cribb crash. In August 2007 the Area Commander, Inspector Jones, invited members of the public to come and raise their concerns with him personally and several of them, including Mr Potter, approached him about the Ford/Cribb crash.
102. Subsequently Inspector Jones and Inspector Burns visited the crash scene in September 2007 and found that they had some reservations about how the crash had occurred. On

19 September 2007 Inspector Burns forwarded the file to the National Crash Advisor, stating:

*“This file is forwarded for external review as per the serious crash investigation review as outlined in the Road Policing Manual of Best Practice. It meets the criteria as a serious crash involving a Police Officer where the facts are in dispute and that there is a high degree of public interest and the independence of Police from the initial inquiry is in question.”*

103. The National Crash Advisor engaged Professor Raine to provide an expert opinion and he reported his findings to the National Crash Advisor on 13 October 2007. Professor Raine stated that a number of factors led him to conclude that the defence’s view of the crash was correct, including: the damage profile of the vehicles, the information about the turning circle of the Holden Ute, and the momentum exchange calculations performed by Mr Marks. He also noted that it appeared Mr Cribb may have been inattentive and was not sufficiently defensive in his driving, because Mr Cribb had not observed the position of Senior Constable Ford’s car and was not *“able to comment on its impending manoeuvre and his efforts to take evasive action”*.

104. Professor Raine commented that:

*“It is interesting that Cribb’s vehicle was moving towards the right hand (southbound) lane prior to impact. While it has no strength as technical evidence, the natural reaction of a following driver perceiving a vehicle turning to the right from the left side of the left lane, would in an emergency be to move to the right as the left lane would be blocked.”*

105. He concluded that Senior Constable Ford had commenced his turn from a position towards the left hand side of the northbound lane and *“quite likely straddling fogline”*.

106. Inspector Burns referred the file to the Police Legal Services section for review, and Police later decided not to oppose Mr Cribb’s application for a rehearing (which was filed on 26 October 2007).

### **Rehearing ordered**

107. On 16 January 2008 Judge O’Driscoll granted Mr Cribb’s application for a rehearing under section 75 of the Summary Proceedings Act 1957. He stated that:

*“In this case ... I am satisfied that the cumulative effect of the proposed evidence of both [the third witness to come forward] and Mr Marks is such that it is in the interests of justice and fairness that I should order that there should be another hearing.*

*... Now that I have ordered a new hearing it is clearly still within the exercise of the police discretion, taking all matters into account, to decide whether in this case ... it is in the interests of justice to proceed."*

108. Police then undertook further enquiries into the evidence, including two interviews of the third witness (who came forward after the incident was featured on "Close Up") in February 2008.

#### **Mr Potter's fourth letter of complaint to the Authority**

109. On 17 February 2008 Mr Potter again wrote to the Authority, explaining that he was not asking for intervention in the judicial process, but for an investigation into the actions of the officers involved "*which in-turn may have negated an expensive trial and the stress, concern and financial costs that goes with it.*" He asked the Authority to send someone to hear his concerns.
110. On 28 February 2008 the Authority wrote back to Mr Potter advising that it was making some enquiries and would write again. That same day the Authority forwarded his original letter of complaint (dated 28 December 2005) and his latest letter to the Commissioner of Police, asking for a preliminary report on the matter to enable the Authority to make a decision as to the appropriate course of action.
111. On 11 April 2008 the Authority received a letter from Police advising that they were examining the "*proposed new evidence*" and suggesting that, since a rehearing had been granted, the Authority should consider declining further investigation pursuant to section 18(1)(b)(v) of the Independent Police Conduct Authority Act 1988.<sup>3</sup>
112. The Authority wrote to Mr Potter on 15 April 2008, advising that Police had informed the Authority they were making enquiries regarding the new information and assessing the prosecution case. The Authority repeated that it could not intervene in the prosecution process and that it was not its role to consider issues which it is the function of the Court to adjudicate upon. The Authority Deputy Chair, Judge Lance, stated:

*"I have therefore decided to exercise my discretion, pursuant to s. 18(1)(b)(v) of the Independent Police Conduct Authority Act, to take no further action on the complaint at this time as in my opinion there is an adequate remedy available to Shane to defend the charge at the*

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<sup>3</sup> Section 18(1)(b)(v) states that: "*The Authority may in its discretion decide to take no action, or, as the case may require, no further action, on any complaint if in the opinion of the Authority there is, or was, in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, that it would be reasonable, or would have been reasonable, for the person alleged to be aggrieved to exercise.*"

*rehearing ordered by the Court, should Police decide to proceed with the prosecution.*

*If, however, at the conclusion of the Court proceedings, including any appeal, Shane or you on his behalf wish to renew your complaint to the Authority in respect of any matters that could not be addressed by the Court I will further consider my jurisdiction to enquire into your complaint at that stage."*

### **Mr Potter's fifth letter of complaint to the Authority**

113. Mr Potter wrote to the Authority on 20 April 2008 and stated, amongst other things, that:

- i) he was shocked and disturbed by the Authority's reply;
- ii) the lack of attention to his complaint was unsatisfactory; and
- iii) the Authority appeared "*hell bent*" on using the prosecution process as an excuse to negate a proper investigation.

114. Mr Potter again explained that he was not asking the Authority to intervene in the prosecution process but to investigate the conduct of the Police that brought about the charge against Mr Cribb in the first place.

115. On 7 May 2008 the Authority wrote to Mr Potter advising that it had noted his comments, and forwarded a copy of his letter to the Commissioner of Police. The Authority also asked Police to monitor and report on the prosecution.

### **Police decision not to offer any evidence at rehearing**

116. On 23 May 2008, Police advised Mr Cribb's lawyers that they had completed their enquiry into the new evidence and as a result Police would not be offering any evidence at the rehearing.

117. Mr Cribb's conviction was subsequently overturned.

### **Police review of the file – investigation commenced**

118. After Police decided not to offer any evidence at the rehearing the file was forwarded to Superintendent Paula Rose, the National Manager: Road Policing, so that an investigation into Senior Constable Ford's actions could be commenced.

119. Superintendent Rose sought an independent review from Police Professional Standards and asked for advice on how best to proceed. On 2 July 2008 Inspector Ian McKeown advised Superintendent Rose that he had reviewed the file. He said:

*“The Police have made some mistakes and should have taken more notice of the concerns of the defence rather than allowing the matter to proceed. A meeting with the complainant and an apology from the Police Department is recommended.”*

120. Inspector McKeown also stated that he was satisfied there was no cover-up or misconduct by the officers involved.
121. In the appendix to his letter Inspector McKeown noted Senior Constable Buchanan’s qualifications and said that he would have expected more from him than just a forensic map – he had the ability and competence to analyse the crash scene and explain what had occurred (but did not do so). He also wondered why Senior Constable Buchanan did not see that there were problems with Senior Constable Ford’s account when he visited the crash site, and questioned his objectivity.
122. Inspector McKeown concluded that, while Senior Constable Buchanan had provided the assistance that was asked of him by measuring and mapping the crash scene, he should have taken extra steps and actually conducted a scene examination and reconstruction. He said that Senior Constable Buchanan had made mistakes, but they did not amount to misconduct or neglect of duty. He submitted that disciplinary action was not required but accepted that training or discussions were needed with Senior Constable Buchanan.
123. On 14 July 2008 Superintendent Rose wrote to advise Mr Potter that she had arranged for the matter to be reviewed by a commissioned officer who had not had any prior involvement with the crash investigation.
124. Inspector Patricia O’Shaughnessy conducted the review and concluded that Senior Constable Ford and Senior Constable Buchanan should be re-interviewed in light of the conflicting evidence that had arisen from the witness statements and independent crash analyses. Consideration would then be given as to whether punitive or performance improvement action should be pursued.
125. Inspector Dave Parsons was assigned to undertake the investigation.

#### **Authority’s letter to inform Mr Potter that Police had commenced an investigation**

126. On 6 August 2008 the Authority wrote to advise Mr Potter that Police had commenced an investigation and that the Authority would write again when they reported the outcome.

#### **Judge O’Driscoll’s comments at the costs hearing**

127. On 19 September 2008 Judge O’Driscoll awarded Mr Cribb with \$17,900.45 towards the costs of his defence. In his judgment he stated that:

*“There was not an independent inquiry by the Police at the time of the crash. The prosecution’s case relied on the evidence of the police officer involved in the crash and the investigation of the collision scene was undertaken by his colleagues. The driving of Senior Constable Ford was not rigorously enquired into. I accept the view of the counsel for the applicant that when Police are investigating a ‘major’ collision involving a member of their own staff, particular care should be taken in establishing the circumstances of the collision and in making resulting prosecutorial decisions. This particular care should also extend to ensuring any post-conviction investigation is carried out in a timely manner.”*

128. The Judge also noted that:

- i) The Police investigation of the crash was *“less than satisfactory, and not in accordance with best practice.”*
- ii) The investigation of matters following Mr Cribb’s conviction was also less than satisfactory – particularly the lack of action taken after Police had reviewed the Marks report and the delay before Police advised that no evidence would be offered at the rehearing.
- iii) Police should have given *“full and proper consideration to conducting an independent inquiry or at least to fully testing the evidence of the Police officer involved in the collision so as to accurately assess the culpability of each driver. If that had occurred, it is likely that the prosecution would never have been brought.”*
- iv) Although there was not an independent investigation and Police did not offer independent evidence, he did not find bad faith on the part of Police in commencing or continuing the prosecution.

129. Judge O’Driscoll suggested that good practice would dictate that, if expert evidence is called by Police in cases where a Police officer is involved in a significant collision, *“any expert investigator should be independent and be seen as independent.”*

#### **Authority advises that it will investigate**

130. On 25 September 2008 the Authority wrote to advise Mr Potter that it had given further consideration to his complaint and subsequent developments and had decided to carry out its own independent investigation.

### Inspector Parsons' review

131. In September 2008 Inspector Parsons met with Mr Potter and interviewed the officers involved in the crash investigation (Senior Constable Ford, Senior Constable Buchanan, Constable Cassidy and Senior Sergeant Cook).
132. Inspector Parsons submitted his investigative report to Superintendent Rose on 23 December 2008. He addressed each of the requests set out in Mr Potter's original letter of complaint to the Authority (see paragraph 61 above):
- i) That the charge against Mr Cribb be dropped: Upheld on the basis that the Police did not offer evidence at the rehearing and the conviction was dismissed.
  - ii) That there should be an investigation into the handling of the crash investigation by Constable Cassidy: Not upheld on the basis that Constable Cassidy investigated the crash to the best of her ability when it should have been investigated by an NCO, and made repeated requests for a review by an external crash investigation expert but was denied.
  - iii) That Police should pay restitution for the damage to and loss of his daughter's car: Upheld on the basis that Police had now accepted liability for the damage.
  - iv) That Senior Constable Ford should receive professional help, counselling and advice on how to maintain standards of professionalism, honesty and integrity when reporting traffic incidents: Upheld on the basis that during his investigation and review Inspector Parsons reached the conclusion that Senior Constable Ford's version of events was at complete odds with the physical evidence and the conclusions reached by external crash investigation experts.
  - v) That there should be an investigation into the management and operations of the Alexandra Police Station: Inspector Parsons stated that Mr Potter told him things had improved considerably since he made the complaint in December 2005 and did not wish to leave this aspect as part of his complaint, however Senior Sergeant Cook was still there and he believed he had a lot to answer for – Inspector Parsons upheld this part of the complaint in light of Senior Sergeant Cook's failure to appoint an NCO to investigate the crash and to retain proper oversight of the matter.
133. Additionally Inspector Parsons partly upheld Mr Potter's complaint regarding the integrity of the crash investigation and the honesty of the various Police officers involved. He stated that, although he had not established evidence of dishonesty from the officers (other than possibly Senior Constable Ford):

*“... the integrity of the investigation into the crash has certainly been found to be unsatisfactory and has placed the faith of the public in the professionalism of police in carrying out serious crash investigations at real risk, especially in the Central Otago Area.”*

134. Inspector Parsons also came to the following conclusions:

- i) Senior Sergeant Cook should have either investigated the crash himself or had another NCO conduct the investigation, and should not have left it to a constable who in effect was a colleague of Senior Constable Ford.
- ii) As the Officer in Charge of the area, Senior Sergeant Cook should have taken a guiding hand and been more mindful of Constable Cassidy’s concerns about the crash investigation and the local publicity that had been generated by Mr Cribb’s supporters.
- iii) Senior Constable Buchanan appeared to be reluctant to go beyond what was asked of him; *“... the matter was not fully analysed by him and this probably led to him not detecting that S/Constable FORD’s version of events did not fit the physical evidence at the scene ...”*.
- iv) Senior Constable Buchanan should have been more assertive and said that if he was to be involved he would undertake a more detailed investigation and analysis befitting his skills, training and experience.

#### **Legal opinion sought by Police**

135. On 8 January 2009 Superintendent Rose wrote to update Mr Potter on the progress of the investigation. She advised that Inspector Parsons had concluded his investigation report and it had now been forwarded to Legal Services at Police National Headquarters for a legal opinion on some of the findings. The legal opinion was completed on 27 January 2009.

#### **Further enquiries by Police**

136. On 18 February 2009 Police wrote to the Authority to advise that:

- i) the investigation into Senior Constable Ford had concluded that there was sufficient prima facie evidence to support a charge of perjury;
- ii) the file was being sent to the Southern District Commander for him to appoint an independent investigator to conduct a small number of enquiries (as recommended by a Police Senior Legal Consultant); and

iii) once those enquiries were completed, a final decision would be made in respect of prosecution.

137. Detective Sergeant Rob Hanna was appointed to conduct the enquiries.

138. As part of the enquiries, Senior Constable Alistair Crosland (the Central Otago Crash Analyst) visited the scene of the crash on 23 April 2009 and re-examined the measurements taken by Constable Cassidy. He reconstructed Senior Constable Ford's turn and determined that: *"There was only one scenario that placed the Holden ... in the correct position on the roadway at impact. This was with the start position entirely to the left of the marked fog line."*

139. Senior Constable Crosland later reviewed the expert opinions on the crash and examined the actions of Constable Cassidy and Senior Constable Buchanan. In a job sheet dated 27 May 2009, he stated:

*"In my opinion the evidence on the road as recorded by Constable Cassidy and later mapped by [Senior] Constable Buchanan together with the photographs on the file and without reference to any other information on the file, shows quite unequivocally that FORD has turned right from the extreme left side of the road and across the path of CRIBB who was not turning."*

140. Senior Constable Crosland also found that Senior Constable Buchanan's analysis of the crash was *"unbalanced"* and *"heavily biased"* against Mr Cribb. He concluded that the physical evidence had largely been ignored and statements had been selected from each driver to justify attributing fault to Mr Cribb.

141. Detective Sergeant Hanna interviewed several witnesses who commented that, from what they had seen of the crash scene and the damage to the vehicles, they believed Senior Constable Ford was in the wrong and were surprised when Police charged Mr Cribb instead.

#### **Police decision to prosecute Senior Constable Ford**

142. Police decided in April 2009 to proceed with the prosecution of Senior Constable Ford for perjury. Senior Constable Ford pleaded not guilty to the charge.

#### **Investigation into the actions of Senior Sergeant Cook and Constable Cassidy**

143. On 12 May 2009, Superintendent Robert Burns, the Southern District Commander, spoke with Inspector (formerly Senior Sergeant) Cook regarding the standard of the Ford/Cribb crash investigation and the management of the Alexandra Police Station during this incident.

144. According to Superintendent Burns' job sheet, Inspector Cook said he was *"more than happy"* to accept criticism that the General Instructions in respect of crashes involving Police vehicles were not strictly carried out, but also stated that *"the way the crash was attended and investigated was definitely in line with [his] understanding of the General Instructions."* He went on to say that:

- i) He was the Acting Area Commander for the Otago Rural Area at the time of the crash, and had no other NCOs working. Constable Cassidy had 10 years' service and was a *"traffic specialist"*.
- ii) He arranged for Sergeant Priebee to interview Senior Constable Ford because he did not think it was appropriate for a constable to interview another constable.
- iii) *"In my view the General Instructions were carried out except that I did not have an NCO carry out the investigation."*
- iv) He was *"firmly of the view"* that it would have made no difference if an NCO had carried out the investigation, or if he had carried it out himself. The statements from Senior Constable Ford and Mr Cribb along with Senior Constable Buchanan's report *"would have provided any investigator the same conclusions."*
- v) The Marks report was reviewed by Sergeant Stables and a Queensland Police Associate, who were also of the view that Mr Cribb was at fault. Judge O'Driscoll also concluded that Mr Cribb was responsible for the crash at the District Court hearing.
- vi) Although the crash was investigated by an officer from the Alexandra Police Station, all the decisions were made at the Southern District Headquarters (i.e. by the Road Policing Manager, Inspector Griffiths).
- vii) Senior Constable Ford was not one of his staff members:
 

*"I think this is an unfortunate situation where the offending driver was a CVIU member who is not one of my staff members, and the decision making was made by the Road Policing Manager whom I have no control over."*
- viii) As soon as he became aware that Mr Cribb's conviction was unsafe he took steps to ensure that this conviction was vacated.
- ix) He does not accept that he dealt with this matter inappropriately:
 

*"I think that any criticism of myself and my handling of this matter is extremely harsh when one considers how many other more senior officers than me had involvement with this file ... ."*

145. On 5 June 2009 Constable Cassidy made a statement to Inspector Lane Todd alleging that:
- i) Senior Constable Ford had admitted to her on the day of the crash that he had turned in front of Mr Cribb. At the crash scene he told her: *“I was turning into the driveway, backed out and saw the car coming. I then gave it the gun to try and get out of the way.”*
  - ii) She wrote what he told her in her notebook but the notebook later went missing.
  - iii) After she read the statement Senior Constable Ford made to Sergeant Priebee, she went to Senior Sergeant Cook and told him about the conflict between that statement and what Senior Constable Ford admitted to her on the day of the crash.
  - iv) Senior Sergeant Cook indicated that she should rely on what Senior Constable Ford said in his statement. She believed she was being told to ignore the admission Senior Constable Ford had made to her.
146. Police commenced an investigation into Constable Cassidy’s allegations. On 17 June 2009 Detective Inspector Chris Bensemman (the Crime Field Manager: Wanganui) was appointed to investigate.
147. When interviewed by Detective Inspector Bensemman, Constable Cassidy stated that after her conversation with Senior Sergeant Cook she began to doubt what she had heard Senior Constable Ford say at the crash scene and thought she must have got it wrong. She said she *“buried”* the information in her own mind and did not speak to anyone else about it until after Detective Sergeant Hanna spoke to her in May 2009 about giving evidence at Senior Constable Ford’s trial and showed her photographs of the crash scene.
148. Senior Constable Ford was also interviewed about the allegations and said he could not remember saying anything to Constable Cassidy at the crash scene, other than telling her he was alright when she came over to check on him.
149. Inspector Cook denied that he had ever received information from anybody, including Constable Cassidy, that Senior Constable Ford had given any explanation for the crash other than what he told Sergeant Priebee in his statement. He also said that:
- i) He could not recall if he spoke with Sergeant Priebee to arrange the interview of Senior Constable Ford or if the sergeant had volunteered to conduct the interview.
  - ii) Constable Cassidy was an *“experienced, trained road policing constable”* and *“should have had the confidence to deal with what on the face of it was a simple road crash”*. When he told her there would be no independent review it was his way of communicating to her that it was a simple matter and she was capable of investigating it.

- iii) He had a number of formal and informal conversations with Constable Cassidy about the crash investigation and:

*“The themes to these conversations was not so much around the technical aspects to the investigation but more around her desire not to hold the file or be part of the investigation. She used a variety of explanations which all sort of rolled into one. These included difficulty she was getting from the CRIBB family, she knew Neil FORD and shouldn’t be investigating a Police Officer, her workload and from memory her perceived deficiencies in crash investigations. Basically I explained to her that she wasn’t investigating Neil Ford, that she was a traffic constable and she had the prerequisite skills to deal with what (at that time) was a simple crash. At the same time I would say to her, keep it simple, deal with the issues.*

*I got the feeling that she was always trying to get rid of the file, she didn’t want it.*

*... it was my view that Constable CASSIDY was overcomplicating what in my understanding was a simple road crash and she was more focused on trying to get rid of the investigation than actually doing the investigation. I had explained to her that [Senior] Constable FORD was not the suspect and she was not investigating a Police Officer but dealing with a road crash where the Police Officer was the victim.”*

- iv) He was not involved in engaging Senior Constable Buchanan in the investigation. His understanding was that Senior Constable Buchanan had worked with Senior Constable Ford a number of years ago but did not and had not had for some time a close relationship with him. His view was also that Senior Constable Buchanan’s job was only to prepare a report based on actual physical evidence.

#### **Police decision to prosecute Constable Cassidy**

150. On 9 November 2009 Police notified Constable Cassidy that they had commenced an investigation into an allegation that she had attempted to pervert the course of justice in Alexandra between the dates of 14 July 2005 and 5 June 2009.
151. Detective Inspector Bensemman completed his investigation report on 1 December 2009. He concluded that Constable Cassidy’s allegation that she had informed Senior Sergeant Cook about Senior Constable Ford’s admission was not credible for a number of reasons, including that Senior Sergeant Cook was not at the Alexandra Police Station on the day the conversation was alleged to have occurred.
152. The detective inspector stated:

*“This has been a thorough investigation and at no stage did I discover any piece of information, or evidence, real or subtle, that added weight to the suggestion that Senior Sergeant COOK was informed about the roadside admissions.”*

153. He recommended that Constable Cassidy should be prosecuted for attempting to pervert the course of justice because she had intentionally suppressed the information about Senior Constable Ford’s admission of fault, and had failed to disclose the relevant notebook entry to Mr Cribb’s defence lawyers or include the admission in her job sheet. She had ongoing opportunities to disclose the admission during Mr Cribb’s prosecution and afterwards, but did not do so.
154. Detective Inspector Bensemman said he had not established any evidence of criminality in the various other Police officers involved but recommended that the entire matter be formally debriefed and appropriate actions identified.

### **Convictions**

155. Senior Constable Ford was convicted of perjury and sentenced on 28 September 2010 to two years and four months of imprisonment.
156. Constable Cassidy pleaded guilty to attempting to pervert the course of justice and was sentenced on 17 November 2010 to nine months of home detention.
157. Both Senior Constable Ford and Constable Cassidy have resigned from Police.

### **Authority’s investigation**

158. On 5 October 2010 Mr Potter wrote to the Authority explaining the issues he felt still needed to be resolved, including that:
- i) He did not accept comments from District Commander Burns *“that [Police] are satisfied no one else is involved and that there was a series of mistakes made.”* It was unacceptable to expect him to believe that experienced officers such as Senior Sergeant Cook, Senior Constable Buchanan and Inspector Jones are that incompetent that they make mistakes at such a high level. He stated: *“This is not about mistakes this is about conspiracy.”*
  - ii) He questioned whether Senior Sergeant Cook’s actions were mistakes (i.e. not actioning a complaint he made to him; not reviewing the accident when concerns were raised with him; not accepting Sergeant Priebee’s offer to help with the investigation; and failing to have the accident investigated by an independent crash expert as requested by Constable Cassidy and Sergeant Stevenson).

- iii) Senior Constable Buchanan attended the crash scene on two separate occasions but *“now expects people to believe he never investigated the accident.”* He suggested that the only reason Senior Constable Buchanan would not have investigated the crash is because he knew Senior Constable Ford was at fault, and that he knowingly withheld information at Mr Cribb’s trial in 2006.
- iv) His first complaint was not investigated properly, professionally and efficiently:

*“Had this been done it would have saved the reputation of the Police, made the Police more accountable for their actions, saved the huge expense of trials, lawyers, crash investigators, witnesses and investigations etc ... not to mention what it has put our family and an innocent young man through over the past five years.”*

159. Also in October 2010, the Authority sought clarification from Inspector (formerly Sergeant) Stables regarding his review of the Marks report. Inspector Stables said that while he found the U-turn scenario plausible, he considered that the photographic evidence was also consistent with Senior Constable Ford having commenced a *“full lock”* right hand turn from the centre of the lane:

*“Using an assumed full lock turn from the start of the manoeuvre did give support to Ford's claim, though not from right next to the centre-line. Based on the photographs and full lock turning circle, Ford's turn was likely executed from approximately centre of the lane. This is all based on the assumption that the turn was made entirely at full lock - perhaps something that should have been more clearly stated in the report. This assumption and the evidence observed gave greater credence to Ford's claim than had Ford pulled away from the side of the road at full lock.”*

160. On 16 November 2010 Inspector Stables emailed a report to the Authority’s investigator explaining the usual process followed when investigating a serious crash. He commented that:

- i) when they became aware of the interest being given to this matter, Police staff involved in the Ford/Cribb crash investigation should have reconsidered its scope and depth;
- ii) vehicles are a vital part of evidence and should be examined;
- iii) a better picture of the crash would have been available if the vehicles had been profiled; and
- iv) witness statements must be evaluated against the physical evidence.

### Police review commenced – Detective Inspector Vaughan

161. In October 2010 Detective Inspector Steve Vaughan was appointed to:
- i) review the full circumstances of the initial crash investigation and the various subsequent reviews, decisions taken and recommendations made at each stage by the Police members involved; and
  - ii) determine whether the actions and decisions taken were justifiable from a risk management and leadership perspective and whether the matter should have been resolved earlier instead of continuing based on flawed decisions.
162. The Authority returned all of the relevant files to the Police. The review was confined to the documentation contained in those files; Detective Inspector Vaughan did not interview the officers involved.

### Authority interviews

163. In June 2011 the Authority's investigator visited Mr Potter to discuss the progress of the Authority's investigation. He also spoke to (former) Constable Cassidy. She did not wish to be formally interviewed but provided the Authority with a copy of the email she said she had sent to the Police prosecutor, Sergeant Scouller, on 30 January 2006 expressing her concerns about the case against Mr Cribb (see paragraphs 66-67).
164. In July 2011 the Authority interviewed (former) Sergeant Stevenson and (former) Sergeant Priebee, who had both retired from Police.

### Detective Inspector Vaughan's review

165. Detective Inspector Vaughan completed his review on 27 July 2011. He criticised the performance of a number of senior Police officers involved in this incident. In particular he found that:

#### *Senior Constable Buchanan*

- i) did not provide an authoritative report on the crash investigation;
- ii) declared a conflict of interest but did not hand over the investigation to the other Southern District crash analyst;
- iii) did not identify "*the obvious discrepancy*" in Senior Constable Ford's explanation;
- iv) said that the Piercy and Marks reports were "*conjecture*", and gave evidence to that effect at the District Court in respect of the Piercy report, but was not sufficiently informed to make that judgment given that he did not conduct a full crash analysis himself; and

- v) *“did not conduct himself with the required level of impartiality and fairness”.*

#### *Senior Sergeant Cook*

- i) did not direct an NCO to undertake the crash investigation and failed to comply with the Police General Instructions;
- ii) did not authorise Constable Cassidy’s request to have the investigation independently reviewed by an external expert;
- iii) did not believe the crash was a *“major event”*;
- iv) did not ensure that Senior Constable Buchanan had conducted a full crash analysis or deal with the conflict of interest identified by him; and
- v) did not keep sufficient oversight of the crash investigation given the high level of media interest in the Alexandra area.

#### *Inspector Griffiths*

- i) did not direct that an NCO undertake the crash investigation or that the crash be investigated as a *“serious crash”*;
- ii) did not clearly identify what was required of Senior Constable Buchanan and did not direct him or the other Southern District crash analyst to conduct a full forensic scene examination;
- iii) did not address the issue of Senior Constable Buchanan’s conflict of interest; and
- iv) attempted to discredit Mr Marks instead of addressing the findings of the Marks report – stated that Mr Marks had previously been criticised by a District Court Judge but, according to Detective Inspector Vaughan, failed to acknowledge that Mr Marks’ evidence in that case was subsequently found to be correct on appeal (see paragraph 93(viii) for Inspector Griffiths’ comment on Mr Marks).<sup>4</sup>

#### *Inspector Jones*

- i) did not direct that an NCO investigate the crash investigation; and
- ii) did not authorise Constable Cassidy’s request to have the investigation independently reviewed by an external expert.

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<sup>4</sup> Inspector Griffiths later advised the Authority that he had not been aware of the appeal decision.

166. Detective Inspector Vaughan concluded that:

- i) There were a number of fundamental flaws in the investigative process for the Ford/Cribb crash.
- ii) *“The failure to identify basic flaws in Ford’s account of the crash has left Police exposed to criticism around judgment, leadership and supervision.”*
- iii) In his view *“... a prudent investigation, with the correct level of supervision”* would have exposed Senior Constable Ford’s lie at an early stage and maintained the integrity of the Police.
- iv) *“The fact that the lie was allowed to progress to the stage that it did is a reflection on the level of professionalism of senior police officers in the Southern District. Their inability to identify critical evidence to expose Ford’s lie indicates an absence of core Police competencies around crash investigation.”*

167. The detective inspector recommended that:

- i) the officers who had been criticised in his report should be given the opportunity to comment and/or offer an explanation for their actions or omissions;
- ii) following that process, the conclusions of his review should be reassessed; and
- iii) his review should be sent to the National Manager: Quality Assurance; the National Manager: Road Policing; and the Head of School: Leadership and Command at the Royal New Zealand Police College (RNZPC) for comment and identification of actions that could be taken to diminish the risk of this type of incident occurring in the future.

#### **Further review commenced - Inspector Pullen**

168. Superintendent Rose directed Inspector Trevor Pullen, the National Advisor: Operational Policy and Standards (Road Policing Support, Police National Headquarters), to:

- i) review the outcome of Detective Inspector Vaughan’s report;
- ii) meet (where possible) with the officers whose actions had been criticised to record any explanations or comments they wished to make; and
- iii) identify any *“lessons learnt”* and make *“any recommendation for any system or organisational improvements.”*

### Civil claim against Police lodged

169. On 2 March 2012 Police confirmed to the Authority that Mr Cribb had lodged a civil claim for malicious prosecution.

### Letter of apology

170. On 14 May 2012, Assistant Commissioner (South) Dave Cliff wrote to Mr Cribb and offered an apology for the Police conduct leading to his wrongful conviction and subsequent disqualification from driving, and for the amount of time it took Police to uncover the truth and take remedial action.

### Inspector Pullen's report on the lessons learnt

171. Inspector Pullen completed his review in July 2012. He concluded:

*"It is a reasonable assumption that the requirements to have an NCO investigate the crash was common knowledge amongst police staff. To assign the file to Cassidy and decline Sergeant Priebee's involvement was wanting. That decision, together with not requiring a Serious Crash Analyst or Investigator [to] attend, in effect set in place a chain of events that ultimately resulted in an investigation that lacked professional objectivity, and in the writer's view, ipso facto, developed into an unhealthy prosecutorial zealotry."*

*[However] ... there is no evidence that there was any collusion or impropriety involving police officers that would give rise to concerns of corruptive practice."*

172. The inspector noted the following comments made by the officers during his review.

#### *Constable Cassidy*

- i) Around the time of the crash investigation she was struggling from having attended an incident involving the sudden death of a child, and this affected her judgment and sense of reasoning.
- ii) She did not feel she had enough support from her supervisors, particularly Senior Sergeant Cook.
- iii) Her first impressions at the crash scene were that Senior Constable Ford was in the wrong. She told Senior Sergeant Cook at the scene *"I think Fordy has stuffed up"*, or words to that effect, and was taken aback when he shrugged and said *"Ah well"*.
- iv) She formed the impression from then on that there was no sense in continuing with any suggestion as to the cause of the crash.

- v) She was surprised when Senior Sergeant Cook told Sergeant Priebee he would not be required to investigate the crash.
- vi) She felt totally let down by Senior Sergeant Cook, and struggled with the investigation despite repeatedly asking for assistance.

#### *Senior Constable Buchanan*

- i) He first heard of the crash when he read about it in the paper, and was surprised that he had not been called to the scene because it involved a Police vehicle and injury.
- ii) He was never asked to attend nor investigate the crash and for that reason no crash analysis was done – at least not to the level that one would normally expect for this type of crash.
- iii) His notification of a conflict of interest in respect of Senior Constable Ford was only on the basis that he had worked with him in the past and knew him in a professional working capacity; he did not have a personal friendship with him.

#### *Senior Sergeant Cook*

- i) With the benefit of hindsight, there should have been a better understanding of all the contributing factors if the crash had been more properly supervised from the outset.
- ii) There was an issue with the supervision of Police staff in the Alexandra area at the time, including Senior Constable Ford (CVIU) and Sergeant Priebee (Highway Patrol) whom he considered to be 'ring fenced' and not under his control.

#### *Inspector Griffiths*

- i) The responsibility for the crash investigation rested at local Area level – the Road Policing Manager was never part of the investigation.
- ii) It was not his role to direct an NCO to undertake the crash investigation – as far as he was concerned the file was being overseen by Senior Sergeant Cook.
- iii) He contacted Senior Constable Buchanan to assist Constable Cassidy but did not deem it prudent to brief him further because the senior constable would have enough experience to determine what the crash investigation requirements were.
- iv) It was not his role to direct Senior Constable Buchanan (or any other crash analyst) to undertake a full forensic investigation, nor to direct an independent crash analyst to review the file – that was a matter for the investigation team.

- v) Senior Constable Buchanan advised him that he had attended to the scene as best he could but was reluctant to come to any conclusions because he had not attended the scene immediately after the crash.
- vi) He was not specifically aware of the conflict of interest issue in respect of Senior Constable Buchanan.
- vii) All the advice he had received indicated that Senior Constable Ford was making a legitimate turn when he was struck by Mr Cribb – there was no reason for him to doubt the prosecution case.
- viii) He stands by his comments regarding Mr Marks' credibility.
- ix) The crash investigation was significantly compromised by the untruths of the Police officers involved (i.e. Senior Constable Ford and Constable Cassidy).
- x) He was not a trained crash investigator and had to rely on the opinion of experts.

#### *Inspector Jones*

- i) He believes that Senior Sergeant Cook was personally in control of the crash investigation, therefore the criticism that an NCO did not undertake the crash investigation is unfounded.
- ii) The crash was "*of a relatively minor nature*" and it could not have been predicted that it would become a high profile event.
- iii) Senior Constable Ford's account was supported by Senior Constable Buchanan.
- iv) When Constable Cassidy requested an independent opinion, Senior Sergeant Cook advised him that Constable Cassidy's concerns were unfounded and Senior Constable Buchanan should remain their expert.
- v) Independent crash experts are used sparingly and it is important to use them only when local resources are unavailable or unsuitable for the task at hand – in this case he was satisfied that Senior Constable Buchanan was competent and unbiased in his opinion.
- vi) His view was supported when Mr Cribb was convicted "*based at least partly on Buchanan's evidence*", confirming (in his opinion) that at that point there was nothing to suggest that anything was awry.
- vii) When he became aware of the level of dissatisfaction within the community he arranged a meeting at the crash site and afterwards suggested the employment of Professor Raine to review the crash analysis data.

- viii) This was in his experience an extremely rare situation where an officer chose to lie when interviewed over a crash and another officer failed to report an admission made by the Police driver.
- ix) He and other Police officers involved in the case could not have known that Senior Constable Ford and Constable Cassidy had *“in effect conspired to defeat the course of justice”* – their evidence was taken at face value, especially when backed by Senior Constable Buchanan.

#### *Sergeant Stables*

- i) In hindsight he accepts that he should have promoted the U-turn possibility further by highlighting it in his report and recommending that it be examined in depth.
- ii) He thought that raising the U-turn theory would have indicated the possibility for further investigation to those involved with the file.
- iii) He has gained more experience since then and now would highlight any issues he identified more appropriately and ensure that they were more fully explored.

#### *Senior Sergeant Grindell*

- i) He could not recall whether or not he was made aware of Senior Constable Buchanan’s reluctance to give evidence against Senior Constable Ford.

173. Inspector Pullen made a number of recommendations to address the concerns arising from the Ford/Cribb crash investigation, including that:

- i) The current policy relating to crashes involving Police employees (in the *“Traffic crashes”* chapter of the Police Manual) should be reviewed in light of this incident and should become a standalone document within the Police Manual.
- ii) That policy should clearly set out the investigative processes and managerial responsibilities for investigations of crashes involving Police employees, and should confirm that:
  - a) an NCO must be assigned to investigate and report on all Police crashes, in a timely manner, irrespective of culpability;
  - b) the Area Commander must maintain oversight of the file;
  - c) the appointed NCO must not be the supervisor of any employees involved in the crash or have *“any line supervisory responsibility where there is the likelihood of a prosecution or disciplinary proceedings of any employee involved in the crash”*;

- d) the appointed NCO must be of higher rank than the officer involved in the crash;
  - e) a Serious Crash Analyst or Serious Crash Investigator must attend and report on any Police crash involving injury, or where there is the likelihood of a *“high public interest”* or a question of impartiality;
  - f) any real or perceived conflicts of interest must be declared and the Area Commander must be advised of them – where necessary the Area Commander may delegate all or some of the investigative responsibilities to another officer who does not have any conflict of interest; and
  - g) *“Where a crash occurs in a policing area, where police employees stationed in that area are likely to be in familiar close working relationships, dependent upon the seriousness of the crash, or where there is the likelihood of high public interest or injury to either party, a NCO from outside the area must be appointed to investigate the crash. Where there is any doubt, the District Commander must be advised.”*
- iii) All Police districts should be required to establish crash panels which review all files involving any Police driver and/or vehicle, decide what action to be taken, and record and communicate their deliberations and decisions to all the parties involved. The panels should:
- a) be chaired by the District Road Policing Manager and comprise at least three panel members appointed by the District Commander;
  - b) be independent from any currently existing panels or committees established under the Professional Police Driver Programme (because those panels are in place to assess driver training and certification issues and should not be seen as a punitive body); and
  - c) not include any employee who is an Employee Practices Manager or Professional Standards employee (to avoid conflicts of interest regarding any decision to charge an officer with an offence or refer them for internal disciplinary proceedings).
- iv) Detective Inspector Vaughan’s review, together with Inspector Pullen’s report, should be forwarded to the Head of School: Leadership and Command at the RNZPC as a case study focusing on issues of complying with policy, supervision and leadership.

### Civil claim settled

174. In November 2013 Police reached a settlement with Mr Cribb in respect of his civil claim for malicious prosecution.

### Further interviews

175. In December 2013, the Authority interviewed five officers to provide them with an opportunity to respond to adverse comments the Authority intended to make in its report.

176. In addition to the explanations recorded above (see paragraphs 144, 149 and 172), the officers advised the Authority that:

#### *Senior Sergeant Cook*

- i) In 2005 he was new to the role of senior sergeant. At the time of the crash he had over 30 staff reporting to him and no sergeants to assist with supervision. He did not have an NCO to give the investigation to. In hindsight he could have tried to obtain another NCO to conduct the investigation. At the time he believed Senior Constable Ford was the victim – if he had information to suggest otherwise, then it would have been a different situation.
- ii) He could not recall Sergeant Priebee telling him that someone other than Constable Cassidy should conduct the investigation, but believes he would have taken notice of such advice because he valued Sergeant Priebee's opinion.
- iii) He directed Constable Cassidy to measure and mark up the scene, with a view to later calling in a crash analyst if necessary. He did not call in a crash analyst on the day due to the bad weather and the fact the analyst would have to drive up to Alexandra from Dunedin. It was common in Alexandra for them to mark up a scene for future reconstruction rather than calling in a crash analyst immediately.
- iv) The reason he believed Mr Cribb was the offender was that Mr Cribb said he crashed into Senior Constable Ford because he never saw him and the scene seemed to support that. There were no other witnesses at the time.
- v) He directed that the crash file be sent to the Road Policing Manager (Inspector Griffiths) for review because there was a Police officer involved. He expected that the review would ensure that there was enough evidence to charge somebody and that Police were charging the right person, as well as provide some guidance about what the charge should be.

- vi) Senior Constable Buchanan's involvement in the investigation was directed by Inspector Griffiths, not by him. He would have expected Senior Constable Buchanan's report to be based on the physical evidence.
- vii) He did not believe there were any triggers for him to have sought another opinion on the crash before the court hearing. When Mr Potter complained to him, Senior Sergeant Cook explained that the evidence would be heard in court.
- viii) In respect of Constable Cassidy's emails requesting an independent expert's opinion, he believed that granting that request would have been a deviation from normal Police practice. He relied on Senior Constable Buchanan as the expert and believed he had answered any questions raised by the Piercy report. He could not remember seeing the second email from Constable Cassidy in February 2006 but when the Authority's investigator showed it to him, he said he was not concerned about the issues it raised. At the time he did not have any reason to question Senior Constable Buchanan's competence.
- ix) He acknowledges that his comment to Constable Cassidy that most experts were "*failed Cops being paid for by the defence*" was unprofessional, but noted that at the time he did not fully appreciate the business implications of emails, including personal emails back to work, as a business record subject to disclosure.
- x) The Marks report was a "*game changer*" for him, which is why he advised the Acting Road Policing Manager (Senior Sergeant Burns) that independent advice may be needed.

#### *Senior Sergeant Burns*

- i) He did not have a clear recollection of discussing the Ford/Cribb crash with Sergeant Priebee, but he would not have granted a request for Sergeant Priebee to conduct the investigation because in 2005 there was a clear understanding that Highway Patrol staff were only to be used for highway patrol work. He thinks he would have told Sergeant Priebee that it was not his role to investigate the crash, and that Senior Sergeant Cook had not requested that he investigate so he would not be assigned the investigation.
- ii) When he asked Senior Constable Buchanan and Inspector Griffiths to review the Marks report, he was unaware of the concerns around a perceived Police bias (and other concerns identified by Constable Cassidy) in this case. If he had known about them, he would have considered engaging an independent expert earlier. However he followed normal Police practice, which was to refer subsequent reports on a matter to those staff that are familiar with the case.

- iii) When he became Road Policing Manager in 2007 he was concerned about the performance of the crash analysts, so he lobbied for a third crash analyst to be appointed and changed the way they worked and who they reported to.
- iv) He was surprised that throughout all the subsequent Police enquiries into the Ford/Cribb crash investigation, no-one approached him to discuss any issues relating to Senior Constable Buchanan's performance.
- v) When he visited the scene in September 2007 it was obvious to him that Senior Constable Ford's account of his turn into the driveway was wrong because the road was too narrow. He considered that Senior Constable Ford would have to have turned from the left side of the road and questioned why Senior Sergeant Cook and Senior Constable Cook did not realise this when they were at the scene.

#### *Senior Constable Buchanan*

- i) Throughout the enquiries into this crash investigation people have referred to his 'report' on the crash but he did not actually complete a serious crash report in the usual required format, only "Pol 258s" (a Pol 258 is a general report form). A serious crash report would have been peer-reviewed by another crash analyst before being signed off by the Road Policing Manager.
- ii) He was not asked to view the vehicles involved in the crash and is not sure if they were even still being held for inspection at that time. He believes he should have been notified on the day of the crash and that the scene being cleared compromised the crash scene investigation.
- iii) He was only asked to do two things: (i) prepare a scene plan, and (ii) calculate the speed of Mr Cribb's car from the skid marks on the road. Later he was also asked to assist the prosecutor by reviewing the Piercy report before the hearing. However he only expected to give evidence relating to the scene plan and the 'skid to stop' calculations from tyre friction marks at the scene. At the court hearing he was asked about the Piercy report without prior notice, and he felt it was more like being cross-examined than giving evidence.
- iv) He learned from this incident and said he no longer appears in court if he has only had a minor role in a crash investigation.
- v) He did not complete a full crash investigation report or carry out an in-depth analysis of the physical evidence because he was not asked to do so. He was wary of going beyond what was requested of him as he had been criticised in the past for doing more than he was asked to do.

- vi) He believed that Mr Cribb's statement that he braked and closed his eyes before the crash was evidence of carelessness, and that Mr Cribb was at fault because he crossed the centre line and collided with Senior Constable Ford's Ute in the southbound lane when he could have continued driving in the northbound lane behind the turning vehicle. He does not know how other people visiting the scene saw that Senior Constable Ford had lied about what had happened but he did not.

#### *Inspector Griffiths*

- i) He became involved in this matter because Constable Cassidy phoned him and said she needed help with the scene. He was surprised that she had contacted him directly but arranged for Senior Constable Buchanan to assist her. He accepted that the crash should have been investigated by an NCO but at the time he believed that Senior Sergeant Cook was conducting the investigation and Constable Cassidy was just tasked with handling the scene.
- ii) He was not aware that the crash had caused injuries. He was told that Senior Constable Ford was the victim in the crash and had no reason to doubt it. He considered Mr Cribb's statement that he had not seen Senior Constable Ford's Ute until he was "*right up near it*" to be an admission of careless driving. The fact that Mr Cribb denied he was at fault was not unusual and did not ring any alarm bells for him.
- iii) He could not specifically recall reading Senior Constable Buchanan's report (including the suggestions for possible further analysis), but remembered discussing the matter with him. Senior Constable Buchanan advised him that the scene measurements were okay but there was little for him to go on and he would struggle to do a full forensic plan or reconstruction.
- iv) He took what Senior Constable Buchanan said at face value. He and other decision-makers were not in a position to challenge crash analysts' opinions because they had not been trained. Subsequently he took a course in basic crash analysis and also arranged for others to be trained so they would have a better understanding.
- v) He was not aware of the concerns raised by Constable Cassidy in her emails to Senior Sergeant Cook and Inspector Jones.
- vi) When he wrote the memorandum requesting Sergeant Stables' review, he wanted to ensure the reviewer was fully aware of the background to the file and the credibility issues regarding Mr Marks. He was not aware at the time that the case he cited, which criticised Mr Mark's evidence, had been overturned on appeal.

*Inspector Jones*

- i) He was away during the initial investigation into the Ford/Cribb crash (and therefore was not in a position to ensure that it was conducted by an NCO). By the time he had returned and received Constable Cassidy's first email, which stated that she was the officer in charge of the crash investigation, he understood that the investigation had been completed and reviewed by the Road Policing Manager and believed any flaws in the investigation would have already been identified. He does not think it was necessary to have an NCO redo the investigation.
- ii) He cannot now specifically recall getting the two emails from Constable Cassidy requesting an independent expert's opinion but accepts that he would have received them and remembers discussing the matter with Senior Sergeant Cook. He did not think there was anything to cause him concern in those emails because the mere fact that Senior Constable Buchanan knew Senior Constable Ford was not enough to justify obtaining another expert opinion. He also noted that it is common for both the defence and prosecution to have experts supporting their case and he believed the matter would be decided in court.
- iii) It was not unusual for him to get requests for expert evidence from his staff. He had previously obtained an opinion from Professor Raine on a double fatality crash where manslaughter charges were possible, but the Ford/Cribb crash was relatively minor in comparison and it did not seem justified to employ Professor Raine.
- iv) He was not aware that Senior Constable Buchanan had emailed Constable Cassidy in November 2005 and asked not to be involved any further in the case (see paragraph 56).
- v) He relied on Senior Sergeant Cook's advice that Constable Cassidy's concerns were unfounded and that Senior Constable Buchanan was their expert.



# Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## POLICE POLICY REGARDING CRASH INVESTIGATION

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177. Police policy at the time of this incident (Police General Instructions T003 – Police Crashes) stated that when a Police vehicle is involved in a crash, an NCO (i.e. non-commissioned officer – a sergeant or senior sergeant) should be directed to conduct the investigation.
178. The Southern Police District Order 2004/1 (Serious Crash Investigation Protocol) also outlined the duties and responsibilities of Police staff attending a crash scene and the management procedures to be followed. The District Order’s definition of “*serious crash*” included crashes where injuries were sustained and the circumstances were of high public interest.
179. The District Order required that an NCO be appointed to attend and take charge of the crash scene as the incident controller. Amongst other things, the NCO was required to ensure that the Police Communications Centre had (a) contacted the local Serious Crash Investigator to attend the crash where possible and (b) contacted the on-call Serious Crash Analyst to advise him or her of the details of the crash.
180. Once the Serious Crash Analyst had been advised of the crash, he or she was responsible for deciding whether the crash scene should be attended immediately. If the Serious Crash Analyst did not attend, he or she was required to peer review all reports by the attending Serious Crash Investigator and to assist him or her with the preparation of these reports.
181. The District Order also set out the duties of the Sub Area Supervisor or Duty NCO responsible for the area where the serious crash occurred. This person was responsible for overseeing the investigation and ensuring that the enquiry was conducted to a satisfactory standard and completed in a timely manner.





# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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182. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:

- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
- investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.

183. The Authority's role on the completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

## THE AUTHORITY'S INVESTIGATION

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184. The Authority's investigator has met with Mr Potter and independently interviewed three former Police officers and five current Police officers. The Authority has also reviewed the Police investigation files, including statements from officers and witnesses, policy documents, court decisions, expert reviews of the crash investigation, and reviews of the Police's handling of this incident.

## ISSUES CONSIDERED

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185. It has already been established that Senior Constable Ford committed perjury and Constable Cassidy perverted the course of justice, resulting in the wrongful conviction of Mr Cribb. The Authority has therefore focused its investigation primarily on how this occurred and why Police did not uncover the truth about the crash at an earlier stage.

186. The Authority's investigation considered the following issues:

- 1) Did Police follow the correct procedure when investigating the Ford/Cribb crash?
  - A) Was an NCO appointed to investigate?
  - B) Was the crash investigated as a serious crash?
- 2) Did Constable Cassidy deny Mr Cribb support during his Police interview?
- 3) Was the Police crash investigation sufficiently thorough?
- 4) Were any conflicts of interest properly identified and addressed by Police?
- 5) Was the Police's decision not to seek an independent expert's opinion (until September 2007) appropriate?
- 6) Was there adequate supervision of the crash investigation and subsequent events?
- 7) Did Police address the concerns Mr Potter raised about the investigation in an appropriate way and in a timely manner?
- 8) Was there a conspiracy and/or were Police biased in the way they handled the crash investigation and subsequent events?



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

187. To avoid confusion, throughout the findings below the officers involved are referred to by the rank they held at the time of the crash investigation rather than their current rank.

## ISSUE 1: DID POLICE FOLLOW THE CORRECT PROCEDURE WHEN INVESTIGATING THE FORD/CRIBB CRASH?

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### Issue 1A: Was an NCO appointed to investigate?

188. Police policy in respect of vehicle crashes involving Police officers requires that an NCO (i.e. a sergeant or senior sergeant) be directed to conduct the crash investigation. The officer responsible for overseeing the Ford/Cribb crash investigation, Senior Sergeant Cook, did not comply with this policy. Instead he appointed Constable Cassidy to carry out the investigation.
189. Constable Cassidy expressed her concerns to Senior Sergeant Cook about being assigned the investigation. Amongst other things, she said she did not feel qualified to undertake the investigation and felt uncomfortable investigating someone she knew. Senior Sergeant Cook has said that he thought she was just making excuses and trying to get rid of the file. He believed she was capable of investigating “a simple road crash”. The Authority’s view is that Constable Cassidy’s concerns about her suitability to carry out this investigation were valid, particularly because she was not an NCO. Senior Sergeant Cook should have taken the concerns more seriously.
190. Senior Sergeant Cook has explained that he did not have any NCOs available at the time of the crash, other than himself. He was the Acting Area Commander at the time and did not think he should conduct the investigation. When interviewed by the Authority he acknowledged that, in hindsight, he could have attempted to get another NCO to conduct the Ford/Cribb crash investigation. He said he believed that Senior Constable Ford was the victim of the crash at the time, but if he had had information suggesting otherwise, it would have been a different situation.

191. Sergeant Priebee, a Highway Patrol sergeant, attended the crash and has said he was willing to carry out the investigation.
192. Senior Sergeant Cook commented that he did not direct Sergeant Priebee to conduct the investigation because the sergeant was not under his supervisory line of command. Senior Sergeant Cook and Senior Sergeant Burns also advised the Authority that there was an understanding at the time of the crash that Highway Patrol staff were not to be used for other Police work; therefore even if Sergeant Priebee did offer to conduct the crash investigation (which neither Senior Sergeant Cook or Senior Sergeant Burns could recall), he would likely have been told that it was not his role.
193. While the Authority acknowledges that there was a shortage of NCOs available to Senior Sergeant Cook at the time of the crash, and that action was taken to ensure Senior Constable Ford was at least interviewed by a higher-ranking officer, the Authority finds that Senior Sergeant Cook should not have tasked Constable Cassidy with conducting the Ford/Cribb crash investigation. Senior Sergeant Cook could (and should) have sought an NCO from a different Police station to carry out the investigation, in order to comply with the policy requirements and ensure a certain level of independence, competence and experience. The fact that Senior Sergeant Cook believed Senior Constable Ford to be the 'victim' of the crash did not diminish his obligation to comply with the crash investigation policy.

**Issue 1B: Was the crash investigated as a “serious crash”?**

194. At the time of this incident, Southern Police District policy defined a “serious crash” as:

*“... any vehicle crash where:*

- *Death occurs as a result.*
- *Serious injuries are sustained and death is a likely result.*
- *Injuries are sustained, and the circumstances of the crash are such as to be of high public interest.”*

195. Injuries were sustained to both parties in the Ford/Cribb crash and, given that there was a Police officer involved, the circumstances were potentially of high public interest – particularly in a small community like Alexandra.
196. However it is clear from Senior Sergeant Cook’s various statements that he did not consider the crash to be a major event at the time. If he had considered the circumstances of crash to be “of high public interest”, policy would have required him as the attending NCO to ensure that (i) the local Serious Crash Investigator was requested to attend the crash where possible, and (ii) the on-call Serious Crash Analyst was advised of the details of the crash so he or she could decide whether it was necessary to attend the scene immediately.

197. Senior Sergeant Cook did not notify a Serious Crash Analyst at the time of the crash. He later told the Authority that this was because the weather was bad and the crash analyst (i.e. Senior Constable Buchanan) would have had to travel from Dunedin to Alexandra. Instead Senior Sergeant Cook ensured that the scene was measured and marked up so a crash analyst could attend later if needed.
198. Senior Constable Buchanan felt that he should have been notified on the day of the crash and that he was disadvantaged by only attending the scene three weeks later, after it had been 'cleared'. However the Authority notes that other officers and crash investigators were able to identify problems with Senior Constable Ford's statement without having attended the scene on the day of the crash.
199. Although Senior Constable Buchanan did ultimately visit the crash scene (following a request from the Road Policing Manager, Inspector Griffiths), he did not conduct a full scene examination or carry out a reconstruction of the crash. Senior Constable Buchanan told the Authority that his 'report' on the crash was not in the format expected for a "serious crash" investigation – it was only limited in scope and not peer-reviewed by another trained crash analyst. Furthermore Senior Constable Buchanan was not asked to be involved in Constable Cassidy's and Senior Constable Ford's 'reconstruction' of the turn he claimed to have made at the time of the crash (see paragraph 59).
200. While the Authority accepts that the potential for this crash investigation to be "of high public interest" may not have been immediately apparent, there were a number of events prior to the District Court hearing which should have prompted Senior Sergeant Cook to reassess the situation and consider elevating it to a proper "serious crash" investigation (with the full involvement of a Serious Crash Analyst), such as when:
- i) Constable Cassidy reported that Mr Cribb was alleging Senior Constable Ford caused the crash by doing a U-turn in front of him – i.e. that Senior Constable Ford had lied about what happened;
  - ii) Mr Cribb was charged with careless driving and entered a not guilty plea;
  - iii) Police received the Piercy report which supported Mr Cribb;
  - iv) Mr Potter met with Senior Sergeant Cook to discuss his concerns; and
  - v) Constable Cassidy reported Senior Constable Buchanan's reluctance to be involved and requested that an independent expert review the crash investigation.
201. Detective Inspector Vaughan commented in his review that:

*"Elevating the crash into the Serious Crash Investigations framework would have benefited the file by:*

1. *affording the crash investigation with a quality assurance structure complete with peer review certification,*
2. *ensuring the crash was subject to comprehensive review/s,*
3. *providing the opportunity for the crash investigation to be selected for 'out of District' review via the District Road Policing Manager to the National Crash Advisor at PNHQ, and*
4. *ensuring that the investigation was aligned to Police procedures and that the findings of the investigation were appropriate and justifiable."*

202. Police should have been alert to the need for a thorough and independent crash investigation in this case, where the facts were in dispute and the credibility of Police would be an issue in Court. The failure of Senior Sergeant Cook to act upon the signs that this crash needed to be investigated under the serious crash investigation framework resulted in Police neglecting to uncover and remedy the deficiencies in the investigation.

#### FINDINGS

Police did not follow the correct procedure when investigating the Ford/Cribb crash.

Senior Sergeant Cook breached policy by appointing a constable to investigate the crash when it should have been investigated by an NCO.

Once it became clear that Mr Cribb was alleging Senior Constable Ford had lied about the cause of the crash, Senior Sergeant Cook should have recognised the potential for the crash investigation to be of "high public interest". Numerous opportunities to re-evaluate the situation and elevate the matter to a serious crash investigation were overlooked.

#### ISSUE 2: DID CONSTABLE CASSIDY DENY MR CRIBB SUPPORT DURING HIS POLICE INTERVIEW?

203. In his initial letter of complaint to the Authority (see paragraph 61), Mr Potter complained that Constable Cassidy had refused his request to be present at Mr Cribb's Police interview and was evasive about whether Mr Cribb would be informed about his rights.
204. Mr Cribb's statement records that he was advised of his rights to consult a lawyer and to refrain from making a statement.
205. In respect of the issue of an appropriate support person for Mr Cribb, Mr Potter's notes of the conversation he had with Constable Cassidy record that she explained at the time that she was willing for Mr Cribb's stepmother to attend the interview, but said she had had

bad experiences with other people attending interviews in the past and did not want Mr Potter to attend.

206. When Constable Cassidy was later interviewed during Inspector Parsons' review of the crash investigation (see paragraphs 131-134), she said that she could not recall the conversation with Mr Potter and was stressed at the time.
207. Although Police policy in respect of young people allows for the young person to choose a nominated person (not necessarily a family member) to be with them when they give a statement, at 17 years old Mr Cribb no longer fitted within the legal definition of a "young person".<sup>5</sup> Constable Cassidy was not required to allow Mr Potter to attend Mr Cribb's interview and Mr Cribb was free to choose not to be interviewed or to terminate the interview at any time.

**FINDING**

Constable Cassidy complied with law and policy in respect of Mr Cribb's interview.

**ISSUE 3: WAS THE POLICE CRASH INVESTIGATION SUFFICIENTLY THOROUGH?**

208. Constable Cassidy measured the crash scene and, following the interviews of Mr Cribb and Senior Constable Ford, prepared a short report on the crash. The file was then reviewed by Inspector Griffiths, who concluded that Mr Cribb had been careless based solely on the drivers' statements and the scene diagram.
209. Inspector Griffiths noted that he was not a trained crash investigator. He was aware that Constable Cassidy had already sought advice from Senior Constable Buchanan, and he suggested that the crash analyst review his conclusions and visit the scene to check Constable Cassidy's measurements. As noted above, Senior Constable Buchanan was not asked to conduct a full analysis of the crash and did not offer to do so.
210. After visiting the scene, Senior Constable Buchanan reviewed the file and concluded that Mr Cribb appeared to have caused the crash because in his statement he said he did not see Senior Constable Ford's car ahead of him. Although Senior Constable Buchanan stated that the file "boils down to the statements of the two drivers and the evidence on the roadway", he seems to have based his conclusions primarily on the statements and not on the crash scene evidence.

<sup>5</sup> Section 2(1) of the Children, Young Persons, and Their Families Act 1989 defines a "young person" as "a boy or girl of or over the age of 14 years but under 17 years".

211. The findings of Senior Constable Buchanan's review of the crash file were later contradicted by the opinions of Mr Piercy, Mr Marks and Professor Raine. Senior Constable Buchanan's report was also criticised by Senior Constable Crosland during the 2009 criminal investigation into Senior Constable Ford's actions (see paragraphs 138-140).
212. Senior Constable Crosland was of the view that Senior Constable Buchanan had largely ignored the physical evidence and his report was unbalanced and heavily biased against Mr Cribb. Senior Constable Crosland also found that the evidence on the road which was recorded by Constable Cassidy and mapped by Senior Constable Buchanan, together with the photographs of the scene, clearly showed that Senior Constable Ford had turned from the extreme left side of the road. It should have been apparent to Senior Constable Buchanan that Senior Constable Ford's version of events was not consistent with the crash scene evidence.
213. Senior Constable Buchanan advised the Authority that he categorically denies he did anything to protect Senior Constable Ford. He thought Mr Cribb was at fault because of the 'admissions' in his statement (that he braked and closed his eyes) and because Mr Cribb "*followed*" Senior Constable Ford's Ute into the southbound lane instead of continuing to drive in the northbound lane behind the turning vehicle. He also said that he was not asked to conduct an investigation, only to review others' work, and that he would have been criticised if he had done more than was asked of him.
214. The Authority considers that Senior Constable Buchanan, as a professional crash analyst, should not have offered an opinion on the crash without properly analysing the physical evidence at the scene.
215. Inspector Griffiths relied on Senior Constable Buchanan's report when advising Senior Sergeant Cook that the evidence supported a charge of careless driving for Mr Cribb. It is clear that other senior officers who were overseeing this investigation (such as Senior Sergeant Cook and Inspector Jones) also relied on the conclusions of that report, and considered Senior Constable Buchanan to be their 'expert' on the case – despite the fact he had not actually conducted a full analysis of the physical evidence.
216. After Police received the Piercy report, Senior Constable Buchanan expressed reluctance to be involved further in the crash investigation and limited his contribution to producing a forensic map of the crash scene. Nonetheless he was asked to review and comment on the findings of Mr Piercy and, later, Mr Marks. His gave his opinion that their conclusions were "*conjecture*" and subsequently that view was echoed by Judge O'Driscoll (in respect of Mr Piercy's evidence at the hearing) and by Inspector Griffiths.
217. Senior Constable Buchanan's statement that he did not investigate the crash, and his reluctance to be involved, cannot be reconciled with the fact that he agreed to provide

opinions on the findings of the other crash experts. The Authority's view is that Senior Constable Buchanan should have declined to review the Piercy and Marks reports, and should not have given his opinion on the Piercy report in court (essentially rebutting defence evidence), since his contribution to the crash investigation was limited and he had not fully analysed the crash scene evidence himself. Alternatively Senior Constable Buchanan should have conducted a proper forensic analysis of the crash scene before providing his opinions on the findings of the Piercy and Marks reports.

218. The Authority notes that although Inspector McKeown of Professional Standards was of the opinion that training or discussions were needed with Senior Constable Buchanan (in July 2008; see paragraph 122), the Authority has not been able to find any evidence that this ever took place. Senior Constable Buchanan has confirmed that this never occurred. The Authority finds that Police have failed to appropriately address the deficiencies in Senior Constable Buchanan's performance during the Ford/Cribb crash investigation.

#### FINDINGS

The crash investigation was not sufficiently thorough. Senior Constable Buchanan was not asked, and did not offer, to conduct a full analysis of the crash.

Senior Constable Buchanan failed to identify that Senior Constable Ford's account was not consistent with the crash scene evidence.

Senior Constable Buchanan should have either (a) refused to offer an opinion on the Piercy and Marks reports due to his own limited investigation or (b) fully analysed the physical evidence at the crash scene before offering his opinion on the Piercy and Marks reports. In particular Senior Constable Buchanan should not have provided his opinion on the Piercy report at the District Court hearing.

#### ISSUE 4: WERE ANY CONFLICTS OF INTEREST PROPERLY IDENTIFIED AND ADDRESSED BY POLICE?

219. Both Constable Cassidy and Senior Constable Buchanan expressed an unwillingness to investigate the crash involving their colleague Senior Constable Ford.
220. Constable Cassidy raised the issue in discussions with Senior Sergeant Cook (see paragraph 149(iii)). As discussed above, Senior Sergeant Cook said he believed she was just trying to get rid of the file. The Authority's view is that Senior Sergeant Cook should have taken her concerns more seriously, especially because she was having difficulty with the file and was junior in rank and seniority to Senior Constable Ford.
221. Senior Constable Buchanan stated in his review of the crash file that he had personally known and worked with Senior Constable Ford since 1982. However he did not at that

stage explicitly say that there was a conflict of interest or that he did not think he should be involved.

222. Police have advised the Authority that it is not uncommon for Police officers to be required to investigate matters involving people they know, particularly Police experts (such as crash analysts) who are in short supply. Without a specific reason to doubt the officer's objectivity, he or she would not usually have to hand the investigation over to someone else. The Authority accepts this, provided the investigation is correctly managed and any issues that arise regarding the perception or existence of a conflict of interest are addressed.
223. In this case, a few months after completing his review of the crash file, Senior Constable Buchanan declared his unwillingness to be involved any further in the investigation in an email to Constable Cassidy, which she then forwarded to Senior Sergeant Cook (see paragraphs 52-53). She later explained her concerns about Senior Constable Buchanan's reluctance to offer an opinion on the crash "*due to his long association with Senior Constable Ford*" in an email to Sergeant Stevenson, Senior Sergeant Cook and Inspector Jones (see paragraph 66).
224. Sergeant Stevenson attempted to address the issue by supporting Constable Cassidy's request for another expert to review the case – but this request was denied by Senior Sergeant Cook and Inspector Jones. Senior Sergeant Cook and Inspector Jones disregarded the concerns that were raised and did not take any action to resolve the perceived conflict of interest.
225. Senior Sergeant Cook has said that he understood Senior Constable Ford was not close with Senior Constable Buchanan and had not been for some time. However it appears he did not discuss the issue with Senior Constable Buchanan. Inspector Jones told the Authority that he relied on advice from Senior Sergeant Cook that Constable Cassidy's concerns were unfounded, and he was not aware of Senior Constable Buchanan's email which stated that it was better not to involve him any further (see paragraph 56).
226. The Authority finds that when Senior Sergeant Cook received the information that Senior Constable Buchanan was reluctant to be involved in the crash file, he should have consulted Senior Constable Buchanan in order to investigate the reasons behind his unwillingness to be involved.
227. The issue should have been examined because of the concerns identified by Constable Cassidy and Sergeant Stevenson, particularly the need to address and manage the risks around a perceived Police bias and Senior Constable Buchanan's reluctance to give evidence in court (see paragraphs 70-71). If a problem with Senior Constable Buchanan's involvement was identified, it could have been addressed by having the file reviewed

before the District Court hearing – either by an independent crash expert or a peer review by a different Police crash analyst.

#### FINDING

Senior Sergeant Cook failed to properly investigate and address Senior Constable Buchanan’s potential conflict of interest during this crash investigation.

#### ISSUE 5: WAS THE POLICE’S DECISION NOT TO SEEK AN INDEPENDENT EXPERT’S OPINION (UNTIL SEPTEMBER 2007) APPROPRIATE?

228. Constable Cassidy twice requested that an independent expert review the crash file before the District Court hearing. The first request was made on 14 November 2005 after Police received the Piercy report, and the second request was made on 3 February 2006 due to Constable Cassidy’s ongoing concerns regarding accusations of Police bias and an inability to offer expert evidence to rebut Mr Piercy’s findings.
229. Both of these requests were denied by Senior Sergeant Cook and Inspector Jones. They have said that they believed an independent review was unnecessary and that they already had expert advice from Senior Constable Buchanan. Senior Sergeant Cook has also said that his denial of the request for an independent expert was his way of telling Constable Cassidy she was capable of conducting the investigation herself. Inspector Jones relied on Senior Sergeant Cook’s advice that there was no need for an independent expert’s opinion.
230. The Authority’s view is that the concerns expressed by Constable Cassidy (and supported by Sergeant Stevenson) – particularly the concerns about Senior Constable Buchanan’s contribution to the crash investigation – were reasonable and well-founded. Senior Sergeant Cook was in charge of overseeing the investigation and had been notified of all the concerns (including those identified in Constable Cassidy’s emails, Sergeant Stevenson’s email, Mr Potter’s complaint, and Senior Constable Buchanan’s email stating that it was better for him not be involved). He should have either granted the request to have an independent expert review the file, or at least had the file peer-reviewed by a different Police crash analyst. If that had occurred prior to the District Court hearing then the wrongful conviction of Mr Cribb may have been avoided.
231. Another opportunity to obtain an independent expert’s opinion arose after the District Court hearing, when the case was publicised on the “Close Up” TV programme and Police were provided with Mr Marks’ report on the crash. At this point Senior Sergeant Cook expressed the view that “*This may be a case for some independent advice*” (see paragraph 88).

232. Senior Constable Buchanan was asked to review Mr Marks' findings and described them as a "rehash" of the Piercy report. The Acting Road Policing Manager, Senior Sergeant Burns, then asked Inspector Griffiths to review the file since he had previously been involved. Inspector Griffiths sent a memorandum requesting Sergeant Stables from the Wellington District Serious Crash Unit to review the file and advise him whether or not Police should oppose a rehearing. In the memorandum Inspector Griffiths clearly expressed his own view that Mr Piercy and Mr Marks' findings were wrong and Mr Cribb's conviction was justified.
233. Sergeant Stables found that it was possible Senior Constable Ford had been conducting a U-turn but also stated that Mr Cribb should have been able to see the Holden Ute in the road ahead of him and his conviction was appropriate. When later interviewed by Inspector Pullen, Sergeant Stables accepted that he should have promoted the U-turn possibility further in his report and recommended that it be examined in-depth.
234. Senior Sergeant Burns subsequently advised Mr Cribb's lawyers that Police would oppose a rehearing. It was not until six months later (September 2007) that Police sought an independent opinion from Professor Raine in light of ongoing community dissatisfaction with the Police's handling of the case and a visit to the crash scene by Senior Sergeant Burns and Inspector Jones.
235. Senior Sergeant Burns told the Authority that when he referred the Marks report to Senior Constable Buchanan and Inspector Griffiths he was not fully aware of all the concerns that had been raised about a perceived Police bias in this crash investigation, and he had no reason to believe that an independent review was necessary. He acknowledged that, if he had had more information, he would have considered engaging an independent expert earlier.

#### FINDINGS

Senior Sergeant Cook should have granted Constable Cassidy's request to have an independent expert review the crash file, or should have arranged for another Police crash analyst to peer review the crash investigation before the District Court hearing.

Sergeant Stables should have recommended, in his review of the file, that the U-turn possibility be examined in depth.

## ISSUE 6: WAS THERE ADEQUATE SUPERVISION OF THE CRASH INVESTIGATION AND SUBSEQUENT EVENTS?

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### Senior Sergeant Cook

236. Senior Sergeant Cook was the Sub Area Supervisor in Alexandra (and the Acting Area Commander: Otago Rural) at the time of the crash. Under the Southern District's Serious Crash Investigation policy it was his duty to oversee the crash investigation and ensure that the enquiry was conducted to a satisfactory standard and completed in a timely manner.
237. As discussed above, Senior Sergeant Cook breached Police policy by failing to assign an NCO to conduct the investigation. Senior Sergeant Cook also did not ensure the crash was investigated as a "serious crash" after it became clear that Mr Cribb was alleging Senior Constable Ford had lied about the cause of the crash.
238. During the crash investigation Senior Sergeant Cook was made aware of the following issues but took no action to address them:
- i) Senior Constable Buchanan's past association with Senior Constable Ford and his reluctance to offer an opinion on the crash;
  - ii) Constable Cassidy's difficulties with the file, including that she felt uncomfortable investigating a colleague; and
  - iii) the accusations of Police bias and ongoing dissatisfaction with the handling of the crash investigation by members of the public – Mr Potter in particular.
239. While acknowledging that Senior Sergeant Cook's decisions were influenced by his belief that Senior Constable Ford was the 'victim' in the crash (a belief which was supported by his interpretation of the drivers' statements, Senior Constable Buchanan's report and Inspector Griffiths' review of the file), the Authority finds that Senior Sergeant Cook's supervision of the crash investigation was inadequate. He should have addressed the deficiencies in the investigation, and taken action to assess the quality and thoroughness of Senior Constable Buchanan's report, rather than dismissing the concerns that were raised with him. Although decisions relating to this crash investigation were also made by other, higher-ranking officers, that does not excuse Senior Sergeant Cook's own failures in this regard.
240. Police identified the shortcomings in Senior Sergeant Cook's performance as early as December 2008 (see paragraphs 132-134: Inspector Parson's report). While Senior Sergeant Cook was subject to a criminal investigation into his actions and was cleared (see paragraph 152: Detective Inspector Bensemman's report), there is no indication that

Police have specifically addressed the performance issues relating to his supervision of the Ford/Cribb crash investigation. The Authority finds that Police should have taken action to deal with these concerns.

### **Inspector Griffiths**

241. Inspector Griffiths was the Road Policing Manager: Southern District. He reviewed the crash investigation file and advised Senior Sergeant Cook that Mr Cribb should be charged with careless driving.
242. Inspector Griffiths concluded from his examination of the crash file (primarily the drivers' statements) that Mr Cribb was at fault. He then noted that he was not a trained crash investigator and requested that Senior Constable Buchanan review his conclusions and visit the scene to check Constable Cassidy's measurements. He did not request that Senior Constable Buchanan carry out a full analysis of the physical evidence, but expected Senior Constable Buchanan would have enough experience to determine what the investigation requirements were.
243. Inspector Griffiths told the Authority that Senior Constable Buchanan advised him there was little at the scene to go on and he would struggle to do a full forensic plan or reconstruction. He relied on Senior Constable Buchanan's advice and said he had no reason to question it. After returning the file to Senior Sergeant Cook, Inspector Griffiths did not have anything more to do with the investigation until after the District Court hearing. He was never notified of the concerns raised by Constable Cassidy and Sergeant Stevenson.
244. The Authority considers that it should have been recognised that the circumstances of this crash warranted a full investigation by a Serious Crash Analyst rather than the limited review provided by Senior Constable Buchanan. Police should have based their decision to charge Mr Cribb on a comprehensive analysis of the physical evidence rather than the drivers' statements. However the Authority accepts that, following his conversation with Senior Constable Buchanan, Inspector Griffiths may have been under the impression that further analysis was not possible.
245. Inspector Griffiths appears to have overlooked the further analysis suggested by Senior Constable Buchanan in his report (such as profiling the damage to the vehicles; see paragraph 43). If those further enquiries had been carried out, they may or may not have had an impact on the Police's decision to charge Mr Cribb.
246. Inspector Griffiths was not a trained crash investigator, nor was he in charge of overseeing the crash investigation. He expected Senior Sergeant Cook to ensure that the crash investigation was conducted to a satisfactory standard (as Police policy assigned that responsibility to the Sub-Area Supervisor, not the Road Policing Manager).

Nonetheless it is clear that Senior Sergeant Cook and Inspector Jones relied on the fact that the Road Policing Manager had reviewed the file, and supported charging Mr Cribb, when deciding that Senior Constable Buchanan's report on the crash was sufficient and it was unnecessary to seek an independent expert's opinion. Senior Sergeant Cook noted that it was Inspector Griffiths who directed Senior Constable Buchanan's involvement in the crash investigation – not him.

247. The Authority agrees that under policy Senior Sergeant Cook was ultimately the one responsible for ensuring the quality of the crash investigation, rather than Inspector Griffiths. Furthermore Senior Sergeant Cook was aware of the concerns that were raised about the investigation after Inspector Griffiths' review of the file, but Inspector Griffiths was not.
248. Unfortunately Inspector Griffiths' review, and the fact that he was the one who arranged Senior Constable Buchanan's involvement rather than Senior Sergeant Cook, seems to have confused the situation. This case highlights the importance of ensuring peer review by other trained crash analysts rather than relying on the review of someone not trained in crash investigation.

### Inspector Jones

249. Inspector Jones was the Area Commander: Otago Rural and was Senior Sergeant Cook's supervisor. He was away on duties outside the Southern District at the time of the crash (Senior Sergeant Cook was the Acting Area Commander: Otago Rural during this time). He returned about two months after the crash had occurred, by which time Mr Cribb had been charged.
250. Inspector Jones received two emails from Constable Cassidy and one from Sergeant Stevenson detailing issues with the crash investigation, including the perception of Police bias and Senior Constable Buchanan's reluctance to offer an opinion. Inspector Jones told the Authority that he was satisfied Senior Constable Buchanan was competent and unbiased in his opinion. He also commented that independent crash experts are used sparingly and should only be used when local resources are unavailable or unsuitable for the task at hand.
251. While the Authority is of the view that the concerns raised by Constable Cassidy and Sergeant Stevenson did warrant further investigation, the Authority accepts that Inspector Jones relied on advice from Senior Sergeant Cook that the concerns were unfounded and that it was not necessary to employ an independent expert.

#### FINDING

Senior Sergeant Cook's supervision of the crash investigation was inadequate.

ISSUE 7: DID POLICE ADDRESS THE CONCERNS MR POTTER RAISED ABOUT THE CRASH INVESTIGATION IN AN APPROPRIATE WAY AND IN A TIMELY MANNER?

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252. As detailed above in the ‘Background’ section of this report, Mr Potter has persistently expressed his dissatisfaction with the Police’s handling of the crash investigation since Mr Cribb was charged with careless driving.
253. The Authority finds that Police did not address Mr Potter’s concerns in an appropriate way or in a timely manner. If Police had acted more quickly to obtain a full analysis of the crash scene evidence then Mr Cribb’s wrongful conviction may have been avoided altogether. Alternatively his conviction could have been overturned much sooner than it was.
254. It was not until May 2008 (almost three years after the crash; 18 months after Police received the Marks report; and seven months after Professor Raine’s review was completed) that Police advised they would not be offering any evidence against Mr Cribb at the rehearing. The Authority agrees with Judge O’Driscoll’s comment in his costs judgment that he *“would have hoped this decision could have been made in a far more expeditious manner.”*
255. Furthermore, it was not until 14 May 2012 that Police offered a formal apology to Mr Cribb – even though Inspector McKeown had recommended an apology when he reviewed the file in July 2008.

FINDING

Police did not address Mr Potter’s concerns about the crash investigation in an appropriate way or in a timely manner.

ISSUE 8: WAS THERE A CONSPIRACY AND/OR WERE POLICE BIASED IN THE WAY THEY MANAGED THE CRASH INVESTIGATION AND SUBSEQUENT EVENTS?

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256. In his complaint, Mr Potter stated that he suspected there had been a conspiracy to protect Senior Constable Ford from prosecution by blaming Mr Cribb for the crash.
257. The Police’s failure to investigate and review the crash properly resulted in this matter being dragged out over a number of years and led to two Police officers being prosecuted for perjury and perverting the course of justice in respect of the same incident. This gave weight to the accusation that Police had conspired to cover up the incident and had a serious impact on public confidence in the Police, particularly in the Alexandra area.

258. Aside from Constable Cassidy, who was convicted of attempting to pervert the course of justice, the Authority has not found any evidence that the officers who took part in or oversaw this crash investigation were involved in a conspiracy or orchestrated a deliberate cover-up. However there were flaws in the investigation, which have been detailed above.
259. Senior Sergeant Cook said that he believed, from the day of the crash, that Senior Constable Ford was the 'victim'. Inspector Griffiths, Senior Constable Buchanan and Inspector Jones were all briefed on the basis that Senior Constable Ford was not at fault, and said they had no reason to suspect otherwise.
260. Senior Constable Buchanan, Senior Sergeant Cook and Inspector Griffiths interpreted Mr Cribb's statement that he had not seen Senior Constable Ford's Ute until he was close to it as evidence of his carelessness. These officers appear to have disregarded Mr Cribb's later comment to Constable Cassidy that he now remembered seeing Senior Constable Ford's vehicle stationary on the left hand side of the road before the crash – which Constable Cassidy took to be an allegation that Senior Constable Ford had u-turned in front of Mr Cribb at the last minute.
261. While accepting that it is not uncommon for 'defendants' to deny they are at fault, and that the findings of Senior Constable Buchanan's report supported Senior Constable Ford, the Authority considers that Police (primarily Senior Constable Cook) should have realised that Senior Constable Buchanan's review of the crash was not sufficiently thorough and, crucially, did not adequately examine the physical crash evidence to test the truth of Senior Constable Ford's account.
262. The Authority is also concerned by inappropriate and unprofessional comments made during and after the initial crash investigation, including Senior Sergeant Cook describing crash experts as *"failed Cops being paid for by the defence"* after he denied Constable Cassidy's first request for an independent expert's review. Senior Sergeant Cook has told the Authority he accepts that this email was unprofessional.
263. Some of Inspector Griffiths' comments in the memorandum requesting the review by Sergeant Stables are also concerning (see paragraph 93); if the intention was to obtain an independent and impartial evaluation of the evidence, then Inspector Griffiths should not have been asserting his own views on the case in such strong terms. The Authority acknowledges Inspector Griffiths' explanation that he wanted to ensure the reviewer was fully aware of the background to the file and credibility issues regarding Mr Marks.

#### FINDINGS

The Authority has not found evidence of a conspiracy amongst the officers overseeing this crash investigation.

Senior Sergeant Cook's comment regarding defence experts and Inspector Griffiths' comments when requesting a review of the crash file were inappropriate.



# Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

## CHANGES TO POLICY SINCE 2005

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264. The Southern Police District Order (Serious Crash Investigation Protocol) was amended in October 2006 to add the words “(for example a Police crash)” to the definition of a “serious vehicle crash” (see paragraph 194). However that addition was subsequently removed and the current Southern District Local Order on Serious Crash Investigation states that:

*“A serious vehicle crash is one that:*

- *has resulted in a fatality, or*
- *has resulted in serious injury that is likely to result in a fatality, or*
- *is likely to attract high public interest and, for this reason, requires a detailed investigation.”*

265. The Police Manual’s current chapter on “Traffic Crashes” defines a “serious crash” as a fatal or serious injury crash, or “any crash that may attract significant interest from the public or media.”

266. The Police Manual also states that when a crash involves a Police employee, the O/C Station must ensure that the scene is attended and inquiries are made by a sergeant or senior sergeant. A Serious Crash Investigator is required to attend and provide a report on any serious crash involving a Police vehicle or Police employee on duty – or at the request of the District Commander, Area Commander or Road Policing Manager.

267. Police are reviewing their policy on traffic crashes but have not yet implemented a new policy. Therefore the Authority has not been able to assess which, if any, of Inspector Pullen’s recommendations regarding the traffic crashes policy have been adopted by Police (see paragraph 173).

268. Inspector Pullen’s recommendation for District Crash Panels was rejected by the Police Executive on the basis that it created an unduly complex environment.

269. Police have advised the Authority that they have improved their supervision and peer review procedures in the years since the Ford/Cribb crash investigation, and are considering a proposal to align the investigation of crashes involving Police staff with existing processes for managing both employment issues and those involving potential criminal liability:

*“The key principles of the revised proposal presently being developed are:*

- 1. That there is oversight of the investigation of crashes involving Police staff;*
- 2. That crashes are investigated in a timely manner and within statutory time limitations;*
- 3. That there is not unnecessary duplication of structure or needless complexity in the process;*
- 4. That there is national consistency;*
- 5. That the process is consistent with the oversight and investigation of other alleged offending by Police staff (i.e. not a duplicate or parallel process);*
- 6. That there is the ability to maintain oversight of poor driving behaviours that may form part of a pattern of behaviour subject to Early Warning intervention, whether this be driving related or other conduct.*

*The overall goal is to augment Police’s current policy with greater oversight in order to ensure transparency and confidence in Police investigation of crashes involving Police employees. This new approach is being worked through between the relevant groups and it is anticipated a revised traffic crash policy will be represented to the Police Executive by the end of March 2014.”*

#### CRASH ANALYSTS

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270. At the time of the Ford/Cribb crash there were only two Serious Crash Analysts in the Southern District. There are now three, and the additional Serious Crash Analyst is based in Alexandra.

#### CASE STUDY

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271. Police used the Ford/Cribb crash investigation as a case study in an Inspectors Qualifying course at the Royal New Zealand Police College in 2012. The case study (which anonymised the officers involved) was used to illustrate the importance of complying with Police policy at all levels and the importance of supervision and leadership.



## Comment on Delay

INDEPENDENT POLICE CONDUCT AUTHORITY

272. It is now more than eight and a half years since the crash involving (former) Senior Constable Ford and Mr Cribb occurred, and more than eight years since the Authority was first notified of Mr Potter's complaint.
273. The completion of the Authority's investigation has been delayed due to a number of factors, including the following:
- i) As set out in the 'Background' section of this report, the Authority initially declined Mr Potter's complaint and did not decide to independently investigate until September 2008.
  - ii) The Authority elected to wait for Police to conclude their criminal investigations and various reviews of the handling of the crash investigation before completing its own investigation report.
274. In respect of (i) above, the reason the Authority gave for declining the complaint was that the matter would be dealt with in court (and therefore there was no need for the Authority to cover the same ground). The Authority's initial decision not to investigate while the matter was before the court was justified. However once the court proceedings had concluded the Authority recognises that it should have acted more quickly to address the issues raised by Mr Potter.
275. In respect of (ii) above, the Authority's decision to wait for the conclusion of the Police investigations and reviews contributed to unacceptable delays in addressing the legitimate grievances in this case. The Authority has recently changed its processes and is endeavouring to complete investigations more quickly than it has been able to in the past. For example the Authority has moved towards conducting its own investigation alongside the Police investigation, rather than waiting to receive final reports from the Police.
276. The Authority would like to thank Mr Potter for his persistence in pursuing this complaint and apologise for its failure to investigate and resolve the complaint in a timely manner.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

277. The Authority has examined the Police's handling of this crash investigation and its aftermath, and has determined that there were failures to:
- i) critically examine Senior Constable Ford's account of the crash and the physical evidence;
  - ii) comply with policy and best practice;
  - iii) provide adequate supervision and leadership; and
  - iv) remedy the deficiencies that had been identified in the investigation.
278. Furthermore Police failed to address Mr Potter's concerns about the crash investigation in an appropriate way or in a timely manner.
279. These failures resulted in Police not uncovering the truth about the crash for over two years and caused much undue stress to Mr Cribb and his supporters – primarily Mr Potter. The mishandling of this crash investigation also greatly damaged the reputation of Police.
280. However the Authority has not found that there was a conspiracy amongst the Police officers overseeing the crash investigation.

## **Section 27(1) opinion**

281. 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 which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
282. In terms of s.27(1) of the Act the Authority has formed the opinion that:
- i) The failure of Senior Sergeant Cook to ensure that an NCO was assigned to investigate the Ford/Cribb crash was unjustified.

- ii) Senior Constable Buchanan's failures to: (a) identify the inconsistency between the crash scene evidence and Senior Constable Ford's account of the crash, and (b) carry out a full analysis of the crash scene evidence, were unjustified.
- iii) Senior Constable Buchanan's actions in providing his opinions on the Piercy and Marks reports, when he had not properly investigated the crash himself, were unjustified.
- iv) Senior Sergeant Cook's failures to: (a) address the concerns raised by Constable Cassidy and Sergeant Stevenson before the District Court hearing, (b) investigate the reasons behind Senior Constable Buchanan's reluctance to offer an opinion on the crash, and (c) ensure that a sufficiently thorough analysis of the crash evidence was undertaken, were unjustified.
- v) The failure of Sergeant Stables to recommend that the U-turn possibility be examined in depth was undesirable.
- vi) The inappropriate comments made by Senior Sergeant Cook (in respect of defence experts) and Inspector Griffiths (when requesting a review of the crash file) were undesirable.
- vii) The individual and collective failures of Police in addressing Mr Potter's concerns about the crash investigation caused unacceptable delays that were unjustified.

### **Section 27(2) recommendations**

283. The Authority notes that the conduct of the officers involved in this case predated the Code of Conduct procedure introduced by Police in the Policing Act 2008 and therefore the former twelve month time limit on instituting disciplinary proceedings applies.
284. The Authority makes no recommendations.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

14 March 2014

# About the Authority

## WHAT 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 investigators who have worked in a range of law enforcement 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.

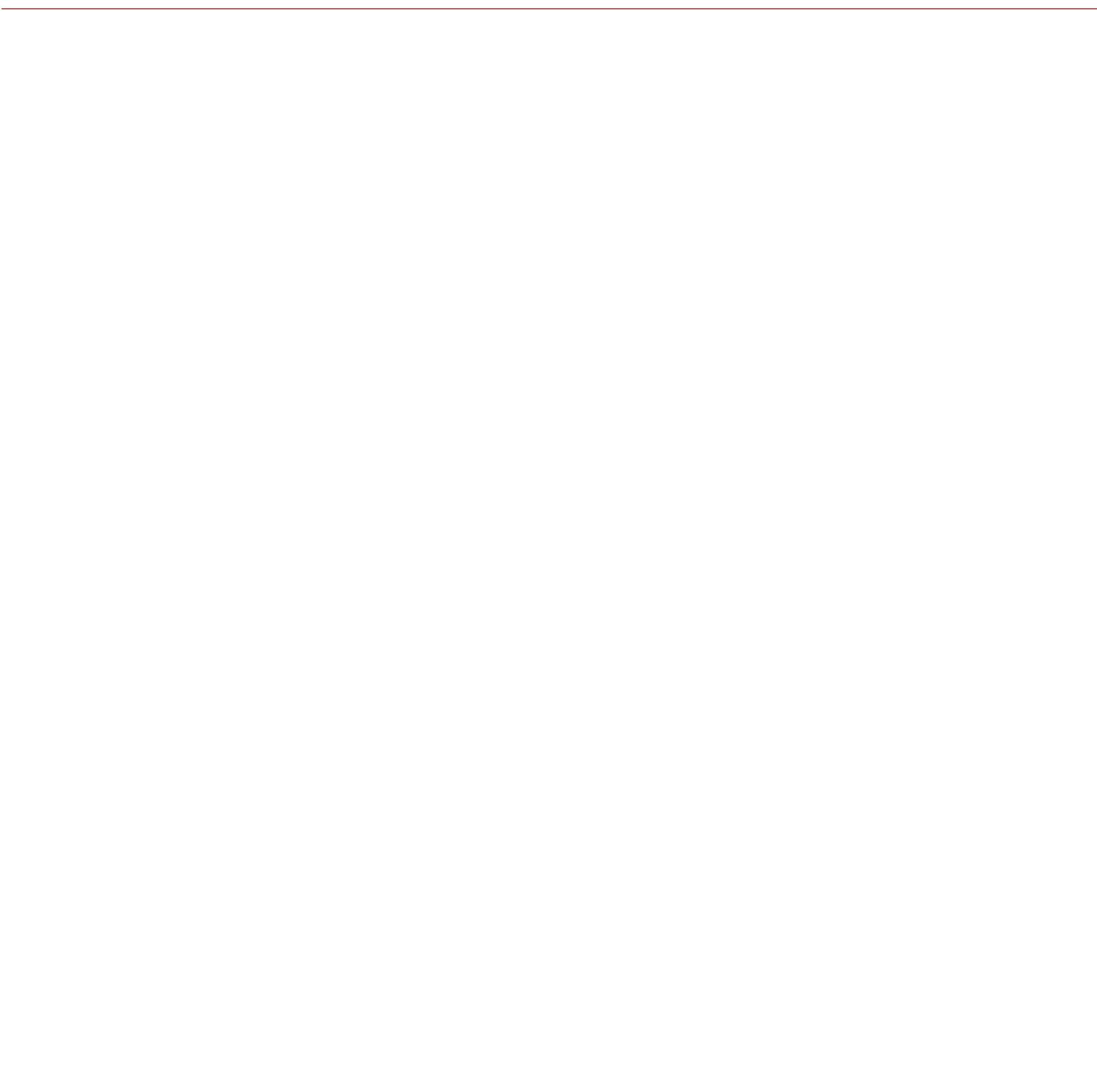
On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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