

Embargoed until 12 noon
Friday 31 August 2012
Not to be published or
transmitted before that time

Fatal pursuit of Luke John Bowman Yates

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At 3:40am on 17 April 2011, Luke John Bowman Yates lost control of a Honda Civic he was driving and crashed while fleeing from Police during a short pursuit on Oruru Road, Taipa, in Northland. Mr Yates died at the scene.
2. The Police notified the Independent Police Conduct Authority of the pursuit, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Events prior to pursuit

3. On the late evening of 16 April and early morning of 17 April 2011, the Northland Police Traffic Alcohol Group (TAG) set up a compulsory breath test (CBT) checkpoint at the intersection of State Highway 10 and Oruru Road in Taipa, Northland. The TAG team consisted of one sergeant (Officer B) and three constables (Officers A, C and D). They had three vehicles at the checkpoint; the "booze bus" (used to process drivers) and two Police cars (one marked the other unmarked).
4. Police policy requires stringent adherence to safety protocols when setting up a CBT checkpoint (see paragraphs 66-77 for safety requirements and paragraphs 107-108 for further discussion of this issue).
5. Officer B, as site supervisor, was responsible for site safety. She moved between Officer A's position (close to the highway) and Officers C and D who were processing drivers in the booze bus, which was parked in a safe location to the side of State Highway 10. The checkpoint area was marked with the required signage and illumination.
6. Officer A's role at the CBT checkpoint was to signal drivers to stop for breath testing. In compliance with policy, she was wearing a high visibility Police jacket and carried a torch fitted with a red cone.

Summary of events

7. At about 3:30am on Sunday 17 April 2011, Luke John Bowman Yates, aged 22, was driving a white Honda Civic southbound on State Highway 10 towards the Police checkpoint.
8. Officer A heard a vehicle approaching the checkpoint and walked out on to State Highway 10 to signal the driver to stop (see paragraph 6). As she stood on the road, Officer A saw a white vehicle (the Honda) initially slow down as it approached her, the driver then drove around her before turning right into Oruru Road, cutting the corner as he did so, and accelerating away.
9. The Honda passed within approximately two metres of Officer A, which enabled her to verify that the vehicle contained one male occupant. She did not recognise the man, and did not manage to read the vehicle's licence plate. Mr Yates was not identified by Police as being the driver of the Honda until after the pursuit.
10. In response to Mr Yates' failure to stop, Officer A ran over to the parked marked 'category A' Police car and got inside. A category A car is authorised to be the lead car in a pursuit.
11. Officer A is certified as a gold licence holder, trained under the Police Professional Driver Programme (PDPP) and therefore competent to engage in pursuits as the lead driver.
12. As the Police car was parked on Oruru Road, facing State Highway 10, Officer A was required to perform a u-turn before she could follow Mr Yates down Oruru Road. Officer A activated the warning lights, but not the siren, on the Police car as she turned. Before she drove off after Mr Yates, Officer A did up her seatbelt (she had some trouble doing this as the sliding mechanism had locked) and obtained her handheld breath testing device.
13. Prior to following the Honda at speed, Officer A carried out a risk assessment noting that: traffic was "*nonexistent*"; the road was dry and sealed; it was a clear night and there was only one occupant in the vehicle. Officer A was familiar with Oruru Road, having driven down it earlier in the evening. She concluded that it was safe to follow and try to locate the Honda.
14. In Authority interview, Officer A said: "*I'd lost sight of him, as soon as I jumped in the car.*" She drove at speed, with her red and blue lights activated, but not her siren, to try and catch up with the Honda.
15. At the time, Officer B was standing close to the booze bus, and saw the tail lights of Mr Yates' vehicle as it accelerated down Oruru Road and then Officer A taking action to follow him. Officer B decided to provide Officer A with backup and so followed Officer A in the unmarked Police car, at speed, with her lights and siren activated. Officer B was so far behind Officer A that "*she was out of my sight*".

16. In interview with the Authority, Officer B said that when she followed Officer A, her intention was to assist Officer A, rather than to catch up with the Honda.

Q – What was your intention when you took after [Officer A]?

A – To assist [Officer A] was my sole intention. The vehicle had run and I didn't think we were going to catch it as he had a good head start on us. It took [Officer A] a while to get her seatbelt on, turnaround and go and just in my experience when someone does that you're not going to catch him I think.

17. When she reached a straight piece of road, Officer A noted that her speed was 167kph; she said she was driving at that speed because she *"thought it would be the only way to you know catch up and see where he went, whether he ducked down a driveway which quite often happens."* The Authority notes that Officer A travelled at this high speed for a relatively short period of time and had slowed considerably by the time she reached the winding part of the road.
18. Officer A did not notify the Northern Communications Centre (NorthComms) that she was trying to apprehend Mr Yates because she did not believe the circumstances fitted within the definition of a Police pursuit (see paragraph 50). When asked in Authority interview to explain this, she said: *"...[i]t was the distance – that I was – that I believed that I was trying to locate him – he was so far ahead – and cause I didn't activate my sirens just my lights."* She said that for her to have considered she was in pursuit and alerted NorthComms, she would have had to have caught up to him and activated her sirens, and if he had failed to stop at that point she would have considered herself in pursuit and contacted NorthComms.
19. Officer B also did not contact NorthComms. In Authority interview she said that she did not believe that this was a pursuit situation that fell within the definition contained in the fleeing driver policy. Whilst acknowledging that the fleeing driver policy does not say anything about proximity, Officer B said that *"[t]he definition of a pursuit is that you are chasing somebody, you've got them in sight and you are trying to catch up to them."*
20. In Police interview, Officer B commented on her own actions and said:
- "I got up to a maximum speed of 130 kilometres per hour. I wasn't actually interested in catching the vehicle as I know the road reasonably well and know if they get a head start you're not going to catch them. I was just travelling behind in case the vehicle had shot up a driveway."*
21. Although Officers A and B said that Officer A was not pursuing, in the Authority's view, the actions of Officer A did amount to a pursuit. This issue is discussed further at paragraphs 79-85 of this report. The actions of Officer B are discussed further at paragraphs 86-92.

22. Officer A accelerated down Oruru Road after Mr Yates. However, due to the distance between the two cars and the bends in the road, she could not initially see his vehicle ahead.
23. About 1.7 kilometres from the checkpoint, the road straightened out for a short time and Officer A briefly saw the tail lights of a vehicle, suspected to be the Honda. She told the Authority that she accelerated to 167 kph along this section of road.
24. A few seconds later, Officer A saw a large blue explosion which lit up the night sky. About 700-800 metres later, she came across a concrete power pole that had been knocked over and was lying across the road from left to right. Officer A had already reduced her speed due to the winding nature of the road.
25. Officer A braked hard to avoid colliding with the power pole, but did not have enough time to stop and prevent the Police car becoming entangled in electricity lines which lay in the right lane of Oruru Road. Shortly after the Police car became entangled there was a second explosion. Officer A looked to her left and saw that Mr Yates' vehicle had crashed and was badly damaged (see paragraphs 39-43 for crash analysis).
26. Officer A knew that Officer B was behind her and so radioed Officer B to alert her to the situation. Officer B responded by instructing Officer A to remain in the Police car and to switch on her lights and siren to alert approaching vehicles to the danger. Officer B then contacted NorthComms to advise them a crash had occurred and asked them to get an ambulance and the power company to the scene as soon as possible.
27. Officer B arrived on the scene a short time later but was unable to reach Mr Yates' vehicle as the road was obstructed by live electricity lines.
28. Officer B left the scene to collect Officer C from the CBT checkpoint.
29. Upon their return, Officer C moved through the live electricity lines and approached Mr Yates' vehicle, he was followed by Officer B. Officers B and C saw that Mr Yates appeared to be deceased.
30. Officer A remained in her Police car for 45 minutes until she was told by a power company technician that she could safely exit the vehicle.
31. The pursuit covered a distance of approximately 2.3 kilometres from the intersection of State Highway 10 and Oruru Road to the crash scene.

Families concerns / Media reports

32. Mr Yates' mother expressed concern that there may have been another Police car waiting near the crash scene, and that it was possible that her son had crashed while trying to avoid this car.

33. In addition, an article appeared in the Sunday Star Times on 8 May 2011 stating that Mr Yates' family had been advised that his car had crashed because it was "banged" by the Police car driven by Officer A. The article reported concerns from a local MP and family friend:

... photos taken at the scene "suggest the cop car rear-ended that young fella". He said he had no proof but "it seems a variance of the facts as they were reported".

These issues are addressed in paragraphs 43 and 110-113.

Environment

34. Oruru Road is a two lane tarsealed road divided by a dashed white centre line and bordered at both sides by a solid white fogline. There is no street lighting. The Oruru River runs along the left side of the road and there is a raised vegetation covered bank on the right. The road has a number of lifestyle block properties along its route.
35. The speed limit on State Highway 10 at the intersection with Oruru Road is 60kph, which continues for 300 metres along Oruru Road before increasing to 100kph for the remainder of the pursuit route.
36. The pursuit route is winding with some short straight sections of road. There is a warning sign about the winding nature of the road 600 metres before the crash scene, but there are no other warnings along the route.
37. At the time of the crash the road was dry, the weather fine and visibility clear; there was an almost full moon. By the time the crash investigator arrived at the scene, there was fog which had dampened the road.
38. Traffic in the area was described as nonexistent by Officer A (see paragraph 17) and the rural nature of the road, together with the time of night, meant that the probability of pedestrians being affected was low.

Police crash analysis

39. Mr Yates was driving a 1992 Honda Civic that had an expired warrant of fitness. The vehicle had two minor faults but was otherwise in good condition. The crash investigator found that these defects did not contribute to the driver losing control and the Honda was otherwise in warrant of fitness condition.
40. There is an area of uneven tarseal 100 metres before the crash scene but due to the absence of skid marks in this area the crash investigator was unable to conclude definitively whether this affected Mr Yates' control of his vehicle.

41. Mr Yates was travelling at an estimated speed of not less than 56-62kph when the vehicle left the tarseal surface¹. The corner immediately before the crash scene can be safely negotiated at the posted speed limit of 100kph.
42. The condition of the driver's seat belt indicated that Mr Yates was not wearing it at the time of the accident.
43. The crash investigator found there "*...was no contact between the Holden [Police car] and the Honda before, during or after the Honda hit the pole.*" See paragraphs 110-113 for the Authority's findings on this issue.

Mr Yates' driving history

44. At the time of the pursuit, Mr Yates was not legally permitted to drive manual vehicles. His criminal and traffic history included two convictions for serious driving offences as well as several traffic infringements.

Toxicology

45. Mr Yates returned a blood alcohol reading of 79 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver over 20 years old is 80 milligrams of alcohol per 100 millilitres of blood.
46. Mr Yates' blood also contained two micrograms of tetrahydrocannabinol (THC), the active ingredient in cannabis. The presence of THC at 2 micrograms would indicate that Mr Yates smoked a single cannabis cigarette between 30 minutes to 5 hours before his death.
47. Neither Officer A nor Officer B were breath tested following the crash. The Authority has no reason to believe that the officers had consumed any alcohol. See the Authority's recommendation to the Commissioner of Police on this point at paragraph 124.1.

Cause of death

48. Mr Yates died as a result of severe neck and head injuries consistent with a motor vehicle accident.

¹ The crash investigator was only able to calculate the minimum speed due to the Honda being stopped firstly by hitting the power pole and secondly by the tree. The actual speed of the Honda at the time of loss of control and impact was most probably higher.

LAWS AND POLICIES

Legislative authority for pursuits

49. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where the vehicle fails to stop, Police may begin a pursuit.

Fleeing driver policy

Definition

50. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.

Overriding principle

51. Under the Police fleeing driver policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

Risk assessment

52. Under the Police fleeing driver policy, the pursuing officer[s] must carry out a risk assessment **both prior to initiation and during a pursuit** (emphasis added). The policy states that *“assessing the risks must be a continuous process until the pursuit is resolved or abandoned.”* The officers involved in the pursuit must provide situation reports to the pursuit controller in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit including whether to direct the abandonment of the pursuit.
53. The assessment must be based on the following: consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to *“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

54. The policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must **not** be initiated, or should be abandoned (emphasis in Police policy).

Communication requirements

55. When a pursuit commences, the communications centre must be notified. The communications centre must provide the following warning: *“If there is any unjustified risk to any person you are to abandon pursuit immediately.”* The pursuing officer[s] must acknowledge this warning. The pursuing officer[s] must provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender’s manner of driving and identity, and the Police driver and vehicle classifications as well as confirmation that warning devices are activated on the Police car.

Abandonment

56. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The Police driver, passenger (if senior in rank or service) and the pursuit controller are all authorised to abandon pursuit. The pursuit controller must then give the direct order: *“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”*

57. The policy states that: *“A pursuit must be abandoned when any of the following criteria apply:*

- *an offender’s identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle’s locations is no longer known*
- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*
- *there is a sustained loss of contact between the primary and / or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*

- *when the siren and / or warning lights fail to operate*
- *any risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver.”*

58. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
1	<i>Acknowledge the direction to abandon pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing vehicle and their own.</i>
3	<i>Deactivate warning devices once below the speed limit.</i>
4	<i>Stop as soon as it is safe to do so.</i>
5	<i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i>
6	<i>Undertake a search phase if authorised by the pursuit controller.</i>

Search phase

59. On formal abandonment of the pursuit, the communications centre may authorise units to undertake a search to locate the offending vehicle. The units must not exceed the posted speed limit and must not have warning devices activated during search phase. If the offending vehicle is located during the search phase, the unit is permitted to signal the driver to stop. If the driver fails to stop and attempts to evade Police, approval from the pursuit controller to recommence the pursuit must be sought and received before the pursuit can continue.

Roles and responsibilities

60. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with the communications centre, comply with all directions from the pursuit controller (i.e the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.

61. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph and communicate instructions from the pursuit controller.

62. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

Urgent duty driving

63. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either**:*

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

***and** to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”*

64. The urgent duty driving policy states:

*“Police **must** use flashing lights and sirens at all times (continuously) unless a “silent approach” is tactically appropriate and can be used safely. Police must not rely on road users to take evasive action when warning lights and siren are activated – they do not guarantee safety [emphasis in original].”*

65. A silent approach involves reducing speed and turning off sirens when in close proximity to critical incidents.

Legislative Authority for Compulsory Breath Testing

66. Under the Land Transport Act 1998, drivers are obligated to undergo breath and blood testing when lawfully requested by an enforcement officer. Failure to comply with a request to undergo testing can result in an offence being committed.

Operating Compulsory Breath Test (CBT) Checkpoints Policy

Principles

67. The policy states that *“CBT checkpoints must be:*

- *safe*
- *highly visible*
- *rigorously enforced.”*

CBT Locations

68. The site supervisor is responsible for the safety of all staff and motorists at the CBT site. The policy states that careful consideration must be given to the safety requirements as well as general occupational health and safety.

CBT safety requirements

69. The policy states that when setting up a CBT checkpoint, the primary consideration is safety of enforcement officers and the public. In order to maximise safety, the policy gives guidelines on; supervision and staffing, site management, site illumination, equipment and shifts.
70. In relation to supervision and staffing, the policy states that all CBT sites must have a designated:
- site supervisor; this person is responsible for the supervision and guidance of employees working at the CBT site, as well as site safety.
 - booze bus operator; this person sets up the bus at the checkpoint start and shuts it down at the end. They should where possible, be well versed in the drink/ drug drive procedures.
71. In relation to site management, the policy states that: *“All safety issues must be raised with the site supervisor who will:*
- *ensure the site location gives approaching traffic sufficient visibility and time for drivers to adjust their driving and enter the site safely*
 - *monitor the weather. If adverse conditions affect the safe operation of the check point, suspend or cancel it. Consider moving to an alternative location.”*
72. In relation to site illumination, the policy says that before the checkpoint can operate, there must be adequate signage and illumination. The site supervisor must:
- *“monitor the officers’ activity on the site with a view to ensuring their safety. Ensure they are wearing an appropriate reflectorised jacket (day and night checkpoints).*
 - *ensure officers use a torch fitted with a red cone or special wand torch when the site is operating during fading daylight or dark hours.”*

Support vehicle (spotter)

73. This section of the policy deals with the action Police should take if a driver approaching a CBT turns off, stops and changes driver before the site or performs a u-turn in view of the checkpoint and heads off in the opposite direction.
74. Policy states that a support vehicle should be used on the approach to a checkpoint to observe approaching traffic and the CBT site. The support vehicle can be marked or unmarked.

75. *“The support vehicle must remain stationary and the driver must:*
- *remain in radio contact with the site supervisor*
 - *look for and intercept all suspect vehicles that turn before the site entrance*
 - *look for vehicles that stop before the site to change drivers.*
76. The policy states that if a vehicle avoids a CBT checkpoint and fails to stop when requested to do so, the officer in the support vehicle should *“ensure all aspects of the pursuit policy² are complied with. This includes a risk assessment, notification to Comms, and activation of lights and siren.”*

Site vehicles

77. The policy states that marked Police vehicles should be used to:
- *“provide extra protection for employees (for safety, at least one marked vehicle must always stay at the CBT checkpoint)*
 - *Transport offenders*
 - *Pursue vehicles when necessary.”*

THE AUTHORITY’S FINDINGS

78. The Authority has firstly considered whether Officers A and B’s actions in following Mr Yates at speed amounted to a pursuit (paragraph 50) or urgent duty driving (see paragraph 63) under Police policy. The Authority has then considered whether or not the Police officers involved complied with the applicable law and policy.

Did the actions of Officer A amount to a pursuit?

79. In interviews with the Authority and Police, Officer A said that she did not believe she was in pursuit because *“it was not clear to me at the time that the driver had been signalled”* to stop. She said she was simply trying to locate or catch up to his vehicle (see paragraphs 14 and 18).
80. However, Police policy does not authorise driving at speed simply in order to try to locate or catch up to a vehicle.
81. The Police urgent duty driving policy only permits a Police driver to drive at speed in certain prescribed circumstances (see paragraph 63), including when involved in a **pursuit** or when

² On 17 April 2011, the Operating Compulsory Breath Test (CBT) Checkpoints Policy mistakenly referred to the pursuit policy rather than the current fleeing driver policy. The fleeing driver policy replaced the pursuit policy on 18 October 2010. This was an oversight and has since been corrected. It is important to note, however, that officers clicking on the ‘pursuit policy’ link were taken to the current fleeing driver policy.

apprehending a driver for a traffic or criminal offence [Authority's emphasis], with warning devices activated at all times (see paragraph 64).

82. For an incident to fall within the definition of a pursuit (see paragraph 50); three elements are required to be present, as follows;
1. the driver of a vehicle has been signalled by Police to stop, and
 2. the driver fails to stop and attempts to evade apprehension, and
 3. Police take action to apprehend the driver.
83. In this case, Officer A signalled Mr Yates to stop with her torch. Mr Yates did not stop as requested, but drove around Officer A and sped off. In response, Officer A got into a Police car, activated her warning lights, and followed Mr Yates at speed.
84. Despite Officer A's view that she was not in pursuit, in the Authority's view, the circumstances of this case clearly establish that she was in pursuit of Mr Yates. Officer A was therefore required to follow the procedure set out in the fleeing driver policy (see paragraphs 50-62).
85. In addition, the CBT Checkpoints policy states that if a vehicle avoids or fails to stop for a checkpoint, then Police need to ensure that all aspects of the pursuit policy (now the fleeing driver policy) are complied with; including a risk assessment, notification to a Communication Centre and activation of lights and siren (paragraph 76).

FINDINGS

Officer A was in pursuit of Mr Yates.

Officer A should have recognised that this situation fell within the definition of pursuit in the fleeing driver policy and should have taken steps to ensure the policy was complied with.

Was Officer B justified in driving in excess of the speed limit?

86. Police policy permits an officer to drive in excess of the speed limit (undertake urgent duty driving), when an officer would be prevented from "*apprehending an offender for a traffic offence*" (amongst other things) if they were required to comply with the traffic rules and regulations.
87. Officer B said that she was travelling at a top speed of 130kph in a 100kph speed zone.
88. When Officer B drove at speed, her stated intention was to provide Officer A with back-up (paragraph 15) and to try to locate Mr Yates. Officer B did not see the Honda or the patrol car driven by Officer A at any stage during the pursuit.

89. In Police interview, Officer B said: *"I wasn't actually interested in catching the vehicle as I know the road reasonably well and know if they get a head start you're not going to catch them. I was just travelling behind in case the vehicle had shot up a driveway."*
90. Despite her statement that she was not interested in catching the vehicle, the Authority finds that in driving in the manner that she did, Officer B was assisting Officer A in trying to apprehend Mr Yates for traffic offences and in the Authority's view was engaged in urgent duty driving (see paragraph 63).
91. Officer B holds a gold classification under the PPDP and is qualified to conduct urgent duty driving.
92. In addition, as the senior officer present, Officer B should have realised that the actions of Officer A amounted to a pursuit and should have ensured that the fleeing driver policy was complied with. She should also have been aware of the requirement in the CBT policy that the fleeing driver policy be complied with in situations where a driver avoids or fails to stop on request for a checkpoint.

FINDINGS

Officer B was engaged in urgent duty driving when she drove after Officer A and Mr Yates at speed and was therefore authorised to drive in excess of the speed limit.

Officer B, as the senior officer present, should have recognised that Officer A was in pursuit of Mr Yates and should have taken steps to ensure that the fleeing driver policy was complied with.

Commencement of pursuit

93. Officer A and her marked patrol car were appropriately classified to undertake pursuits. Officer A was a gold rated driver.
94. Mr Yates was signalled to stop under section 114(1) of the Land Transport Act 1998. Because he failed to stop, Officer A had the authority to commence a pursuit.
95. Although Officer A did not believe she was in pursuit, she did carry out a risk assessment prior to following the Honda as required by policy (see paragraph 17).

FINDING

Officer A was justified under the law and Police policy in attempting to stop Mr Yates.

Communication

96. Officer A did not believe that she was in pursuit of Mr Yates and as a consequence did not notify NorthComms that a pursuit was taking place or provide any of the information that is required under the fleeing driver policy (see paragraph 55).
97. Officer B, as the senior officer present, should have recognised that Officer A was in pursuit of a fleeing driver and ensured that NorthComms were notified of the circumstances and relevant risk factors.

FINDINGS

Officer A did not comply with the communication requirements of the fleeing driver policy.

Officer B did not ensure the communication requirements of the fleeing driver policy were complied with.

Speed and manner of driving

Officer A

98. Officer A activated the warning lights but not the siren on her patrol car. Police policy requires officers to activate both warning devices in any situation where they are driving in excess of the speed limit.
99. Officer A reached a maximum speed of 167kph along a straight section of Oruru Road. Whilst it is acknowledged that the high speed reached by Officer A was for a relatively short time on a quiet, straight section of road, the Authority finds that a speed of 167kph in an 100kph speed zone was excessive because it was night time and Oruru Road does not have street lighting, making driving conditions less predictable. In travelling at such a speed, a driver does not have enough time to respond to sudden hazards, such as slower vehicles, pedestrians or obstacles on the road. In this case, due to her high speed and the winding nature of the road, Officer A did not have time to brake to avoid the fallen electricity lines that lay tangled on the road (paragraphs 23-25).
100. The Authority finds that the risk to the driver, Police and the public when driving at such a speed outweighed the need to apprehend the offender.

Officer B

101. Officer B reached a maximum speed of 130kph for a short time along Oruru Road. The Authority has found that this maximum speed was reasonable in the circumstances. She had activated both her lights and siren in compliance with policy.

FINDINGS

Officer A did not comply with the fleeing driver policy or the urgent duty driving policy in relation to the activation of her siren when driving in excess of the speed limit.

The speed at which Officer A drove, whilst lawful, was undesirable.

Officer B complied with the urgent duty driving policy in relation to her speed and manner of driving.

On-going risk assessment and the option of abandonment of pursuit

102. Officer A properly carried out a risk assessment prior to following Mr Yates (see paragraph 17). However, the Authority finds that officer A did not continuously assess the relevant risk factors throughout the incident as required by policy (paragraph 52).
103. Officer A's failure to recognise that the incident amounted to a pursuit meant that she did not give any consideration to the option of abandonment under the fleeing driver policy. The policy states that if the risks involved in pursuing are too great then a pursuit must be abandoned (see paragraph 54).
104. The fleeing driver policy lists six situations when a pursuit must be abandoned. One situation occurs when the distance between a Police car and the offending vehicle is such, that in order for the Police car to catch up to it, the speed involved creates an additional risk (see paragraph 57, second bullet point).
105. The Authority considers that Officer A should have abandoned pursuit once it became apparent that, due to the distance between her car and the Honda, she had to drive at an excessively high speed (167kph) in order to try and catch up. In addition, Officer A should certainly have abandoned pursuit (slowed to the speed limit, turned off her lights and siren, and proceeded with caution) once she observed the large blue explosion nearby.
106. In the Authority's view, the risks to safety from continuing to pursue Mr Yates clearly outweighed the immediate need to apprehend him.

FINDING

Officer A did not comply with the fleeing driver policy in relation to ongoing risk assessment and abandonment.

Officer B's Supervision of the CBT Checkpoint

107. In terms of the physical site, the CBT checkpoint appears to have been managed by Officer B in an appropriate manner and in line with Police policy (see paragraphs 68-72).

108. Officer B did not remind staff of the policy requirement to comply with the fleeing driver policy should a driver flee from the checkpoint. The Authority is concerned that there appeared to be lack of knowledge of this requirement amongst the members of the Northland TAG team involved in this case, at that time. See the Authority's recommendation to the Commissioner of Police on this point at paragraph 124.2 and the subsequent action taken at paragraph 115.

General comment on the CBT Checkpoints Policy

109. The main focus in the CBT policy is on staff and public safety. The site supervisor is responsible for *"the supervision and guidance of employees working at the CBT site, as well as site safety."* Whilst the policy does not specifically require to the site supervisor to conduct a safety briefing, the Authority finds that it would be difficult for the site supervisor to satisfy the detailed safety requirements, and effectively supervise the staff and site, without providing a safety briefing to staff. Accordingly, the Authority has made a recommendation to the Commissioner of Police on this point at paragraph 124.2.

FINDING

As site supervisor, Officer B should have reminded staff of the policy requirement that they comply with the fleeing driver policy should a driver flee from the checkpoint.

Family concerns and media reports

110. Mr Yates' mother expressed concern to the Authority investigator that there may have been another Police car waiting near the crash scene, and that it was possible that her son had crashed while trying to avoid this car.

111. In addition, an article appeared in the Sunday Star Times on 8 May 2011 stating that Mr Yates' family had been advised that his car had crashed because it was *"banged"* by the Police car driven by Officer A. The article reported concerns from a local MP and family friend:

... photos taken at the scene "suggest the cop car rear-ended that young fella". He said he had no proof but "it seems a variance of the facts as they were reported".

These issues are also addressed in paragraphs 43.

112. The allegation that another Police car was waiting near the crash scene and caused Mr Yates to crash has been investigated by the Authority. The Authority has found no evidence that another Police car was near the crash scene at the time of the crash. All officers involved in the CBT checkpoint, other than Officers A and B, were at the checkpoint site at the time of the crash.

113. The Police car driven by Officer A was examined by a Police crash investigator. No damage was found other than from the power cable arcing. He found no areas of damage or paint

transfer that would indicate that the Police car had come into contact, at any stage, with the Honda.

FINDINGS

There was no other Police car at the crash scene at the time of the crash.

The Police car driven by Officer A did not come into contact with Mr Yates' Honda.

SUBSEQUENT ACTION

114. An internal Police investigation found that Officers A and B breached Police policy and procedures relating to the fleeing driver policy, conduct and management of Police pursuits and operating a CBT checkpoint.
115. Both officers have received remedial training in relation to the fleeing driver policy and conduct and management of Police pursuits. Officer B has also received remedial training in respect of the duties of a site supervisor operating a CBT checkpoint.
116. In addition CBT training has been delivered to the whole squad.

CONCLUSIONS

117. Luke John Bowman Yates demonstrated by his actions that he was prepared to take risks to avoid being caught by Police.
118. Officer A was justified in law and under the fleeing driving policy to take action to apprehend Mr Yates.
119. Although Officer A did not believe she was engaged in a pursuit, in the Authority's view her actions did amount to a pursuit, as defined in the fleeing driver policy.
120. Officer A should have recognised that the fleeing driver policy applied and should have complied with the policy requirements.
121. Officer B should have also recognised that the fleeing driver policy applied to the situation and should have ensured the policy was complied with.

AUTHORITY OPINION AND RECOMMENDATIONS

122. 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.

123. Pursuant to section 27(1) of the Act the Authority has formed the opinion that:

123.1 Officer A's actions in engaging in a pursuit without adhering to the relevant policies were undesirable.

123.2 Officer B's failure to recognise that the situation fell within the fleeing driver policy was undesirable.

124. Pursuant to section 27(2) of the Act the Authority recommends that the Commissioner of Police;

124.1 adopt the recommendation previously made by the Authority and develop as a matter of urgency, policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents; and

124.2 include a requirement in the Compulsory Breath Test (CBT) Checkpoints policy for site supervisors to give staff safety briefings at the commencement of a shift, and for this briefing to include a reminder to staff to ensure all aspects of the fleeing driver policy are complied with when a vehicle avoids a CBT checkpoint and fails to stop when requested to do so.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

AUGUST 2012

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a Judge and has other members.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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



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