

Independence
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Report on the deaths of Lance David
Lumsden Duff, Cheyenne Horace Freeman
and Walter James Russell in Auckland
on 24 December 2006.

June 2008



IPCA

Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika



June 2008

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June 2008

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Introduction

REPORT ON THE DEATHS OF LANCE DAVID LUMSDEN DUFF, CHEYENNE HORACE FREEMAN AND WALTER JAMES RUSSELL IN AUCKLAND ON 24 DECEMBER 2006.

June 2008

1. INTRODUCTION

- 1.1 At about 3.50am on Sunday 24 December 2006, the driver of a Honda Prelude lost control of the car at an off-ramp on Auckland's North Western Motorway. The car, which shortly beforehand had been travelling at over 200kph, hit a metal barrier and flipped over, landing on its roof over a roadside embankment.
- 1.2 The driver, 16-year-old Lance David Lumsden Duff, and his two passengers, Cheyenne Horace Freeman (aged 19) and Walter James Russell (aged 17) all died at the scene.
- 1.3 The crash followed a brief (2 minute 35 second) police pursuit, which had begun when Lance sped away from officers who had stopped him.
- 1.4 Because Lance had been the subject of a police pursuit leading up to the crash, the incident was notified to the Independent Police Conduct Authority and Authority investigators carried out an investigation.
- 1.5 This report describes the events that took place on the evening of 23 December 2006 and the early morning of 24 December 2006, which culminated in the deaths of Lance, Cheyenne and Walter. It examines Lance's actions and the actions of the police officers who were involved in the incident. It also examines the policies, procedures and practices relating to police pursuits and considers the effectiveness of their application in respect of this incident.

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The Facts

REPORT ON THE DEATHS OF LANCE DAVID LUMSDEN DUFF, CHEYENNE HORACE FREEMAN AND WALTER JAMES RUSSELL IN AUCKLAND ON 24 DECEMBER 2006.

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2. EVENTS OF 23 AND 24 DECEMBER 2006

23 December 2006

- 2.1 Between 8pm and 9pm on the evening of 23 December 2006, Lance Duff left his home in West Auckland, where he lived with his girlfriend and her parents, telling them he was going to a family function. Lance left in the Honda Prelude, which was registered to his girlfriend's father – who later told police that Lance did not have permission to use the car.
- 2.2 At approximately 9.55pm, two constables (officers D and E) stopped the Honda for exceeding the 50kph speed limit on Hillsborough Road. The speed was checked at 93kph. Lance was driving and had two male passengers. Officer D began to issue Lance with an infringement notice for being an unaccompanied learner driver, failing to display a learner plate, and exceeding 50kph. The effect of this notice was that Lance's driver licence would have been suspended for 28 days, effective immediately. As officer D asked Lance to surrender his car keys and reached for them in the ignition, Lance sped away.
- 2.3 Officers D and E started to pursue but the Honda was quickly out of sight and they decided not to continue. The officers confirmed the personal details Lance had given them with the Police Northern Communications Centre (NorthComms), then went to Lance's address and left the infringement notice for him.

- 2.4 Lance spent the next six hours driving across Auckland, carrying several different passengers, some of whom later said that on at least three occasions during the night he drove at speeds over 200kph on the North Western Motorway.
- 2.5 During the evening Lance filled the car with petrol and drove off without paying; and at some time that night the Honda's rear wheels were swapped with wheels fitted with snow tyres, purportedly to increase the car's skidding ability.

24 December 2006

- 2.6 At about 3.45am on 24 December 2006, two CIB officers on patrol in an unmarked police car (officers A and B) saw the Honda on Victoria Street in Auckland. They saw the car travelling at excessive speed with one of the passengers standing up through the sunroof. The officers had no knowledge of the earlier incidents involving this car.
- 2.7 They decided to stop the Honda. Officer A drove the police car alongside the Honda while it was stationary at a red light at the intersection of Victoria and Queen Streets. From his seat, officer B spoke to the driver through the open window and asked him to remain stopped there. Officer B then got out of the police car and went to the driver's side of the Honda while officer A repositioned the police car. At 3:45:15 officer A advised NorthComms that the Honda had been stopped and gave its registration number and location.
- 2.8 Officer B saw the front seat passenger, now known to be Walter Russell, holding a wine cask bladder which he suspected contained alcohol. Officer B spoke to him about this.
- 2.9 Officer B then asked the driver, now known to be Lance, to produce his licence and to provide his details. Lance did not produce his licence but said that he was the registered owner of the car. Officer B could not hear the first names given by Lance but heard the surname, "Russell" and recorded this in his notebook. As he was crouching by

the driver's door, so he could hear better, the car lurched forward and accelerated away, turning left onto Queen Street against a red traffic signal.

- 2.10 Officer B ran back to the patrol car and, at 3.45:48, radioed NorthComms advising: "*Comms [call-sign] failing to stop.*" Officer A had already activated the red and blue flashing lights and siren. The NorthComms dispatcher acknowledged officer B's radio call.
- 2.11 Officers A and B followed the Honda, turning left onto Wyndham Street, left onto Albert Street, right onto Victoria Street, and left onto Hobson Street, then entering the North Western Motorway. Officer B later said that the Honda went through five red traffic signals and reached speeds of up to 100kph before entering the motorway.
- 2.12 Officer C was driving a marked police car in the Auckland CBD when he heard, over police radio, the commentary in relation to the pursuit. Officer C caught up with the pursuit at the intersection of Hobson Street and Wellesley Street West and advised NorthComms that he was free to assist with the pursuit.
- 2.13 The officers saw that the Honda's lights were switched off as it approached the Bond Street over-bridge. Shortly after this had been radioed to NorthComms, officer B reported that the traffic was light and the driver was "*driving quite well, although quite fast*". Officers A and B later confirmed that motorway traffic was light and weather and visibility were fine.
- 2.14 The police patrol briefly reached a speed of 200kph on the North Western Motorway but was unable to close on the Honda.
- 2.15 The Honda then moved across three lanes from right to left and entered the St Lukes Road offramp at high speed – at which point Lance lost control and the vehicle crashed.
- 2.16 The pursuing police were too far behind to see the loss of control and crash. At 03.48.23 officer B advised

NorthComms: *"It looks like he's crashed. Gone through the fence to the left."*

2.17 Officer A later said:

"I had lost sight of the vehicle as he entered the off-ramp, at which point I was about 400m behind.

As I entered the St Lukes off-ramp... I saw smoke or dust and some debris on the road. I looked to my left and saw a skid mark on the grass which went towards some trees. I stopped the patrol car, turned off the siren and both [officer B] and I exited the patrol car. We ran to where we thought the vehicle had gone and located it in the trees at the side of the off-ramp."

2.18 The attending police crash analyst formed the view that when entering the off-ramp the Honda's speed was around 200kph. In his view the Honda had struck the metal barrier on the right side of the off-ramp, then veered back to the left of the off-ramp where it mounted an embankment, became airborne and crashed through a wire mesh fence. It then hit the top of the embankment, crashed into a tree and came to rest upside down over the embankment.

2.19 The three occupants suffered fatal injuries and died at the scene.

2.20 The pursuit covered 5.1 kilometres and lasted 2 minutes and 35 seconds; recorded from the time officer B notified NorthComms of the failing to stop to the time he advised NorthComms that the Honda had crashed.

**3. POLICE CRASH
ANALYSIS**

3.1 The Police Serious Crash Unit's analysis of the crash focused on three principal areas: the environment; the vehicle; and the people involved.

Environment

- 3.2 The road surface was in very good order. The weather was fine and the road surface was dry. The road was well illuminated and clearly marked with fog lines. The crash investigation report concluded: *“The road design and construction is sound and is not a causative factor in this crash.”*

Vehicle

- 3.3 A vehicle inspector found that the tread of the right front tyre was almost totally worn.
- 3.4 On the night of the crash, the two rear wheels of the Honda had been swapped with wheels fitted with snow tyres. A passenger in the Honda at that time said that this change was to make the car drift or slide better.
- 3.5 An inspection of the vehicle’s brakes, steering, suspension and throttle operation did not reveal anything likely to have caused the crash. The vehicle inspector found that the Honda appeared to have been operating in a normal manner prior to the crash, but was not of warrantable standard due to the worn condition of the right front tyre.

Driver

- 3.6 An analysis of blood taken from Lance found that he had 11 milligrams of alcohol per 100 millilitres of blood. The legal limit for a driver under the age of 20 is 30 milligrams of alcohol per 100 millilitres of blood.
- 3.7 The analysis also revealed that he had a tetrahydrocannabinol (THC) level of 2.7 micrograms per litre of blood, consistent with him having smoked the equivalent of a single cannabis cigarette between half an hour and 4½ hours before his death. The forensic toxicology report contained the caution that:

“Blood THC levels are generally a poor indicator of cannabis intoxication. It is not usually possible to determine whether a subject was intoxicated based on blood levels alone. The level of THC in [Lance’s]

blood is such that it is possible that he was affected by the drug at the time of his death."

- 3.8 Interviews with Lance's friends confirmed that he smoked cannabis in Blockhouse Bay at around 1am on the night of the crash.
- 3.9 The serious crash analyst found that the catastrophic loss of control at the time of the crash was attributable to the speed at which the vehicle was travelling and to over-steer.
- 3.10 He concluded that Lance was attempting to evade police and was driving at no less than 200kph on the motorway. The analyst considered the crash was caused by driver error, in that Lance was driving at a speed and in a manner that exceeded his driving ability.

4. LANCE DUFF'S DRIVING HISTORY

- 4.1 Lance had come to the notice of police on multiple occasions during 2006 for driving and vehicle-related matters. In one conversation with a police officer, he is reported to have said that he and his friends never stopped for police and further: *"I don't care if I kill myself running from you guys, and my mates are the same."*
- 4.2 In March 2006, Lance crashed into a power pole while being pursued by police, destroying the car and cutting off power supply to part of West Auckland.

5. CORONIAL INQUIRY

- 5.1 On 28 June 2007, inquests into the deaths of Lance, Cheyenne and Walter took place before Coroner Sarn Herdson. The Coroner found that Lance, Cheyenne and Walter died when the vehicle being driven by Lance,

"...which was attempting to evade police, when it drove onto the St Lukes motorway exit off ramp, struck an Armco barrier twice, and then left the roadway. The Honda Prelude motor vehicle struck other objects, including a tree, before coming to rest upside down on its roof."

5.2 The Coroner found that the major factors contributing to the cause of the crash were:

"a) The Honda Prelude motor vehicle was being driven at a speed in excess of the legal limit;

b) The driver of the Honda Prelude motor vehicle was attempting to evade police;

c) The driver of the Honda Prelude motor vehicle misjudged the exit manoeuvre onto the St Lukes off-ramp after leaving the motorway;

d) The results of forensic toxicology testing established the presence of the active ingredient of cannabis, together with a lawful amount of alcohol for a driver under the age of 20 years, for the driver of the Honda Prelude motor vehicle."

5.3 In relation to police actions, the Coroner found:

"On the basis of the available evidence, I am satisfied that at the time of the crash, Lance was attempting to evade Police. The corresponding finding is that, at the time of the crash, Police staff were actively pursuing Lance in the Honda Prelude."

5.4 The Coroner also said:

"On the basis of the available evidence, there is nothing to suggest that there is any requirement for comment by a Coroner about the conduct of the Police pursuit."

5.5 The Coroner also expressed the view that there was no requirement on her to make formal recommendations about matters of future prevention. She did comment:

"...it is important to record the self-evident factor of high speed being a contributing factor to the cause of the crash."

6. POLICE PURSUIT POLICY

- 6.1 Section 114 of the Land Transport Act 1998 and sections 314B and 317A of the Crimes Act 1961 empower a police officer in uniform or in a vehicle displaying flashing lights and sounding a siren to stop a vehicle for: traffic enforcement purposes; to conduct a statutory search; or if there is reasonable grounds to suspect the vehicle contains a person who is unlawfully at large or has committed an offence punishable by imprisonment. When such a vehicle fails to stop for police a pursuit may be commenced.
- 6.2 Following a detailed review in 2003, the Police General Instructions and policy on the Conduct and Management of Police Pursuits were changed. The revised policy came into effect on 5 March 2004.
- 6.3 Under the policy, a pursuit occurs when the driver of a vehicle which has been signalled by a police officer to stop, fails to stop and attempts to evade apprehension, and police take action to apprehend the offender.
- 6.4 The policy assigns primary responsibility for the initiation, continuation and conduct of a pursuit to the officer driving the pursuing police vehicle. No driver can be directed to commence or continue a pursuit against their judgment, and a driver's decision not to commence a pursuit, or to abandon a pursuit in progress, cannot be overridden.
- 6.5 When a sworn member of police is a passenger in a police vehicle involved in a pursuit, the policy provides that he or she must assist the driver by operating the radio and advising the driver of environmental and other considerations.

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The Authority's Investigation and Findings

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7. ISSUES CONSIDERED

7.1 In relation to this pursuit, the Authority has looked at the following issues:

- a) the police decision to begin a pursuit;
- b) the manner of driving by pursuing police;
- c) other options available to police;
- d) communication with NorthComms;
- e) the option of abandoning the pursuit; and
- f) the automatic vehicle locator (AVL) system.

7.2 The Authority has also considered the speed of the pursuit.

8. THE POLICE DECISION TO BEGIN A PURSUIT

8.1 When a vehicle fails to stop, the driver of the police vehicle (assisted by a sworn passenger where applicable) must assess whether a pursuit is appropriate. The pursuit policy states:

A risk assessment based on the following factors must be undertaken when considering whether to commence a pursuit:

- speed and other behaviour by the offending vehicle;
- weather conditions;
- occupant characteristics such as identity (if known) and offences suspected or committed. If the identity of the offender(s) is known and apprehension can safely be effected later, a pursuit must not be commenced;

- traffic conditions such as speed and volume;
- environment such as road type, houses, and pedestrians; and
- officer capabilities, such as experience, whether they are operating single-crewed, and the limitations of their vehicle (including whether it is marked – in a pursuit an unmarked vehicle is to be replaced by a marked vehicle as soon as possible).

Considering these factors, officers must determine whether the need to effect immediate apprehension of the offender is outweighed by the risks posed by a pursuit to the public, the occupants of the pursued vehicle, or police. Where this is the case, a pursuit is not to be commenced.

- 8.2 Whether or not a pursuit is commenced, the driver (or passenger as applicable) must advise the appropriate communications centre immediately, giving details of the risk assessment according to the factors outlined above.
- 8.3 Where the required information is not supplied by the pursuing police vehicle, the dispatcher at the communications centre is required to prompt for it.
- 8.4 This pursuit was initiated at a time when there were few other vehicles around, on a dry, well-lit road, in a non-residential area. The identity of the driver of the Honda was not known to officers A and B. Prior to stopping the car, officers A and B had seen it being driven at excessive speed and had seen a passenger standing up through the sunroof. Once it had been stopped, officer B saw that the front seat passenger had a bladder of what appeared to be alcohol in his hands. The driver of the Honda failed to produce his licence when asked by officer B and drove off at speed.
- 8.5 Officers A and B are experienced police officers, having 8 and 13 years experience respectively. Both had 'gold driver ratings' which qualified them to engage in pursuits.

- 8.6 In response to a question put to him by the Authority about the reasons for the pursuit, officer A said:

"The occupants of the car had not been identified. A breath test had not been completed so it was possible that the driver was intoxicated, particularly due to the fact that intoxicating liquor had been seen in the vehicle. The driver's actions also gave rise to the possibility that the vehicle was stolen as he drove off before any checks were carried out. We were not sure of any other criminal activity they were up to and positive police action may have identified something they wanted to conceal by running away. They had failed to remain stopped. I was unaware of the extent of their offending and we had little information for future identification. The amount of time we were with them meant I may not have been physically able to identify them. Failing to remain stopped caused further suspicion of concealment or flight to avoid apprehension from other criminal offending. Their behaviour in their vehicle as described when we first spoke to them meant that their activity was that of risk taking and they needed to be stopped to prevent further risk to the public. There were also factors associated with the Police oath to serve and protect which meant they needed to be stopped."

- 8.7 When asked whether the need for immediate apprehension was sufficient to outweigh the risks inherent in a pursuit, officer B said:

"I believe so, during the initial stages of the pursuit, the risk factors were low. The speed of the pursued vehicle did not at first seem to be overly excessive and his driving manner was relatively good which I outlined in my commentary.

The weather conditions were fine, clear and dry, the time of day meant that the traffic conditions were light and the environment, especially once we entered the motorway was such that there was

minimal risk to any other members of the public. The roadway was four lanes wide and was well lit. There was possibly only two other vehicles on the road during the entire distance that the pursuit travelled on the motorway.

Finally, [officer A] was driving well and easily within his and the vehicle's capabilities. At no time during the pursuit, did I feel uneasy at the manner of his driving.

Given these factors, I believed that the risk factors as assessed did not pose a risk to other members of the public or Police staff and the requirement to apprehend and identify the occupants of the vehicle outweighed any minor risks that may have been present.

Further I believe that the fact that we were pursuing the vehicle had no effect on the manner of the occupants driving. By the time we entered the motorway; the driver was some distance ahead of us and was out of our view through the initial corner sections of the Motorway. It was not until we were in the vicinity of the Bond St over bridge that we would have been able to be seen by the driver. During this time when we were out of his view, his driving behaviour had not changed and in fact his speed had increased."

FINDING

- 8.8 The Authority is satisfied that, based on current policy, officers A and B were justified in commencing a pursuit when Lance failed to remain stopped while he was being spoken to by officer B on Victoria Street.

9. THE MANNER OF DRIVING BY PURSUING POLICE

- 9.1 Once a pursuit has been commenced, the pursuit policy states that the driver of the pursuing police vehicle must:
- comply with relevant legislation. In particular, members must be aware that there is no blanket legal protection

for staff involved in a pursuit, and may need to justify their actions in any subsequent proceedings;

- drive in a manner that prioritises the safety of the public and staff;
- comply with any directions from the Pursuit Controller; and
- comply with the directions of a sworn passenger if senior in rank or service.

9.2 In respect of the requirement in the policy for the police driver to comply with the directions of a sworn passenger in the car if senior in rank or service, the officers were equal in rank but officer B was senior in service. Officer B gave no directions to officer A. Officer A, in response to a question put to him by the Authority, said, *“Had [officer B] expressed concern or instructed me to abandon the pursuit I would have done so without question.”*

9.3 In response to the same question by the Authority, officer B said:

“I was the senior officer in the vehicle and was aware of my responsibilities in that regard.

During the time frame of the pursuit, I did not feel the requirement to explicitly take charge of the situation. [Officer A] is a competent driver and Police Officer who I know was well aware of the pursuit policy and his responsibilities in that regard.

As I have previously stated, I had made a risk assessment and believed the risks at that point to be minimal. [Officer A] was driving well and safely and there were minimal risks to others.”

9.4 Other responsibilities of the driver (or their passenger as appropriate) during the course of a pursuit include:

- activating warning devices (lights and siren);
- informing the communications centre that they have commenced pursuit and maintaining radio contact

with the communications centre, providing situation reports regularly and as requested;

- continually reassessing the continuation of the pursuit according to the risk framework, which prioritises the safety of all involved; and
- abandoning the pursuit if the identity of the offender becomes known during the pursuit and apprehension can safely be effected later.

9.5 Officers A and B both reported that officer A activated the red and blue flashing lights at the time that the Honda was first stopped. Officer A said that he also *“blipped the siren to confirm our identity”*. Officer A stated that as soon as he saw the Honda drive away from officer B he activated the siren and initiated a pursuit. The immediate activation of the siren is confirmed by officer B. In addition, the siren can be heard during officer B’s radio call to NorthComms advising that they had a *“failing to stop”*.

9.6 The pursuit policy states that, in a pursuit, an unmarked vehicle is to be replaced by a marked vehicle as soon as possible. The Authority has considered whether a marked car was in a position to take over. Officer C, who was driving a marked police car, had started to follow the pursuit and was possibly in a position to take over, given time. In response to a question put to him by the Authority as to whether officers A and B were aware that a marked police car was behind them, officer A said:

“I was aware that [the marked car] was behind us, although I was not sure how far behind he was. I was aware at the time of the pursuit policy that a uniform car should be the lead car, but we were not in a position to put his car in the lead as this would have meant that we would have had to slow and would have subsequently lost sight of the car we were pursuing.”

FINDING

9.7 Officers A and B complied with the pursuit policy insofar as it related to the manner of their driving.

9.8 The issue of the speed is discussed in paragraphs 99 to 104.

10. OTHER
OPTIONS
AVAILABLE
TO POLICE

10.1 The Authority has looked at whether the officers considered other options as alternatives to pursuit.

10.2 The officers did not consider the option of not starting a pursuit when the Honda sped off. However, they did fleetingly consider other options for how the pursuit was managed.

10.3 Officer A said that, in his view, there was no other option as:

“The Police helicopter Eagle was not available as they had finished work earlier that night and even if they had been available it is unlikely they would have been able to take over by the time the pursuit ended. There was no time for other units to deploy road spikes either. The motorway camera system may have been able to follow the car along the motorway, but this would have taken time to organise. It was not considered at the time because things were happening so quickly.”

10.4 By the time of the crash, a NorthComms dispatcher (dispatcher A) had started to locate and position other police vehicles, at least one of which was carrying road spikes, in an attempt to stop the Honda.

FINDING

10.5 The officers did not consider not pursuing, but once the pursuit had started both they and NorthComms considered options for its termination. These options were not viable within the timeframe of the pursuit.

11. COMMUNICATION WITH NORTHCOMMS

Responsibility of pursuing patrol

11.1 It is the responsibility of the pursuing police patrol to inform the communications centre that they have commenced a pursuit and to maintain radio contact with the communications centre, providing situation reports regularly and as requested.

11.2 The policy requires the following officer announcement to be given:

*"I am in pursuit of (make/regio of vehicle) on (road/
street name) travelling in the direction of (direction).
Reason for pursuit is (reason)."*

11.3 If this information is not given by the pursuing police vehicle, the policy requires the dispatcher to request it.

11.4 Radio transmissions during the pursuit indicate that:

- At 3.45:48, officer B radioed NorthComms advising that the Honda had failed to stop. Officer A had already activated the red and blue lights and siren.
- The NorthComms dispatcher acknowledged officer B's radio call, stating: *"Yeah – location?"*
- Officer B replied: *"Turned left onto Albert. Getting up past the Auckland District Court."*
- The NorthComms dispatcher then asked *"Got a speed – manner of driving?"*
- Officer B then replied: *"He turned aah, right onto Victoria Street."*
- The dispatcher then asked again for the speed and manner of driving. Officer B advised the registration number again, the type and colour of car and that there were three people in it.

- The dispatcher then gave the warning: *"If there is unjustified risk to any person you are to abandon the pursuit immediately. Do you understand?"* Officer B replied: *"Yeah. Copy that."*
- Officer C, in a marked police car, advised NorthComms that he was following the pursuit and also advised that the speed on the motorway was 140-150kph.
- Just prior to the crash officer B advised NorthComms that *"He's turned his lights off."* and later that *"He's um, driving quite well although quite fast."*

11.5 In response to a question from the Authority on why some conditions (traffic, speed, manner of driving) were not given until well into the pursuit, officer B said:

"If I have one issue with something that I could have done better, it would be the commentary which was not as complete as it could have been."

Without appearing to make excuses, which I am not, the following factors may have affected the commentary.

I was out of the vehicle when the offending vehicle decamped and had to run back to the car to commence the pursuit. As we travelled down Queen St and then up into Victoria St, I was catching my breath and locating the microphone for the radio and trying to determine what road we were on. This is seen by the fact that I did not call the pursuit until we were on Albert St. I then gave the basic details and as we turned onto Hobson St, I tried to gain the opportunity to put my seatbelt on. It was at this point that [officer C] took over the commentary. Once we got onto the motorway,

I was able to gain control of the situation and tried to give more of a sitrep [situation report]. The whole incident appeared to me to occur so quickly that I lost the structure of the commentary and so it appears disjointed and deficient."

FINDING

11.6 Officer B did not follow the precise format set out in the pursuit policy for officer announcement of a pursuit. Nor was information provided as quickly as it should have been. However, the information given by him, and by officer C, did comply with the basic requirements of the pursuit policy. The Authority is satisfied that officer B provided situation reports to NorthComms to an acceptable extent, given the short duration of the pursuit and the circumstances that he was working under.

Responsibilities of dispatcher and pursuit controller

- 11.7 Turning to the responsibilities of the dispatcher (dispatcher A) and the pursuit controller: the pursuit policy provides that the dispatcher is to maintain communications with frontline staff, to give the safety reminder, and to request information from the pursuing officers if it is not forthcoming from them. The dispatcher is also required to communicate instructions from the pursuit controller, a sworn shift supervisor at the communications centre, who is responsible for supervising the pursuit and co-ordinating the overall response.
- 11.8 It is apparent from the radio transmissions that dispatcher A sought information from officer B about the details of the pursuit, particularly the speed and manner of driving. Dispatcher A issued the standard pursuit warning, which was acknowledged by officer B.
- 11.9 Dispatcher A has a detailed knowledge of the pursuit policy. The last reported speed he received prior to the crash was between 140 and 150kph. The Authority is satisfied, from what the dispatcher has stated, that if he had been given further information on the high speed he would have called the pursuit off.

- 11.10** During the 2 minutes and 35 seconds of the pursuit, dispatcher A was engaged in tactically positioning patrols with a view to stopping the vehicle.
- 11.11** Dispatcher A was being observed by a pursuit controller. The pursuit policy states that the pursuit controller is to monitor and supervise the pursuit, and where practicable, coordinate other operational resources. Other responsibilities of the pursuit controller include to:
- constantly reassess the situation to determine whether the need to effect immediate apprehension is outweighed by the risks posed by the continuation of the pursuit;
 - require the pursuing vehicle to respond to risk assessment questions from the communications centre and to provide situation reports;
 - direct that the pursuit be abandoned if the identity of the offender(s) becomes known during the pursuit and apprehension can safely be effected later;
 - replace unmarked vehicles in a pursuit with marked vehicles at the earliest opportunity;
 - coordinate other units to support pursuing units and to control traffic at critical points to maximise public and staff safety.
- 11.12** The pursuit controller was standing at dispatcher A's shoulder during the duration of this pursuit. He had assumed an oversight role, but at the time of the crash had not been required to give any specific direction to either dispatcher A or to officers A and B.

The earlier stop

- 11.13** During the pursuit it was the role of another dispatcher to enter the registration number of the Honda into the computer system to bring up the vehicle's history. The information obtained was then entered into the event chronology (the electronic record of the pursuit) being viewed by dispatcher A.

11.14 The information available from the earlier stop (at about 9.55pm on 23 December 2006) consisted of the call-sign of officers D and E and the time and the location of the traffic stop. No details of the driver or the fact that an infringement notice had been issued were available to dispatcher A. NorthComms could have obtained further details about the first stop by contacting the officers involved. However, the short duration of the pursuit did not allow this.

FINDING

11.15 The Authority is satisfied that, on the basis of the information available to them, the pursuit was properly managed by dispatcher A and the pursuit controller.

12. THE OPTION
OF ABANDONING
THE PURSUIT

12.1 The pursuit policy states that, where the need to effect immediate apprehension is outweighed by the risks posed by the continuation of the pursuit, the pursuit controller must direct that the pursuit be abandoned.

12.2 NorthComms was advised by officer C that the speed of the pursuit was 140-150kph. When questioned about whether he was concerned at that speed, dispatcher A said:

“At that time of night I was not too concerned because the north western motorway would have been pretty much empty, weather conditions were good, and the time of day there wouldn’t have been a lot of traffic around, so it wasn’t of a major concern – at that sort of speed.”

12.3 Dispatcher A said that when he became aware that the Honda’s lights had been turned off he considered whether he should call off the pursuit. However, the car crashed *“within seconds”* of that advice being received. (In fact, it was about 40 seconds.)

12.4 Dispatcher A was asked what his view on abandonment would have been if he had known the speed of police car was 200kph. He said:

"My view would have been that we should have abandoned."

And further:

"...140-150that would be getting close to where I would question the Inspector as to whether we should pull it. Anything above that, I would definitely be asking the question."

12.5 Officers A and B said that they were surprised when they realised they were travelling at 200kph. Officer A stated:

"When I took a look at the speedometer I was surprised to see that it was 200km/h. It was at this point I was making mental assessments and I said to [officer B] that it was becoming too fast and I was contemplating calling off the pursuit."

12.6 It is an accepted phenomenon that when travelling at high speed a driver's vision becomes increasingly 'tunnelled', and it is difficult to look at the speedometer or to focus on anything other than driving. For this reason the Authority believes that police communications centres should have the ability to access the speed of a pursuing police vehicle without relying solely on reports from the officers involved. This is especially the case where a pursuing patrol is single-crewed.

FINDING

12.7 The Authority accepts that officer A was driving safely, albeit at high speed, and is satisfied that if the pursuit speed had remained high the pursuit would have been abandoned in accordance with policy.

13. THE AUTOMATIC VEHICLE LOCATOR (AVL) SYSTEM

13.1 At the time of this pursuit, Auckland police were piloting an automatic vehicle locator (AVL) system. The AVL technology provides vehicle position and speed data to the dispatchers' computer map screens at NorthComms and the data is available for later analysis.

13.2 The AVL system in the unmarked police car was not operating at the time of the pursuit. Officer A said:

“When I first got into the patrol car that night I noticed the AVL was off line and the signal bar on the top left screen was in the red meaning there was something wrong with the system. At that stage I didn’t do anything in respect of getting it repaired as I knew that it wouldn’t be repaired during the night. I was aware after the incident that [the previous user] of the vehicle had logged a job with help desk.”

13.3 Investigations have confirmed that the fault in the AVL system was logged on 18 December and the faulty system was replaced on 28 December 2006.

FINDING

13.4 No criticism can be directed at the officers involved in the pursuit for the failure of the AVL system.

13.5 The Authority is aware that the AVL system is still being piloted and supports the continuation of the project.

14. SPEED OF THE POLICE CAR AND PURSUIT

14.1 Shortly before the crash, the police car had reached a speed of approximately 200kph. It could not keep up with the Honda. The top speed of the Honda is unknown but clearly it was travelling at over 200kph. The Authority has considered whether pursuits should reach such speeds and whether, in this particular case, the pursuit should have continued at such a speed.

14.2 The following factors were taken into account when considering this issue.

- There is no electronic record of the speed of the police vehicle.
- Officer C, in a marked police car, was following the pursuing vehicle. There is an electronic record of this car reaching a speed of 195kph.
- Officer A describes his speed during a peak of acceleration as 200kph. When he looked at the

speedometer and became aware he was travelling at that speed, he considered calling off the pursuit.

- Officer A describes how, seconds later, he saw the Honda's brake lights come on and the car move from the extreme right hand lane towards the St Lukes off-ramp on the left. Officer A said that he began to slow the patrol car to negotiate the intersection. He did not see the Honda again as it was too far ahead.
- Officers A and B expressed surprise that they had reached a speed of 200kph. That the speed of 200kph was reached for a short period only is supported by Officer C and the AVL data for his car.
- At the time of the high speed, the motorway was virtually clear of other traffic. It is a straight section of road, four lanes wide, sloping slightly downhill. The road was dry and the street lighting good.
- Officer B reported to NorthComms, just prior to the Honda taking the St Lukes exit: *"We're about aah, 100m behind."* It is apparent, that this statement was incorrect. Officer B, in a statement two days later said: *"As it went up the off-ramp we lost sight of it. Although in the commentary I said we were about 100m behind it we must have been considerably further back, more like 400m."*
- Officer C said that when he heard officer B say that he was about 100m behind the Honda: *"I recall thinking at that time that their actual distance behind the offending car was closer to 300-400m but there seemed little point transmitting that over the radio."*
- A police sergeant who was travelling along the motorway in the opposite direction at the time described the police car as being *"...400-500 metres behind the pursued vehicle and whilst travelling quickly was not as fast as the first car."*
- Witnesses have said that Lance was driving the Honda at speeds of at least 200kph on the North Western

Motorway on at least three occasions earlier that night. This was not known to either the pursuing police or to NorthComms.

- 14.3 It is clear that officers A and B did carry out risk assessments during the pursuit and at the time the Honda left the motorway they were deciding whether or not to abandon the pursuit. In response to a question posed by the Authority about risk assessment, officer A said that at the time the speed of 200kph was reached:

"...I had just become aware of my own speed over a very short distance and period of time I was in an instantaneous ongoing state of risk assessment when he exited. We decreased speed and would have no doubt abandoned the pursuit had any further high risk behaviour continued."

FINDING

- 14.4 For a brief period, the pursuit reached a speed in the vicinity of 200kph, which was not justified by the circumstances.
- 14.5 Officers A and B were assessing the risks and the Authority is satisfied that, if the speed had remained high any longer, they would have abandoned the pursuit.
- 14.6 Although this cannot be known with certainty, the fact that Lance had driven at high speed several times that night suggests that police abandonment of the pursuit is unlikely to have caused him to moderate his speed.

Independence

trustworthiness
accountability
vigilance
integrity

Conclusion

REPORT ON THE DEATHS OF LANCE DAVID LUMSDEN DUFF, CHEYENNE HORACE FREEMAN AND WALTER JAMES RUSSELL IN AUCKLAND ON 24 DECEMBER 2006.

June 2008

15.1 Reaching a speed of 200kph in the course of a pursuit cannot, in general, be justified.

However:

- the actions of the officers involved in this pursuit were legal and within policy;
- there was no misconduct or neglect of duty on the part of any officer;
- there can be no suggestion that the actions of the officers caused the deaths of Lance Duff, Cheyenne Freeman and Walter Russell.

15.2 The Authority is currently carrying out a review of police pursuit policy and will, in the course of that review, consider the justification for initiating pursuits, their management, and the circumstances under which they should be abandoned.

15.3 The Authority expresses its sympathy to the families and friends of Lance Duff, Cheyenne Freeman and Walter Russell.



The Hon. Justice Goddard

INDEPENDENT POLICE CONDUCT AUTHORITY

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