



Death of Liku Onesi following collision with a Police vehicle

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 8.39am on Wednesday 22 August 2012, a Police patrol responding to a report of a burglary in progress collided with a vehicle being driven by Ikenasio Onesi on Ormiston Road, Flat Bush.
2. Liku Onesi, Mr Onesi's wife and passenger in the vehicle, died as a result of injuries sustained in the collision.
3. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At 8.34am on Wednesday 22 August 2012 the Police Northern Communications Centre (NorthComms) received a report of a burglary in progress in Ashton Avenue, Otara. The report contained information that between four and six people had kicked in a door and entered a house occupied by a woman living alone. The call taker at NorthComms recorded the incident as a priority one event and Police were immediately dispatched to the scene¹.
5. Officer A was the shift supervisor at the Ormiston Road Police Station. He decided to respond to the event to provide support for the unit already dispatched, because of the unusual nature of the incident and the number of offenders reportedly involved.

¹ A Priority One incident requires Police to either be at the scene or at a Safe Forward Point (a safe location near an incident from where the forward operations can be supported) within ten minutes.

6. Officer A left the Police station in a marked Police station wagon and activated the car's warning lights and siren.
7. He proceeded from the station to the intersection of Laidlaw Way and Ormiston Road where he stopped at a red light before turning right onto Ormiston Road when it was safe to do so.
8. Officer A drove east towards Preston Road. Due to the nature of the incident he was responding to, Officer A engaged in urgent duty driving as authorised by the Police urgent duty driving policy. Urgent duty driving involves driving at speed with warning devices activated (see paragraphs 29-32 for further details).
9. The area of Ormiston Road between Laidlaw Way and Preston Road has a speed limit of 60 kph. The distance between the Police station and Ormiston Road is about 650 metres. At some points over this distance Officer A drove above the speed limit.
10. Ormiston Road splits into two lanes as it approaches Preston Road; one for right hand turning traffic, and the other for left. The right hand lane was backed up with a long line of traffic stopped at a red light. Officer A noted that the left lane was clear of vehicles and he elected to proceed to the intersection in this lane.
11. Data retrieved from Officer A's vehicle shows that he reached a speed of about 100 kph. He is unlikely to have travelled at this speed for much longer than a few seconds.
12. At the same time Mr Onesi was driving a Mitsubishi Pajero west along Ormiston Road. His wife, Liku Onesi, was the front seat passenger. They were travelling to the Tongan Methodist Church at 3 Ormiston Road.
13. Mr Onesi stopped in the westbound lane of Ormiston Road about 60 m from the intersection with Preston Road, parallel to the line of traffic. He had his right hand indicator on, signalling his intention to turn right across both eastbound lanes into the church car park. He waited here for three to four minutes.
14. Witness X was stopped in the line of traffic, close to Mr Onesi. As the traffic started to move she allowed a gap to open up in front of her vehicle and signalled Mr Onesi to move through it.
15. Due to the congested traffic and the presence of a large truck, Mr Onesi's view of any oncoming traffic was blocked. Witness X's view of any traffic coming from behind her was also blocked. Officer A's view of Mr Onesi's vehicle was also blocked by the truck. Appendix A shows the position of these vehicles at this point.

16. Mr Onesi turned through the gap left by Witness X. He then accelerated towards the church car park and across both eastbound lanes. Officer A first saw the Pajero at this point, when he was about 7 metres from the vehicle (see paragraph 24 for further analysis).
17. Officer A had commenced normal braking as he approached the intersection. He commenced emergency braking when he noticed the Pajero, but a collision was unavoidable. The Police car hit the front passenger side of the Pajero, causing extensive damage to both vehicles.
18. Liku Onesi was thrown from the Pajero. She received significant injuries and was attended to at the scene, first by Officer A and a member of the public, and then by ambulance officers. She died in the ambulance while being transported to hospital.
19. Both Mr Onesi and Officer A suffered minor injuries in the crash.

Crash Analysis

20. At the time of the incident the weather was fine and the roads were dry and in good condition.
21. A Police crash analyst determined that neither the Pajero nor the patrol car had any pre-existing faults which would have contributed to the cause of the crash.
22. Data received from Officer A's vehicle shows that he reached a speed of 100.8 kph a few seconds before the crash. His speed at the point of collision was between 73 kph and 76 kph. The Police crash analyst concluded that Officer's A speed was not a cause of the crash, but did contribute to its severity.
23. Limited visibility was a factor in the crash. The line of traffic on Ormiston Road, in particular the large truck, obstructed the view of Mr Onesi, Officer A and Witness X.
24. It is likely that the Pajero would only have been visible to Officer A for 0.53 seconds before the collision. According to the Police crash analyst Officer A would not have had sufficient time to react to the presence of the Pajero and avoid a collision.
25. Both Mr Onesi and Officer A were tested for the presence of alcohol. No alcohol was detected in either case.

Officer A

26. Officer A is an experienced front line supervisor. He had served with the Police for eleven years at the time of this incident.

27. Officer A holds a gold class response driver certificate under the Police Professional Driver Programme (PPDP) and is qualified to undertake urgent duty driving. He is a workplace trainer in the fleeing driver policy and the use of road spikes and is responsible for reviewing the driving performance of new Police staff under his command.

Police investigation

28. Police considered whether charges should be laid against either Officer A or Mr Onesi. Neither was charged with a criminal or traffic offence in relation to this incident.

LAWS AND POLICIES

Urgent Duty Driving

29. 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].”*

30. Critical incidents include situations involving (i) force or the threat of force, (ii) any person facing the risk of serious harm, or (iii) officers responding to people in the act of committing a crime.

Overriding principle

31. Under the Police urgent duty driving policy, the overriding principle is: *“No duty is so urgent that it requires the public or Police to be placed at unjustified risk.”*
32. When deciding whether it is appropriate to commence or continue urgent duty driving, an officer must consider the following factors:
- *“time of the incident – is it in progress?”*
 - *nature and seriousness of the incident*
 - *proximity of other units to the incident*

- *environment e.g. weather, traffic volume, road type, speed limit and pedestrians etc*
- driver classification and vehicle classification
- *whether warning devices are activated or a “silent approach” is being used [emphasis in original].”*

THE AUTHORITY’S FINDINGS

Was Officer A justified in commencing urgent duty driving?

33. Under Police policy, urgent duty driving is permitted when an officer would be prevented from responding to a “critical incident” if required to comply with the traffic rules and regulations. Critical incidents include situations where officers are responding to people in the act of committing a crime.
34. Officer A was engaged in urgent duty driving immediately prior to the collision with Mr Onesi’s vehicle. Such driving was justified because he was responding to a report of a crime in progress. He knew that force had been used to enter the house, and believed that the single female occupier could be at risk of serious harm from multiple offenders.
35. Officer A needed to attend the scene as soon as possible to prevent serious harm occurring. To comply with the 60 kph limit on Ormiston Road would have seriously reduced his ability to respond in a timely manner.

FINDING

Officer A was justified in commencing urgent duty driving.

Was the manner and speed of Officer A’s driving appropriate?

36. When deciding to commence or continue urgent duty driving an officer must consider several factors, including: the environment, the urgency of the situation, and whether warning devices should be used. The overriding principle is: “No duty is so urgent that it requires the public or police to be placed at unjustified risk.”
37. Officer A noted that the weather was fine and the road dry and in good condition. He assessed the traffic volume and flow on Ormiston Road, and stayed alert for the presence of pedestrians. Due to the traffic congestion in the right hand lane he chose to use the left hand lane which was free of other vehicles. He activated the patrol car’s warning devices before exceeding the speed limit of 60 kph.

38. Officer A reached a maximum speed of 100.8 kph while on Ormiston Road. He slowed as he approached the intersection with Preston Road and would have had sufficient time to stop before he reached this point. However, he was still travelling at a speed – between 73 kph and 76 kph at point of impact - that made collision with the Pajero unavoidable once it entered the left hand lane.
39. Officer A carried out continuous risk assessment while engaged in urgent duty driving.

FINDING

Officer A complied with the urgent duty policy in relation to speed and manner of driving. The speed at which he drove was justified in the circumstances.

CONCLUSIONS

40. Officer A complied with the urgent duty driving policy.
41. The collision between Officer A and Mr Onesi, and the subsequent death of Mrs Onesi, occurred as the result of a combination of several factors. It was a tragic accident, the circumstances of which were unique and not reasonably foreseeable by Officer A.
42. Pursuant to section 27(1) of the Independent Police conduct Authority Act 1988, the Authority has formed the opinion that the actions of Officer A were not contrary to law, unreasonable, unjustified, unfair or undesirable.

The Authority makes no recommendations.



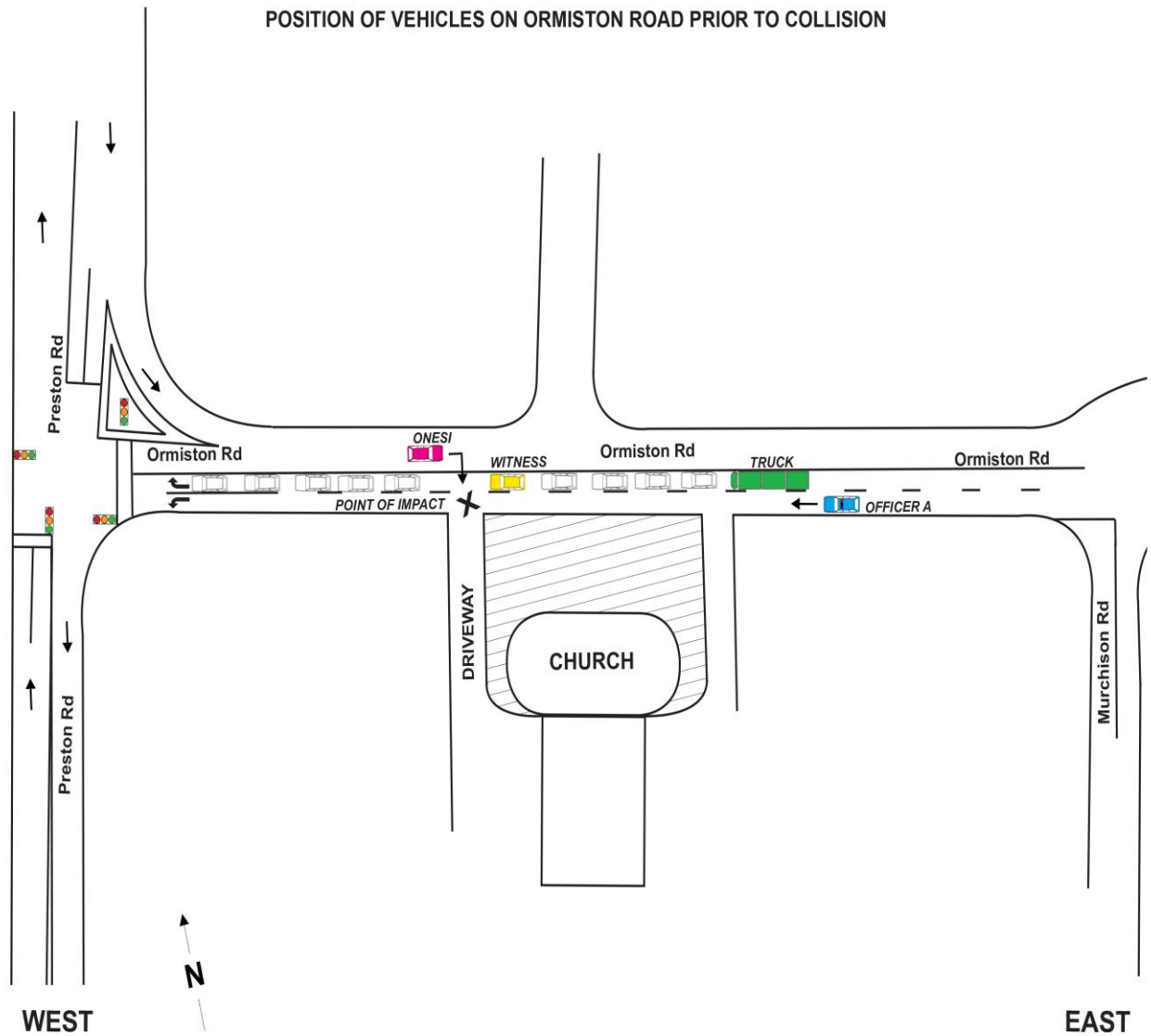
JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

29 August 2013

Appendix A



About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

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

The Authority 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.



IPCA

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