



Fatal Pursuit of Jason Luke Downes

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 11.22pm on Tuesday 4 May 2010, a car driven by Jason Luke Downes, aged 25, crashed into a drainage ditch on Pioneer Highway in Palmerston North during a short Police pursuit. Mr Downes died at the scene and his passenger was seriously injured.
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

Summary of events

3. At around 11.20pm on Tuesday 4 May 2010, Officer A, a Highway Patrol constable, was driving north on State Highway 56 in a category A marked patrol car. A category A car is authorised to be the lead car in pursuits.
4. Officer A is certified as a gold license holder, having been trained under the Police Professional Driver Programme (PPDP) and therefore competent to engage in pursuits as the lead driver. As Officer A was the sole occupant of the car, he was also responsible for operating the radio and communicating with the Police Central Communications Centre (CentComms).
5. At the Palmerston North city boundary, State Highway 56 becomes Pioneer Highway, with a speed limit of 50 kph.
6. As Officer A was driving along Pioneer Highway, his radar equipment detected a vehicle coming towards him at a speed of 68 kph. The officer monitored the vehicle's increasing

speed on his radar, and then saw that there were in fact two cars approaching side by side in the southbound lanes. Officer A's first impression was that the cars appeared to be racing each other.¹

7. Officer A locked the cars' speed on his radar equipment at 128 kph, in a 50kph speed zone, as they drove through a green traffic light at the intersection of Pioneer Highway and Botanical Road. About 100 metres south of the intersection, the two cars (both black Honda Civics) merged into single file as the road narrowed to one southbound lane.
8. Mr Downes was the owner and driver of the first Honda. His friend, an 18 year old male, was in the front passenger seat.
9. The second Honda, which had been stolen earlier that evening, had two male occupants. Both were 16 years old.
10. Officer A pulled over to the left of the road and activated his patrol car's red and blue warning lights as the two Hondas drew near, indicating to the drivers that they were required to stop. Once the cars had passed him, he completed a u-turn in order to follow them.
11. The drivers of both cars immediately turned off their headlights and increased their speed in an attempt to evade apprehension. The passenger in the Honda driven by Mr Downes said in interview that when Mr Downes saw the police car he said: "...that's my licence."
12. Officer A then turned off his warning lights and began to follow, in excess of the speed limit, the cars south along Pioneer Highway. He did not activate his siren.
13. At 11.21:49pm Officer A radioed CentComms and said: *"Just clocked two cars doing 128 on Pioneer Highway heading out of town towards Longburn. Put my lights on, they instantly turned their lights off. I am not pursuing."* The CentComms dispatcher acknowledged the message.
14. Although Officer A said he was not pursuing, in the Authority's view his actions did amount to a pursuit. This issue is discussed further at paragraphs 53 - 56 of this report.
15. In interview with the Authority, Officer A explained his actions, saying:

"My intent at the time was to keep them within sight only, and not alarm them any further to go any faster."

¹ When interviewed by Police, the passenger in the Honda driven by Mr Downes and the driver of the second Honda both denied that they were racing.

16. According to Mr Downes' passenger, by the time the first Honda approached the intersection of Pioneer Highway and Maxwell's Line it had reached a speed of about 190-200 kph in a 50 kph zone. Other witness accounts put Mr Downes' speed at 70-80 kph and at 140-160 kph.
17. Mr Downes' passenger saw another car, a Holden Astra, start to pull out into the intersection at Maxwell's Line and he shouted at Mr Downes to "slow down".
18. The driver of the Holden was turning right from Maxwell's Line into Pioneer Highway. She was unable to see Mr Downes' car, or the second Honda behind it, because they were both black and their headlights were off.
19. Mr Downes braked suddenly and his car swerved behind the Holden, narrowly avoiding a collision. His Honda then slid right across the road, hit a tree, and landed in a drainage ditch filled with water. The impact tore the car into two pieces.
20. The driver of the Holden saw Mr Downes' Honda swerve and heard its tyres squeal as she completed her turn into Pioneer Highway, but did not see the car crash into the ditch. When the second Honda, a short distance behind, went speeding past, she saw Officer A's patrol car following: "...about 100 metres behind the second car going at a slower speed so the distance was getting further apart". Assuming that the police car was "on to" the speeding cars, she drove on.
21. In interview with the Authority, Officer A said that it was hard to judge the distance between his patrol car and the two Hondas because they did not have their lights on. He estimated that he was 300-400 metres behind when he saw brake lights come on near Maxwell's Line. Officer A did not know which one of the Hondas braked.
22. Considering the reported speeds of Mr Downes' Honda (ranging from 70-200 kph), and the reported distance between the patrol car and the second Honda (between 100 - 400 metres), the Authority is satisfied that Officer A was travelling well in excess of the speed limit of 50 kph at this stage.
23. The occupants of the second Honda witnessed the crash. They did not stop but continued along Pioneer Highway at speed and soon turned their headlights back on.
24. Officer A did not realise that Mr Downes' car had crashed. When he saw brake lights come on near the Maxwell's Line intersection he thought that one of the cars had turned left into Maxwell's Line. At 11.22:17pm he advised the CentComms dispatcher:

"I am following at some distance. One's turned into Maxwell's Line I think, and one's gone in down by the racecourse. No it's heading over the bridge, it's just flicked on its lights... I'll head on out towards Longburn after the one out there." [sound of the engine accelerating]

25. The speed limit on Pioneer Highway increases from 50 kph to 100 kph about 400 metres past the site where Mr Downes' car crashed at Maxwell's Line.
26. Officer A followed the second Honda, which turned right into Longburn Rongotea Road. At 11.23:16pm the officer told the CentComms dispatcher: *"I'm not in pursuit, I have not got my lights on."* He then said: *"I'm just gonna catch up to it, see if I can then flick the lights on."* The dispatcher acknowledged the messages from Officer A.
27. In interview with the Authority, the CentComms dispatcher said that she was unsure what action to take, because Officer A had initially said that he was not pursuing but was now saying that he was following the cars without his warning lights activated. She wanted to treat the incident like a pursuit but was unsure how to proceed, so she signalled to her supervisor, the CentComms shift commander, that she required his advice. She said she did this for two reasons: first, she thought the incident had the potential to turn into a pursuit, even though Officer A had not called it in as a pursuit, and second, she was uncomfortable because she did not know how fast Officer A was going, and the two cars were travelling without their lights on so *"it had potential to turn pear-shaped"*.
28. The driver of the second Honda crashed into a traffic island as he attempted to turn right from Longburn Rongotea Road onto No. 1 Line. At 11.23:56pm Officer A came across this crash and reported it to the CentComms dispatcher.
29. The CentComms shift commander arrived at the dispatcher's desk at the same time as Officer A called in the crash. He had not had time to give advice to the dispatcher.
30. The occupants of the second Honda were uninjured. They told Officer A that Mr Downes' car had crashed near Maxwell's Line on Pioneer Highway, and Officer A radioed this information to the CentComms dispatcher.
31. It took Police several minutes to locate Mr Downes' car, which was about 40 metres south of the intersection with Maxwell's Line and hidden from view by the bank of the water-filled drainage ditch.
32. In the meantime, a man living nearby heard cries for help and found Mr Downes' passenger lying on the bank of the ditch with a broken leg. The man got Mr Downes out of the car, which was submerged, and with the help of a neighbour attempted to resuscitate him.
33. Mr Downes died at the scene. Neither he nor his passenger had been wearing a seatbelt.
34. The pursuit lasted for two minutes and seven seconds and covered a distance of approximately 4.7 kilometres. Mr Downes' car crashed about 1.5 kilometres into the pursuit.

Crash analysis

35. On the evening of the crash, the weather was fine and the roads were dry. There was little traffic and Pioneer Highway was lit by street lights.
36. A vehicle inspector found no mechanical faults with Mr Downes' Honda which would have contributed to causing the crash. Both front tyres were below the minimum tread depth required for a warrant of fitness, but were not considered to be a contributing factor because the road surface was dry.
37. The crash investigator concluded that:

"The actions of the driver of the Honda, travelling at an extremely high speed without the headlights on, combined with the application of the vehicle's handbrake ... must be considered as the prime causative factors for this crash."

Jason Downes

38. Mr Downes had a history of traffic-related offending, including dangerous driving and driving at excessive speed. On 4 May 2010 he was driving in contravention of the terms of his restricted driver licence.
39. His blood and urine were tested for the presence of alcohol or drugs. No alcohol was detected, but his blood had a tetrahydrocannabinol (THC) level of 12 micrograms per litre of blood. This is consistent with Mr Downes having smoked one cannabis cigarette within about 2 hours prior to death.
40. The forensic toxicologist's report stated:

"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. However, given the THC level detected in the blood of Mr Downes it is highly likely that he was affected by cannabis at the time of death."

Cause of death

41. The Coroner concluded that Mr Downes' death was caused by a "head injury sustained in a motor vehicle incident". He also observed (but without making any formal finding relating to the Police pursuit policy):

"I think it would be unfair to attribute blame or responsibility to [Officer A] who attempted to follow. I can loosely describe this as a pursuit, but he attempted to follow in a relatively restrained way."

LAWS AND POLICIES

Legislative authority for pursuits

42. 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 such a vehicle fails to stop, the Police may begin a pursuit.

Police pursuit policy²

Definition

43. A pursuit 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.

Overriding principle

44. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*
45. The driver of a Police vehicle has the primary responsibility for the initiation, continuation and conduct of a pursuit. Further, before commencing a pursuit an officer is required to first undertake a risk assessment. The driver must then determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.

Communication requirements

46. When a pursuit commences, the communications centre must be notified as per the communications procedure contained in the pursuit policy. The communications centre must then provide the following warning: *“If there is any unjustified risk to any person you are to abandon pursuit immediately.”* The pursuing officer must acknowledge this warning.

² The Police policy in place at the time of this incident was called the pursuit policy. On 18 October 2010 the pursuit policy was replaced by the fleeing driver policy. All references to Police policy in this report relate to the pursuit policy unless otherwise stated.

47. The pursuing officer must also provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender's manner of driving and identity, and the pursuing officers' driver and vehicle classifications.

Roles and responsibilities

48. The driver of a Police vehicle must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, and comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre). The driver must also activate warning devices when commencing a pursuit.

Abandonment

49. When abandoning a pursuit, the driver must:

Step	Action
1	<i>Acknowledge the direction to abandon pursuit</i>
2	<i>Immediately reduce speed to increase the distance between the offender's 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>

Urgent duty driving

50. 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]."*

51. 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 in road users to take evasive action when*

warning lights and siren are activated – they do not guarantee safety [emphasis in original].”

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

THE AUTHORITY’S FINDINGS

Commencement of pursuit

53. Officer A’s radar equipment recorded that Mr Downes and the driver of the second Honda were driving at a speed of 128 kph in a 50 kph zone. The officer was empowered under the Land Transport Act 1998 to stop the vehicles for traffic enforcement purposes, and he was justified in attempting to do so.
54. Officer A signalled the cars to stop by activating his red and blue warning lights and completing a u-turn in order to get behind the vehicles. Both of the drivers attempted to get away by turning off their headlights and increasing their speed.

FINDING

Officer A was justified under the law in attempting to stop Mr Downes and the driver of the other vehicle.

Did the actions of Officer A amount to a pursuit?

55. In response to the Honda drivers speeding away, Officer A turned off his warning lights but continued to follow the cars, in excess of the speed limit, along Pioneer Highway. He told the CentComms dispatcher that he was not pursuing.
56. The Authority is of the view that Officer A’s actions came within the definition of a pursuit under the Police pursuit policy because: (i) he had signalled the cars to stop, (ii) the drivers failed to stop and attempted to evade apprehension, and (iii) he took action to apprehend the drivers by following them at speed (see paragraph 43). By their actions the occupants of both Hondas clearly believed they were being pursued by police.
57. Officer A had made the decision not to pursue due to the obvious risks involved, and had communicated this decision to CentComms. However instead of disengaging and following the abandonment procedure outlined in paragraph 49, he kept following the cars at speed without his warning devices activated. This was a breach of pursuit policy.
58. Officer A has advised the Authority that he accepts his decisions breached pursuit policy. However, he made these decisions “...with only the best of intentions for the safety of the public.”

FINDINGS

Officer A was in pursuit of Mr Downes and the driver of the other Honda.

Officer A did not comply with Police policy when he followed the two Honda cars at speed without his warning devices activated.

Communication

59. To summarise: Officer A first contacted the CentComms dispatcher at 11.21:49pm to advise that two speeding drivers had turned their headlights off after he activated his warning lights (see paragraph 13). He told the dispatcher he was not pursuing, but then said he was *“following at some distance”*. Shortly after this he advised that he was going to follow the second Honda towards Longburn.
60. At 11.23:16pm Officer A advised: *“I’m not in pursuit, I have not got my lights on,”* explaining that he was intending to catch up to the car and then activate his warning lights to signal the driver to stop. About 15 seconds later the second Honda crashed at the intersection of Longburn Rongotea Road and No. 1 Line.
61. After reviewing the audio tape of Officer A’s communication with CentComms, it is clear that at the time Officer A advised that he would follow the second Honda out to Longburn he was travelling at a high speed or accelerating heavily.
62. The CentComms dispatcher was unsure about what action to take in these circumstances, and correctly sought advice from her supervisor (see paragraph 27). By the time he arrived at her desk, the pursuit had ended with the crash of the second Honda.
63. This pursuit was reviewed by the National Operations Manager: Communications Centres. He said:

“In retrospect, it would have been prudent for the Dispatcher to clarify the circumstances to clearly establish whether this was a situation of pursuit and whether the elements contained in the definition of a pursuit had been met....

This was an unusual situation whereby the evidence heard over the radio differed from what the Dispatcher was being told by the unit....

... Training [of Comms dispatchers] covers what a pursuit is, the policy and the roles and responsibilities of staff involved in a pursuit incident. It does not cover a situation whereby there is conflict between what an officer identifies and other information available to the Dispatcher.”

64. In interview with the Authority the dispatcher explained that she was uncomfortable with the situation and wanted to treat it as a pursuit, but did not know what to do because Officer A was saying that he was not in pursuit.
65. Acknowledging the relatively short time frame of the pursuit (just over 2 minutes), the radio transmissions made by Officer A (see paragraphs 13, 24 and 26) clearly gave the dispatcher cause for concern. These comments were acknowledged by the dispatcher saying “*roger*”, but she did not question Officer A further in order to clarify the situation.
66. Ideally the dispatcher would have sought more information from Officer A (such as his speed, and how close he was to the second Honda when he said he was catching up to it), and would have reminded the officer of his responsibilities under the pursuit policy. She should then have given him the required pursuit warning (see paragraph 46), or, in the continued absence of the pursuit controller, directed Officer A to pull over and stop (see paragraphs 29 and 49).
67. However the Authority recognises that the dispatcher had not been trained to deal with situations where there is conflicting information (see paragraph 63), and that she sought advice from her supervisor.
68. In interview with the Authority, the dispatcher said that following this incident she now notifies her supervisor and gives the pursuit warning whenever an officer’s actions lead her to believe that a pursuit has been commenced.

FINDINGS

Officer A failed to recognise that the pursuit policy applied to this situation.

Faced with an unusual situation, the dispatcher should have been more proactive in trying to obtain information from Officer A, however she correctly sought advice from her supervisor.

Speed and manner of driving

69. Pursuit policy requires officers to drive in a manner that prioritises the safety of the public and staff. The pursuit policy and the urgent duty driving policy also state that Police drivers must use their warning devices (i.e. flashing lights and siren) at all times during a pursuit (see paragraphs 48 and 50-51).
70. When Officer A began to follow the two speeding cars south on Pioneer Highway, he turned off his warning lights and did not use his siren. He then exceeded the speed limit in an effort to catch up with the vehicles.

71. In a statement made two days after the incident, Officer A said, when he was following the cars; *“I don’t know what speed I was doing I was just trying to keep them in view.”* Witnesses reported a wide range of potential speeds for the Police car, but all were estimates.
72. Officer A breached the pursuit and urgent duty driving policies by exceeding the speed limit without activating his patrol car’s warning lights and siren. Although the officer did not believe he was engaged in a pursuit, he was engaged in urgent duty driving (apprehending an offender for a traffic offence) and should have activated his warning lights and siren.
73. The only exception to this rule is when a *“silent approach”* is tactically appropriate, which does not apply in pursuit situations (see paragraphs 51-52).

FINDING

Officer A did not comply with the pursuit policy or the urgent duty driving policy in respect of the requirement to use warning devices when driving in excess of the speed limit.

Ongoing risk assessment/abandonment

74. The pursuit policy requires officers who are abandoning a pursuit to slow down and stop their vehicle as soon as it is safe to do so (see paragraph 49).
75. As discussed in paragraphs 53-57, although he had decided against conducting a pursuit Officer A continued to follow the cars at speed rather than carry out the abandonment procedure. This was contrary to policy.

FINDING

Officer A did not comply with the pursuit policy in respect of abandonment.

SUBSEQUENT ACTIONS

76. Following this incident, all Central District Police staff were reminded of the provisions of the pursuit policy – in particular the definition of a pursuit.
77. The unique circumstances of this incident have also been incorporated into national communications centre training.

CONCLUSIONS

78. Jason Downes demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
79. Officer A was justified under the law in attempting to stop the two Honda cars for traffic enforcement purposes.
80. Officer A followed the fleeing vehicles at speed after he had advised CentComms that he was not pursuing. Although the officer did not believe he was engaged in a pursuit, in the Authority's view his actions did amount to a pursuit as defined in Police pursuit policy.
81. Officer A should have recognised that the urgent duty driving and pursuit policies applied and that he was required to use his patrol car's warning lights and siren.
82. The CentComms dispatcher should have been more proactive in trying to obtain information from Officer A.
83. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that:
 - Officer A's actions, in engaging in urgent duty driving and a pursuit without adhering to the relevant policies, were unjustified.

RECOMMENDATIONS

84. Pursuant to section 27(2) of the Act the Authority recommends that:
- Officer A receives remedial training in respect of the policy requirements for urgent duty driving and pursuits;
 - Police clarify policy for officers following vehicles at speed without using warning devices.
85. The Authority notes that the circumstances of this incident have been incorporated into national communications centre training and have been addressed with the dispatcher. The Authority therefore makes no recommendations in respect of those issues.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

22 November 2011

About the Authority

WHAT 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 High Court 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.



IPCA

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

PO Box 5025, Wellington 6145

Freephone 0800 503 728

www.ipca.govt.nz