

Summary Report

Death of a Youth following the Police Pursuit of Fabian Jessie Mika

INTRODUCTION

1. At about 12.37am on Friday 22 February 2013, 25 year old Fabian Jessie Mika lost control of the stolen Toyota Hilux he was driving and crashed following a short Police pursuit in Christchurch.
2. Mr Mika's 15-year-old passenger, X, died from injuries suffered during the crash.
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

Events during the evening of 21 February 2013

4. At 10.10pm on 21 February 2013, Officer A responded to a reported assault and theft on New Brighton Road in Christchurch. At about 10.40pm Officer A located X, suspected of the assault and theft with a group outside the Palms Mall in Shirley. X was 15 years old. Officer A was not aware of X's age.
5. Officer A said that X swore at him and was abusive when first spoken to. Officer A told X to modify his behaviour. After X failed to calm down or stop being abusive, Officer A arrested him for disorderly behaviour. Officer A said to the Authority that he arrested X because his abusive and aggressive behaviour was inciting others around him to cause trouble for Police and was obstructing him and another officer.
6. Officer A said that X's behaviour changed dramatically after he was placed in the patrol car, he stopped being abusive and calmed down. When X said that he was 15 years old, Officer A un-

handcuffed him and informed him of his rights under the Children, Young Persons and their Families Act 1989. Officer A said that X remained cooperative after this. After speaking with X and other officers, Officer A determined that the reported assault had actually been only a minor scuffle with another young person.

7. Officer A decided to release X as his behaviour had improved and neither he nor the other young person involved wanted to make a complaint. Officer A asked X who he was with, and X asked Officer A to drop him off close to a nearby address, where X said he had been staying with his brother. Officer A then dropped X off by a bus stop on Shirley Road, diagonally opposite the Palms Mall.
8. In interview with the Authority, Officer A said that he did not think it was necessary to notify X's parents of the arrest because he did not think his *"physical or mental wellbeing was being impaired. He was with a guardian."* In addition, Officer A said that X's arrest had only lasted a short time and he had only been in Police custody for about two minutes, during which his behaviour had improved.

Pursuit of Fabian Jessie Mika

9. A little over two hours later, at 12.31am the following morning, Officer B, a Police dog handler working alone on general policing duties, was driving a marked Police car west on New Brighton Road in Christchurch.
10. Officer B was in a category A marked patrol car, which is authorised to be the lead car in pursuits. He was a gold class driver, certified to engage in pursuits.
11. Near Locksley Avenue a Toyota Hilux travelling in the opposite direction passed Officer B at a speed Officer B estimated to be at least 20kph over the posted 50kph speed limit. Officer B did not recognise any occupants of the vehicle. X was in the rear right passenger seat of the Hilux.
12. Officer B performed a U-turn on New Brighton Road and activated his patrol car's warning lights and siren to signal to the Hilux driver to stop. The driver did not stop and accelerated away. According to the front seat passenger the driver, Fabian Mika, refused his passengers' requests to stop, stating *"Nah fuck up, I can't stop, I got to go, I got to get out of here."*
13. Officer B decided to commence a pursuit based on the driver's speed and failure to stop. Before he did so Officer B carried out a risk assessment. He took into account the light vehicle and pedestrian traffic in the area, the dry weather conditions, good visibility, and the Hilux driver's speed, which he estimated to have increased to about 90kph. Officer B concluded that the need to apprehend the driver outweighed the risks involved in pursuit.
14. Officer B notified the Southern Communications Centre (SouthComms) that he had commenced a pursuit on New Brighton Road, also advising that the Hilux had turned onto Locksley Avenue and was travelling at 90kph in a 50kph zone. After following the Hilux onto Locksley Avenue, Officer B advised SouthComms that *"the road's a bit rough from the earthquake Comms, there's no traffic at all"*, and provided the Hilux's registration number.

15. Following this communication, the SouthComms dispatcher gave Officer B the pursuit warning required by the Police Fleeing Driver policy. Officer B acknowledged the warning and advised SouthComms that there were three or four people in the Hilux and that the driver was travelling at 80kph and had turned left onto Gayhurst Road.
16. Just before the vehicles crossed Gayhurst Bridge the SouthComms dispatcher advised Officer B that it was suspected the Hilux had been involved in an alleged aggravated robbery earlier in the evening. Officer B had not been aware of this information until this point in the pursuit.
17. The pursuit then continued along Gloucester Avenue as the Hilux travelled at 90kph in a 50kph zone. At the intersection with Linwood Avenue, Mr Mika turned left onto the wrong side of Linwood Avenue. Officer B advised NorthComms of this. After following Mr Mika onto the wrong side of the road, Officer B advised SouthComms that he was backing off slightly. He did not advise SouthComms that he had also crossed to the wrong side of Linwood Avenue.
18. Linwood Avenue is a four lane road with two lanes in either direction separated by a wide median strip, planted with two rows of mature trees. At every intersection there are breaks in the median strip with give way markings. Parking spaces and bicycle lanes border each side of the road.
19. In interview with the Authority, Officer B said that after crossing to the wrong side of the road he increased the distance between his patrol car and Mr Mika's vehicle to 50 metres due to the increased risk in pursuit. Officer B stated that this had worked in previous pursuits in *"taking the pressure off the offending driver and actually maybe getting some reduction in speed."*
20. Officer B also said that after he followed Mr Mika onto the wrong side of Linwood Avenue he had considered whether it was prudent to continue the pursuit. He said that at the time he felt that the risk in pursuit did not outweigh the need to apprehend the driver of the Hilux. Officer B said that he considered the good lighting and visibility on Linwood Avenue, as well as lack of vehicle and pedestrian traffic, justified his continuing the pursuit on the wrong side of the road. He also noted that the pursuit occurred in the oncoming lane closest to the median strip, which left a lane free for any traffic entering the Avenue.
21. While the pursuit continued along Linwood Avenue, Officer B advised SouthComms that Mr Mika had travelled through a green light at the Buckleys Road intersection, his speed was about 100kph and that there was no traffic in the area.
22. In interview with the Authority, Officer B said that there remained no pedestrian or vehicle traffic throughout the time that the pursuit continued on the incorrect side of the road, and Mr Mika's manner of driving did not deteriorate. He said that, had these factors changed, he would have abandoned the pursuit.
23. After Mr Mika travelled through the Buckleys Road intersection, the SouthComms pursuit controller decided that the risk created by Mr Mika's continued high speed on the wrong side of Linwood Avenue was too great and ordered Officer B to abandon pursuit.

24. Officer B did not acknowledge or comply with the order to abandon pursuit. Instead he radioed that Mr Mika had returned to the correct side of Linwood Avenue and was approaching Dyers Road. The pursuit controller then gave a second order to abandon pursuit, which was also not complied with.
25. Officer B later reported that he did not hear the pursuit controller's two directions to abandon the pursuit and stated that this could have been due to other radio traffic or the volume of his patrol car's siren. As part of its investigation the Authority has listened to the SouthComms recording of the pursuit and has found that the pursuit controller's two orders to abandon the pursuit are much quieter than the rest of the radio transmissions, and were difficult to hear. Accordingly, the Authority accepts that Officer B did not hear the orders over his Police car's siren.
26. Following Officer B's non-compliance with the first two orders, the SouthComms dispatcher ordered Officer B to abandon the pursuit. This order was given as Mr Mika turned left onto Dyers Road.
27. When Mr Mika turned left onto Dyers Road the Hilux clipped the raised traffic island that divides the left-hand turn lane from the intersection. Officer B said in interview with the Authority that this was the only point during the pursuit where he saw the Hilux hit anything.
28. After he heard the third order to abandon pursuit, Officer B immediately acknowledged the order and slowed down on Dyers Road. As required by Police policy, Officer B deactivated his patrol car's lights and siren and pulled over near the Maces Road intersection.
29. Officer B advised SouthComms that he had pulled over and gave Mr Mika's direction of travel. He then pulled back onto Dyers Road to commence searching for the Hilux. Shortly after this, in response to a query from SouthComms, Officer B advised that he had commenced searching for the Hilux while driving at the speed limit and with his patrol car's lights and sirens deactivated. The pursuit controller subsequently authorised Police to commence search phase (see paragraph 51 for relevant policy).
30. In the meantime, Mr Mika had further accelerated along Dyers Road, rejecting his passengers' requests to slow down.
31. About one minute later Officer C, driving an unmarked category B Police car on Breezes Road towards Dyers Road at the speed limit and with his patrol car's emergency lights and sirens deactivated, saw the Hilux crash on Dyers Road, about 400 metres southwest of the Dyers Road and Breezes Road roundabout. At the time, there were road works in place on that section of Dyers Road and the speed limit had been reduced to 50kph from 70kph.
32. Mr Mika's front seat passenger later reported to Police that Mr Mika was travelling at about 150kph prior to the road works on Dyers Road, where he lost control of the Hilux.
33. Following the crash, Mr Mika fled from the scene on foot. Officer B, assisted by an officer who had arrived shortly after the crash, arrested and handcuffed the rear-left seat passenger.

Officer C arrested and handcuffed the front seat passenger. Both passengers had suffered minor injury.

34. Officer B then requested armed officers to help him commence a search with his Police dog for the other two occupants of the vehicle, who were suspected to be armed. Officers carrying firearms in their patrol cars and already on their way to the scene arrived less than five minutes later.
35. After two officers armed themselves and commenced the search with Officer B, they located X lying about 30 metres from the Hilux. Officers immediately commenced first aid and called an ambulance, which arrived about ten minutes later. However, X had already died at the scene from injuries suffered in the crash.
36. The pursuit lasted about five and a half minutes and covered approximately nine kilometres. Officer B's maximum speed during the pursuit was 100kph.

Fabian Jessie Mika

37. Mr Mika was located and arrested by Police the following afternoon. He did not hold a current driver's licence at the time of this incident.
38. Mr Mika subsequently pleaded guilty to charges of manslaughter, driving while forbidden, failing to stop or ascertain injury and failing to stop when followed by red and blue flashing lights. On 10 September 2013 he was sentenced in the Christchurch High Court to six years and nine months imprisonment. The Court of Appeal dismissed Mr Mika's appeal against this sentence on 12 December 2013.

Police Involved

39. Officer A had served about four and a half years in the Police at the time of his dealings with X. Officer B had been in the Police for over 15 years, and is an experienced road traffic officer.

Police Crash Analysis

40. The Police crash investigator determined that the primary cause of the crash was Mr Mika losing control of the Hilux after he entered the section of road works at 106kph. The investigator determined that no environmental or mechanical factors contributed to the crash.

LAWS AND POLICIES

Youth Justice

41. Section 48 of the Children, Young Persons, and Their Families Act 1989, empowers Police to detain any child or young person found unaccompanied by a parent or guardian in a situation where the child or young person's physical or mental health is or is likely to be impaired. With the child or young person's consent, officers may then take them to their parent or guardian.

42. The Police Youth Justice policy states that after an officer has arrested a young person and they believe that the arrest has achieved its purpose, their supervising officer must decide whether to release the young person without charge to the custody of their parents or guardians.
43. The policy states that every arrest of a child or young person must be documented in a written report to the Commissioner of Police within three days of the arrest. Each report must provide the reason for the young person's arrest.

Legislative Authority for Pursuits

44. Under the Land Transport Act 1998, Police are empowered to stop vehicles for traffic enforcement purposes. Where such a vehicle fails to stop, the Police may begin a pursuit. The Search and Surveillance Act 2012 also authorises Police to stop a vehicle in order to arrest an occupant that Police believe on reasonable grounds is unlawfully at large or has committed an offence punishable by imprisonment.

Fleeing Driver Policy

45. 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.
46. Safety is the overriding principle of the policy, which states that *"Public and staff safety takes precedence over the immediate apprehension of the offender."*
47. The policy requires the pursuing officer to carry out a risk assessment both prior to initiation and during a pursuit. This must be based on 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.
48. The policy requires the officers involved in the pursuit to notify the Police communications centre (Comms) when a pursuit commences and to provide situation reports to the pursuit controller (i.e. the shift commander at Comms) 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.
49. 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 Comms and comply with all directions from the pursuit controller.

50. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. 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>

51. Once a pursuit has been formally abandoned, the pursuit controller may authorise units in the area to undertake a search to locate the fleeing vehicle. The policy states that there is no longer a justification for units to engage in urgent duty driving and the search phase units must not exceed the posted speed limit.

THE AUTHORITY'S FINDINGS

Arrest of X

52. Police are empowered by the Children, Young Persons and Their Families Act 1989 to detain in custody any young person found unaccompanied by a parent or guardian in circumstances where their mental or physical wellbeing may be impaired.
53. The Police Youth Justice policy states that an officer who arrests a young person must consult their supervising officer about whether to release the young person without charge to the custody of their parents or guardians.
54. Officer A said that he decided to release X after his behaviour improved following arrest. He stated that he did not consider it necessary to notify X's parents of the arrest because he had released X into the care of a guardian, his older brother, and did not consider that X's physical or mental wellbeing was being impaired. As a result, Officer A considered that it was unnecessary to invoke the statutory power to detain X in order to deliver him to his parents.
55. However, when Officer A dropped X off at the bus stop, he did not speak to or confirm that X was with his older brother, or that the brother was his guardian. Officer A also did not check with his supervising officer as to whether he should release X without charge to the custody of his parents or guardian. He said that, due to the short duration of the arrest, he did not think it was necessary to notify X's parents.

56. Officer A was not required by law to detain X in order to deliver him to his parents. However, Police policy required Officer A to ensure that his supervising officer made the decision as to whether to release X to his parents or guardians.
57. As a matter of best practice, the Authority considers that, given X's age, Officer A should have notified his parents of the arrest or, at the least, confirmed that X was in the care of his older brother by speaking with the brother when he dropped X off at the bus stop. In addition, Officer A subsequently failed to document the arrest in a report to the Commissioner of Police as required by policy.

FINDING

Officer A did not comply with Police policy when he released X by not consulting with his supervising officer and failing to document X's arrest in a report to the Commissioner of Police.

Commencement of the Pursuit

58. Mr Mika was travelling in excess of 70kph in a 50kph zone when he passed Officer B on New Brighton Road. Officer B was accordingly justified under section 114 of the Land Transport Act 1998 to attempt to stop the Hilux for traffic enforcement purposes and in order to speak to Mr Mika. When Mr Mika failed to stop and attempted to evade apprehension, Officer B commenced a pursuit in accordance with the Police fleeing driver policy.
59. That policy requires Police to conduct a risk assessment prior to commencing a pursuit. As discussed in paragraph 13 above, before commencing pursuit Officer B took into account relevant risk factors and decided that the need to apprehend the driver of the Hilux outweighed any risk in pursuit.

FINDING

Officer B complied with law and Police policy in commencing the pursuit.

Communication

60. Under the Police fleeing driver policy an officer that initiates a pursuit must notify the communications centre that they are in pursuit. In this instance Officer B notified SouthComms that he was "*in pursuit [on] New Brighton Road.*" Following this the SouthComms dispatcher gave Officer B the pursuit warning required by the policy.
61. During the pursuit Officer B provided SouthComms with a steady flow of information regarding the pursuit and relevant risk factors. However, he should have notified SouthComms that he had followed Mr Mika onto the wrong side of the road.

FINDING

Officer B generally complied with the fleeing driver policy in respect of communication.

Police Speed and Manner of Driving

62. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety. The policy does not explicitly address situations where officers and other fleeing drivers drive on the incorrect side of the road.
63. In accordance with the Policy, Officer B kept his patrol car's warning lights and siren activated during the pursuit.
64. Officer B's maximum speed during the pursuit was 100kph. He reached this speed on Linwood Avenue, a 60kph zone, while travelling on the wrong side of the road. Officer B said that after assessing the risk in driving in this manner, he considered that it was justified in the circumstances. At the time, there was no vehicle or pedestrian traffic and the area was dry and well lit, providing good visibility. Officer B also deliberately pursued Mr Mika at an increased distance, on the inside lane, to mitigate the increased risk in pursuit. Officer B said that had any of these factors changed he would have abandoned the pursuit.
65. The Authority asked Officer B if he considered whether he could have continued the pursuit by staying on the correct side of Linwood Avenue. Officer B responded that due to the two rows of mature trees planted on the median barrier, any other road users would have had limited warning a pursuit was in progress. He stated that:

"I felt that it was safer to continue following in the lanes he was using and have the patrol car lights visible to other road users that may turn onto Linwood Avenue to warn them an incident was occurring."
66. The Authority accepts that Officer B made a considered decision, based on his experience, to continue the pursuit by driving on the incorrect side of Linwood Avenue. However, the Authority has concluded that Officer B did not give enough weight to the increased risk created by him driving at speed, on the wrong side of the road for 1.9 kilometres.
67. Although Officer B travelled in the inside lane, the risk and consequences of a potential collision with any vehicles turning left onto Linwood Avenue, where the left-turning driver's attention would likely be focused to the right, were unacceptable. The Authority has reached this conclusion in light of the overriding principle of safety that informs the fleeing driver policy.

FINDING

Officer B should not have followed Mr Mika at high speed on the wrong side of the road for 1.9 kilometres. These actions in combination placed the fleeing driver and his passengers, members of the public and Police at unjustified risk.

Ongoing Risk Assessment and the Option of Abandonment

68. The fleeing driver policy requires Police to abandon a pursuit if at any stage the risk to the safety of the public and the Police outweighs the immediate need to apprehend the driver.
69. Officer B told the Authority that he considered abandoning the pursuit when Mr Mika crossed to the incorrect side of Linwood Avenue, but after assessing the risks decided that continued pursuit was justified in the circumstances. He considered that the Hilux's suspected use in an aggravated robbery increased the need to stop the vehicle and apprehend the occupants, justifying a continued pursuit.
70. However, based on the information provided by Officer B during the pursuit, the pursuit controller independently determined that the risk involved in pursuit was too great and gave the order to abandon the pursuit.
71. In the course of its investigation the Authority has considered the disparity between the decisions of the pursuit controller and Officer B in regards to abandonment.
72. The Authority accepts that Officer B undertook an ongoing assessment of risk during the pursuit, and made an independent decision to continue. Nevertheless, the Authority considers that when the pursuit continued at high speed for 1.9 kilometres on the wrong side of the Linwood Avenue, the risk outweighed the need to continue the pursuit in order to apprehend the driver of the Hilux. In light of this risk, Officer B should have abandoned the pursuit.

FINDING

Officer B should have abandoned the pursuit on Linwood Avenue.

Abandonment and Search Phase

73. When an order to abandon pursuit is given, the Police fleeing driver policy requires all officers in pursuit to deactivate their patrol car's lights and sirens and stop where safe at the side of the road. Officers may only commence a search for the pursued vehicle when authorised by the pursuit controller.
74. Officer B did not hear the pursuit controller's two directions to abandon pursuit (see paragraphs 24 and 25). When he heard the order to abandon pursuit given by the dispatcher,

Officer B complied with Police policy by deactivating his lights and siren and stopping at the side of Dyers Road.

75. The pursuit controller authorised Police units to begin searching for the Hilux shortly after Officer B pulled back onto Dyers Road.

FINDING

Once Officer B heard the order to abandon pursuit, he complied with Police policy.

CONCLUSIONS

76. The Authority has formed the conclusion on the balance of probabilities that:
- 1) Officer A failed to comply with Police policy in two respects when he released X without consulting his supervising officer and subsequently failed to properly document the arrest. These failures were undesirable.
 - 2) The commencement of the pursuit by Officer B was justified.
 - 3) Officer B generally complied with Police policy in respect of communication during the pursuit.
 - 4) Officer B's actions in driving at speed on the wrong side of the road for 1.9 kilometres were unjustified.
 - 5) Officer B should have abandoned pursuit due to the risks involved in the pursuit; failure to do so was unreasonable.

RECOMMENDATION

77. The Authority recommends that the ongoing revision of Police policy connected to the pursuit of fleeing drivers introduces a strong presumption against pursuits on the wrong side of a dual carriageway that may be overridden only in highly exceptional circumstances.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

2 October 2014

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 employs highly experienced staff who have worked in a range of law enforcement and related 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 in a personal capacity;
- 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 form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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