

## Summary Report

# Police actions during a pursuit and the subsequent apprehension of three men in Christchurch

## INTRODUCTION

1. At around 3:16am on Thursday 30 October 2014, Police commenced a pursuit of a black Honda Prelude (the Honda) after it failed to stop on Marshlands Road, Christchurch. The subsequent pursuit lasted approximately 24 minutes and was abandoned three times due to the dangerous manner in which the Honda was driven by Mr X.
2. The Honda was eventually located and stopped in the suburb of Hillmorton, and Police used Tasers and a Police dog to extract the occupants. The front seat passenger (Mr Y) received a serious dog bite to his left elbow.
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 about 3:15am on Thursday 30 October 2014, Officers A and B were in a marked patrol car driving north-east along Briggs Road in the suburb of Shirley in Christchurch. As they turned onto Marshlands Road, they saw a black Honda Prelude (the Honda) being driven in an erratic manner in the opposite direction through the intersection.
5. Officer A told the Authority that what he saw made him want to breath test the driver (Mr X):

*"[It] was coming towards us south and it was a little bit over the speed limit, not a lot, and he was veering slightly [in the lane] and he gave me a sort of, a bit of a reaction...he wasn't happy to see me as he went past, and the combination of those factors were enough for me to think 'I want to see if you're intoxicated.'"*

6. Officer A performed a U-turn and followed the Honda, which accelerated to about 70 kph in a 50 kph zone. As Officer A drove back through the intersection, he estimated that the Honda was approximately 200 metres in front of him and continuing to accelerate. Officer A put on his red and blue flashing lights and siren to signal Mr X to stop.
7. At approximately 3:16am Officer B<sup>1</sup> informed the Southern Communications Centre (SouthComms) that they were attempting to catch up with a car heading south on Marshlands Road.
8. After a further 200 metres the Honda had accelerated to approximately 80 kph. Officer A decided that the Honda was failing to stop, and told Officer B to inform SouthComms that they were now in pursuit.
9. As required by Police policy, Officer A had conducted a risk assessment and judged that it was safe to initiate a pursuit because there was no other traffic on the road, it was a fine, clear night, and the roads were dry.
10. The dispatcher<sup>2</sup> issued the standard pursuit safety warning which Officer B acknowledged. The dispatcher did not prompt Officer B for this information.
11. The Honda slowed and crossed the intersection with Shirley Road against a red traffic light, then continued into North Parade. The patrol car followed. Officer B did not advise SouthComms that they had travelled through a red light.
12. About 40 metres from the intersection, Mr X accelerated to approximately 80 kph, crossed onto the wrong side of the road and turned the Honda's headlights off. Officer A later told the Authority that he judged that continuing to pursue a speeding, unlit car on the wrong side of the road posed too great a risk to the public, so instructed Officer B to advise SouthComms that they were abandoning the pursuit. Officer A then pulled over, stopped on the side of the road and turned off his flashing lights and siren.

#### *Officer A recommences the pursuit*

13. About three seconds later, the officers saw that the driver of the Honda had returned to the correct side of the road, had turned the headlights back on and had slowed to approximately 60 kph in a 50 kph zone. Officer A decided that the risk level had decreased sufficiently to allow him to continue the pursuit. Officer B radioed SouthComms to seek permission to recommence the pursuit, explaining that the Honda was on the correct side of the road. The dispatcher responded "*Roger go ahead.*"
14. Meanwhile, at about this time, the pursuit controller<sup>3</sup> became aware that a pursuit was in progress and started to listen to the pursuit over the radio. He was unaware that the pursuit had previously been abandoned by Officer A for safety reasons.

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<sup>1</sup> If the Police unit pursuing a fleeing driver includes a Police passenger, Police policy requires that officer to operate the radio and provide information about the pursuit to Police communications.

<sup>2</sup> The dispatcher advises the shift commander when a pursuit has commenced, maintains radio communications with the units involved in the pursuit, obtains situation reports from the pursuing units and communicates instructions from the pursuit controller. The dispatcher is also responsible for communicating the pursuit warning to the lead pursuit unit.

15. Officers A and B followed the Honda southwards on North Parade, and were able to get close enough to report the Honda's registration number to the dispatcher. The Honda slowed at the intersection of North Parade and North Avon Road and turned left against the red traffic light. Officer B did not communicate this manoeuvre to SouthComms. The Honda then turned right into Flesher Avenue at approximately 60 kph.
16. The Honda turned left into Evelyn Couzins Avenue (a dead-end road) where Mr X evaded Officer A's attempt to block the Honda in. At this point SouthComms informed the officers that the registered owner of the vehicle (Mr Y) was a gang member. Mr Y was in fact the front seat passenger. However, at that time Police could not identify any occupants of the Honda and did not know if Mr Y was in the vehicle.
17. Approximately one minute later, at 3:19:37am, SouthComms gave permission to all units to set up road spikes to stop the fleeing vehicle, but no directions were given about where exactly to set them up.
18. The Honda turned right into Shirley Road and accelerated to approximately 90 kph. Before Officers A and B could also turn right, two other patrol cars approached from the west and became the leading pursuit vehicles. Officer A attempted to follow the pursuit along Marshland Road, but was too far back and lost sight of the vehicles. He pulled over to the side of the road and he and Officer B took no further part in the pursuit.

#### *Officer C becomes the lead pursuit driver*

19. The Honda drove in a loop back towards Shirley Road. Officer C, a sergeant, activated his flashing lights and siren and joined the pursuit at the intersection of Shirley Road and Petrie Street as the second pursuit vehicle. After a short distance, at 3:23:20am he advised SouthComms that he had taken over as the lead pursuit vehicle after the patrol car ahead of him pulled over with a mechanical problem. Officer C's transmission was acknowledged by SouthComms. However, they did not reissue the pursuit warning as required by policy when the lead pursuit vehicle changes.
20. Officer D, a dog handler, pulled in behind Officer C in his dog van and became the secondary pursuit vehicle.
21. Both Officers C and D told the Authority that they were mindful of the fleeing driver's potential gang connections. Based on information previously received, they believed that the Honda's occupants were probably involved in trafficking drugs. Officer C said that this information made him believe that it was important to stop the Honda and apprehend the occupants.
22. The pursuit continued southwards along Petrie Street and Stanmore Road, and then westwards along Worcester, Hereford and Cashel Streets until the Honda reached the intersection with Linwood Avenue. Officer C provided SouthComms with a continual commentary on the Honda's direction of travel and manner of driving during this phase of the pursuit. This included that Mr X:

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<sup>3</sup> The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

- was travelling at between 70 and 95 kph in a 50 kph zone;
- was staying within his lane on the correct side of the road;
- periodically turned off the Honda's headlights;
- passed through an intersection against a red traffic light at approximately 45-50 kph; and
- passed slowly through several intersections controlled by 'Stop' signs without stopping.

Officer C also reported that there was no other traffic around during this phase of the pursuit.

23. At 3:26:09am, Officer C reported that the Honda had turned right onto the wrong side of Linwood Avenue and travelled approximately 100 metres, but had since turned right again onto the correct side of Aldwins Road.
24. The pursuit controller later told the Authority that, at this point, under normal circumstances he would have ordered that the pursuit be abandoned if the Honda continued on the wrong side of the road. However, because by the time he was advised of it the Honda had returned to the correct side of the road and there was no other traffic around, he allowed the pursuit to continue.
25. The Honda continued southwards towards the intersection with Ferry Road at approximately 100 kph in a 60 kph zone. Officer C reported that the Honda went through another intersection against a red light at approximately 40 kph. The pursuit continued southwards until the Honda turned west onto Brougham Street, which has two lanes on each direction.
26. Officer C radioed that his own speed was 96 kph in a 60 kph zone. As they approached the intersection with Waltham Street, Officer C reported that the Honda had again crossed onto the wrong side of the road. The pursuit controller immediately ordered the officers to abandon the pursuit. Officers C and D pulled over to the side of the road and Officer C radioed to SouthComms that they had abandoned the pursuit.

#### *Search phase and recommencement of the pursuit*

27. The dispatcher then advised all units that they were authorised by the pursuit controller to enter a 'search phase,' which means that Police units are directed to look for the vehicle that has evaded Police, but are not allowed to engage in urgent duty driving (to drive at speed with lights and sirens activated) while doing so.
28. An officer in the District Command Centre used CCTV cameras to locate the Honda, and informed SouthComms that it was driving on the wrong side of Brougham Street further to the west.
29. At approximately 3:29am, Officer D informed SouthComms that he had found the Honda near the intersection of Lincoln Road and Moorhouse Avenue. The dispatcher acknowledged this information by saying "Roger."

30. Officer D put his flashing lights on and started pursuing the Honda, which he believed he was justified in doing under Police policy in the circumstances. He notified SouthComms of his actions:

*"Yeah Comms Dogs, I'm catching up from Lincoln Road. He's in the right side of his lane, lights are off, nil traffic um his speed's about 98 over 50."*

31. Shortly after this radio transmission, another unit requested permission from SouthComms to lay road spikes on Lincoln Road, which was granted. Officer D then reported:

*"Yeah Comms from Dogs speed's 120 over 50, nil other vehicles on the road, he's in the right side of his lane. We're just passing, or coming up to the Wrights Road intersection, speed is 140 over 50, nil traffic and he's well within his lane."*

32. After confirming to SouthComms that he had his flashing lights and sirens on, Officer D reported:

*"...we are just past the Wrights Road intersection ah speed is 140 over 50, still heading west."*

33. At this point the pursuit controller ordered Officer D to abandon the pursuit due to the high speed. Officer D complied and pulled over to the side of the road. The pursuit controller again granted permission for units to enter 'search phase' and look for the Honda.

34. Approximately six minutes later, Officer C located the Honda at the corner of Nottingham Avenue and Wales Street. The pursuit controller denied Officer C permission to re-engage in the pursuit because, as he later told the Authority, he did not believe that the circumstances had sufficiently changed to justify the risks associated with another pursuit. Officer C followed the Honda along Halswell Road, keeping to the speed limit and without activating his lights and sirens.

35. A short time later, the Honda swerved left into Templeton Road to avoid a set of road spikes. The Honda then travelled along Cardinal Drive and turned right into Wolsey Place which is a dead-end road.

36. Officer C had followed the Honda and turned into Wolsey Place, not realising that Mr X had already turned around and was about to drive back out onto Cardinal Drive. Both vehicles stopped, facing each other.

#### *Officer C's patrol car is rammed by Mr X*

37. Officer C told the Authority that he could see Mr X's face clearly in the light from his headlights, and at this point Mr X looked directly at him aggressively, drove directly towards him and rammed the patrol car. As Officer C radioed to SouthComms that he was being rammed, Mr X reversed and rammed the patrol car again.

38. When Mr X reversed a third time, Officer C drove his patrol car forward to prevent his patrol car from being rammed again.

39. Meanwhile, Officers E and F had arrived in their patrol car to deploy road spikes across the intersection of Cardinal Drive and Halswell Road. They saw the Honda and Officer C turn into Walsey Place. As Officer F drove towards Walsey Place, both officers saw the Honda ram Officer C's vehicle.
40. Officer E got out of the patrol car, taking a Taser and baton with him, and ran 50 metres towards the Honda with the intention of apprehending the driver while the Honda was stationary. Given the dangerous actions of Mr X, Officer E believed that he needed to be apprehended immediately because Officer C was in a particularly vulnerable position.
41. Officer C saw Mr X look over his shoulder and reverse the Honda directly towards Officer E. Seeing this, Officer E ran towards the side of the road to take shelter behind a parked car. Officer C, fearing that Officer E was going to be run over and "seriously hurt or killed," decided to take action:
- "Fearing for [Officer E]...I made the immediate decision to drive directly at [Mr X] in an attempt to stop the vehicle. Using the force of the patrol vehicle, I hit [Mr X's] car on the front left hand passenger panel, forcing his car off the road and up onto the footpath where it stalled."*
42. The Honda came to rest with its rear on the curb and its front on the road. Officer F then drove his patrol car forward and parked alongside the driver's door to block the Honda in.

#### *Use of force to arrest Mr X and Mr Z*

43. As Officer E approached the stationary Honda, he said that he believed that the driver and passengers were "willing to do anything, including assaulting Police, to avoid apprehension." He broke the back windscreen with his baton in order to gain access to the vehicle, and ordered the three occupants to put their hands where he could see them. They did not immediately comply.
44. Officer E moved around the car to assist Officer C, who was attempting to bring Mr X under control. Officer C yelled through the driver's open side window for the car occupants to exit the car, but these instructions were ignored. Officer C could see that Mr X was fiddling with the gear stick and ignition, and he feared that Mr X was trying to re-start the car, which could put other arriving Police officers at risk. Both officers attempted to grab Mr X and pull him out of the car, but Mr X pulled away.
45. Officer C later reported that he briefly considered using Oleoresin Capsicum (OC) spray to subdue Mr X, but felt that he could not justify the likely impact on nearby Police officers or the other passengers in the car. Instead, he removed his Taser from its holster and warned Mr X that he should get out of the car or he would be tasered. Mr X ignored this direction and continued to try to re-start the car.

46. Officer C then used his Taser in an attempt to deliver a contact stun<sup>4</sup> to Mr X's upper leg, which Officer C perceived briefly incapacitated Mr X<sup>5</sup>.
47. Meanwhile, Officer E turned his attention to the back-seat passenger, Mr Z. Because Mr Z had not complied with verbal instructions, Officer E said he believed that he needed to present his Taser to compel Mr Z to follow instructions so the situation could be safely and quickly resolved. He took out his Taser and laser painted<sup>6</sup> Mr Z, telling him to put his hands up. Mr Z complied, and Officer E put his Taser away.
48. Mr Z was handcuffed and removed from the car by other officers who had arrived at the scene.
49. Officers C and E then reached into the Honda and tried to pull Mr X out through the driver's side window. Mr X started to struggle again, and Officer C delivered two closed-fist punches to his face, which were eventually effective in subduing him. Mr X was then pulled from the car and handcuffed.

#### *Use of a Police dog to arrest Mr Y*

50. As Officer D arrived at the scene he saw Officer C's vehicle being rammed.
51. Officer D removed his Police dog from his van, placed it on its lead and approached the rear of the Honda. He saw Officers C and E struggling with the driver, and heard one of the officers warn the driver that a Taser would be used. Officer D said that this caused him to believe that the officers were facing a very dangerous situation, and that the car's occupants could have weapons. He was mindful of the fact that the occupants might have gang connections.
52. Officer D told the Authority that the actions of Mr Y, the front seat passenger, attracted his attention. Officer F was standing on the bonnet of one of the Police cars blocking the Honda in and challenging Mr Y to get out of the Honda. In response, Officer D saw that Mr Y was *"refusing and swearing at [Officer F] whilst...leaning down with his hands out of sight and appeared to be reaching in the foot well."*
53. Officer D said he believed that Officer F was in a vulnerable position. He challenged Mr Y:  
  
*"Keep your hands where we can see them or I'll send in the dog."*
54. Mr Y continued to yell, and reached out with his left arm as if to grab Officer F's legs, while still reaching down in the foot well with his right hand. Officer D said he believed that Mr Y might be reaching for a weapon.
55. Officer D commanded his dog to bite Mr Y in order to bring him under control. The Police dog bit Mr Y on the left forearm.

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<sup>4</sup> This involves activating the Taser while the device is applied to the body of the subject, in conjunction with a verbal warning. This method utilises pain compliance to bring the offender under control.

<sup>5</sup> Testing of the Taser later showed that the Taser did not fire.

<sup>6</sup> This involves overlaying the laser sighting system of the Taser on the subject as a visual deterrent, in conjunction with providing a verbal warning.

56. Officer F and another officer pulled Mr Y out of the car, laid him face-down on the ground and applied handcuffs. Officer D then removed his dog.
57. Officer D allowed other officers to take over the arrest procedure, and took his dog around to the driver's side of the car to see if Officer C needed assistance. However, he told the Authority that he judged that the situation was sufficiently under control.
58. Mr X, Mr Y and Mr Z were transported to Christchurch Central Station. At 4:55am, a Police doctor assessed Mr Y's wounds, and recommended that he be taken to hospital. He was transported to Christchurch Hospital, but discharged himself without receiving treatment.

### **Mr Z, Mr Y and Mr Z**

59. Mr X, Mr Y and Mr Z all have significant criminal histories.
60. Police searched the Honda and found drugs and drug utensils. A knuckle duster was found in a backpack located in the front passenger foot well.
61. Following this incident, Mr X was convicted of multiple driving, drug and assault offences and he is yet to be sentenced. Mr Y was convicted of obstructing Police.

### **Police involved**

62. The three lead pursuit drivers, Officers A, C and D, had 12, 11 and seven years' experience respectively at the time of this incident. All were appropriately certified to take the lead role in a pursuit.
63. Officers C and E were current in Taser training and certification at the time of this incident. Officer D and his dog were also appropriately certified.

### **Police investigation**

64. Police investigated this incident. Officers were either interviewed directly, or had formal statements taken.
65. The use of force, including the use of a Police dog, was deemed appropriate, proportionate and justified in all cases.
66. Several deficiencies were identified with respect to the pursuit. These included a failure by SouthComms to obtain a reason for the pursuit, and failure by the pursuit controller to abandon the pursuit at an earlier stage – for example, when Mr X went through red traffic lights on two separate occasions.
67. Operational tests were carried out on Officer C's Taser, which showed that it did not fire during Officer C's altercation with Mr X.

## Authority's investigation

68. The Authority interviewed the Police officers involved in the pursuit and arrest of Mr X, Mr Y and Mr Z, and reviewed relevant documentation produced by the Police investigation team.
69. The Authority also listened to a recording of radio transmissions during the pursuit, and viewed footage shot from the video camera on Officer E's Taser.

## THE AUTHORITY'S FINDINGS

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70. The Authority has looked at whether the pursuit and the subsequent apprehension of Mr X, Mr Y and Mr Z complied with law and Police policy.

## THE PURSUIT

### Were Officers A and B justified in commencing a pursuit of the Honda?

71. Police officers are empowered to stop vehicles for traffic enforcement purposes under section 114 of the Land Transport Act 1998. When Officer A saw the Honda travelling southwards on Marshland Road, he considered that it was being driven erratically and believed that the driver might be intoxicated.
72. The Honda continued to accelerate away from Officer A's patrol car after Officer A signalled the driver to stop using lights and sirens (see paragraphs 6-8). Under current Police fleeing driver policy, officers may commence a pursuit when a driver who has been signalled to stop by Police fails to stop and attempts to evade apprehension.
73. Officers are required by the fleeing driver policy to conduct a risk assessment prior to commencing a pursuit. As discussed above in paragraph 9, Officer A considered the risk factors involved and decided it was safe to commence the pursuit because there was no other traffic on the road, it was a fine, clear night, and the roads were dry.

## FINDING

Officers A and B complied with law and Police policy in commencing a pursuit of the Honda.

### Did communication between the officers and SouthComms comply with Police policy?

74. The Police fleeing driver policy requires officers who commence a pursuit to provide notification of this to the communications centre. The policy requires the dispatcher to provide a safety warning. After acknowledging this warning officers must provide information about their location and direction of travel to the dispatcher.

75. The dispatcher is then required to request information from the pursuing officers about the reason for the pursuit, vehicle description, posted speed limit, road and traffic conditions, weather, the offender's manner of driving and identity, and the Police driver and vehicle classifications, as well as confirmation that warning devices are activated on the Police car.
76. Officer B advised the dispatcher that they were in pursuit, and their location and direction of travel, and acknowledged the pursuit warning provided by the dispatcher (see paragraph 10). However, contrary to Police policy, the dispatcher did not prompt Officer B to explain the reason why they had originally signalled the Honda to stop.
77. Officer B provided intermittent but adequate information about the location and speed of the pursuit. However, he did not communicate important details about Mr X's manner of driving, for example, the fact that the Honda was driven through several red traffic lights (see paragraphs 11 and 15).
78. When Officers C and D respectively took over as the lead pursuit vehicle the dispatcher did not re-issue the pursuit warning to the officers as required by policy.
79. However, both Officers C and D were able to provide SouthComms with a fluent and detailed commentary which included regular speed updates and the manner in which Mr X was driving, including the fact that the Honda was passing thorough controlled intersections and periodically had its headlights turned off.

## FINDINGS

Officers C and D complied with their communication obligations under Police policy.

Officer B complied with his communication obligations in the most part, but failed to advise SouthComms about some high-risk aspects of Mr X's driving.

The dispatcher failed to prompt Officer B to provide a reason for the pursuit, and to re-issue the pursuit warning when the lead pursuing driver changed.

### **Did the officers comply with Police policy with respect to speed and manner of driving during the pursuit?**

80. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety.
81. The Authority is satisfied that the officers involved in the pursuit adapted their speed and manner of driving to the conditions, and conducted regular risk assessments to ensure that it was safe to continue the pursuit.

82. Officer A did not reach significant speeds when pursuing the Honda through narrow residential roads. Officer C reached a maximum speed of 100 kph in a 60 kph zone on Aldwins Road, and Officer D travelled at between 98 and 140kph in a 50kph zone before he was ordered to abandon the pursuit. In both cases, the speeds reached by Officer D were achieved on straight, double lane roads with good visibility and no other traffic on the road. Officer D travelled at high speed for less than 30 seconds. The Authority finds that these speeds were justified in the circumstances.

## FINDINGS

In general, Officers A, C and D complied with law and Police policy in relation to their speed and manner of driving throughout the pursuit.

### **Did the officers and pursuit controller comply with Police policy in relation to their ongoing risk assessment and the option of abandonment?**

83. 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. Pursuing officers and the pursuit controller must conduct an assessment of relevant risk factors to determine this.
84. When officers abandon a pursuit they are required to advise the pursuit controller, deactivate their emergency lights and sirens and stop the Police car when it is safe to do so. The pursuit controller may then authorise the officer to undertake a search for the fleeing driver. However, the officer must drive within the posted speed limit.
85. In interview with the Authority, the officers and pursuit controller explained why they believed that the pursuit was justified during its earlier stages, based on their risk assessments. The absence of traffic on the roads, and the clear, dry conditions caused them to believe it was safe to continue the pursuit.
86. Officer C described his thought process to the Authority:
- “..it was Sunday morning at 3:00 am, there wasn’t a soul in sight, it was dry, the weather was fine, so I’ve considered all those factors and thought to myself, ‘you know, the risk is low’”*
87. The likelihood that the car occupants were involved in serious drug offending also formed part of the risk assessment of Officers C and D. Officer C said *“I was quite well aware that we were probably dealing with something a lot higher end in my mind. And so weighing that up I thought, you know, well, we should probably give this a shot.”*
88. The pursuit controller told the Authority that he used his local knowledge of the areas that the pursuit was passing through to judge whether the speeds were excessive and whether the fleeing driver’s manoeuvres were unacceptably dangerous.

89. Until the pursuit reached Brougham Street and the fleeing driver went onto the wrong side of the road, the pursuit controller felt that the nature of the roads, driver visibility and the lack of other traffic on the road lowered the risk of the pursuit to an acceptable level. The Authority accepts this assessment.
90. The pursuit controller's decision to allow the pursuit to continue after the fleeing driver briefly drove on the wrong side of the road on Linwood Avenue (as described in paragraphs 23 and 24) was reasonable in the circumstances because, by the stage that the pursuit controller became aware of it, the Honda had returned to the correct side of the road.
91. At each point that the pursuit was abandoned, the officers complied with policy by deactivating their lights and sirens and pulling over to the side of the road.

## FINDINGS

The officers and pursuit controller complied with Police policy in relation to their ongoing risk assessment and the option of abandonment.

The Authority accepts the decision of the pursuit controller to allow the pursuit to continue at Linwood Avenue.

### Did the officers comply with Police policy when recommencing the pursuit?

92. An abandoned pursuit must not be recommenced without the approval of the pursuit controller. Approval to recommence will only be considered if:
  - the situation has changed following abandonment;
  - the risk assessment criteria indicates that the risks involved in the pursuit have reduced, so that the need to immediately apprehend the offender is no longer outweighed by the risks posed by recommencing the pursuit.<sup>7</sup>
93. The pursuit was recommenced twice before finally being abandoned.
94. On the first occasion, Officers A and B complied with Police policy by explaining why it was now safe to recommence the pursuit on North Parade (the Honda was now travelling on the correct side of the road) and ensuring that he had permission from SouthComms to do so.
95. On the second occasion, Officer D briefly recommenced the pursuit on Lincoln Road. Officer D located the Honda at the intersection of Lincoln Road during search phase, activated his flashing lights and sped up to catch up with the Honda. He later told the Authority that he believed that policy permitted him to start pursuing the Honda as long as he informed SouthComms where he was. If the pursuit controller did not want the pursuit to recommence, he believed that he would be instructed to disengage.

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<sup>7</sup> Police fleeing driver policy, page 15.

96. Instead, the dispatcher acknowledged his communication, and shortly afterwards radioed that road spikes could be deployed further south on Lincoln Road. These two factors supported Officer D's belief that he was justified in pursuing the Honda.
97. Officer D also believed that the fleeing driver was driving in a less reckless fashion; his speed wasn't excessive and he was travelling on the correct side of a road which had two lanes in each direction. He therefore judged it safe to resume the pursuit.
98. The Authority disagrees with Officer D's interpretation of policy. It is clear that an officer may signal a driver to stop if located during search phase, but may not exceed the speed limit to do so. If the driver fails to stop, "*approval from the pursuit controller must be **sought and received** [emphasis added] before the pursuit can continue.*"<sup>8</sup>

## FINDINGS

Officers A and B complied with Police policy when recommencing the pursuit on North Parade.  
Officer D did not comply with Police policy when recommencing the pursuit of the Honda on Lincoln Road.

### Was the pursuit adequately controlled by the pursuit controller?

99. It is the pursuit controller's responsibility to supervise the pursuit, coordinate the overall response and select and implement the appropriate tactical options.
100. The Authority acknowledges that this is a difficult role to perform, given the amount of information which the pursuit controller must quickly consider and respond to while under pressure.
101. The Authority considers that, while the pursuit controller performed to an adequate standard, he could have taken a more proactive approach during the pursuit.
102. There were opportunities for the pursuit controller to be more directive in the placement of road spikes and more assertive in ensuring the dispatcher and officers followed communication and risk identification protocols, particularly in relation to recommencement.
103. The pursuit controller also failed to obtain a full briefing from the dispatcher about what events had taken place before he started monitoring the pursuit over the radio. This failure meant that the pursuit controller missed some important information about the dangerous nature of Mr X's driving. He was also unaware of the reason for the pursuit, and did not check whether this had been obtained from the officers. In interview with the Authority, the pursuit controller accepted that this information probably would have influenced his risk assessment.

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<sup>8</sup> Police fleeing driver policy, page 15.

## FINDING

The pursuit controller should have taken a more proactive approach during the pursuit.

## USE OF FORCE

### Was Officer C justified in ramming the Honda with his patrol car?

104. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*
105. The Police Use of Force policy provides a framework for officers to assess and respond to situations involving threat and risk to themselves and members of the public. Force used by an officer must be necessary and proportionate to the threat, and based on (amongst other factors) the information they know about the situation at the time, and the behaviour and potential actions of the offender.
106. The Authority accepts that Officer C believed that Officer E was at significant risk of being killed or seriously hurt by Mr X’s actions. As described in paragraph 41, Officer C believed that Mr X was targeting Officer E and intended to run him over. Officer C had reason to believe that Mr X would carry out this action, since he had already been deliberately rammed by Mr X.
107. Officer C’s response was to use sufficient force to deflect the Honda away from Officer E, allowing Officer E to take cover. This was a reasonable and justified action in the circumstances.

## FINDING

Officer C was justified in ramming the Honda with his patrol car in order to protect Officer E.

### Were Officers C and E justified in deploying their Tasers?

108. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
109. Police use of Tasers is regulated by policy, which states that officers may only use a Taser to arrest an offender if they believe on reasonable grounds that (i) the offender poses a threat of physical injury and (ii) the arrest cannot be effected less forcefully.

110. Officers must have an honest belief that the offender, because of his or her age, size, apparent physical ability and threats made (or a combination of these factors), is capable of carrying out the threat posed.
111. The Taser should only be used against a person who is “*assaultive*” – that is, someone displaying openly hostile and aggressive behaviour, accompanied by physical actions or an intent (expressed verbally and/or through body language) to cause physical harm.
112. When Officers C and E approached the Honda, it was reasonable for them to believe that the occupants, particularly Mr X, would continue to act aggressively to avoid arrest.

#### *Mr X*

113. Mr X had already displayed considerable aggression towards Police, and an unwillingness to comply with Police directions.
114. Both Officers C and E feared for their safety and that of other officers arriving at the scene. They believed it was necessary for Mr X to be removed from the car as quickly as possible because he was attempting to re-start it. It was reasonable for them to believe that Mr X would attempt to run over other Police officers in his attempt to get away if given the chance.
115. Mr X refused to comply with the officers’ instructions to get out of the car, or heed Officer C’s warning that he would deploy his Taser if Mr X continued to resist.
116. Officer C later recorded in his statement to Police that he considered using OC spray to bring Mr X under control, but discounted it because of the unjustifiable effects to others in the Honda, and the risk it would partially incapacitate Officer E and himself.
117. In the Authority’s view it was reasonable for Officer C to attempt to deliver a single contact stun to Mr X because he could not be brought under control by means of a lesser force. Because the Taser did not fire, Mr X continued to struggle, and Officer C was justified in delivering two punches to his face to finally subdue him.

#### *Mr Z*

118. When Officer E turned his attention to Mr Z, who was in the back seat of the Honda, he still perceived that the car occupants presented a significant threat. Mr Z had not complied with Officer E’s earlier instruction to present his hands.
119. Officer E presented his Taser and laser pointed Mr Z for approximately five seconds (he did not specifically warn Mr Z that he would use the Taser if Mr Z didn’t comply). This show of force was sufficient to convince Mr Z to comply with Officer E’s instruction to show his hands. Officer E was satisfied that Mr Z no longer posed a threat, and lowered his Taser.
120. The Authority is satisfied that Officer E used the minimum force necessary to bring Mr Z under control so he could be safely arrested by another officer.

## FINDING

Both Officers C and E were justified in using their Tasers, and did so in compliance with Police policy.

### Was Officer D justified in deploying his dog to bite Mr Y?

121. When Officer D arrived at the scene, he was aware that the officers were dealing with a volatile and violent situation (see paragraphs 50-51). As he approached the front passenger side of the Honda, he saw that:
- Officer F was in a vulnerable position;
  - Mr Y was leaning down into the foot well with his hands out of sight and refused to comply with Police instructions;
  - Mr Y then attempted to grab Officer F's legs
122. Officer D reasonably feared that Mr Y was reaching for a weapon, and that he and Officer F were in grave danger. Officer D warned Mr Y to show his hands or he would be bitten by the dog. When Mr Y did not comply, the Authority accepts that Officer D had no other option in the circumstances than to command his dog to bite Mr Y. The Police dog was removed from Mr Y immediately after Mr Y was brought under control.
123. As required by Police policy, Mr Y was given access to appropriate medical care, but declined treatment.

## FINDINGS

Officer D was justified in using his Police dog to prevent Mr Y from reaching for a potential weapon.

Police met their obligation to provide Mr Y with the opportunity to receive medical treatment.

## ONGOING DISCUSSIONS

124. The current policy governing the pursuit of fleeing drivers is highly prescriptive, and police officers faced with the need to make quick decisions in a pursuit situation sometimes find it difficult to comply with all aspects of that policy. The Authority notes that, for this reason, the Police have been undertaking a review of the policy. It expects a new policy to be adopted shortly.

## CONCLUSIONS

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125. The Authority has concluded on the balance of probabilities that:

- 1) Officers A and B complied with law and Police policy in commencing a pursuit of the Honda.
- 2) Officers C and D complied with their communication obligations under Police policy.
- 3) Officer B complied with his communication obligations in the most part, but failed to advise SouthComms about some high-risk aspects of Mr X's driving.
- 4) The dispatcher failed to prompt Officer B to provide a reason for the pursuit, and to re-issue the pursuit warning when the lead pursuing driver changed.
- 5) In general, Officers A, C and D complied with law and Police policy in relation to their speed and manner of driving throughout the pursuit.
- 6) The officers and pursuit controller complied with Police policy in relation to their ongoing risk assessment and the option of abandonment.
- 7) The Authority accepts the decision of the pursuit controller to allow the pursuit to continue at Linwood Avenue.
- 8) Officers A and B complied with Police policy when recommencing the pursuit on North Parade.
- 9) Officer D did not comply with Police policy when recommencing the pursuit of the Honda on Lincoln Road.
- 10) The pursuit controller should have taken a more proactive approach during the pursuit.
- 11) Officer C was justified in ramming the Honda with his patrol car in order to protect Officer E.
- 12) Both Officers C and E were justified in using their Tasers, and did so in compliance with Police policy.
- 13) Officer D was justified in using his Police dog to prevent Mr Y from reaching for a potential weapon.

- 14) Police met their obligation to provide Mr Y with the opportunity to receive medical treatment.

A handwritten signature in black ink, appearing to read 'Sir David Carruthers', written in a cursive style.

**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

4 November 2015

## ABOUT THE AUTHORITY

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### 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?

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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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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