

Use of road spikes causing injury to a member of the public near Puhoi

INTRODUCTION

1. At about 1.52pm on 28 February 2018, Police started to pursue a stolen Mazda Demio in Manurewa. The pursuit continued north along State Highway 1 for approximately 68 kilometres. At 2.30pm, just south of Puhoi, a pregnant member of the public was injured when she braked to avoid road spikes thrown onto the road by a Police officer, and the fleeing driver crashed into the rear of her car.¹ The pursuit ended shortly afterwards.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results and findings of the Authority's investigation.

BACKGROUND

3. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
4. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

The start of the pursuit

5. At approximately 1.50pm on 28 February 2018, Officers A and B were patrolling in an unmarked Police car near the Southmall shopping centre in Manurewa.

¹ Police refer to road spikes as tyre deflation devices (TDD). The relevant policy is set out in paragraphs 119-123.

6. Officer A noticed a silver Mazda Demio with a broken rear light. Officer B checked the car's registration number in the Police database and established that it was stolen. Both officers said that the driver saw their Police car and sped away at approximately 70kph.² Officer B activated the Police car's emergency lights and sirens and they followed the Demio.
7. The driver of the Demio overtook several cars and turned slowly against the red traffic light onto Great South Road. Officer A followed cautiously. Officer B radioed the Police Northern Communications Centre (NorthComms) to advise that they were in pursuit of a stolen car. The NorthComms dispatcher issued the pursuit warning, which Officer B acknowledged.³ Officer B further advised NorthComms:
 - of the make, model and registration details of the stolen car;
 - that Officer A was appropriately certified to be the lead driver in a pursuit, but that they were in a 'B' class Police car;⁴ and
 - that they had just passed Alfriston Road and were continuing south on Great South Road.⁵
8. The NorthComms shift commander went over to the dispatcher, received a briefing about what had occurred and plugged his headset into the radio system so he could listen to the transmissions between the dispatcher and Officer B.⁶ The shift commander took the role of pursuit controller, supervising the pursuit and co-ordinating the overall response, including the appropriate tactical options.
9. Meanwhile, the driver of the Demio started to drive down the wide median strip on Great South Road at approximately 80kph (in the 50kph speed zone), and passed through several intersections against the red traffic lights.
10. Officer A said they conducted a risk assessment regarding whether they should continue to pursue the Demio.⁷ They considered that the fleeing driver was driving at a relatively low, constant speed on the correct side of the road, and he appeared to be aware of the other traffic when driving through the intersections. Consequently they decided they were justified in continuing with the pursuit.

² Both officers later told the Authority that the driver appeared to be a young Pacific Islander, and there were no passengers visible. This description was not transmitted over the radio.

³ Dispatchers allocate Police units to attend incidents, and pass on relevant information to the field units. The dispatcher advises the shift commander when a pursuit has commenced, provides the pursuit warning, maintains radio communications with the units involved in the pursuit, and communicates instructions from the pursuit controller.

⁴ A 'B' class vehicle, such as unmarked Police car, must be replaced as the lead vehicle in a pursuit by an 'A' class vehicle as soon as practicable.

⁵ This information is required as part of the fleeing driver policy, see paragraph 113.

⁶ The shift commander is the senior officer at a Police communications centre, usually ranked inspector.

⁷ See paragraph 111 for further explanation of the Police's risk assessment tool, TENR (Threat-Exposure-Necessity-Response).

11. At Takanini, the Demio turned right onto the northbound Southern Motorway on-ramp, against the red traffic light. Officer B advised NorthComms that the pursuit was now on the Southern Motorway travelling north, and that the Demio was weaving through the dense traffic at approximately 80kph.
12. At about 1.55pm, approximately two kilometres north of the Takanini on-ramp, Officer C, a sergeant who was by himself and driving a marked patrol car, took over as the lead pursuing vehicle and directed Officer B to continue the pursuit commentary. Officer C advised NorthComms that he was now leading the pursuit, of his vehicle and driver classification, and his speed and location on the motorway. He acknowledged a second pursuit warning given by the dispatcher.⁸
13. At approximately 1.57pm, Officer B advised NorthComms that the driver was *“a young male, black cap ... in his 20s to 30s. Believed to be a single occupant of vehicle.”* Unknown to Police, there was actually one passenger in the Demio.
14. At approximately 1.59pm, the Police helicopter (Eagle) joined the pursuit and observed the Demio near Otara. The Eagle sergeant, Officer D, took over responsibility for providing radio commentary for the remainder of the pursuit. Eagle’s camera captured footage of the pursuit from this point onwards.
15. Officer C advised NorthComms that he and Officers A and B were going to *“drop right back”* to remain out of sight of the fleeing driver. They slowed and turned their lights and sirens off, eventually maintaining a distance of 400-500 metres behind the Demio (this was confirmed by Officer D’s commentary). The officers’ lights and sirens remained off, except when trying to push through heavy traffic to stay with the pursuit. They listened to the commentary provided by Officer D.
16. Officer C explained that he was undertaking a continuous risk assessment at this point, and decided that the fleeing driver did not pose a sufficient threat to warrant abandoning the pursuit. He considered that the fleeing driver was driving erratically, weaving between lanes and altering his speed, but his speed was not excessive and he did not pose undue risk to other motorists.
17. The Demio continued north, reaching speeds of 120-150kph when the volume of traffic allowed, swerving between lanes, and occasionally using the red chip hard shoulder to undertake other vehicles. Officer D provided regular updates on the fleeing driver’s speed, manner of driving and location (noting upcoming off-ramps where, in response to NorthComms’ direction, Police units had positioned themselves with road spikes in case the Demio exited the motorway). The shift commander was able to view the progress of the pursuit along the motorway on CCTV cameras operated by the Auckland Transport Operations Centre (ATOC), but did not have access to the Eagle camera footage.

⁸ Officer C is a Gold class driver, enabling him to engage in pursuits and urgent duty driving. He was driving an ‘A’ class marked Police car.

18. Officers E and F, Police dog handlers in separate dog vans, also joined the pursuit and positioned themselves near Officer C.⁹
19. At approximately 2.05pm, the Demio appeared to be about to take the Market Road off-ramp, but swerved back onto the motorway at the last minute, just missing the hard barrier between the motorway lane and the off-ramp. The officers following the Demio did not see this manoeuvre as they were too far behind, and Officer D did not describe it in detail as part of his radio commentary.
20. Shortly afterwards, at approximately 2.07pm, Officer C noted other Police units joining the pursuit and issued a direction over the radio that all units, other than himself, Officers A and B, and the Police dog vans, should drop out. This direction was reinforced by the shift commander.
21. The Demio continued north, and over the Harbour Bridge into the Waitematā Police District. By this stage Officers E and F were the lead Police vehicles, but still maintained a gap of several hundred metres behind the Demio. The volume of traffic decreased and the fleeing driver was able to increase his speed again, to a maximum of 150kph. The fleeing driver continued to weave through traffic and undertake using the red chip on the hard shoulder to pass slower vehicles. Officer C again issued a direction for Police units attempting to join the pursuit to drop out.
22. At approximately 2.23pm, as the Demio approached Silverdale, an unidentified officer radioed his concern that the fleeing driver could be an armed offender that had stolen a car in Manukau three days prior and had been seen near Kaitaia. The officer stated that this person was *“running around with a pistol”* and had threatened to shoot Police.¹⁰
23. Based on this information and their belief that it was possible the fleeing driver was this armed offender, Officers E and F decided to arm themselves with Glock pistols. Officer E asked Officer F to confirm over the radio whether he had armed himself. The Authority could not hear Officer F’s response when listening to a recording of the radio transmission, however Officer F later explained that he slowed down, opened the lock box next to him and holstered his Glock.
24. The shift commander told the Authority he understood from the radio communication that the fleeing driver had been positively identified as this offender (which was not the case). At this point his assessment of the risks associated with the pursuit increased, along with the need to safely apprehend the driver.

⁹ Officers E and F are Gold class drivers, and were driving ‘A’ class vehicles, enabling them to engage in pursuits and urgent duty driving.

¹⁰ On the morning of 28 February 2018, Police issued a Front Line Intelligence (FLINT) document advising officers that a 21 year old male Pacific Islander (whose identity was known to Police) had stolen a blue 2007 Toyota Auris hatchback and had been seen in Kaitaia. The stolen car’s registration number started with the same letter as the fleeing Demio’s registration, but was otherwise dissimilar. The man had told a family member that he had a handgun, would shoot Police and *“was not going out quiet.”*

25. At 2.24:47pm Officer D asked NorthComms whether any thought had been given to setting up spikes on the other side of the Johnstone Hill tunnels just south of Puhoi, where the road narrowed to one lane. Another officer radioed that the closest available Police unit was in Warkworth (approximately 25 km to the north). At about this point the shift commander directed that radio communication about the pursuit should move to the Waitematā radio channel.¹¹

Officer G attempts to spike the Demio

26. Meanwhile, Officer G was driving an unmarked Police car south from Warkworth towards the North Shore to deliver some paperwork.¹² He was in Police uniform but did not have his stab-resistant body armour (SRBA), high visibility vest and appointments, as his usual Police car had been taken by another Police officer.¹³
27. Officer G was listening to the radio and heard that Eagle was following a stolen car that was just crossing the Harbour Bridge into the Waitematā Police District. He heard Officer D provide commentary of the Demio's progress, but believed that the pursuit had been abandoned and that Police units were not engaged in following it. He had not heard any radio transmissions about the possibility that the fleeing driver was armed.
28. As the Demio continued north towards Silverdale and did not exit the motorway, Officer G started to pay more attention to the radio transmissions. He told the Authority that he noted the Demio was maintaining high speeds and was overtaking and undertaking traffic.
29. Officer G became concerned that the Demio could reach the stretch of road between the Johnstone Hill Tunnels and Warkworth, which was particularly dangerous and notorious for crashes. At this point, the road becomes single lane without a median barrier, and includes multiple bends and roadworks sites. He feared that anyone driving in a dangerous manner on this stretch of road posed a real risk of crashing and causing serious injury or death to themselves or other motorists.
30. Officer G said that he had little time to decide whether to intervene, as he knew the Demio was rapidly approaching his position. He was still north of the Johnstone Hill Tunnels, and believed that the next officer in a position to deploy road spikes was in Warkworth (see paragraph 25).
31. At approximately 2.28pm, Officer G radioed NorthComms to advise that he was "*on the other side of the tunnels*" and asked: "*do you want me to try and spike him?*" The dispatcher (at the shift commander's direction) responded: "*Yeah, affirm.*"

¹¹ Police use different radio channels in different Police districts. Three separate radio channels were used during this pursuit.

¹² Officer G had 26 years' Police service at the time of this incident. He was a Youth Aid Officer but, being based in Warkworth, was still expected to assist with frontline incidents where necessary. He was current in all of his certifications, including the Police Professional Driving Programme (PPDP) that incorporates fleeing driving and Tyre Deflation Device deployment policy.

¹³ Police deployment policy requires a deployable employee working in the operating environment to wear SRBA and high visibility garments.

32. Officer G exited the southbound road, crossed over the tunnels and re-joined the state highway just after the northern tunnel exit.
33. Officer G told the Authority that he initially considered setting up road spikes not far from the tunnel exit, but did not believe he had sufficient time to set up before the Demio arrived. In fact, the shift commander had assumed that was where Officer G intended to set his road spikes, and was watching footage from the camera positioned above the tunnel exit in anticipation.
34. Instead, Officer G parked his Police car (without his emergency lights activated) on the hard shoulder just north of the intersection with Billing Road, approximately 800 metres north of the tunnel exit. At the intersection with Billing Road, the road reduces to a single lane, separated by a wire median barrier. Officer G stated: *"I had very little time to find a location, park, exit my car and get the spikes ready for deployment."*
35. Officer D advised that the Demio was approaching the tunnel at approximately 140kph. At 2.29:26pm Officer G asked whether there were many other cars in front of it and whether he would be able to 'spike' the Demio without hitting the other cars. Officer D responded that he would need to be quick due to the Demio's speed, that he would *"call it"* when the Demio exited the tunnel and that the driver would probably *"go wide"* of him so Officer G should take care that he had adequate cover. Officer G responded: *"Yeah he can't go wide I got the barrier on the right hand side of me. He can maybe go left to me but he's going to struggle."*
36. At 2.30:33pm Officer D advised that the Demio had just exited the tunnel behind a red Suzuki Swift. Eagle and ATOC footage captured the following sequence of events:
 - 1) The Demio accelerated towards the Swift as it came out of the tunnel, until it was approximately two car lengths behind.
 - 2) Officer G was positioned at the back right hand corner of his unmarked Police car with road spikes ready to be deployed.
 - 3) The Swift slowed as it approached the unmarked Police car. Officer G threw the spikes onto the road, in front of the Swift. The driver of the Swift braked hard and stopped before the road spikes.
 - 4) The Demio had swerved to the left as if to undertake the Swift as Officer G threw the road spikes, but then pulled back to the right and crashed into the back of the stationary Swift. The Demio shunted the Swift to the left, drove around it and over the road spikes, and continued on.¹⁴
 - 5) The Swift moved slowly off the road and came to a stop on the hard shoulder in front of Officer G's Police car.
 - 6) Officer G pulled the road spikes off the road, and the two dog vans (Officers E and F) drove past and followed the Demio.

¹⁴ The crash occurred at 2.30:43pm.

Officer G's account of the spiking

37. Officer G said he saw the Demio exiting the tunnel by itself, but it quickly drew close behind the Swift and looked like it was about to undertake it.
38. Officer G said he was focussed on the Demio, and did not realise that the Swift had slowed considerably. He anticipated that the Swift would pass safely, so he threw the spikes out onto the road. Ms Y, the driver of the Swift, stopped the vehicle unexpectedly and the fleeing driver swerved into the rear of the Swift in an attempt to avoid the spikes.

Ms Y's recollection of the crash

39. Ms Y was driving towards Warkworth and talking on the phone to her partner on the hands-free set. She was 28 weeks pregnant at the time. After exiting the tunnel she saw a man (Officer G) standing on the side of the motorway, which she thought was "odd."¹⁵ She slowed to approximately 70kph (the speed limit on this section of the road is 80kph).
40. Suddenly, Officer G threw what she recognised as road spikes onto the road in front of her car, which startled her, and she braked hard and came to a stop. She said that she was unaware of the Demio accelerating behind her.
41. The Swift was hit from behind with "massive force" and "careered off the road."

Aftermath of the crash

42. After the crash, Officer G saw that the Swift had moved onto the hard shoulder of the road, while the Demio had continued on. He first removed the road spikes from the road so that the other Police vehicles could drive through. He then went to the Swift and opened the front door to check if the driver was alright.
43. Officer G approached Ms Y's car but did not identify himself as a Police officer. He said this was because he was wearing a Police uniform and he was more concerned with checking on the driver.
44. Ms Y said that when she asked why Officer G had thrown spikes at her, he was dismissive and walked away without offering any help, even after she told him that she was pregnant and had other medical conditions. A short time later, Officer G came back and repeatedly asked for her name. Ms Y said she indicated to her wallet in the driver's door pocket, and he took it and walked off again.
45. Officer G stated that he had gone to radio for an ambulance then returned to reassure Ms Y. However, Ms Y would not speak to him, and he felt that his presence was making her more upset so he moved away out of concern for her welfare, and stood by his Police car. He said he

¹⁵ As described in paragraphs 26 and 34, Officer G was wearing Police uniform, but not his SRBA or high visibility vest. He had not activated the emergency lights of his unmarked Police car.

did not attempt to establish her identity or take her wallet as she was too upset to permit this. By this time a truck driver with first aid training had stopped and was reassuring Ms Y.

46. Ms Y recalled being comforted by a member of the public wearing a high-visibility jacket who had stopped to assist. She also recalled a “ginger-haired” Police officer arriving and asking her why she did not pull over, which Ms Y found upsetting.
47. Officer H, a senior sergeant (who has red hair) attended the scene of the crash. He told the Authority that he asked Ms Y for her name, and may have looked at her driver licence. He said that he did not ask Ms Y any questions about the circumstances of the crash, because he was focusing on her well-being.
48. A nurse also attended the scene and sat with Ms Y in the front passenger seat until an ambulance arrived. Ms Y gleaned from comments made that the nurse was a friend of Officer G’s and he had called her to come and help.
49. The Authority spoke to the nurse, who said that she was driving to Warkworth when she saw at least two Police cars and a damaged car parked at the side of the highway, so she stopped to offer assistance. She told the Authority that, while Officer G knew her in a professional capacity, he had not contacted her to attend the crash. The nurse recalled that she was told the injured woman’s name on arrival, and that the officers spoke to Ms Y in a polite and respectful way.

The end of the pursuit

50. After the spiking, the Demio continued northbound on State Highway 1 at speed. However, it was damaged from the crash and approximately 20 seconds later (at 2:31:05pm) the Eagle footage shows that its bonnet flipped up and obscured the windscreen.
51. Officer D advised NorthComms that the Demio was travelling at approximately 120kph and was crossing double yellow lines to overtake slower traffic.
52. Officers E and F, who were now approximately 200 metres behind the Demio, fell back again so as not to provoke the fleeing driver into taking further risks. Periodically the dog vans activated their lights and sirens to warn oncoming motorists.
53. Approximately three minutes after the spiking, the Demio slowed to 60kph. It then turned left onto a gravel road and crashed at low speed into a dirt bank. The fleeing driver had climbed into the back seat of the Demio prior to it crashing into the bank, and the passenger had subsequently moved into the driver’s seat.

54. Officers E and F parked approximately 20 metres behind the Demio. When the driver did not emerge, they approached the Demio with their firearms drawn, believing that the driver could be the armed offender referred to in the earlier radio transmission (see paragraph 22). The officers called on the occupants of the Demio to get out with their hands visible.
55. At approximately 2.35pm, an unarmed young person and a child got out of the Demio and were arrested by Police. Police advised them of their youth Bill of Rights and took them back to Counties Manukau Police Station.

The fleeing driver and passenger

56. The driver of the Demio (aged 14) was charged with multiple offences and dealt with through the Youth Justice system. The passenger (aged 11) was referred to Youth Aid.

Ms Y

57. Ms Y was transported to North Shore Hospital, where she was treated and discharged the following day. She sustained injuries that affected the rest of her pregnancy, but has since given birth to a healthy baby. Ms Y told the Authority that this incident has had a significant and ongoing impact on herself and her family.

Complaint

58. During interview with the Authority Ms Y raised issues with the actions of Officer G in spiking her vehicle and how he behaved towards her afterwards. The Authority has considered these issues as part of its independent investigation in relation to the incident.

Police investigation

59. Police conducted an employment investigation into Officer G's actions. The investigation identified deficiencies in Officer G's decision making around the deployment of the road spikes, including poor site selection, inadequate cover and a lack of appointments and other personal equipment. He received further relevant training.
60. On 31 May 2018 Police wrote to Ms Y to explain the outcome of the Police investigation and apologise for the impact of the incident.

THE AUTHORITY'S INVESTIGATION

61. As part of its investigation the Authority interviewed Officers A, B, C, D, F, G, H, the shift commander, the nurse and Ms Y. The Authority also made unsuccessful attempts to speak to Officer E (who is no longer a Police officer) and the fleeing driver. The Authority decided that these individuals did not have information that was critical to the investigation, so it was not necessary to summon them.¹⁶
62. The Authority drove the pursuit route, reviewed relevant documentation, viewed ATOC and Eagle footage and listened to the pursuit audio.
63. The Authority identified and considered the following issues:
 - 1) Did Police comply with law and Police policy during the course of the pursuit?
 - 2) Was Officer G's use of spikes appropriate and in accordance with Police policy?
 - 3) Was appropriate and timely assistance provided to Ms Y?
 - 4) Were Police justified in conducting an armed arrest of the occupants of the Demio?

¹⁶ The Authority is empowered to summon people under section 24 of the Independent Police Conduct Authority Act 1988.

Issue 1: Did Police comply with law and Police policy during the course of the pursuit?

64. Section 9 of the Search and Surveillance Act 2012 empowers Police to stop a vehicle without a warrant to arrest a person if they have reasonable grounds to believe that that person has committed an offence punishable by imprisonment. Officer B checked the Demio's registration number in the Police database and ascertained that it was stolen. As theft of a car is an offence punishable by imprisonment,¹⁷ Officers A and B had the lawful authority to stop the Demio to speak to the occupants.
65. The driver of the Demio did not stop when Officer B activated his lights and sirens. As required by policy, Officer B advised NorthComms that they were in pursuit of the Demio, and acknowledged the pursuit warning given by the dispatcher.¹⁸ Officer B provided the required details about the fleeing vehicle, including its description and direction of travel. He also advised the dispatcher of Officer A's driver classification and the Police vehicle classification ('B' class). Officer C, travelling in a marked 'A' class Police car, appropriately replaced Officer A as the lead pursuing vehicle as soon as was practicable.
66. Officer B and later Officer C provided adequate commentary about the Demio's direction of travel and manner of driving. Officer D (in Eagle) took over commentary and provided very detailed information which allowed the shift commander to maintain an overall appreciation of the pursuit and consider tactics.
67. Eagle's involvement also gave Officer C and the other units the opportunity to drop back out of sight of the fleeing driver so as not to provoke further high-risk behaviour, while still maintaining sufficient proximity to intervene if necessary. Rather than having to concentrate on providing the pursuit commentary, Officer C was able to actively manage other aspects of the pursuit, such as limiting the number of units involved to what was necessary to safely arrest the fleeing driver and any passengers.¹⁹
68. The Authority spoke to Officers A, B, C, D, F and the shift commander about their risk assessments throughout the pursuit.
69. The fleeing driver drove erratically and presented a certain level of risk to other road users. He did not comply with traffic rules on Great South Road and while on the motorway (for example, driving through red traffic lights and undertaking traffic on the hard shoulder). However, dense traffic meant that the Demio's speed was often limited, and only reached high levels occasionally. The fleeing driver did not attempt to travel on the wrong side of the road and, overall, his driving did not create a sustained, extreme hazard to other motorists.

¹⁷ Section 223 of the Crimes Act 1961 states that anyone who commits theft is liable for a term of imprisonment, the length of which is determined by the value of the stolen item.

¹⁸ The relevant policy is set out in paragraphs 109-118.

¹⁹ See paragraphs 20 and 21.

70. Towards the end of the pursuit, when the fleeing driver's actions presented a greater risk to other motorists, Police believed that he could be an armed offender and there was a greater need to arrest him for public safety reasons.
71. On balance, the Authority agrees with the officers' assessments that the fleeing driver's manner of driving did not reach a level of threat that warranted the pursuit to be immediately abandoned before the Johnstone Hill tunnels. The shift commander also explained that, even if Police had decided to abandon the pursuit, it is uncertain whether this would have had any impact on the fleeing driver's behaviour because it was unlikely he that he was aware that Police units and Eagle were still following him, due to their distance.

FINDINGS

Police were justified in commencing the pursuit of the Demio.

Overall, the Authority is satisfied that Police complied with policy during the pursuit.

Issue 2: Was Officer G's use of spikes appropriate and in accordance with Police policy?

72. The overriding principle of Police policy in relation to the use of Tyre Deflation Devices, or 'road spikes', is that public and Police safety takes precedence over the immediate apprehension of the offender.²⁰ Appropriately certified officers must continually assess all relevant factors to ensure that the specific risks do not outweigh the benefits of deploying the road spikes.
73. In principle, the use of road spikes was an appropriate tactical option to attempt to stop the fleeing driver. By the time the pursuit was approaching the Johnstone Hill tunnels, the fleeing driver had covered a considerable distance and was not showing any indication that he would stop voluntarily. Officer G reasonably assessed that the fleeing driver was about to reach a particularly dangerous stretch of road and would pose a serious threat to other motorists if he got that far due to his manner of driving. Officer G told the Authority that he had attended "four or five" fatal crashes along that stretch of road in recent years, and he was concerned that inaction on his part could result in preventable injuries or death. He was aware that he was the last officer in a position to deploy road spikes before Warkworth.
74. Officer G advised NorthComms of his approximate position and asked for permission to deploy road spikes, which he received. However, as outlined in paragraph 33, the shift commander had a different understanding of where Officer G was planning to set up the road spikes.

²⁰ See paragraphs 119-123 for policy.

75. Officer G turned his mind to the number of vehicles ahead of the Demio and asked for Officer D's opinion about whether he would be able to deploy spikes successfully without "hitting" other cars. Officer D cautioned Officer G that he would need to be "quick" and rely on verbal cues from him.
76. Officer G explained that he chose to deploy road spikes where he did primarily because he did not consider that he had enough time to set up closer to the tunnel exit (where he could have taken protective cover behind a concrete barrier). In addition there was a median barrier to protect southbound traffic at the location he decided to deploy.
77. However, there were significant shortcomings in respect of Officer G's choice of location, as well as his practice in deploying the road spikes and his overall risk assessment.
78. Officer G put himself in a dangerous position as he had no cover to protect him if the fleeing driver deliberately or accidentally drove towards him to avoid the road spikes. He was also exposed to any flying debris should a crash occur. Police policy specifically states that a Police car itself does not provide sufficient cover for officers deploying road spikes. Officer G was fully aware that the fleeing driver was travelling at speed and using the hard shoulder (where Officer G was positioned) to pass slower traffic. He had clearly identified this risk in an earlier radio transmission to Eagle (see paragraph 35).
79. The deployment site itself did not comply with Police policy. It was immediately beside an area of roadworks. A curve in the road between the tunnel entrance and Officer G's position meant that he briefly lost sight of the oncoming cars. This would have made it even more difficult for Officer G to track the relative speeds and road position of the oncoming traffic.
80. Officer G was aware that a Swift was in front of the Demio. He explained that he anticipated Ms Y would maintain a constant speed when passing him, allowing him to throw the road spikes in the path of the Demio. However, this was not a reasonable assumption for him to make, and certainly should not have been relied upon for safe and successful deployment of road spikes. It was understandable that Ms Y would slow down when approaching what would appear to her as a potential hazard in the form of an unidentifiable person standing on the side of the highway. Officer G's Police car was unmarked, the emergency lights were not activated, and he was not wearing a SRBA or high-visibility vest to readily identify him as a Police officer.
81. Having viewed the Eagle footage and considered Ms Y's account of events, the Authority concludes that the Demio was far too close to the Swift for Officer G to be able to deploy the road spikes safely. The overall situation was extremely dynamic, and Officer G could not effectively judge the speeds of the approaching vehicles or predict the behaviour of the respective drivers. In conjunction with the fact that Officer G had placed himself in a highly exposed position, he should have assessed that the risks to other motorists (specifically Ms Y) and to himself substantially outweighed the immediate need to stop the fleeing driver at that particular moment, and decided against deploying the road spikes.
82. It is worth noting that, while appropriately certified, Officer G told the Authority he had not physically practiced deploying road spikes in ten years.

FINDING

In principle, road spikes was an appropriate tactical option to stop the fleeing driver. However, Officer G should not have deployed road spikes in this circumstance because he did not undertake an adequate risk assessment and did not comply with Police policy. Specifically, Officer G did not prioritise the safety of himself or Ms Y and other members of the public over his perceived need to stop the fleeing driver.

Issue 3: Was appropriate and timely assistance provided to Ms Y?

83. Police have a duty of care towards any person who is injured as a result of Police actions.
84. After checking on Ms Y, Police records show that Officer G requested an ambulance within two minutes of the crash, and ensured that the paramedics were advised that the victim was pregnant. The ambulance arrived 17 minutes after Officer G's initial call.
85. Ms Y has raised concerns about how she was treated at the crash scene by attending officers. Ms Y was in pain and, understandably, upset and angry about what had happened. She was extremely worried about the wellbeing of her unborn child.
86. Ms Y perceived that Officer G was abrupt and unhelpful. Ms Y was also concerned about some of the comments made by Officers G and H with regard to the seriousness of what had happened and whether she was at fault.
87. Officer G explained to the Authority that he did try to speak to and reassure Ms Y, but she was so upset and unwilling to engage with him that he judged that any persistence on his part would be detrimental to her welfare. For this reason, he said he did not try to establish her identity. Officer H stated he thought he might have viewed Ms Y's driver licence, which makes it likely that he took her wallet from her car. The Event Chronology (a record of notes kept by Police communications through the course of incidents) shows that Ms Y's identity was established at 2.40pm, about 10 minutes after the crash.
88. The Authority also spoke to the nurse who assisted at the scene (see paragraph 49). The nurse recollected that Ms Y was extremely upset in the aftermath of the crash, and the officers present (including Officer G) treated Ms Y respectfully. The nurse also explained that she came across the crash by chance and was not called by Officer G, as Ms Y thought might have been the case (see paragraph 48). The Authority is satisfied with this explanation.
89. The Authority does not have sufficient evidence to conclude that Officers G and H treated Ms Y inappropriately, although this does not necessarily negate Ms Y's perception that this was the case.

90. The Authority accepts Officer G’s explanation for withdrawing from Ms Y’s presence when other people, including another officer and a nurse, arrived to assist her. Officer G had called an ambulance and could not do anything further to help Ms Y at this point.

FINDINGS

Police ensured that Ms Y received timely and appropriate medical assistance.

There are differing accounts of Officer G’s and H’s interaction with Ms Y and therefore there is insufficient evidence to uphold Ms Y’s concerns about her treatment at the crash scene.

Issue 4: Were Police justified in conducting an armed arrest of the occupants of the Demio?

91. Police policy authorises an officer to arm themselves when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death or grievous bodily harm range as specified by the Tactical Options Framework.²¹
92. Throughout the pursuit, Police did not know the identity of the fleeing driver or that there was a passenger in the Demio. They believed that they were pursuing a male in his twenties or thirties (see Officer B’s radio broadcast in paragraph 13).
93. Police had issued an advisory to all officers about a potentially armed man travelling in a stolen car near Kaitaia. This person had made a general threat to a family member about shooting Police.²²
94. However, the information communicated to Officers E and F by an unknown officer was not detailed and was somewhat misleading, when compared to the actual FLINT information (see paragraph 22). There was never any indication that the man was “*running around with a pistol.*” The location and the vehicle description also did not match the circumstances of the pursuit.
95. Had the correct information been communicated to Officers E and F, the Authority does not consider that there would have been a sufficient threat to justify their decision to arm themselves, and approach the crashed Demio with their firearms drawn.
96. However, based on the information that was actually communicated to them, the Authority cannot criticise them for perceiving that the fleeing driver could be armed and might pose a significant threat. On this basis, it was appropriate for the officers to arm themselves and approach the Demio with their firearms drawn (although it is unfortunate that a child and a young person were arrested at gunpoint). Officer E’s radio conversation with Officer F (as described in paragraph 23) alerted NorthComms that they were arming themselves, as policy required. The Authority accepts that it was not appropriate for the officers to stop and put on ballistic body armour during an active pursuit.

²¹ The relevant policy is set out in paragraphs 104-108.

²² The information set out in the FLINT advisory is recorded in footnote 10.

FINDING

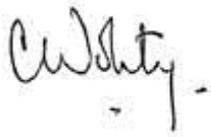
Officers E and F were justified in conducting an armed arrest based on the information communicated to them.

CONCLUSIONS

97. This incident caused injury, trauma and stress to an innocent, pregnant member of the public. Ms Y's injuries caused her worry, pain and affected her pregnancy. This incident has also caused ongoing stress and difficulties for Ms Y.
98. As a result of its investigation, the Authority has found that the use of road spikes was an appropriate tactical option to consider in principle. However, Officer G should not have deployed road spikes in this instance because he did not undertake an adequate risk assessment or comply with Police policy. Specifically, Officer G did not prioritise the safety of himself or Ms Y over his perceived need to stop the fleeing driver.
99. The Authority has also found that:
 - 1) Police were justified in commencing the pursuit of the Demio.
 - 2) Overall, the Authority is satisfied that Police complied with policy during the pursuit.
 - 3) Police ensured that Ms Y received timely and appropriate medical assistance.
 - 4) There are differing accounts of Officer G's and H's interaction with Ms Y and therefore there is insufficient evidence to uphold Ms Y's concerns about her treatment at the crash scene.
 - 5) Officers E and F were justified in conducting an armed arrest based on the information communicated to them.

RECOMMENDATIONS

100. The Authority and New Zealand Police have undertaken a review of the fleeing driver environment from which various recommendations have arisen. Many issues identified in this report are addressed by these recommendations. However, in addition to these, the Authority recommends Police amend the Tyre Deflation Device policy to require all officers conducting an overt deployment to wear high visibility apparel.²³



Judge Colin Doherty

Chair
Independent Police Conduct Authority

6 March 2019

IPCA: 17-1846

²³ See paragraph 124 for current policy.

Law on use of force

101. 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.”*
102. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*
103. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

104. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
105. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
106. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).
107. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily

harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

108. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Fleeing driver policy

109. The overriding principle of the Police fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender”.*

110. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).

111. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:

- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
- b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
- c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
- d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

112. The TENR risk assessment must weigh up:

“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”

113. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so).

114. Police Communications transmits pursuit warning to all vehicles involved: *“{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”*

115. The policy states that no more than two vehicles should actively participate in a fleeing driver pursuit unless they are preparing tactical options, undertaking a temporary road closure, or responding to a Pursuit Controller direction.

Aerial surveillance

116. Where available and tactically appropriate, an aircraft (such as the Police helicopter, Eagle) must take over primary responsibility for providing commentary to Police Communications, in order to reduce pressure on the lead or secondary vehicle providing the situation reports.
117. Once aerial surveillance is established, the Pursuit Controller must consider instructing the lead vehicle (and secondary if present) to drop back and consider the appropriate role of all vehicles involved, including whether they should remain in pursuit, or whether other tactical options should be employed.
118. Aircraft will assist the Pursuit Controller in the control and coordination of the pursuit by (amongst other things):
 - providing sit-reps;
 - continually undertaking a risk assessment (TENR) and advising any change in justification to pursue; and
 - recommending abandonment.

Tyre deflation devices (TDD)

119. Tyre deflation devices (TDD), commonly referred to as 'road spikes,' are a tactical option used to stop fleeing vehicles. The overriding principle is that every deployment of TDD is inherently dangerous, and the safety of Police and the public takes precedence over the immediate apprehension of the offender.
120. Appropriately certified staff may deploy TDD on the authority of the Pursuit Controller, as per the 'Fleeing driver policy.'
121. Deploying officers must continually assess the risks of deployment using the TENR framework, to ensure that the risks are not outweighed by the benefits of deployment. If this becomes the case, the deployment should be abandoned.
122. TDDs must not be used in certain situations. These include:
 - if there is road construction around the potential deployment site; or
 - if there is a likelihood of injury to members of the public, Police, or the offender(s).
123. Deployment sites should be chosen carefully. The site must:
 - be far enough away from the target vehicle to give time for selecting and assessing the site and deploying the device;
 - provide a clear view of the road in all directions, to allow the fleeing vehicle and other traffic to be observed as it approaches. TDD should not be set up on or immediately before a bend in the road;

- provide enough space to deploy the device but not enough that the offending vehicle can easily evade; and
- always provide cover and an escape route for deployment staff. Cover is defined as any material that will stop or at least deflect a vehicle without causing harm to the deployment officer. Fixed objects such as overpass pillars, buildings, guardrails and bridge abutments provide the most solid protection. Police or other vehicles should not be relied upon to provide cover unless operational circumstances require it.

124. Unless deploying road spikes by crossing a road and pulling the spikes back across (the ‘pull deployment method’), officers are not *required* to wear high visibility clothing when deploying road spikes. Whether or not to do so forms part of the officer’s own risk assessment.

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 Colin Doherty.

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

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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