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Case No: HQ10X00957 / QB-2010-000113

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2020

Before :

THE HON. MR JUSTICE TURNER

- -

Between :

GLENYS GOODENOUGH & ANOR	**Claimants**
- and -	
CHIEF CONSTABLE OF THAMES VALLEY POLICE	**Defendant**

- -
- -

James Laddie QC and Raj Desai (instructed by **DPG Law LLP**) for the **Claimant**
John Beggs QC and Aaron Rathmell (instructed by **DAC Beachcroft**) for the **Defendant**

Hearing dates: 3, 4, 5 and 6 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be at 10:30 on Thursday 26 March 2020.

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THE HON. MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. These claims arise out of the death in police custody of Robin Goodenough whose short and troubled life came to a sudden and unexpected end on 27 September 2003. The events of that day have cast a long and dark shadow over the lives of his bereaved family and of those police officers whose actions at the time have been subject to intense, and often hostile, scrutiny over the last seventeen years.

2. The claimants are the mother and sister respectively of the deceased. The hearing before me was concerned only with the issues of liability and causation of death. The issue of quantum of damages was ordered to be determined on a future occasion in the event that the claimants were to be successful at this stage.

3. Fortunately, although the parties are not in complete agreement as to the details of the events giving rise to these claims, there is sufficient common ground to enable me to outline the background in relatively uncontroversial terms. This I have done with the intention of providing a coherent introductory narrative uncluttered with extraneous detail.

4. Where in this judgment I have omitted to make specific reference to any given piece of evidence or argument this must not be taken to be an indication that this is owing to accidental oversight. In a case in which there are no fewer than 3,834 pages of documents (not including the medical evidence) and 120 pages of written submissions it is neither practicable nor desirable to aim to be all-inclusive in my reasoning. I can indicate, however, that where I have not referred to any particular detail or submission arising therefrom then it is because I have concluded that the recital of the consideration and resolution of the same would not lead me to any conclusions different from those later articulated in this judgment.

BACKGROUND

5. On 26 September 2003, Mr Goodenough appeared at Oxford Magistrates' Court. It was a venue with which he was by no means unfamiliar. At the age of 26 he had already accumulated a long record of relatively petty offending and may well have expected on this occasion to have been sent to prison yet again. So he probably considered himself fortunate when the magistrates decided to give him another chance. Having been remanded in custody over the week prior to his appearance, he was allowed his liberty.

6. Their mercy, however, proved to be fatal.

7. Even the most cursory glance over Mr Goodenough's extensive catalogue of criminal antecedents would be sufficient to confirm his obsession with cars. This was a fascination which found him behind the wheel of his sister's Vauxhall Astra on the very evening of the day upon which he had been saved the ordeal of a further period in custody. He was disqualified from driving but this prohibition operated as no more effective a disincentive on this occasion than it had done in the past. He was, inevitably, uninsured and the Astra was neither taxed nor covered by an MOT certificate.

8. Mr Goodenough enhanced the chances of his being caught by driving close to Oxford City Centre in the early hours of the morning in an eye-catchingly tatty car. He had made matters even worse by earlier inhaling butane to which he was addicted and the recent consumption of which was never likely to have enhanced his driving skills. His passengers on this excursion were one Andrew Swaddling in the front passenger seat and the second claimant in the rear.

9. At 12.19am, as Mr Goodenough was negotiating the Plain roundabout, which is just to the east of Magdalen Bridge, his vehicle was spotted by police officers in a van being driven by one PC Shane. There were no fewer than eight other officers on board. Suspicions were aroused by a combination of the condition of the Astra and the furtive reaction of Mr Goodenough and his sister when they became aware of the presence of the police. The decision was made to stop the Astra but Mr Goodenough made off. He would have been all too well aware of the likely custodial consequences if he were to be apprehended. He left the roundabout at its junction with Cowley Road and, when PC Shane activated the van's blue lights and sirens, he put his foot down. A short chase over a distance of about 260 metres ensued. Mr Goodenough, although not reaching high speeds, was noted by the officers to be driving erratically before turning left into Alma Place. It doubtless came as a disappointment to him when he realised that he had driven into a cul-de-sac. He came to a halt but, despite the fact that he was trapped in a dead end, there remained sufficient room in which he could have driven the Astra a little further down the street before running out of road. The police van drew to a halt immediately behind the stationary Astra and the officers got out to surround it.

10. According to his notebook, the officer in charge, PS Bates, attempted to open the driver's door but Mr Goodenough tugged on it and ignored repeated shouts to get out of the vehicle. At this time, the engine of the Astra was still running, although probably in neutral gear. PS Bates stated that he considered that there was a severe risk to the officers in the event that the driver were to attempt to move the vehicle. Mr Goodenough was

seen to be tensing and straining in the driver's seat. PS Bates pulled at Mr Goodenough's arm for a couple of seconds but later described being pushed to the left as other officers crowded in. Perhaps because he may have lost his balance, his next recollection was of seeing Mr Goodenough under restraint on the ground. He was not called to give evidence at the hearing before me and the claimants made no application to cross-examine him.[1]

11. After PS Bates's initial unsuccessful efforts, it was PC Shatford who took the lead in attempting to get Mr Goodenough out of the car. His account was to the effect that his first objective was to remove the keys but Mr Goodenough then appeared to be leaning towards the inside of the vehicle. He said that he feared that he was intending to reach for a weapon. He took hold of Mr Goodenough by his right shoulder and arm and attempted to extricate him from the vehicle by pulling at him several times.

12. PC Summerville was also involved, albeit to a lesser extent, in the effort to remove Mr Goodenough. He had followed PS Bates around the front of the car and recorded reaching into the car to help PC Shatford remove Mr Goodenough.

13. Mr Goodenough, however, was not compliant. At this stage, PC Shane arrived and, from behind PC Shatford, delivered what he described as two "distraction blows" in the form of punches to Mr Goodenough. PC Shane said that he was motivated by concern that PCs Shatford and Summerville were afraid that the driver was about to manoeuvre the vehicle and hit and injure other officers in the process. The first blow was largely ineffective because it partly landed on the Astra and/or PC Shatford's arm. However, whether as a result of the second of these two blows or otherwise, Mr Goodenough's resistance to physical movement soon ceased and he emerged from the vehicle. The force required to achieve this was mainly provided by PC Shatford with some momentary assistance from PC Summerville who had taken hold of Mr Goodenough's clothing for a short time. Mr Goodenough's face hit the road with sufficient force to fracture the alveolar ridge (the raised thickened border of the jaw that contains the sockets of the teeth) and to loosen teeth. His facial wounds were bleeding profusely and an ambulance was called. He was handcuffed and arrested

[1] The claimants contend that, because the defendant did not serve a hearsay notice in respect of the evidence of PS Bates, no application to cross examine him could be made. However, as the defendant points out, the claimants chose to include all of the documentary hearsay evidence from PS Bates in the trial bundles. Both parties at trial proceeded to treat this information as evidence of the facts stated therein. I agree with the defendant that the claimants could have applied to cross examine PS Bates (see section 3 of the Civil Evidence Act 1995 and the notes to CPR 38.4 in The White Book) but, even if I am wrong and this option was not open to them, it would not make any difference to my conclusions in this case.

by PC Shatford: first for driving whilst unfit through drugs and then for driving whilst disqualified.

14. Thomas Sayers, a witness who lived in a nearby property on Alma Place, was not called to give evidence but had given a statement suggesting that officers may have kicked Mr Goodenough when he was on the ground. However, this allegation was unsupported by the medical or any other witness evidence and the claimants rightly abandoned the suggestion that it was sustainable. In the circumstances, I find that caution falls to be exercised in considering what weight to give to any other evidence given by Mr Sayers.

15. Paramedics Teresa Hardy and Stephen Oakes arrived at the scene at 12.28pm and placed Mr Goodenough in an ambulance. Tragically, he died soon thereafter. By the time the ambulance arrived at the John Radcliffe Hospital it already was too late. The cause of his death was atrial fibrillation caused by the stress of events. The physiological impact, in particular of the release of adrenalin, would very probably not have had fatal consequences for someone with a normal constitution. However, Mr Goodenough, was a regular abuser of butane gas. Indeed, an empty butane gas canister had been found in the vehicle which he had been driving. As a result, his heart had been fatally sensitized to the impact of the various stressors which had accumulated over the minutes prior to his death.

16. By 12.51am, the police officers had been told that Mr Goodenough may have died and the area fell to be treated as a crime scene. Senior officers were soon informed of the situation and the Police Complaints Authority ("PCA") was notified.

17. At 3:00am, the officers involved attended a meeting at St Aldate's police station presided over by Detective Superintendent Chesterman in the course of which PS Bates was called upon to give an account of the events of the evening. PC Shane supplemented this narrative with the information that he had inflicted the two distraction blows. I will consider in greater detail what happened before, during and after this meeting later in this judgment.

18. The matter was subsequently investigated by the Hampshire Constabulary under the supervision of the PCA and, subsequently, the Independent Police Complaints Commission ("IPCC").

19. On 15 October 2003, PS Bates and PCs Shane, Shatford and Summerville were all arrested by officers from the Hampshire Constabulary under suspicion of criminal responsibility for the death of Mr Goodenough.

20. On 8 December 2003, PCs Shane, Shatford and Summerville were charged with manslaughter and assault causing actual bodily harm. No charges were brought against PS Bates. It took nearly two years for the matter to come to trial. Eventually, after a hearing lasting over six weeks, the jury acquitted PC Summerville but were unable to reach verdicts in respect of PCs Shane and Shatford.

21. A retrial took place in June and July 2006 during the course of which PCs Shane and Shatford faced charges limited to assault causing actual bodily harm. It may be assumed that the allegations of manslaughter had not been proceeded with as a result of difficulties in proving the causation of Mr Goodenough's death. In the event, both officers were acquitted.

22. On 5 February 2007, the IPCC determined that no misconduct proceedings should be brought against any of the officers concerned. An attempt to challenge this decision by way of judicial review was unsuccessful (see ***R. (on the application of Goodenough) v Independent Police Complaints Commission*** [2009] EWHC 3706 (Admin)).

THE HEARING

23. The procedural background to the hearing before me was somewhat unusual.

24. The claimants elected not to call any lay witnesses. They applied, however, to cross examine PC Summerville. The defendant agreed to call, in addition, PCs Shane and Shatford. This meant that the evidence of all other lay witnesses was admissible under the hearsay provisions of the Civil Evidence Act 1995 and the weight to be attached to it was a matter for the discretion of the Court. Accordingly, I have approached this evidence in accordance with the terms of sections 2 and 4 of the 1995 Act the familiar provisions of which require no rehearsal.

25. In the event, PCs Shane and Shatford duly turned up at court to be cross examined but PC Summerville did not. I therefore issued a witness summons which prompted a general practitioner's letter commenting, in somewhat broad terms, upon the adverse impact that this witnesses' further involvement was liable to have upon the state of his mental health. The timing, form and content of the note were, to say the least, unfortunate. However, on any account, PC Summerville had been exposed to a highly traumatic event followed by years of investigation and a manslaughter trial in which his liberty was at stake. In these circumstances, the claimants realistically conceded that the hearing should proceed in his absence. Any points which were to have been put to him in cross examination would be raised in argument. These included, for example, certain suggestions in the documents that he may have had a reputation for getting "stuck in".

26. A further, and perhaps more significant, development related to the question of causation. There was an issue between the parties as to whether the officers' use of force on Mr Goodenough had been causative of his death. The defendant maintained the position that their actions in this regard had made no material contribution to the onset of atrial fibrillation and Mr Goodenough's death. This, it was contended, could safely be ascribed to the stress of what had happened immediately before the deployment of physical force and which included the combination of butane inhalation and the chase. I heard expert medical evidence on the issue at the conclusion of which it had become clear that the defendant's stance on medical causation was no longer sustainable and the causation defence was then rightly abandoned.

EVIDENTIAL CHALLENGES

27. The challenge of making findings of primary fact and of drawing the appropriate secondary inferences therefrom has been rendered more difficult by a number of features in this case. These include the following factors:

    (i) It is nearly seventeen years since the events in question occurred;

    (ii) The events leading to Mr Goodenough's death unfolded over a very short period of time in fast moving circumstances, involved several participants and took place in the hours of darkness;

    (iii) Those involved were, for the most part, not detached and objective observers. In particular, the three officers, who were later prosecuted at the Old Bailey, were under very considerable personal stress immediately after the news of Mr Goodenough's death was announced and, until the final resolution of the prosecutions bought against them, faced the risk of a significant custodial sentence and the loss of their careers;

    (iv) Only two witnesses gave oral evidence of the events of the evening in question thus leaving much room for interpretation of the often contradictory or incomplete hearsay evidence of other witnesses which was untested by cross examination.

28. To this list, the claimants would add the risk of contamination by the failure to keep the officers separate to prevent them conferring in the aftermath of the incident. This is factor to which I will return later in this judgment.

29. I readily accept the point made on behalf of the claimants that in any given case there may arise a powerful tendency for witnesses to remember past events in a self-enhancing light. In this context, near contemporaneous

written records of disinterested witnesses should be accorded appropriate relative weight. It is important, however, not to elevate such a common sense approach to the evaluation of evidence to a matter of stricter principle. It is not difficult to find examples of circumstances in which apparent discrepancies between the contemporaneous record and the evidence of the interested witness will not necessarily lead to the dismissal of the account given by the latter.

30. This is particularly so where the record does not directly contradict the account of the witness but simply omits one or more details which the witness purports to recollect. In such circumstances, the court will doubtless consider what, if any, other explanations there might be for the discrepancy. These may include the possibilities that:

    (i) the witness may not at the time have considered the information sufficiently important to convey; and/or
    (ii) the person making the record may not have thought it sufficiently important to record; and/or
    (iii) the particular circumstances in which the record was being made might have an impact on its likely accuracy or level of detail.

31. Even where there is an apparent express discrepancy, care must be taken to consider whether this may be attributed to differences in choice of descriptive language reflecting matters of form and presentation rather than of substance.

32. Clearly, there will be cases in which the relevant discrepancy is best explained by the accuracy of the record and the inaccuracy of the interested witness's recollection fuelled, whether consciously or unconsciously, by self-interest of the latter. Each case, however, must ultimately be analysed and decided on its own particular facts.

33. Suffice it to say that I have had regard to all of the factors listed in this section of the judgment in the course of my analysis of and adjudication upon the issues of fact in this case.

THE CAUSES OF ACTION

34. The claimants now rely upon two distinct causes of action:

    (i) the tort of battery; and

(ii) breach of rights under Article 2 of the European Convention on Human Rights ("ECHR") arising from alleged flaws in the investigation which followed Mr Goodenough's death.[2]

35. I propose to deal with each cause of action in turn.

BATTERY – THE LAW

36. With respect to the tort of battery, there is, and could be, no dispute that the officers involved used physical force on Mr Goodenough which, subject to the specific defences available in such circumstances, went well beyond that which would otherwise be generally acceptable in everyday life. The burden of proof therefore shifts to the defendant to make out one or more of those specific defences.

37. Two central potential justifications for the use of force arise on the facts of this case:

(i) The officers were effecting, or assisting in, the lawful arrest of Mr Goodenough; and/or

(ii) The officers were acting in self-defence or the defence of others.

Arrest

38. At the material time, Section 163 of the Road Traffic Act 1988 (as amended) provided:

> "**Power of police to stop vehicles.**
>
> (1) A person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a constable in uniform or a traffic officer…
>
> (3) If a person fails to comply with this section he is guilty of an offence.
>
> (4) A constable in uniform may arrest a person without warrant if he has reasonable cause to suspect that the person has committed an offence under this section."

39. Section 3 of the Criminal Law Act 1967 provides:

> "**Use of force in making arrest, etc.**

[2] In my original draft, as circulated to the parties, I observed that earlier claims, based on allegations of negligence and additional breaches of the ECHR relating to the events in Alma Place, had been "rightly abandoned during the trial". The defendant agrees with this interpretation of the concessions made on behalf of the claimants. The claimants, however, contend that the concession actually made fell short of abandonment but would mean that that these claims would "stand or fall with the primary assault/battery claims". I continue to hold the view, and so decide, that the claims were, in fact, abandoned but, even if I were to be wrong about this, they would fall to be dismissed in any event in consequence of my findings in respect of the tort of battery.

> (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders…"

40. Section 117 of the Police and Criminal Evidence Act 1984 provides:

> "**117. Power of constable to use reasonable force.**
>
> Where any provision of this Act—
>
> (a) confers a power on a constable; and
>
> (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer, the officer may use reasonable force, if necessary, in the exercise of the power."

41. It is to be noted that no allegation of unlawful arrest is relied upon by the claimants in this case. As Fox LJ noted in ***Simpson v Chief Constable of South Yorkshire Police*** *The Times*, March 7, 1991:

> "The first of those allegations is in effect an assertion of the use of undue force in effecting an arrest, making the arrest itself unlawful. No authority was cited to us which supports that proposition. Nor would it be a sensible state of the law."

Self-defence

42. In ***Ashley v Chief Constable of Sussex Police*** [2008] 1 A.C. 962 the House of Lords held that the defence of self-defence in the context of a civil claim required the defendant to show, at least, that his use of force was in response to an honest and reasonable belief that he was under imminent attack. The question whether the defence of self-defence to a tortious claim for assault and battery requires the defendant to prove that he was actually being attacked or under threat of imminent attack had been answered in the negative in the Court of Appeal but remains open at Supreme Court level. For present purposes, I am necessarily bound by the Court of Appeal approach to this issue.

43. The same considerations fall to be considered in respect of force deployed in the defence of others.

Proportionality

44. Even if the deployment of force by the officers is shown to have been legally justified, the defendant must also prove that the extent of the force used was reasonable in all the circumstances.

The Proper Approach

45. The Court must take care not to judge the actions of the officers by unrealistic standards of detached reflection and retrospective analysis. As Lord Diplock observed in ***AG for Northern Ireland's Reference (No. 1 of 1975)*** [1976] 3 W.L.R. 235 at page 138:

> "… the jury in approaching the final part of the question should remind themselves that the postulated balancing of risk against risk, harm against harm, by the reasonable man is not undertaken in the calm analytical atmosphere of the court-room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind and degree of force that was used by the accused: but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed…"

BATTERY - DISCUSSION

46. I am satisfied, on the balance of probabilities, that it was lawful for the officers concerned to use force against Mr Goodenough in the aftermath of the chase and that the force they used was reasonable. In particular, I accept that where the force used was said to be by way of self-defence or the defence of others that the officer concerned was acting in the reasonable belief that there was an imminent threat of attack.

47. The claimants have sought to persuade me that the accounts of the officers have evolved over time in order to provide a retrospective justification for their actions but I do not accept that this was the case.

48. It is important not to analyse the events which occurred in Alma Place in isolation. The officers were entitled to take into account the circumstances leading up to this point. Mr Goodenough had already shown himself capable of taking a criminal risk in deciding to make off rather than to stop when it was obvious that he was being required to do so. This is a consideration which was bound reasonably to colour the officers' beliefs as to the potentially dangerous steps which he might further take to avoid detention.

49. The officers were also entitled to conclude that if Mr Goodenough had really decided that "the game was up" after he had come to a halt in Alma Place then he would have turned off the car engine and complied without delay with the officers' calls for him to get out of the vehicle. I find that his failure to do either was reasonably interpreted to amount to a serious and imminent threat to their safety.

50. The point is made that in Supt. Chesterman's notes of the debriefing session it is recorded: "Goodenough was uncooperative and PS Bates

began to pull him out of the driver's seat". The claimants contend that because no express mention was recorded of any fears for the safety of the officers then this should be taken as a later invention. I disagree. The note does not purport to record that the reason given for the use of force was only that Mr Goodenough was being uncooperative. If this is what Supt. Chesterman had actually understood to have been the case then it might be expected that he would have recorded immediate serious concerns about the use of this degree of force but no such concerns are expressed.

51. A similar point is made concerning the note of what PC Shane said about his distraction blows with respect to Mr Goodenough "as he was being uncooperative and difficult to remove from the car". Again, this is factually correct[3] and does not justify the conclusion that PC Shane was not fearful for his own safety or that of other officers at the relevant time. Supt. Chesterman's notes are relatively succinct and do not purport to be a verbatim record of what was said at the meeting and he states in his notebook that he expected that written (and doubtless more detailed) statements would later be given by the officers involved. In the event, PC Shane did indeed record his fears in his notebook shortly afterwards on the following evening.

52. A Gold meeting was held at 10:00am on the same day when Supt. Chesterman recounted what he had recorded in his notebook. Two of those present had also attended the de-briefing meeting and it is argued that if Supt. Chesterman had been mistaken in his recollection than they would have corrected him. Again, I am satisfied that the primary aim at that stage was to establish a coherent understanding of what had happened on the ground and not a detailed analysis of the state of mind of each of the officers concerned.

53. It is said on behalf of the claimants that the officers should have taken into account details which might suggest that Mr Goodenough would not be likely to try to drive the Astra forward including, for example, the fact that it was probably in neutral gear and that Mr Goodenough did not have his hands on the steering wheel. However, this is just the sort of "frame by frame" examination of events the deployment of which the courts have so frequently warned against. The actions of the officers were taken over a matter of seconds in a highly stressful environment in the hours of darkness and not over a period of two days of clinical analysis in a brightly illuminated courtroom.

[3] Although PC Shane's recollection was that it was another officer who mentioned that Mr Goodenough was being uncooperative and refusing to get out of the car.

54. Similarly, the claimants peremptorily dismiss the suggestion that PC Shatford believed that Mr Goodenough was reaching for a weapon when the latter turned towards the inside of the car. I do not share their scepticism. It may have been folly for Mr Goodenough to attempt to avoid arrest in this way but these were not circumstances in which it could safely be assumed that a suspect would behave in a rational and measured fashion. PC Shatford's decision to use force to extract Mr Goodenough from the vehicle was reasonable and proportionate in the circumstances and the suggestion that he should have held off was unrealistic. The claimants rely on a catalogue, which it would be disproportionate to rehearse here, of no fewer than eight points of challenge to PC Shatford's explanation but this approach falls once more into the trap of relying too much on retrospective and leisurely forensic analysis than a realistic appraisal of his state of mind over a matter of seconds.

55. Further, I do not accept that any of the officers involved trespassed beyond the bounds of exerting such force as was reasonable. For whatever reason, Mr Goodenough was persistently resisting the officers and when his resistance ceased it is unsurprising that emerged from the car and landed with some force on the road surface thereby suffering facial injuries. It would have occurred to no-one present that the injuries sustained would have been capable of causing death. I am not persuaded that the differences in the way his exit from the vehicle were described by different officers and at different times give grounds for suspicion. The accounts are not so divergent as to be redolent of fabrication. A rather more dramatic description is to be found in the statement of Mr Sayers but, as I have mentioned earlier, the weight to be given to his evidence is attenuated by his suggestion that the officers appeared to have been kicking Mr Goodenough when he was on the ground which is an observation which even the claimants are now unable to present as being accurate.

56. For the sake of completeness, I am unable to conclude on a balance of probabilities (and with the benefit of hindsight not available to PC Shatford) that Mr Goodenough was, in fact, reaching for a weapon. I do note that the property list in respect of the Astra records that above the glove box was found a blue handled serrated edge knife with a 135mm blade. However, judging by the long list of other items also found in the car which included a gas cooker, TV set and various items of clothing, it is certainly possible that the second claimant was actually living in the car at the relevant time and so the knife was capable of being categorised as an item of cutlery rather than a weapon.

57. PC Shane had a limited view of what was going on around the driver's seat of the Astra but he could tell from the shouts of his colleagues that there

was a sense of growing panic and a developing struggle in the effort to get Mr Goodenough out of the car. In these circumstances, it was reasonable for him to deploy force in defence of his fellow officers. In ***Williams v Macrae*** (Unreported, November 17, 1980, DC) two officers in a car saw a police constable chasing a man. They stopped and apprehended the man. It was held that where a police constable sees somebody running down the road with a uniformed police officer in pursuit then he or she would be entitled to lay hands on and detain the fugitive without the need for further information as to the offence he had been suspected of committing. Although this was a case about the lawfulness of the arrest, the analysis it deploys is consistent with the proper approach to the reasonableness of the use of force in this case. As the House of Lords held in ***R v Clegg*** [1995] 1 A.C. 482, in considering reasonable force, there is no distinction to be drawn between the use of excessive force in self-defence and the use of excessive force in the prevention of crime or in the arrest of an offender. Of course, each case must still be decided on its own facts in this regard.

58. The claimants suggested that PC Shane had deliberately tried to hide the fact that he had struck Mr Goodenough twice because there is no record in the notes of the paramedics (who were not called to give oral evidence) that PC Shane told them about this when they arrived on the scene and it was not appreciated just how serious Mr Goodenough's condition was. PC Shane, however, insisted that he had told them about the blows and they must simply have omitted to make a note of this. I believe him on this point. It is to be observed, in particular, that about three hours later, at the meeting convened by Supt. Chesterman, PC Shane volunteered this information after PS Bates had given an account of the events from which it had been (I find innocently) omitted. By this time, all present knew that Mr Goodenough had died. Contrary to the arguments presented on behalf of the claimants, I am satisfied that if PC Shane had deliberately failed to mention his distraction blows to the paramedics when the injuries to Mr Goodenough were not considered to have been grave then he would have had an even greater incentive to keep silent about them after he had found out that he had died.

59. It is further contended on behalf of the claimants that, with particular reference to PC Summerville's recorded comments to the TVP control room, Teresa Hardy, Tamsin Dunn and PC Kingsley, that there was a concerted attempt to cover up the fact that PS Shane had struck distraction blows in the area between Mr Goodenough's shoulder, neck and head area. PC Summerville was variously recorded as referring to the shoulder and arms but later referred to the shoulder, neck and head area in his notebook. I take the view that the discrepancies relied upon are of the type which

could readily be expected to arise whether though misunderstanding, misinterpretation or otherwise. The contrast is not so great as to lead me to conclude that there was, or even might have been, a cover up.

60. In this context, I do place some reliance on the demeanour of PC Shane when he was in the witness box. I recognise that some caution must be exercised in placing undue weight on this factor when determining where the truth lies but in this case I am satisfied that it is not without significance. It was very obviously an ordeal for PC Shane to have to rehearse once more the events of 27 September 2003 under prolonged, close and inimical scrutiny but his responses to questions put in cross examination were measured and, where appropriate, concessionary. I also note that I took the same view of the way in which PC Shatford gave his evidence.

61. For the sake of completeness, I am unable to conclude on a balance of probabilities (and, again, with the benefit of hindsight not available to the officers involved) that Mr Goodenough was actually intending to drive off.

62. The initial deployment of handcuffs to restrain Mr Goodenough was entirely proper and I can find no evidence that unnecessary force was used in the process. In this regard, I accept PC Shatford's evidence that as he went to Mr Goodenough's right arm to cuff it, Mr Goodenough moved it under his body and tucked it under his chest. PC Shatford thus had to pull it behind his back to complete the procedure. This was an entirely proportionate and reasonable response. In the light of Mr Goodenough's egregious behaviour in the events leading up to his detention, it was lawful and entirely reasonable to leave the handcuffs on until the paramedics arrived.

63. I should record that I have reached the my conclusions of fact in respect of the claim in battery taking full account of the legitimate criticisms which fall to be made in respect of the opportunities which arose after the event for cross-contamination of the evidence of the police officers involved. I will deal with these criticisms in greater detail in consideration of the point arising under Article 2 but, suffice it to say at this stage, I find as a matter of fact that what took place amounted to conferring but not to collusion arising from an improper motive on the part of those involved.

ARTICLE 2 – THE LAW

64. The relevant legal framework is helpfully set out in the judgment of Richards LJ in ***R (Delezuch) v Chief Constable of Leicestershire Constabulary*** [2014] EWCA Civ 1635 which I gratefully adopt and now summarise.

65. Article 2 of the ECHR provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

66. The Grand Chamber of the European Court of Human Rights held in ***Nachova v Bulgaria*** (2006) 42 EHRR 43:

> "110. The obligation to protect the right to life under Art.2 of the Convention, read in conjunction with the state's general duty under Art.1 of the Convention to 'secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.
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> …
>
> 112. For an investigation into alleged unlawful killing by state agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice.
>
> 113. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia,

> eye witness testimony and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements and must apply a standard comparable to the 'no more than absolutely necessary' standard required by Art.2(2) of the Convention. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness."

67. In ***Ramsahai v Netherlands*** (2008) 46 EHRR 43, Mr Ramsahai had made off with a scooter in a robbery involving the use of a firearm. He was stopped shortly afterwards and resisted arrest, during the course of which he was shot and killed by the police. Following a police inquiry, the public prosecutor decided that the shooting had been an act of self-defence and for that reason did not institute criminal proceedings against the police officer who fired the shot. The issues before the ECtHR included the compatibility of the investigation with Article 2.

68. The Court stated that in order to be effective in the relevant sense an investigation into a death that engages the responsibility of the state must firstly be adequate; that is, it must be capable of leading to the identification and punishment of those responsible. This is an obligation of means, not of result. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Secondly, the persons responsible for the investigation and carrying it out must be independent of those implicated in the events, which means not only a lack of hierarchical or institutional connection but also a practical independence: "What is at stake here is nothing less than public confidence in the state's monopoly on the use of force"

69. In relation to the adequacy of the particular investigation, the applicants pointed out that several forensic examinations which one would normally expect in a case such as this had not been carried out, and that the two officers directly involved in the incident had not been questioned until several days after the fatal shooting, during which they had had the opportunity to discuss the incident with others and with each other. There was no evidence that they had actually colluded with each other or with their colleagues in the police force but the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounted to a significant shortcoming in the adequacy of the investigation.

70. In ***R (Saunders) v Independent Police Complaints Commission*** [2009] 1 All E.R. 379, Underhill J had to consider the decision in ***Ramsahai*** in the context of a challenge to the lawfulness of an investigation by the IPCC in circumstances where no steps had been taken to prevent the police officers involved in a fatal shooting from speaking to one another before they gave their first accounts, or to prevent them from collaborating in producing the notebook entries or statements which constituted those accounts, and where they had in fact so collaborated. That conduct was expressly permitted by the Association of Chief Police Officers ("ACPO") guidance in force at the time of the incidents, though the guidance was in the course of revision at the time of the judgment. The judge observed:

> "38. In my view the judgment in the Ramsahai case … demonstrates that in the case of a fatal shooting by police officers the state may be held to have violated Article 2 if, in the course of the investigation required by the Article, adequate steps were not taken to prevent the police officers directly concerned from conferring before producing their first accounts of the incident; and that that is so even if it cannot be shown that they did in fact confer. I accept that the opportunity which was given to Officers Brons and Bultstra to 'collude' was only one of three reasons which were held, cumulatively, to give rise to a breach. But I can see no principled reason why a vitiating factor of this kind needs to be supported by other factors. I also accept that the court explicitly referred to the risk only of 'collusion' rather than of innocent contamination. But the risks of collusion and of innocent contamination are both alike products of the opportunity to confer, and in cases where contamination does occur it will often be difficult to know whether that was deliberate or innocent. Both are capable of prejudicing an effective investigation, and the measures aimed at preventing the one would also protect against the other. While the court was, for obvious reasons, most exercised by the risk of collusion I very much doubt that it regarded the risks of innocent contamination as being of no concern.
>
> 39. It follows that if the circumstances of either of these cases were in due course to be considered by the court it might very well find that a breach of Article 2 had occurred ….
>
> 40. I am not, however, prepared to say that the mere fact that there was collaboration in the production of witness statements in these two cases means that a

> breach of Article 2 has been definitively established. Decisions of the European Court of Human Rights on the facts of a particular case ought not to be treated as a binding precedent, even in a case where the material facts appear to be similar. The only authoritative parts of a judgment are the statements of principle which it expounds. In my view the relevant statements of principle emerging from the Ramsahai case are that there must in every case of a killing by state agents be an effective investigation, and that in order to be effective such an investigation must be both independent and 'adequate'. The case also establishes that an investigation may be inadequate, and therefore ineffective, if 'appropriate steps' are not taken to 'reduce' the risk of collusion (see the Ramsahai case, para 330): I do not myself regard that as a statement of principle so much as an application of the underlying principles which I have identified. But, even if I am wrong about that, the principle in question is far from absolute in its formulation and involves the need to make judgments as to what steps are 'appropriate' and to what extent it is possible to 'reduce' the risks: those are precisely the kinds of judgment which ACPO is having to make in formulating its revised guidance …."

71. Later in his judgment, at paragraph 65, the Judge stressed that he was not saying that collaboration in note-taking complied with Article 2. On the contrary, he believed that a practice of permitting principal officers to collaborate generally in giving their first accounts was highly vulnerable to challenge under Article 2.

72. In ***Delezuch*** Richards LJ observed at para 55:

> "I accept that, in a case of death following the use of force by police officers, a failure to separate the police officers who used or witnessed the use of force may impair the adequacy of the investigation because of the risk of collusion (a term which I will use for the sake of simplicity to cover both dishonest collusion and innocent contamination of police evidence). Whether it does so to any material extent will, however, depend on the circumstances, including the other safeguards in place; and whether the investigation as a whole is adequate for the purposes of Article 2 will depend on an overall assessment of relevant factors, of which the risk of collusion is only one. The ECtHR in Ramsahai…did not hold that a failure to keep officers separate will necessarily render an investigation inadequate. The Court did say that the failure to take

> appropriate steps to reduce the risk of collusion amounted to a significant shortcoming in the adequacy of the investigation in question, but that was only one of several factors that led to the finding that the investigation was inadequate and in breach of Article 2. I agree generally with the observations of Underhill J in Saunders as to the effect of the judgment in Ramsahai…"

73. Finally, in ***DSD v Commissioner of the Police of the Metropolis*** [2019] AC 196 the Supreme Court held, by a majority, that serious failures which were purely operational would suffice to establish a claim that an investigation carried out pursuant to an Article 3 duty infringed the duty to investigate, provided that they were egregious and significant and not merely simple errors or isolated omissions. The same approach must also apply to cases concerned with Article 2.

ARTICLE 2 – DISCUSSION

74. News of the death of Mr Goodenough led to the declaration that the incident should be treated as a death in custody at 12.52am. The location of the fatal events in Alma Place became a crime scene.

75. The practice at the time, as confirmed by Mr Summerville's evidence at the manslaughter trial, was for officers to confer in order "to get the best possible report of what it is you're writing about" but not to collaborate.

76. Inspector Cook was on duty as the Patrol Inspector at St Aldate's Police station at the material time. She told PS Bates to ensure that all of the officers concerned were to convene at the conference room at the Station and arrangements were made for Supt. Chesterman to attend. The opportunity therefore arose for the officers to discuss the events of the evening between themselves before he arrived. Naturally, some of them did indeed talk about what had happened. According to the evidence given by PC Summerville at his trial, they were trying to work out what could have caused Mr Goodenough's death. PC Shane was the last to join the others and had not been present when other officers had been conferring.

77. A debriefing session with Supt. Chesterman presiding duly commenced at 3:00am. PS Bates gave an overview of what had happened which was clearly based, at least in part, upon what he had earlier been told by other officers. As I have already noted, PS Bates' account was supplemented by PC Shane volunteering the information that he had punched Mr Goodenough during the course of the incident. The officers were given no specific instruction not to confer after the debriefing session and there is some evidence from PC Shatford's notebook entry that he may have attended two further meetings in the early evening of the same day. I am

not surprised that, owing to the passage of time, neither PC Shatford nor PC Shane were able to cast further light on what such meetings may have entailed.

78. The report of the Hampshire Police dated 21 December 2006 accepted that the meeting presided over by Supt. Chesterman was convened for legitimate operational reasons but concluded:

> ""…the net effect … was that.in eliciting information and accounts from key officers involved, their individual actions, evidence and opinions were effectively disclosed in front of all other significant witnesses thus potentially undermining the integrity and individual knowledge unique to each witness. Officers had not at this stage been the subject of individual debrief nor had they made pocket note book entries or formally or individually recorded their knowledge, own actions and evidence pertinent to the incident and death of Mr Goodenough. For instance, all witnesses would have been made aware at the meeting of PC Shane's actions and the fact he stated he intended the blows as 'distraction blows'. PC Shane's intentions would not otherwise have been within the knowledge of all witnesses at this point in time."

79. In response to this criticism, the defendant prays in aid the following points which I reproduce, in summary form and with gratitude, from its skeleton argument:

    a. There is no specific allegation or evidence of any improper conferring or contamination of evidence;
    b. It is not apparent that the officers who used force against Mr Goodenough were left together unsupervised at any time;
    c. There was a degree of physical separation of officers. PC Shane was conveyed from the scene, together with his girlfriend, WPC Hood, by officers who had not been present at the incident. PC Summerville left the scene with the paramedics;
    d. The officers were supervised, when making their PNB entries within 24 hours, by two detective sergeants of Hampshire Police, whose role it was to maintain the integrity of the evidence-gathering process;
    e. There is no specific allegation of breach (by the officers or Supt. Chesterman) of any guidance or direction against conferring which applied at the time;
    f. As soon as it was appreciated that Mr Goodenough may have died, steps were taken to preserve the evidence;
    g. The early involvement of senior and operationally independent officers evidence a genuine commitment to integrity;

h. The claimants' contemporaneous judicial review challenges to the compliance of the investigation with Article 2 were unsuccessful and their remaining allegations fall to be considered in retrospect considering the investigation as a whole;

i. The investigation was independent and effective in the Article 2 sense, including by identification of the officers and provision of extensive opportunity for scrutiny of their conduct, their witness accounts and how they came to be made;

j. The investigation of the officers' conduct (by an independent police force) was exceptionally robust by Article 2 or any standards.

80. Whilst recognising the force of these points, I must nevertheless conclude that the investigation was seriously operationally inadequate by the application of the approach laid down in the cases to which I have referred. In this regard, I find the conclusions of the Hampshire Police report to be accurate and appropriate. I am satisfied that there was no actual collusion but there was a risk of innocent contamination. I also accept that the inadequacy which I have identified is not such as to undermine my conclusions on the common law claim in battery. I have acknowledged the risks of contamination as one of the features to which I have had regard in my assessment of the evidence despite which I am satisfied that the defendant has discharged the burden of proof on this issue.

CONCLUSION

81. It follows from the above that:

(i) The claimants' claim in battery fails; but

(ii) There has been a breach of Article 2 in respect of which any remedy under section 8 of the Human Rights Act 1998 now falls to be considered.