

Investigation name:	Chester Road
IOPC reference:	2020/135685

> Summary of IOPC conclusions

There was no indication that any police officer/ member of staff may have behaved in a way that would justify the bringing of disciplinary proceedings and/or that they had committed a criminal offence.

We issued one national learning recommendation to the College of Policing and five local recommendations to Greater Manchester Police.

A summary of our conclusions and our rationale is set out below.

> Police Constable (PC) 1 and PC 2 – Greater Manchester Police

> Allegations

1. 'During the police interview following his arrest, our client was questioned as to whether he had tried to use his son as a "human shield" before the unjust and disproportionate use of Taser by a police officer. Our client totally rejects this extremely disturbing allegation. Our client is a loving father and would never use his son as a human shield. The allegation is disgraceful and unfounded. Our client simply took his son into his arms to comfort and reassure him as his son was understandably in distress and would not stop crying.'
2. 'Our client was not a physical threat immediately before being Tasered. He was simply concerned for the safety and wellbeing of his son, whom he has raised single-handedly following the death of his mum, when he was eighteen months old. The use of the Taser was therefore unjustified and unlawful.'
3. 'The video footage clearly shows that shortly before our client was Tasered, the two officers were totally in control of the situation. They simply had to attend to the needs of the child first before physically restraining our client. At no stage did the officers lose control of the situation. At no stage did police officers caution our client about their intent to deploy a Taser. It was therefore incumbent upon those

officers to seek to physically restrain our client. The use of the Taser was arbitrary, oppressive, excessive, unwarranted and therefore unlawful. The use of the Taser was a disgrace, particularly so in front of a minor; it was a gross abuse of police powers.'

4. 'The officers had scant regard for the welfare of our client's son despite their vow to serve and protect. The use of the Taser was not only an excessive use of force but wholly inappropriate in front of a five-year-old child. A Taser being deployed in front of a five-year-old child is despicable and we find this reprehensible. Clearly, there is need to psychologically assess and support our client's son upon his GP's referral for any trauma caused by this disgraceful act as he was convinced his father had been shot by the police officer.'
5. 'The Taser was deployed on a petrol station forecourt near petrol pumps. This was a serious health and safety risk and in breach of established police protocols for the use of Tasers.'
6. 'Our client was not given any warning that the Taser would be deployed. This is in clear breach of established police protocol.'
7. 'The officer continued to deploy the Taser without lawful justification whilst our client's son witnessed the entire gruesome ordeal, as our client lay bleeding, struggling and confused. This was a disgraceful and unjustifiable abuse of police powers.'
8. 'It is alleged that had Mr A been a white man with his son, he would not have been Tasered. Home Office figures show Tasers were used against Black people in England and Wales 7.7 times more than against white people in 2018-19.'
9. 'Two officers were sufficient to physically restrain and detain our client without the need to deploy the Taser. If the officers felt that, the presence of the child meant that only one officer was available to physically restrain our client, the officers should have called for backup. Backup did arrive but only after our client was Tasered. Our client should have been informed that backup was being called and that his son would be looked after. At no stage did our client attempt to flee the scene. Backup was necessary in any event, as it was necessary to make arrangements for the care of the child.'

> Summary of rationale

Allegation 1:

It is our opinion that the service provided was acceptable in relation to this complaint.

Evidence from the Record of Taped Interview (ROTI) indicates that two detectives conducted a police interview with Mr A under criminal caution on 7 May 2020. The ROTI records that during the interview, Mr A is asked '*Did you intend to use (Child L) as like a human shield?*' The ROTI also records that a detective asked Mr A '*Ok, so you didn't use him then, as we've said, as a human shield?*'

There is no evidence that PC 1 or PC 2 used the phrase 'human shield' in their statements, although both refer to Child L being used as a 'shield' in their view. Their statements were later passed to the detectives who interviewed Mr A.

Our investigation found that the evidence did not clearly indicate Mr A was using his son as a 'shield' - it was one possible explanation, another being that Mr A was holding his child to comfort him and provide reassurance during a difficult situation.

There is learning for two detectives in that they could have used more neutral terminology when interviewing Mr A. However, it was appropriate to ask Mr A about the way he was holding his child.

Allegation 2 and 3:

It is our opinion that the service provided was acceptable in relation to this complaint.

PC 1 said he used the National Decision Model (NDM) in making his decision to use Taser and provided rationale within statements. PC 1 stated his consideration of legislative powers, tactical options and the risks they posed.

Evidence from BWV and from the officers' statements shows that Mr A had been advised he was under arrest five times and that he did not comply with seven requests to put his arms behind his back to be handcuffed. He also displayed 'active resistance' on 19 occasions. This evidence indicates that the officers were unable to physically restrain Mr A using unarmed skills and they were not in control of Mr A.

The weight of evidence supports PC 1's account that he believed that Mr A would continue to resist arrest and that both he and PC 2 were at risk of assault, that all other methods to restrain had failed, and the weight of evidence tends to support that this was his honestly held belief. Both officers' accounts are further supported by the objective evidence from the BWV.

In conclusion, the lawfulness of the use of force is ultimately a matter for a court, having heard all the evidence, including potentially cross-examination of witnesses. However, based on the evidence collated during this investigation we concluded there is insufficient evidence that the use of force by PC 1 was unlawful.

Allegation 4:

It is our opinion that the service provided was acceptable in relation to this complaint.

The complaint is that the officer continued to deploy the Taser without lawful justification and that Child L witnessed the use of Taser. The complaint also alleges that Taser continued to be used whilst Mr A was lying down "*bleeding, struggling and confused*".

Data was analysed from the Taser used by PC 1 and assessed that on the first discharge the firing trigger was engaged and the cartridge deployed for five seconds.

Evidence from the BWV, PC 1's statement and analysis of the Taser data indicates that PC 1 discharged his Taser on a further six occasions whilst Mr A was on the floor.

There is no guidance or policy that prohibits the use of Taser on a subject who is already on the ground. The APP states 'The duration of the initial discharge and any subsequent discharge must be proportionate, lawful, accountable and absolutely necessary. Incidents where subjects are already contained or restrained may be subject to closer scrutiny or interest. Any medical risk may be increased the longer or more often the device is discharged'.

A subject matter expert stated that any officer's decision to use force sits within the framework of the NDM and stated that in her view, PC 1 provided a comprehensive rationale for both his initial decision to draw his Taser and then to subsequently discharge it.

The BWV evidence shows that prior to each occasion when PC 1 re-energised the Taser, Mr A had physically moved and his movements were not as PC 1 had directed.

In our view, the evidence indicates that Mr A was not following instructions from PC 1 and was not under his control.

There is evidence from the BWV that Mr A's hand was bleeding where one of the Taser barbs had lodged. There is no other available evidence regarding Mr A's potential confusion, as stated previously, Mr A did not provide a statement to this investigation and therefore this could not be explored further.

After analysing evidence and on the balance of probabilities, in our view it is more likely than not that Child L witnessed at least one of the Taser discharges, as PC 2 was holding Child L and stated that Child L became frightened after seeing his father on the floor, which must have been after the first discharge of the Taser.

Having considered the evidence obtained by this investigation and the relevant law, it is our opinion that that each use of Taser by PC 1 was justified, necessary and proportionate.

Allegation 5:

It is our opinion that the service provided was acceptable in relation to this complaint.

We consulted The College of Policing Authorised Professional Practice (APP) in relation to conducted energy devices (Taser) and 'risk factors' that 'may influence the operational use of CEDs'. We also reviewed the GMP Operational Use of Conductive Energy Devices Policy dated December 2017 and reviewed a Subject Matter Expert's report.

Both officers state that they did not use CS spray and there is no other evidence to suggest that an incapacitant was used during the incident or that Mr A's clothing was doused with any flammable liquids, including petrol.

The document also states that Taser should not be used near or in the immediate vicinity 'where, due to the presence of a flammable substance in the atmosphere or escaping gas, it is likely to result in a more hazardous situation i.e. fuel station forecourts when fuel is being dispensed'.

The GMP policy states, 'These heightened risks must be considered when assessing the 'appropriateness' and 'necessity' of using the CED'. There is

evidence from PC 1's statement that he considered the risks of using his Taser in the petrol forecourt.

PC 1 provided a comprehensive rationale for his decision to use Taser and he detailed how he considered the six elements of the NDM in making his decision.

We note the use of the words 'should not' rather than 'must not' in the GMP policy and that it states 'these heightened risks must be considered when assessing the 'appropriateness' and 'necessity' of using the CED'. In our view the wording of the policy does not absolutely prohibit the use of Taser in the circumstances of this incident. Rather, it states that the heightened risks of such use must be considered. APP guidance also refers to risk factors and the precautions and considerations relevant to these risk factors. PC 1 stated that he considered the risks of using Taser and possible mitigation of those risks.

We concluded, although there is an inherent risk in using Taser on a petrol forecourt and this risk must be considered, the evidence indicates that such use is not in breach of police protocols.

Allegation 6:

It is our opinion that the service provided was acceptable in relation to this complaint.

There is evidence from the body worn video (BWV) that PC 2 said "*I'll Taser him*" and that Mr A said "*Taser me*". There is also evidence that PC 2 advised PC 1 to Taser Mr A and that PC 1 then fired his Taser for the first time.

We consulted with subject matter experts who provided evidence on police procedure in respect of Taser warnings.

PC 1 said he developed the working strategy of drawing his Taser with the intention of Mr A seeing the red dot on his chest. PC 1 pointed the Taser at Mr A when giving repeated instructions to put his hands behind his back. The Taser was yellow and from the BWV, Mr A appeared to have it in his line of sight. The red dot of the laser sight was visible on Mr A's t-shirt on the BWV of the incident.

In our view it is reasonable to assume that on the balance of probabilities, Mr A understood that the Taser may be fired at that time by the visual cue of PC 1 pointing the Taser at him and the activation of the red dot laser sight. However, no verbal warning was given by PC 1. The BWV indicates that subsequently PC 2 said "*Taser him*" and that PC 1 fired his Taser.

PC 1 stated that his working strategy was to fire his Taser and take the immediate opportunity whilst Mr A was not in close proximity to his child. He said he felt there was a danger of Mr A picking up his child again which he said would have eliminated all of the officers' tactical options and they would then have had no means of arresting Mr A without causing harm to the child which, he said, he was not prepared to do.

Based on the available evidence, it is our view that the Taser was not discharged without any warning or reference to the use of Taser and the visual cue of using the red dot laser sight was also deployed.

In our view there is learning for PC 1, and this aspect of the incident should be debriefed with him so that he understands it would have been best practice to firstly verbally communicate that he was armed with a Taser, that he intended to

use it and that he also should have provided the warning “*Taser, Taser*” on each occasion that he discharged his Taser.

Allegation 7:

It is our opinion that the service provided was acceptable in relation to this complaint.

The College of Policing Authorised Professional Practice (APP) and GMP guidance in relation to conducted energy devices [Taser] are silent on the use of Taser in front of a child. Taser use in these circumstances is not referred to in either of these documents and so use in these circumstances does not contravene any guidance or training. Whilst the impact on a child of witnessing police use of Taser should be considered as part of the overall risk assessment and National Decision Model (NDM) rationale, there will be circumstances where officers assess that it is necessary, justified and proportionate to use a Taser in the presence of a child.

There is evidence from the officers’ statements that they considered the presence of the child and that this formed part of their thinking when considering use of force options. Both officers stated that they considered and discounted the use of CS spray due to the presence of Child L.

There is also evidence of consideration of the welfare of Child L during the incident. PC 2 said he sought to hold Child L whilst PC 1 was using his Taser. PC 2 said his consideration was the welfare of Child L who was clearly distressed by what was happening. PC 2 said he was conscious that if the child was left alone, due to his distressed state he might run off in a panic, he was near to a busy main road and it was night time. He said he assessed that this could have put Child L in danger.

Having reviewed all evidence, in our view it is arguable that PC 2 placed the wellbeing of Child L above the wellbeing of his colleague, who was left to deal with Mr A alone. This was not without risk given that evidence from the BWV indicates that both officers together struggled to physically restrain Mr A.

Evidence from the officers’ statements demonstrated that the officers continued to show appropriate concern for Child L immediately after the incident.

In our opinion, the evidence indicates that officers considered the welfare of Child L. The use of Taser in the presence of Child L did not contravene any guidance or training.

In our opinion it would be beneficial for GMP and the College of Policing to consider the training of officers who will be equipped with Taser and the potential inclusion of a scenario where a child is present during an incident where Taser is used, as there would be obvious benefit in other officers working through such a scenario in a training environment, to consider tactics.

Allegation 8:

It is our opinion that the service provided was acceptable in relation to this complaint.

We considered whether there is evidence of indirect discrimination. Indirect discrimination occurs when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic. We reviewed policies, guidance and training in relation to the police use of force, including Taser. Our investigation also examined data held on the use of Taser in the GMP force area during 2019-20.

The investigation examined all prior 'use of force' forms submitted by both officers to identify any patterns of behaviour that could indicate Black people were more likely to be subjected to use of force by them. Analysis of the information did not indicate the officers were more likely to use force on people from a Black ethnic background.

An examination of the officers' previous 'use' of Taser, in all of its forms, from drawing a Taser to discharge, was also conducted. This did not indicate that PC 1 or PC 2 were more likely to use Taser upon people from a Black ethnic background.

An examination of all previous complaints made against the officers was also undertaken. This did not indicate people who shared Mr A's protected characteristics were more likely to make complaints about the officers.

An assessment of the evidence was also undertaken to establish whether unconscious bias resulted in the level of force used due to commonly held stereotypes of the strength of Black men.

The evidence indicated that in the circumstances there has been no less favourable treatment due to the protected characteristic of Mr A's race. In our view, there is no evidence that indicates any indirect discrimination based on the assessment of the policies that applied in these circumstances.

There is learning for both officers to be aware that frequently referring to an individual's strength and their perception of the individual's body in their statements when justifying use of force, can align to commonly held stereotypes and such perceptions can also increase the likelihood of force and restraint being used against Black men.

Allegation 9:

It is our opinion that the service provided was acceptable in relation to this complaint.

As stated above, the evidence from BWV and from the officers' statements shows that Mr A had been advised he was under arrest five times and that he did not comply with seven requests to put his arms behind his back to be handcuffed. He also displayed 'active resistance' on 19 occasions. In our opinion, this evidence indicates that the officers were unable to physically restrain Mr A using unarmed skills and he was not under the officers' control.

The evidence also indicates that when PC 1 discharged his Taser, he was effectively acting alone as PC 2 was dealing with Child L.

The BWV evidence shows that PC 1 first approached Mr A's vehicle at 10.55pm and subsequently used his radio to request a van at 10.58pm before Mr A was arrested. PC 1 stated that Mr A was arrested at 11.00pm. BWV evidence indicates that PC 1 chased up his request for a van at 11.02pm.

We are satisfied that the officers summoned backup in a timely way, and this aspect of the complaint is not supported by the evidence.

The complaint also states that Mr A should have been informed that backup was being called and that his son would be looked after. The BWV evidence shows that PC 1 said, "*Right. Stay there then until we get somebody else here*" and this could be reasonably construed as indicating to Mr A that other resources (or 'back up') were on their way. There is also evidence from the BWV and officers' statements that reference was made several times to Child L and Mr A asked if he could ring his 'missus'. It could be reasonably inferred that this was a reference to arranging care for Child L, although this was not explicitly stated by Mr A. PC 1 and PC 2 stated that they said Mr A needed to comply with the breath test procedure first.

Taking all evidence into account, it is therefore our opinion that it was reasonable, proportionate and necessary for the officers to use force before backup arrived.

Organisational Learning

We carefully considered whether there were any learning opportunities arising from the investigation. We make learning recommendations to improve policing and public confidence in the police complaints system and prevent a recurrence of similar incidents. In this case we identified the following areas for improvement.

The Police Reform Act 2002 affords the IOPC powers to issue two types of learning recommendations:

Section 10(1)(e) recommendations – these can be made at any stage of the investigation. The recipient is not required to provide a formal response to the IOPC.

Paragraph 28A recommendations – these must be made at the end of an IOPC investigation and the issue subject to learning must have come to light due to the investigation. The recipient is required to provide the IOPC a formal response. Recommendations are published on the IOPC website, along with the responses received.

> Local P28A recommendations – Greater Manchester Police, December 2021

Recommendation 1

The IOPC recommends that Greater Manchester Police (GMP) review their Conductive Energy Device (CED) policy to clarify, expand upon and improve existing guidance in the public domain, particularly in relation to addressing a potential public perception that Taser is only used in circumstances where there is a threat of violence. This should be done in partnership with local communities, particularly those that historically have lower confidence in the police. The policy should also align with the Authorised Professional Practice (APP) guidance in relation to the use of Taser.

Recommendation 2

The IOPC recommends that Greater Manchester Police include a learning point in local training for officers equipped with Taser, in relation to considerations when a child is present during an incident where Taser is used. This is to enable officers to consider the potential impact on the child, together with alternative tactics as part of the overall risk assessment and National Decision Model in a training environment.

Recommendation 3

The IOPC recommends that Greater Manchester Police (GMP) update the section of their Conductive Energy Device (Taser) policy so that it is clear when it might be appropriate to use Taser in an environment where there is a flammable substance, such as the forecourt of a petrol station; ensuring that the wording is clear and unambiguous and to prevent interpretation issues or restriction of officers' decision making.

Recommendation 4

The IOPC recommends that Greater Manchester Police take steps to ensure that officers' decision-making and their policing response is not being unreasonably impacted by stereotypical assumptions about the strength and threat posed by individuals from a Black, Asian or minority ethnic background.

Greater Manchester Police accepted our recommendations and their response can be found on our [website](#).

Recommendation 5 – Section 10

This recommendation was made outside the provisions of paragraph 28A of Schedule 3 of the Police Reform Act 2002 because we have decided that the contents should not be published at this time.

> National P28A recommendation - The College of Policing, December 2021

Recommendation 1

The IOPC recommends that the College of Policing include a learning point in national training for officers equipped with Taser, in relation to considerations when a child is present during an incident where Taser is used. This is to enable officers to consider the potential impact on the child, together with alternative tactics as part of the overall risk assessment and National Decision Model in a training environment.

The College of Policing accepted our recommendation and Chief Constable Andy Marsh provided the following response:

"I write on behalf of the College of Policing (the College) in relation to the recommendation made under Paragraph 28A of Schedule 3 to the Police Reform Act 2002 to the College dated the 17th December 2021. Your recommendation states:

The IOPC recommends that the College of Policing include a learning point in national training for officers equipped with Taser, in relation to considerations when a child is present during an incident where Taser is used. This is to enable officers to consider the potential impact on the child, together with alternative tactics as part of the overall risk assessment and National Decision Model in a training environment.

I understand a similar recommendation has been made to Greater Manchester Police in respect of local training. The College is the independent professional body supporting everyone working in policing to reduce crime and keep people safe.

The College has three complimentary functions;

- Sharing knowledge and good practice: creating and maintaining easy access to knowledge, disseminating good practice, and facilitating the sharing of what works*
- Setting standards: setting standards for key areas of policing which help forces and individuals provide consistency and better service for the public*
- Supporting professional development: setting requirements, accrediting, quality assuring and delivering learning and professional development, promoting diversity and wellbeing, and helping to nurture and select leaders at all levels.*

As set out in the Code of Practice on Armed Policing and Police use of Less Lethal Weapons 2020, the College produces a national curriculum, and associated learning products, for specially trained officers (Taser trained officers). These products are subject to review by the College in order to ensure that organisational learning is appropriately reflected. Chief officers must ensure that the selection, training and accreditation of officers identified within the Code meets the requirements of the curriculum.

Having considered your recommendation as part of the current review, module J3 of the curriculum, and its associated learning products, has been revised and now includes the considerations and potential implications of Taser use in the presence of a child. All of the updated training material is scheduled to be launched in early March 2022 and disseminated to all UK police forces (including Greater Manchester Police), with a view to being implemented in the new training new commencing 1st April 2022.

The College is committed to continuing our work with forces, the NPCC and other agencies to maintain high standards in respect of the police use of Taser. I would like to thank you for bringing this recommendation to my attention.”