

Investigation name:	Jordan Begley
IOPC reference:	2013/011110

> Summary of IOPC conclusions

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

> PC Terence Donnelly

> Allegations

It is alleged that PC Donnelly may have breached the standards of professional behaviour.

1. It is alleged that, by utilising the Taser for more than the five-second cycle, PC Donnelly may have used excessive and disproportionate force, not in accordance with the training he received.

Case to answer for misconduct.

However, as PC Donnelly resigned from the force on 4 March 2018, no further action can be taken.

2. It is further alleged that, during the restraint of Mr Begley, PC Donnelly failed to take adequate steps in regard to the immediate aftercare of Mr Begley once he had been Tasered; in particular it is alleged that the giving of verbal reassurance and instruction set out on the Greater Manchester Police policy on the operational use of Taser did not take place.

No case to answer.

> Summary of rationale

Allegation 1: Used excessive and disproportionate force

The Police Standards of Professional Behaviour are outlined in Schedule 2 to the Police (Conduct) Regulations 2012. The standard relating to the use of force states: *“Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.”* The standard relating to duties and

responsibilities states: *“Police officers are diligent in the exercise of their duties and responsibilities.”*

All of the relevant information is set out in the report, including the relevant evidence, legislation, guidance and local/national policies. We have not reiterated this information in full here. However, as set out in the report, for the purposes of a case to answer decision, the objective reasonableness of any use of force *“must be judged on the facts as the defendant honestly believed them to be... if he made a mistake of fact, he can rely on that fact only if the mistake was a reasonable one to have made.”*

On balance, we accept that PC Donnelly honestly believed he was dealing with an aggressive man, potentially armed with a knife capable of causing significant injury. A number of witnesses have confirmed that Mr Begley was aggressive and agitated, and Mrs Begley was so concerned by his behaviour that she called the police. While PC Donnelly was mistaken in his belief that there was a knife, we consider that a tribunal¹ could find it was a reasonable mistake to have made.

A number of officers gave evidence that Officer 7 was able to develop a rapport with Mr Begley, although he remained agitated and angry. While there is some evidence that PC Donnelly’s presence may have been an aggravating factor, he has explained that he did not feel able to leave, because his colleague would then have been left alone with Mr Begley, who reportedly had a knife. Again, we consider that a tribunal could find this decision was reasonable in the circumstances.

The location of the Anti-Felon Identification discs and the report from the Centre for Applied Science and Technology corroborate the officers’ accounts that Mr Begley approached PC Donnelly. However, PC Donnelly’s evidence in relation to this point is internally inconsistent. In interview, he said he first told Mr Begley to *“come round here”*, and then issued repeated commands to remain where he was – finally discharging his Taser when Mr Begley continued approaching. At the inquest, he did not deny having said this, but stated that he could not recall what he had actually said at the time. (Officer 7 stated that he did not recall PC Donnelly telling Mr Begley to approach him.)

If a tribunal were to find that PC Donnelly did tell Mr Begley to approach him, we consider that the panel could then find that PC Donnelly was mistaken in his initial belief that Mr Begley was approaching him with ill intent; and moreover that this mistake was not a reasonable one to have made. However if PC Donnelly did follow the invitation to approach with repeated commands to stay back or stop then, although the conflicting instructions cannot have helped matters given the evidence that Mr Begley was already under considerable stress, intoxicated and distracted, PC Donnelly’s threat assessment becomes reasonable.

In interview and at the inquest, PC Donnelly stated that Mr Begley put his hands into his pockets and continued approaching, ignoring his commands to stay back, and his threats to discharge Taser. He stated that he backed away and Mr Begley took one final quick step towards him, at which point he discharged his Taser.

Officer 7 confirmed that Mr Begley approached PC Donnelly despite his warnings to remain where he was. However, significantly, he did not corroborate PC Donnelly’s

¹ Here and in the rest of this document, “tribunal” should be read as shorthand for “a reasonable tribunal, properly directed could find on a balance of probabilities.”

account that Mr Begley had his hands in his pockets. At the inquest, Officer 7 stated that he could not recall seeing Mr Begley's hands in his pockets and "*would expect*" to have remembered if this had been the case. Officer 7 stated that Mr Begley was leaving his field of view prior to the Taser being discharged. He also stated that Mr Begley was clenching his fists, which a tribunal could reasonably consider aggressive or threatening when combined with the failure to accede to demands to stop walking towards PC Donnelly.

Other than Mr A (whose evidence we consider to be unreliable due to the discrepancies highlighted in the report, and therefore attach very limited weight to), nobody else saw what happened at this point. There are only two witnesses, both equally credible, who have given conflicting evidence as to whether Mr Begley had his hands in his pockets. Officer 7 is clear that Mr Begley was moving away from him and out of his line of sight at the key moment.

It would be a matter for a tribunal to determine whether PC Donnelly may have been mistaken in his belief that Mr Begley had his hands in his pockets, and, if so, whether this mistake was a reasonable one to have made. Such a discrepancy would clearly influence the nature of the threat felt by PC Donnelly – a potential knife or the use of fists, but either could create a reasonable belief of a threat such that the use of Taser was justified.

It is worthy of note that the 'jogging' bottoms worn by Mr Begley were not the subject of any forensic examination and were destroyed by Greater Manchester Police as a result of an administrative oversight prior to the commencement of the inquest. As a consequence, it was impossible to ascertain the existence or absence of pockets.

On the basis of the available evidence we find there is no case to answer for misconduct in respect of the decision to deploy the Taser. Taken at its highest (that is the version of events most unfavourable to PC Donnelly) in our opinion, no reasonable tribunal, properly directed, could find on the balance of probabilities that he misconducted himself, because in our view, there is insufficient evidence that the decision to deploy the Taser was unjustified, unreasonable or disproportionate to the perceived level of danger. PC Donnelly is clear that he extended the Taser cycle for up to five seconds after Mr Begley went to the ground. His evidence (albeit inconsistent) indicates that he intended to discharge his Taser for a further cycle beyond the first initial cycle.

In relation to the length of the Taser discharge, PC Donnelly's rationale for keeping his finger on the trigger was that Mr Begley had not "*gone down as if he's gonna stay still as to listen to what we're going to say.*" He clarified that Mr Begley was "*still kicking*", and he believed he was going to get back up. He stated that he still could not see exactly what Mr Begley had in his hand, and "*didn't want him getting up after the first five seconds and going in his pockets cause right at this time I didn't know whether [the other officers] had come in.*" He gave a similar explanation at the inquest.

We consider that a tribunal could question why PC Donnelly felt the need to continue Tasing Mr Begley after he had fallen to the ground. The guidance indicates that someone subjected to Taser may make an almost immediate recovery, such that the logic of Mr Begley not having "*gone down as if he's gonna stay still*" may be flawed in the eyes of a tribunal. We also consider that a tribunal could find that, once on the ground, Mr Begley posed a lesser threat than when he was approaching PC Donnelly either with his hands in his pockets, or not. The National Decision Making model states

that officers should (after considering all the information available to them), take action, review the outcome, and take further action if necessary. We also consider that a tribunal could find that PC Donnelly did not take sufficient time to review the outcome before deciding to discharge the Taser again, as evidenced by the fact that it was, in fact, one continuous discharge. We consider that a tribunal could find that there was no immediate necessity for this extended discharge, given that the barbs remained in place and PC Donnelly therefore had the option of reactivating the device at any time, at a moment's notice.

We are also of the view that a reasonable tribunal could find that PC Donnelly's actions in this regard were disproportionate.

The College of Policing guidance on outcomes in misconduct proceedings sets out the approach that should be taken when assessing the seriousness of alleged² conduct.

Paragraph 4.4 of the guidance states that any assessment of the seriousness of alleged misconduct should be conducted with reference to:

- the officer's culpability for the misconduct
- the harm caused by the misconduct
- the existence of any aggravating factors
- the existence of any mitigating factors

Paragraph 4.8 states that the decision-maker must "*carefully assess the officer's decisions and actions in the context in which they were taken... Many police officers are required to take decisions rapidly and/or in highly charged or dangerous situations... Such decisions may carry significant consequences. Take care not to confuse these consequences with what the officer knew or could reasonably have known at the time of their decision.*"

In relation to culpability, the guidance states:

"Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.

Conduct which is intentional, deliberate, targeted or planned will generally be more culpable than conduct which has unintended consequences, although the consequences of an officer's actions will be relevant to the harm caused.

Where harm is unintentional, culpability will be greater if the officer could reasonably have foreseen the risk of harm."

In this case, while there is no dispute that the Taser discharge was intentional, there is no cogent evidence that undermines PC Donnelly's assertion that he honestly believed³ he used no more force than was necessary to defend himself and his colleague. While PC Donnelly confirmed in the inquest that he was aware of the ACPO guidance in relation to the risk of harm associated with extended Taser discharges, there is no evidence that he was aware that Mr Begley suffered from cardiac

² While the Guidance refers to proven conduct, at this stage the conduct is only alleged.

³ Whether this belief was reasonable and/or mistaken is a matter for a panel to decide.

arrhythmia; and there is no reason to believe that he could have foreseen the tragic outcome of this incident.

The degree of harm that can reasonably be attributed to the Taser discharge is open to debate. While the inquest jury concluded that the Taser discharge was one of a number of factors that contributed to Mr Begley's death, we cannot know whether he might have lived if he had not been Tasered.

Paragraph 4.67 of the guidance states that the following may be regarded as aggravating factors:

- premeditation, planning, targeting or taking deliberate or predatory steps
- abuse of trust, position, powers or authority
- concealing wrongdoing in question and/or attempting to blame others
- regular, repeated or sustained behaviour over a period of time
- continuing the behaviour after the officer realised or should have realised that it was improper
- serious physical or psychological impact on the victim
- vulnerability of the victim
- significant deviation from instructions, whether an order, force policy or national guidance
- failure to raise concerns or seek advice from a colleague or senior officer
- scale or depth of local or national concern about a particular issue

Paragraph 4.71 states that the following may be regarded as mitigating factors:

- misconduct confined to a single episode or brief duration
- the extent of the officer's involvement in the misconduct
- any element of provocation, threat or disturbance which may have affected the officer's judgement, e.g. in relation to the use of force in the heat of the moment
- acting pursuant to a legitimate policing purpose or in good faith, but getting things wrong
- mental ill health, disability, medical condition or stress which may have affected the officer's ability to cope with the circumstances in question
- whether the officer was required to act outside their level of experience and/or without appropriate training or supervision
- open admissions at an early stage
- early actions taken to reduce the harm caused

- evidence of genuine remorse, insight and/or accepting responsibility for one's actions

In this case, we consider that there are the following potential aggravating factors:

- serious physical or psychological impact on the victim (albeit not foreseeable)
- vulnerability of the victim (although there is no evidence that PC Donnelly was aware of this)
- significant deviation from instructions, whether an order, force policy or national guidance
- scale or depth of local or national concern about a particular issue (again, we consider that this is something PC Donnelly could not reasonably have foreseen at the time)

We also consider that there are the following potential mitigating factors:

- misconduct confined to a single episode or brief duration
- any element of provocation, threat or disturbance which may have affected the officer's judgement, e.g. in relation to the use of force in the heat of the moment

In conclusion, having given careful consideration to the above guidance, particularly paragraph 4.8 and the lack of evidence to indicate a high level of culpability, and the potential mitigating factors, we are of the view that PC Donnelly, had he still been serving, would have a case to answer for misconduct in respect of the excessive force allegation. By this, we mean that, in our opinion, there is sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that PC Donnelly's decision to extend the automatic five-second Taser cycle was excessive, but not to such an extent that his dismissal would be justified.

As PC Donnelly is no longer a serving officer (resigned 4 March 2018), the views of the Appropriate Authority were not sought in this respect and no further action can be taken against him.

Allegation 2: Failed to provide Mr Begley with adequate after care after he was Tasered

It is our opinion that PC Donnelly (had he still been serving) has no case to answer for misconduct or gross misconduct in respect of the allegation that he failed to provide adequate aftercare. By this, we mean that, in our opinion, no reasonable tribunal, properly directed, could find on the balance of probabilities that he misconducted himself, because in our view, there is insufficient evidence in respect of this allegation.

We base this decision on the fact that a number of Authorised Firearms Officers were present, who took over the restraint. They were Taser-equipped and no less qualified than PC Donnelly to provide appropriate aftercare. The evidence indicates that PC Donnelly took no part in the restraint after the Taser was discharged, and left the room as soon as it became clear that his presence was no longer needed. We are of the view that it would be unfair to hold PC Donnelly to account for any failings in Mr Begley's aftercare in the circumstances.

> PC Christopher Mills

> Allegations

It is alleged that PC Mills may have breached the standards of professional behaviour.

1. It is alleged that, during the restraint of Mr Begley, PC Mills performed two distraction strikes on him in quick succession. It is alleged that this use of force may have been excessive and unnecessary.

No case to answer.

2. It is further alleged that, during the restraint of Mr Begley, PC Mills failed to take adequate steps in regard to the immediate aftercare of Mr Begley once he had been Tasered, in particular it is alleged that the giving of verbal reassurance and instruction set out on the Greater Manchester Police Policy on the operational use of Taser did not take place.

No case to answer.

> Summary of rationale

Allegation 1: Used excessive and disproportionate force

Having taken into account the evidence gathered in the course of this investigation, it is our opinion that PC Mills has no case to answer for misconduct in respect of the alleged excessive use of force. By this, we mean that, in our opinion, there is not sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that the distraction strikes (and particularly the second strike) amounted to misconduct.

The Police Standards of Professional Behaviour are outlined in Schedule 2 of the Police (Conduct) Regulations 2012. The standard relating to the use of force states: *“Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.”* The standard relating to duties and responsibilities states: *“Police officers are diligent in the exercise of their duties and responsibilities.”*

The relevant information is set out in the report, including the relevant evidence, legislation and local/national policies. We have not reiterated this information in full here. However, as set out in the report, for the purposes of a case to answer decision, the objective reasonableness of any use of force *“must be judged on the facts as the defendant honestly believed them to be... if he made a mistake of fact, he can rely on that fact only if the mistake was a reasonable one to have made.”*

As with PC Donnelly, we accept that PC Mills honestly believed he was dealing with an aggressive man, potentially armed with a knife capable of causing significant injury. A number of witnesses have confirmed that Mr Begley was aggressive and agitated, and Mrs Begley was so concerned by his behaviour that she called the police. Moreover,

PC Mills was aware that another officer had just considered it necessary to Taser Mr Begley. While PC Mills was mistaken in his belief that there was a knife, we consider that a tribunal could find it was a reasonable mistake to have made, especially as one hand was concealed under his body.

Guidance indicates that the effects of Taser may wear off quickly and that restraint should be effected as quickly as possible.

As is also detailed above, we have considered Mr A's evidence in relation to the restraint, and are of the view that we cannot rely upon it to any significant extent due to the discrepancies highlighted in the report.

The officers' evidence varies regarding both the degree and nature of Mr Begley's resistance when he was being restrained. PC Mills stated that Mr Begley resisted by holding his right arm underneath his body, and PC Peter Fox stated that he was kicking his legs. However, PC David Graham stated that Mr Begley offered "*minimal*" resistance when he gained control of his left arm. Officer 7 stated that he resisted by tensing his body and pulling his arms underneath him, and PC Donnelly stated that he was "*kicking out arms and legs.*"

PC Mills stated in interview that he knelt on Mr Begley's right shoulder before trying to pull his arm out from underneath him. At the inquest, he stated that he had used "*some*" of his body weight, but "*wouldn't like to say how much.*" He stated that his body weight would not have prevented PC Fox from drawing Mr Begley's arm out from underneath him.

As detailed in the report, Mr Begley was of slim build. However, there is no evidence that would assist in determining his upper body strength at that time. In addition, as PC Mills explained, the officers also believed he was in possession of a knife, which "*could well have been underneath him, and that was obviously part of our threat assessment.*"

In interview and at the inquest, PC Mills stated that he ordered Mr Begley to release his arm, delivered a strike, repeated the command and then delivered a second strike, which was successful.

The only other officers who witnessed the distraction strikes were PC Fox, PC Andrew Wright and PC Lee Moore.

PC Fox stated that he heard PC Mills say, "*Release your hands, release your hands*" before delivering "*two quick strikes.*" When questioned as to whether there was a gap between the strikes, PC Fox stated, "*I just remember him shouting 'release your arms' and there were two strikes. Whether there was something said in between, I can't recall.*"

PC Moore stated that he heard PC Mills shout, "*Release your arm, release your arm*", before striking him twice "*on the centre of the back.*" He stated that there was one strike but then PC Mills was "*still pulling at his [Mr Begley's] arm at this point in time, he's not releasing it, and he punches him again and then he managed to pull his arm out.*"

PC Wright described PC Mills giving Mr Begley one warning and then striking his lower back. He was asked if a second warning was given prior to the second distraction strike, and replied, "*I remember it being continuous commands from PC Mills to free his arms and stop struggling.*"

In short, none of the other three officers who witnessed the strikes were able to fully corroborate PC Mills' account that he paused between strikes to assess the situation

and issued a further command before delivering the second strike; however, there is some evidence to suggest that multiple commands were given, even though not directly aligned with the timing of the strikes. This, in our opinion, falls short of best practice.

The College of Policing guidance on outcomes in misconduct proceedings sets out the approach that should be taken when assessing the seriousness of alleged conduct.

Paragraph 4.4 of the guidance states that any assessment of the seriousness of alleged misconduct should be conducted with reference to:

- the officer's culpability for the misconduct
- the harm caused by the misconduct
- the existence of any aggravating factors
- the existence of any mitigating factors

Paragraph 4.8 states that the decision-maker must "*carefully assess the officer's decisions and actions in the context in which they were taken... Many police officers are required to take decisions rapidly and/or in highly charged or dangerous situations... Such decisions may carry significant consequences. Take care not to confuse these consequences with what the officer knew or could reasonably have known at the time of their decision.*"

In relation to culpability, the guidance states:

"Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.

Conduct which is intentional, deliberate, targeted or planned will generally be more culpable than conduct which has unintended consequences, although the consequences of an officer's actions will be relevant to the harm caused.

Where harm is unintentional, culpability will be greater if the officer could reasonably have foreseen the risk of harm."

In this case, while there is no dispute that the strikes were intentional, there is no cogent evidence that undermines PC Mills' assertion that he honestly believed he used no more force than was necessary to enable Mr Begley to be safely restrained and handcuffed. Although the witness evidence does not consistently align PC Mills' verbal commands with the two strikes, the evidence is consistent (amongst those who heard anything) that commands were being given at various points. There is also no evidence that PC Mills was aware that Mr Begley suffered from cardiac arrhythmia; and there is no reason to believe that he could have foreseen the tragic outcome of this incident.

Having taken into account the evidence gathered in the course of this investigation, it is our opinion that PC Mills has no case to answer for misconduct in respect of the alleged excessive use of force. By this, we mean that, in our opinion, there is not sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that the distraction strikes (and particularly the second strike) amounted to misconduct, although it may not have amounted to best practice.

We considered that management action would be sufficient to prevent any recurrence of this conduct. We did not believe that the circumstances were serious enough to warrant formal unsatisfactory performance procedure (UPP).

Allegation 2: Failed to provide Mr Begley with adequate after care after he was Tasered

It is our opinion that PC Mills has no case to answer for misconduct or gross misconduct in respect of the allegation that he failed to provide adequate aftercare. By this, we mean that, in our opinion, no reasonable tribunal, properly directed, could find on the balance of probabilities that he misconducted himself, because in our view, there is insufficient evidence in respect of this allegation.

We base this decision on the fact that the evidence suggests Mr Begley became unwell very soon after he was restrained, at which point medical care took precedence over verbal reassurance.

While the officers have confirmed that there was a brief pause following the restraint (they could not agree on how long), the call to the ambulance was made just one minute and 27 seconds after PC Donnelly reported the Taser discharge. As outlined in the report, while some allowance should be made for the possibility that PC Donnelly did not report the Taser discharge immediately, an allowance should also be made for the time it would have taken officers to finish restraining Mr Begley, and then to realise that he was unwell enough to need an ambulance. In our view, the brief time elapsed would not have allowed sufficient margin for the officers to also provide verbal reassurance before they realised that Mr Begley required proper medical care.

PC Mills has given a detailed account of the medical treatment that was provided while the officers were awaiting the ambulance, and the first paramedic on the scene has corroborated his account. We also noted the paramedic's comment that the "*quality of CPR... was excellent and I could tell that [the officers] had trained for this regularly.*"²

In the circumstances, our view was that no reasonable tribunal could find that the failure to provide verbal reassurance amounted to misconduct.

> PC Andrew Wright⁴, PC Peter Fox and PC David Graham

> Allegation

It is alleged that PC Andrew Wright, PC Peter Fox and PC David Graham may have breached the standards of professional behaviour.

It is alleged that, during the restraint of Mr Begley, PC Andrew Wright, PC Peter Fox and PC David Graham failed to take adequate steps in regard to the immediate aftercare of Mr Begley once he had been Tasered, in particular it is alleged that the giving of verbal reassurance and instruction set out on the Greater Manchester Police Policy on the operational use of Taser did not take place.

No case to answer.

⁴ PS Wright was a police constable at the time of the events under investigation. To avoid confusion, he is referred to here as PC Wright.

> Summary of rationale

See rationale for PC Mills, allegation 2, above.

> PC Lee Moore

> Allegation

It is alleged that PC Lee Moore may have breached the standards of professional behaviour.

It is alleged that PC Moore's use of the phrase 'Hamlet moment' in front of Mr Begley's family at the inquest into his death brought Greater Manchester Police force into disrepute.

No case to answer. Proposed management action.

> Summary of rationale

Allegation: Brought Greater Manchester Police force into disrepute

Having taken into account the evidence gathered in the course of this investigation, it is our opinion that PC Moore has no case to answer for misconduct in respect of the allegation outlined in his notice of investigation. By that, we mean that, in our opinion, no reasonable tribunal, properly directed, could find on the balance of probabilities that PC Moore misconducted himself.

The Police Standards of Professional Behaviour are outlined in Schedule 2 of the Police (Conduct) Regulations 2012. The standard relating to authority, respect and courtesy states: "*Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police officers do not abuse their powers or authority and respect the rights of all individuals.*"

While PC Moore has not explicitly said, we understand the term 'Hamlet moment' to be a reference to the Hamlet cigar advertising campaign, which features men in a variety of challenging situations who relax and smile after lighting a Hamlet cigar.

PC Moore has explained that he first heard the term during his time in the military. He stated that the training instructors frequently used this term to describe a brief period of reflection and assessment during intense scenarios and training. He stated that it was never used in a derogatory sense, and he had never perceived it in that way. He stated that he had used this phrase during the inquest to describe the situation with Mr Begley, "*whilst under the pressure of a court room, in my own words.*"

There is no evidence to suggest that PC Moore's overall attitude or demeanour during these proceedings was unprofessional, disrespectful, or otherwise not in keeping with

the gravity of the situation. We believe it would be disproportionate to find a case to answer for what seems to be simply one ill-judged remark.

We consider that management action will be sufficient to prevent any recurrence of this conduct. We do not believe that the circumstances were serious enough to warrant formal UPP.

> **Decisions regarding upholding of Mrs Begley's complaints (not subject to special requirements)**

Complaint 1: the officers gave differing evidence to the inquest and to the IOPC

Not upheld.

Complaint 2: the officers searched Mrs Begley's house

Not upheld.

Complaint 3: the officers mistook Mr Begley for another man

Not upheld.

> **Summary of rationale**

In our view, there is insufficient evidence to prove these allegations, on the balance of probabilities.