



Neutral Citation Number: [2021] EWCA Civ 1422

Case No: B3/2020/1537/QBENF

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
Mr Justice Turner
[2020] EWHC 695 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/10/2021

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
LORD JUSTICE NUGEE
and
LORD JUSTICE EDIS

Between :

GLENYS GOODENOUGH AND ANOTHER **Appellants**
- and -
THE CHIEF CONSTABLE OF THAMES VALLEY **Respondent**
POLICE

Mr. James Laddie QC and Mr. Raj Desai (instructed by DPG Law LLP) for the Appellant
Lord Faulks QC, Mr. John Beggs QC and Mr. Aaron Rathmell (instructed by DAC
Beachcroft) for the Respondent

Hearing date: 13 July 2021

JUDGMENT

Lord Justice Edis :

Introduction

1. This appeal arises out of the death of Robin Goodenough. Mr. Goodenough died in Alma Place, which leads off Cowley Road in Oxford, after an incident which happened at about 0020am on 27 September 2003. The claimants are his mother and his sister. Mrs. Goodenough sues as his administratrix on behalf of the dependants under the Fatal Accidents Act 1976 and on behalf of the estate under the Law Reform (Miscellaneous Provisions) Act 1934. Susan Williams, Mr. Goodenough's sister, joined the claim under the Fatal Accidents Act and pursued a claim in her own right as a participant in the incident.
2. The claim is for trespass to the person by battery, negligence and also for vindication of Mr. Goodenough's rights under Article 2 of the European Convention on Human Rights relying on flaws in the investigation into his death. After a trial on liability only, Mr. Justice Turner handed down a judgment on 26 March 2020 dismissing the claim for assault and negligence, but allowing the claim under Article 2. The claimants now appeal against the dismissal of the action for damages for battery and negligence.
3. It was agreed that police officers had applied force to Mr. Goodenough and that this force was in law a cause of his death. The judge decided that the officers who used the force reasonably feared that it was necessary to do so in order to protect themselves and others. The judge decided that Mr. Goodenough was not actually intending to cause harm to others, but held that he was bound to apply the law as explained by the Court of Appeal in *Ashley v. Chief Constable of Sussex Police* [2006] EWCA Civ 1368, [2007] 1 WLR 398. It was not, therefore, necessary to prove that the officers were actually being attacked or under threat of attack. That question remains open in the Supreme Court, see *Ashley v. Chief Constable of Sussex Police* [2008] UKHL 25, [2008] 1 AC 962, at [20], [55], and [90]. It is common ground that the point is not open in the Court of Appeal and, like the judge, we are bound by the decision in *Ashley* in the Court of Appeal on that issue.
4. The Grounds of Appeal are as follows:-
 - i) The judge erred in accepting that a reasonable and honest but mistaken belief in imminent danger suffices to establish self-defence. The correct test for self-defence requires a defendant to establish that there was in fact such a danger and the High Court made a specific finding that the Defendant was unable to discharge this burden on the evidence before it. This ground must be rejected for the reason explained above, and the issue for this court is whether to grant leave to appeal to take it to the Supreme Court. I will say nothing more about it at this stage.
 - ii) In any event, the judge erred in his approach to the application of the requirement that there be an honest and objectively reasonable belief in a real and imminent danger. He should have found that the officers had no such belief and that if they did any such belief was not a reasonable one.
 - iii) The judge further erred in his approach to the proportionality of the force used.

- iv) The rejection of the battery claim was premised on an unbalanced and seriously inadequate analysis of the issues and evidence that compromised the fairness of his decision. The errors in the judge's approach are *a fortiori* given that the case concerns the legality of state agents applying force and thereby causing death.
- 5. It will become apparent that Grounds 2, 3 and 4 are challenges to the judge's findings of fact in his judgment, which by Ground 4 are said to have been arrived at in an unfair way. The suggested unfairness is entirely contained within the judgment and it is not suggested that there was any other unfairness in the conduct of the trial. There is criticism of the sufficiency of the reasons given in the judgment which overlaps across the three grounds of appeal under consideration.
- 6. It is worth stating at the outset that the force used in this case involved two punches to the head and neck and pulling Mr. Goodenough out of the driver's seat of a car in such a way that he landed on his face. The punches and the pulling were both part of the effort to remove him from the car. He had been resisting the attempt to extract him from the car, and became free suddenly so that he landed on the surface of the road. That resistance was not violent. He sustained very unpleasant facial injuries from that fall, but they would not have been fatal if he had not been an abuser of butane gas which had left him vulnerable to heart failure if exposed to stress. It was not alleged that any officer had used force which was intended to create a risk of death. There is an allegation, which in my judgment is an extremely important part of the appellants' case, that the officers deliberately threw Mr. Goodenough to the ground with such force as to prevent him from guarding his face as he landed and thus caused the facial injuries. That is the key factual issue in the case, because the officers deny doing this, saying that he emerged from the car suddenly and fell to the ground as part of that movement. The appellants contend that the judge should have found the allegation proved, and that he rejected it in an unfair way and gave inadequate reasons for doing so.

Factual summary

- 7. In summary, Mr. Goodenough was driving his sister's Vauxhall Astra on the roundabout in Oxford, called "the Plain", when a police van signalled to him to stop. His sister and another person were passengers in the car. He drove away off the roundabout and on to Cowley Road. He came to a stop when he had turned off Cowley Road into a *cul de sac* called Alma Place. The police officers got out of their van and surrounded the car. Mr. Goodenough did not turn his engine off, and did not obey their instruction to get out of the car. He was then pulled out of the car, after being punched once or twice to the head and struck the road or pavement with his face, suffering unpleasant injuries. Butane gas had an effect on his heart and meant that the stress of the incident caused his death. His sister was also arrested. That gave rise to her claim which was settled by her acceptance of a Part 36 offer on 12 November 2019, some months before the trial.
- 8. Several issues were resolved at or after the trial and are not now disputed. These are:-
 - i) During the trial a concession was made on behalf of the Chief Constable of Thames Valley Police that the force used by the officers in extracting Mr. Goodenough from the car was a contributory cause of his death.

- ii) The judge considered that during the trial the claims for damages for negligence and for violations of Mr. Goodenough's Article 2 rights arising from his treatment in Alma Place were abandoned. This was contentious, but if they were not formally abandoned a concession was made on behalf of the claimants that they were co-extensive with the claim in trespass and would "stand or fall with the primary assault/battery claims." This comes to the same thing. The judge did not, therefore, consider those causes of action separately, and no complaint is made about that. The judge was concerned only with the claim for battery, as are we.
 - iii) Although permission to appeal against the decision to award damages of £5,000 to each of the claimants for the flawed investigation under the Article 2 claim was sought by the Chief Constable, it was refused. We are not concerned with that, although it will be necessary to refer to the facts on which it relied in so far as it may have affected the cogency of the evidence on the issue on this appeal, the rejection of the claim for battery.
9. It was admitted at trial that force had been used by police officers on Mr. Goodenough, and the issue which the judge had to decide was whether the respondent had proved that the force which was used was lawful because it was used in lawful self-defence or defence of others from reasonably anticipated harm from Mr. Goodenough.

The facts

10. The judge observed that there was a good deal of common ground between the parties as to the facts, which enabled him to set out most of them in a narrative uncluttered with unnecessary detail. I will adopt the same course and will identify the facts and, where they are in dispute, what that dispute was.
11. Only two witnesses gave oral evidence before the judge, Police Constables Shane and Shatford. The judge granted a witness summons requiring the attendance of a third officer, Police Constable Summerville, so that he could be cross-examined. He produced a medical note which said that this would have an adverse impact on his mental health. The trial proceeded without him being cross-examined. These were the three officers who used the force on Mr. Goodenough which caused his death. Constable Shane delivered the two punches; Constable Shatford took the lead in pulling Mr. Goodenough out of the car, assisted by Constable Summerville.
12. There was a good deal of written evidence as well, including witness statements from the criminal investigation and transcripts of evidence from two criminal trials in which Constables Shane, Shatford and Summerville were defendants. They were ultimately acquitted of both manslaughter and assault. The relevant officers had been interviewed in the course of the criminal proceedings and had also made entries in their pocket-books which were available. They gave evidence in the Crown Court, and there were transcripts of that.
13. The narrative starts in the morning of 26 September 2003 when Mr. Goodenough appeared before the Magistrates' Court in Oxford. He had been on remand for 7 days and it appears that the court dealt leniently with him in respect of an allegation of driving while disqualified and he was released that morning. The judge referred in his narrative to the fact that by this time Mr. Goodenough, then aged 26, had "already

accumulated a long record of relatively petty offending”. This is criticised by Mr. Laddie QC on behalf of the appellants as placing undue prominence on something which was prejudicial but irrelevant. It is an example of the points he makes in support of Ground 4. His Skeleton Argument says that the judge was guilty of an:-

Irrelevant or disproportionate or sarcastic invocation of Mr. Goodenough’s antecedent history (which was unknown to the officers on the evening in question), at [1], [5] and [7-8]. This invocation contrasts uneasily with the overly sympathetic approach to the officers’ suffering at [1], [25] and [60].

14. The use of the word “sarcastic” in relation to a judgment is notable, and I will quote the four paragraphs which are so described in full. It is worth pointing out that the facts they set out are undisputed:-

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 17 years.

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.

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 on 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.

15. The three officers who used force and extracted him from the car did not recognise him, and his history was not part of their thought process in acting as they did. However, it is not irrelevant. The officers describe a course of behaviour by Mr. Goodenough between the time when they tried to stop him on the Plain and the time when they applied force. They say that this behaviour was part of what caused them to decide to use that force. Their descriptions of the appearance and driving of Mr. Goodenough and his behaviour when his car was surrounded were matters which the judge had to evaluate. Mr. Goodenough's history provides the explanation for his decision to try and evade the police, and supports the description of the officers of how he tried to do that. What they say he did makes sense in view of what is now known, and makes it more likely that their evidence about what they saw and what they thought was happening is true.
16. The judge said that it was the appearance of the car, and the furtive reaction of Mr. Goodenough and his sister when the police van came into view which caused the officers in the van to try and stop them. As the Astra left the roundabout and entered Cowley Road, Constable Shane, the driver of the van, applied his blue lights and sirens. Mr. Goodenough "put his foot down" and tried to escape. A short chase covering about 260m ensued at the end of which the Astra came to a halt in the *cul de sac* when it could go no further. The appellants submitted that from the timing of radio messages it is possible to calculate the average speed of the Astra over this distance at 22mph. The Astra came to a halt at a point where there was still some room to drive forward before the end of the road, and the police van stopped very close behind, so that its room for manoeuvre in that direction was just a few inches. There were cars parked on both sides of the road and there was very limited room at the sides of the Astra. The officers got out of the van and surrounded the Astra.
17. In relation to the duration and speed of the chase, Mr. Laddie has suggested that it was short and that Mr. Goodenough's decision to stop was "voluntary". He relies on the low average speed. This is designed to suggest that the behaviour of Mr. Goodenough was obviously innocuous. I do not accept that suggestion. The evidence of the police about the behaviour of the Astra was not contradicted, and it showed that during the chase Mr. Goodenough had struggled to control the car and had caused pedestrians to jump out of the way. They also said that the speeds varied considerably. What is now known about Mr. Goodenough's antecedents, recent court appearance and subsequent consumption of an intoxicating gas tends to confirm their account of how the car reacted to their attempt to cause it to stop. Moreover a witness who was in bed in one of the houses in Alma Place, Thomas Sayers, said in his first witness statement that:-

"I could hear what I would describe as an engine being thrashed. It sounded like the car was being driven faster than any car in Alma Place that I have ever heard. I immediately thought 'car chase'."
18. It is a part of Mr. Laddie's argument that the judge acted unfairly in failing to accept Mr. Sayers' evidence on what happened when the police removed Mr. Goodenough from the car. Mr. Laddie did not deal with the passage of Mr. Sayers' statement just quoted, or suggest that it should be rejected. Mr. Sayers gave evidence under oath at

the criminal trials, and did not retract this evidence, in substance although he re-phrased it somewhat. I shall return to him later. At this stage, given the attempt to downplay Mr. Goodenough's conduct when seeking to escape from the police, I shall set out my interpretation of the facts as found by the judge.

- i) The chase lasted 260m because that was as far as Mr. Goodenough could get. He came to a stop a few metres from the point where he would have driven into a wall if he had continued, but it is not sensible to describe that as coming to a halt "voluntarily".
- ii) The average speed is not, on its own, a very helpful piece of information. In order to achieve that average speed when starting from a very slow speed on the roundabout and then turning from the roundabout into Cowley Road, and slowing again when turning left into Alma Place, it is inevitable that the Astra must have reached significantly higher speeds at other points on this short journey. Mr. Goodenough was, after all, trying to escape from the police. He would have been acting very strangely indeed had he not been trying to go as fast as he could. The judge said that his driving was "erratic, although he did not reach high speeds". No doubt the speeds were not high in absolute terms, but the witness description quoted above suggests that his speed in the context of Alma Place (a narrow residential road with cars parked on both sides of the road) was high enough to be dangerous. In this context the additional finding that the driving was "erratic" is obviously highly significant. In his pocket book entry about the incident, Sergeant Bates said this, describing the point at which the van began to follow the Astra with its blue lights and siren activated:-

"The Astra immediately began to pull away from us, however I cannot say how fast we were travelling, and cannot estimate the speed of the Astra.The Astra drove along Cowley Road, towards Cowley, and whilst doing so appeared to be accelerating. I could see it pulling away from our vehicle despite the fact that we too were accelerating. ...Having narrowly missed the two pedestrians, the Astra then accelerated into Alma Place. As we neared the end of Alma Place, the Astra braked hard and skidded to a halt...."

- iii) Although the police did not know of the criminal record of Mr. Goodenough at this point, his behaviour would inevitably cause them to suspect that he was guilty of some criminal conduct which made it worth taking serious risks to avoid being spoken to by the police. Mr. Laddie's submission that the police should have regarded him as a man who had done nothing worse than commit the offence of "failing to stop" is unrealistic. Any person who is willing to drive in a dangerous way in a built-up area in order to escape the police is willing to risk his own life and that of others. That, in itself, is a cause for a reasonable suspicion of the commission by him of an arrestable offence.
19. The judge did not spell out all these obvious points exactly as I have done, but he certainly had them in mind. That is why he described the chase in the way that he did. He said:-

“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 willing to take 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 detection.

“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.”

20. Because Mr. Laddie expresses forensic puzzlement about the nature of the “criminal risk” referred to by the judge, I have spelt it out at [18] above.
21. The judge summarised the evidence about the force which was then used to extract Mr. Goodenough from the car. I will set out the key paragraphs of the judgment in full:-

“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.

“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 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 in 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.”

22. The judge added a footnote about whether or not the claimants would have been able to cross-examine Sergeant Bates in circumstances where no hearsay notice had been served in relation to his evidence. He said they would have been, but even if he was wrong about that, it would make no difference to his conclusions. This was no doubt because there was no real basis on which to challenge what he said about the incident.
23. The arrest for driving while disqualified occurred because Sergeant Bates recognised Mr. Goodenough at some point during the incident in Alma Place which was not precisely identified in the evidence, but was probably as he initiated the attempt to pull him from the car.

Mr. Sayers

24. Part of the appellants' case is that it was wrong for the judge to decline to accept the evidence of Mr. Sayers about the way in which Mr. Goodenough was extracted from the car. It is necessary therefore to set out in a little detail what Mr. Sayers actually said. The judge referred to the appellants' reliance on this witness while dealing with the accounts given by the officers and the suggested discrepancies between them, and said this:-

“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 he 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 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.”

25. Mr. Sayers had made four witness statements in the criminal proceedings and had also given oral evidence at both criminal trials which was transcribed. I have read all that material. I have quoted an extract from the first witness statement at [17] above. Mr. Sayers said that it was quite dark when he looked out of his window and that his eyesight is not very good if he does not have his glasses on, but fine if he does. He did put his glasses on before the key events occurred. He described the exit from the car in his first statement in this way:-

“The officer had leant a long way into the Astra, more so than I would have expected. His weight seemed to be on the front foot. I could not see what was going on in the car, but after a few seconds the driver was pulled from the car and thrown to the ground....Due to vehicles parked in the road I could no longer see the driver.... I would also like to add that as well as not being able to see the driver my view of the bottom half of the officers close to where the driver was on the ground] was now also obstructed.

“At this point I saw what I can only describe as one of the officers kicking the driver. I say this because of the way his weight was shifting back and forwards. The top half of his body seemed to be acting like a pendulum which is consistent with someone kicking a ball. I cannot be sure if it was the same officer who had pulled the driver from the Astra as was doing the kicking.

“The situation had developed into what I would call a bundle. I was not able to see the bottom half of the officer who appeared to be doing the kicking nor if his kicks were making contact with the driver. What I was able to make out was three distinct sounds coming from the driver. The noise was a loud grunt and it sounded very deep and nasty. I could hear them very clearly and would describe them as guttural. They just seem to sound wrong.”

26. In later statements he made it clear that the noises from the driver did not coincide with the kicking movements, which meant that they could not be used to confirm the infliction of blows with the foot. He said this about the extraction in his fourth witness statement dated 1 December 2003:-

“Then suddenly Mr. Goodenough was pulled sideways out of the car. He was pulled with such speed and strength and angle that I am certain that even if he’d wanted to stand he could not have. His centre of gravity was pulled out of the car and it was clear to me he would not have been able to stand. He went sideways and then down to the ground. I must clarify from my first statement when I said he was thrown to the ground, he was thrown sideways and ended up on the ground.”

27. He gave oral evidence at the first trial on 6 October 2005 and at the second trial on 22 June 2006. At the first trial he said this about the extraction from the car:-

“He was, the driver of the car was, removed and thrown to the, thrown sideways onto ground in kind of one movement.”

28. In cross examination by Mr. David Fisher QC, who appeared for Constable Shane, Mr. Sayers said that Mr. Goodenough had emerged from the car in “one fluid movement”. Then this exchange occurred:-

“Q: Yes, because it was not the situation of an officer throwing somebody to the ground, but they were coming out and dropped to the ground, did they not?

A: Correct.”

29. In relation to the kicking his evidence at the trials was consistent with what he had said in his statements. He could not see the lower leg or foot of the officer and so his allegation of kicking was, as he had always said, an inference which he drew from what he could see. There was no evidence from the post-mortem of any injury which was consistent with any kicking.

30. The evidence at the second trial on this point was very much like the first.

31. The appellants submit that the judge erred when he rejected Mr. Sayers’ description of the extraction because of the unsustainable allegation of kicking. They say that this is a key illustration of their allegation of the unfair approach of the judge which is the substance of Ground 4.

The Article 2 claim and the “de-brief”

32. I will deal at this point with the judge’s decision about the Article 2 claim in respect of the investigation which is not now challenged. This is to explain how the judge addressed this question when assessing the factual evidence in dealing with the battery claim. A de-brief had occurred at about 0300am very soon after the incident, which was conducted by Detective Superintendent Chesterman, of the respondent police force, at which all relevant officers attended. Sergeant Bates is recorded as having given an account of what happened, with Constable Shane adding that he had punched Mr. Goodenough. The other officers, according to the note taken by the Superintendent, were present without saying anything which he felt it necessary to record. By this stage, the relevant officers had not made any entry in their pocket notebooks or made any other written record of their accounts of what had happened. This was the basis on which the judge found that the investigation was flawed and upheld the Article 2 claim. The investigation was flawed in that it allowed the officers an opportunity to hear the accounts of others before they had recorded their own account. The judge analysed English and Strasbourg authority and concluded that:

“.....the investigation was seriously operationally inadequate by the application of the approach in the cases to which I have referred.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”.

33. The appellants place some weight on the note of this de-brief by Superintendent Chesterman. The judge dealt with these points in this way:-

“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 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."

34. It is submitted on this appeal that the judge failed to give these points proper weight. Again, this is one of the points made in support of Ground 4, the allegation of unfairness. The judge decided that the absence from the Chesterman note of any mention of a fear that Mr. Goodenough might be reaching for a weapon or planning to move the car did not drive him to reject the officers' evidence that they did hold those beliefs. The note gives an account of Sergeant Bates taking the lead in outlining what had happened, and does not record anyone else saying anything except that Constable Shane said he had punched Mr. Goodenough twice in the face to distract him because he was uncooperative and difficult to remove from the car. It does say Constables Shane, Shatford and Summerville forcibly removed Mr. Goodenough from the car and "took him face down onto the floor". The judge's decision about the importance of this note is described in the appellants' Skeleton Argument as "extraordinarily benign towards the officers". This point is associated with a more broadly based suggestion that this was strong evidence of the evolution of the officers' accounts over time and the submission that the judge failed properly to explain why he accepted their evidence nonetheless.

The judge's approach

35. The judge was dealing with a case about a very brief incident which had occurred 17 years before the trial. The case turned on what the officers did, and what threat they believed existed between the time when the Astra stopped in Astra Place and the time when Mr. Goodenough's face hit the road or pavement. On any view, this was a short time during which the officers had to react quickly to what was happening. The judge identified these factors as rendering his task of making findings of primary fact and drawing appropriate secondary inferences therefrom more difficult. In view of the submission that his judgment was sarcastic about Mr. Goodenough and overly sympathetic about the officers' sufferings, I will set out two further complicating factors he listed:-

"(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 brought 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.”

36. The judge accepted a point made by the appellants that there would be a powerful tendency for witnesses to remember past events in a self-enhancing light. He said that discrepancies between contemporaneous records and later evidence would be important, but that they would not always lead to the rejection of that evidence. He continued:-

“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.”

37. In rejecting the submission that the accounts of the officers had evolved over time and should not be accepted as a truthful explanation of why they used force, the judge began with the passages I have set out at [19] and [33] above. He then said this:-

“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 and 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.

“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.”

38. In relation to Constable Shane’s use of the force by striking two punches towards the neck or head of Mr. Goodenough, the judge accepted that he had a limited view of what was going on, 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. It was reasonable for him to act on this perception by analogy with an unreported decision in *Williams v. Macrae* (November 17, 1980 DC) which the judge found cited in Clayton & Tomlinson, *Civil Actions Against the Police*, 3rd edition, paragraph 5-082. He believed Constable Shane when he said that he had told the paramedics about the punches, and that their omission of this from their statements was not because he had not done so. It was common ground that he had told Superintendent Chesterman about the punches in the de-brief, see the passage quoted at [33] above. The judge said:-

“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.”

39. In rejecting the allegation that there was a concerted effort to conceal the striking of the punches by Constable Shane, the judge acknowledged the discrepancies in some of the evidence but said that they were not such as to lead him to conclude that there was a cover up. He then said, in one of the passages highlighted as being “overly sympathetic” to the officers:-

“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 the 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.”

The appellants’ submissions

40. I have attempted to refer to some of the submissions when giving an account of the way in which the judge decided the case. I have quoted extensively from the judgment because of the nature of the attack on it. It is available at [2020] EWHC 695 (QB) for further reference.
41. As previously remarked, the appeal contends that the judge found the facts wrongly, and, by Ground 4, unfairly. A key part of those submissions is the fact that the claim of “anticipatory self-defence” was not made by the three key officers until they compiled their notebook entries in the evening following the morning when the death occurred. In that time there had been the de-brief where the only reason for using force which was given was that Mr. Goodenough was being “uncooperative”, and no-one said that Constable Shatford feared that he may be going for a weapon, and Constable Shane feared he might be about to move the car. For these reasons (in summary) it is argued that the evidence that the use of force was in self-defence or defence of another should have been rejected. In relation to an alternative defence, that force was used to effect an arrest, the appellants say, in a footnote in the Skeleton Argument, that “The Respondent also relied in written closing submissions upon the use of reasonable force to effect an arrest, but this was not pressed with any vigour since no relevant police officer gave evidence that they were planning on arresting Mr. Goodenough prior to his extraction”. I take this to mean that this contention was not abandoned. It appears from the evidence that Mr. Goodenough was first handcuffed and then arrested for driving while unfit through drugs. It would be surprising if the officers had not intended to effect an arrest in the circumstances. They did not decide to arrest him for a particular offence until a butane canister was discovered in the car, but by then he was handcuffed.
42. The appellants make a submission of law, namely that:-

“Ultimately a trial judge’s assessment of whether a defendant has discharged the burden of proof in respect of the above elements must be properly calibrated to strike a balance between the fundamental interests at stake. As Arden LJ said in *Ashley* CA at [192]:

“...the defendant relies on the exercise...of an extra-judicial remedy. Any claim to commit a trespass to another’s person or property out of self-defence must be jealously regarded by the law because it amounts to the creation of an exception to the rule of law.”

“This is *a fortiori* in the case of fatal force: in particular. “*The use of fatal force by police officers....requires the most detailed*

and rigorous examination”, see *E7 v. Holland* [2014] EWHC 452 (Admin) at [1] per Sir Brian Leveson P.”

43. The appellants also make submissions on the role of the Court of Appeal when considering appeals against findings of fact in a reasoned judgment. It is unnecessary to summarise those. They submit that in this case this court should reverse the trial judge’s findings of fact and his evaluative judgments about those findings.
44. In relation to Ground 2, the appellants emphasise the need for the respondent to prove that the officers held an honest and reasonable belief in a real and imminent danger which necessitated action in self-defence, as opposed to a mere speculative possibility of danger. It is said that the judgment lacks any meaningful analysis of the nature and degree of risk posed by Mr. Goodenough, from either a subjective or objective basis. It is noted that the judgment does not refer to the fact that Mr. Goodenough did not use or threaten any violence towards the officers at any time. It is at this point that submissions express the forensic puzzlement about the risks which Mr. Goodenough was taking in trying to escape. I have dealt with that above at [20]. Mr. Laddie submits that the only thing which the officers should reasonably have been concerned with was an offence of what he calls “failing to stop”.
45. Particular criticism is made of a passage in the judgment at [49], set out in full at [19] above. The submission sets out the last sentence and correctly points out that it does not refer to the judge’s findings that the risk perceived by the officers was that he would drive the car and injure them, or, according to Constable Shatford, that he was going for a weapon. Those findings of fact are explained further at [53] and [54], see [37] above. At this point, the appellants’ Skeleton Argument makes this assertion, for which it cites no evidence:-

“The fact that Mr. Goodenough was at the wheel of a car does not take matters further: whilst instances of people driving at police officers have been known to occur, they are exceptionally rare....”
46. The appellants then submit that the judgment muddles up the different uses of force by the different officers, and that it also muddles up the reasonableness of their suggested beliefs and the proportionality of the force used. It is noted that paragraph [55] deals with the proportionality of the force used to extract Mr. Goodenough from the car, and that the punches inflicted by Constable Shane are dealt with separately at [57]-[60] without any separate consideration of their proportionality.
47. It is contended that the judge failed to break down the event and to consider each part of it separately. It is said that his treatment of the eight points in his passage set out at [37] above was a breach of natural justice and that he should have dealt with them all separately. Had he done so, it is said, “he would have been compelled to the conclusion that Constable Shatford either did not believe that Mr. Goodenough was reaching for a weapon or that any such belief was not objectively reasonable.” Instead, it is said, he “derided” these submissions.
48. Similar criticisms are made of the judge’s treatment of Constable Shane’s punches. It is said that there is no consideration of whether the belief that Mr. Goodenough may be about to drive the car was reasonable. We are reminded that there were six points about

this issue in the closing submissions at trial, and once again the judge did not set them all out and deal with them. There was no separate treatment of the proportionality of this use of force.

49. On Ground 3, proportionality, the appellants say that because death resulted “detailed and rigorous examination” of the proportionality of the force used was required. The say that the first part of paragraph [55] of the judgment, set out at [24] above, is inadequate to meet this test. In particular, it fails to deal with the appellants’ “central point” that Mr. Goodenough was a “69kg deadweight sitting in a car”. The Skeleton Argument then says:-

“Failing to engage with the mechanics of Mr Goodenough’s removal from the car relieved the Judge from having to find that the force used to extract him was disproportionate, but that was the obvious and only reasonable conclusion. As a matter of physics, there is no explanation other than that PC Shatford *hauled* Mr Goodenough out of the car *and then threw or thrust* him to the ground (with assistance from PC Summerville, yet another issue that the Judge failed to address).” [emphasis added]

50. In other words, the complaint is that the judge should have found that there were two movements by the officers, hauling, and then throwing Mr. Goodenough. Reliance is placed in the photographs of the scene which show blood on the pavement some little distance from the car as supporting this contention. If he had accepted this factual proposition, it is submitted that the judge would have been bound to find that this was disproportionate.
51. Ground 4 has been summarised above when setting out the key parts of the judgment on which it relies. It is said that the reasons given fail the test articulated by Lord Dyson MR in *Harb v. HRH Prince Abdul Aziz* [2016] EWCA Civ 556, at [39].

“Our system of civil justice has developed a tradition of delivering judgments that describe the evidence and explain the findings in much greater detail than is to be found in the judgments of most civil law jurisdictions. This requires that a judgment demonstrates that the essential issues that have been raised by the parties have been addressed by the court and how they have been resolved. In a case (such as this) which largely turns on oral evidence and where the credibility of the evidence of a main witness is challenged on a number of grounds, it is necessary for the court to address at least the principal; grounds. A failure to do so is likely to undermine the fairness of the trial. The party who has raised the grounds of challenge can have no confidence that the court has considered them at all: and he will have no idea why, despite his grounds of challenge, the evidence has been accepted. That is unfair and is not an acceptable way of deciding cases.”

52. Eleven points are made in support of Ground 4, one of which is sub-divided into 3. In summary the eleven points are as follows:-

- a) I have set this out in full at [13] and [14] above.
- b) It said that the judge rejected the significance of the de-brief in a “cursory” way. I have summarised that at [32]-[34] above. This submission is divided into three sub-clauses, which include the suggestion that the judge was “extraordinarily benign” as set out in [34] above. In short, it is said that the judge acted unfairly in refusing to accept the submission made to him about the importance of the absence of the two justifications for the use of force from Superintendent Chesterman’s note. I have identified the important parts of the note above, in the passage just referred to.
- c) The judge’s decision not to rely on the evidence of Mr. Sayers is said to have been unfair. I have set out this material at paragraphs [17] and [18] and [24]-[31] above.
- d) The appellants complain that the judge acted unfairly in failing to accept the appellants’ submissions about how the officers’ accounts had evolved over time and failing to deal with the points made or to describe the chronology of events.
- e) It is said that the judge’s decision to accept the evidence of Constable Shatford that he thought that Mr. Goodenough was reaching for a weapon and not to consider in detail all the submissions to the contrary made on that topic was unfair.
- f) This makes the same criticism of the judge’s acceptance that Constable Shatford’s belief was a reasonable one.
- g) It is said that the judge’s decision to accept the evidence of Constable Shane that he thought that Mr. Goodenough was about to drive into the officers, and not to consider in detail all the submissions to the contrary made on that topic was unfair.
- h) This makes the same criticism of the judge’s acceptance that Constable Shane’s belief that Mr. Goodenough was about to drive the car as a reasonable one.
- i) This complains that the judgment does not properly address the reasonableness of the force used by Constable Shane. I shall not deal with this further, because it is obviously hopeless. If he reasonably believed that Mr. Goodenough was about to drive the car in a way which risked injury to police officers, the infliction of two punches which caused no significant injury, and were intended to distract him, was quite obviously reasonable force.
- j) This repeats the criticism of the judge’s approach to the mechanism by which Mr. Goodenough was extracted from the car, see [49] above.
- k) “Generally, the judgment does not contain (in relation to the claims of battery) a discrete section where the judge can be seen to consider, in

logical order, each of the elements of the defence of self-defence vis-a-vis each use of force.”

53. In oral submissions, Mr. Laddie took us through the detail of the criticisms of the evidence which he said the judge had failed to address, and added the submission that the judge’s findings in favour of the appellants where he did not find that Mr. Goodenough was actually reaching for a weapon or intending to drive off at the time when the force was used were made “through gritted teeth”. He added that where Mr. Goodenough had died at the hands of the police because they made mistakes about his intentions there should have been an expression of sympathy, which is absent. The passages of the judgment to which this submission relates are as follows:-

“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.

“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.”

54. Lord Faulks QC for the Chief Constable submits that the officers were entitled to stop and arrest the occupants of the car. It is true that none of the officers said in terms that they were using force in order to make an arrest, but arrest was plainly in their contemplation. Sergeant Bates was in charge of the operation, and was the first to take physical action to remove Mr. Goodenough from the car. He explained why he did this in his pocket book entry. As recorded above, the appellants did not seek his attendance for cross-examination. The notebook says this:-

“Suspecting the vehicle to be stolen, I considered it likely the ignition had been hot wired for this reason I precluded attempting to disable the vehicle by removing the key or undoing the hot wire. However, due to the manner of the driving I had already witnessed, the clear attempt to evade the police, and the fact that officers were now surrounding the car, I identified a severe risk to the safety of officers should the driver have attempted to move the vehicle....I decided it was necessary to remove the driver from the vehicle in order to secure the safety of officers on scene and members of the public who may have been on the street.”

55. Lord Faulks supported the judge’s findings as being reasonable and cited authority in support of the proposition that the Court of Appeal will exercise restraint in reviewing

findings of fact by a trial judge. He submitted that this, in truth, is an appeal on the facts in what is a sad case.

The proper approach to this appeal against findings of fact

56. In the context of the role of the appellate court in relation to findings of fact, in addition to *Harb* cited above, we were referred to a familiar set of cases. These included *Fage UK Limited v. Chobani UK Limited* [2014] EWCA Civ 5, *Henderson v. Foxworth Investments Limited* [2014] UKSC 41, and, in relation to the proper approach to evaluative judgments based on factual findings, *Re Sprintroom Limited* [2019] EWCA Civ. 932. The principles to be applied when dealing with an appeal against findings of fact based on the suggested lack of reasons in the judgment were set out by the Court of Appeal in *Simetra Global Assets Limited and another v. Ikon Finance Limited and others* [2019] EWCA Civ 1413. Males LJ, with whom the other members of the court agreed said this at [46] and [47]:-

“46. Without attempting to be comprehensive or prescriptive, not least because it has been said many times that what is required will depend on the nature of the case and that no universal template is possible, I would make four points which appear from the authorities and which are particularly relevant in this case. First, succinctness is as desirable in a judgment as it is in counsel’s submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of “the building blocks of the reasoned judicial process” by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it.

“47. I would not go so far as to say that a judgment which fails to follow these requirements will necessarily be inadequately reasoned, but if these requirements are not followed the reasoning of the judgment will need to be particularly cogent if it is to satisfy the demands of justice. Otherwise there will be a risk that an appellate court will conclude that the judge has ‘plainly failed to take the evidence into account’.”

57. I do not think it necessary to analyse further the authorities which were cited. The principles are clear and no refinement of them is required in order to determine this appeal.

Discussion and decision

58. I will deal quite shortly with Ground 4 at the end of this judgment. It is heavily dependent on Grounds 2 and 3. If the judge dealt properly with the issues raised in those grounds it is difficult to see how he could have been acting unfairly. The fairness challenge is to the terms of the judgment, and not the conduct of the trial. On the other hand, if he did not it is unnecessary to consider fairness as a separate heading. I wish, however, to begin by saying something about the phrasing of the judgment and the tone of the criticisms of it. It is plain from the way in which the submissions for the appellants have been advanced that they take exception to the tone of the judgment. Words such as “sarcastic”, “derided”, and “cursory” are powerful terms when they appear in the submissions of leading counsel to describe a judgment under appeal. I accept that if it indicates a hostility to the losing party, the language used by a judge may give rise to a valid complaint on appeal. But this was a situation where Mr. Goodenough had, by his conduct, given rise to a situation where he could have been lawfully arrested on the basis of what the police suspected by the time when his vehicle came to a halt. The whole sequence of his behaviour on the last day of his life, which the police did not know until later, was reprehensible and merited a significant term of immediate imprisonment. These facts were relevant to what the judge had to decide, because they supported the officers’ evidence that they believed that the driver of the Astra was trying to escape and was apparently acting irrationally and with a degree of desperation. The fact that he had been released only that morning explains why he was behaving as he did, and makes it more likely that the officers are telling the truth about their descriptions of that behaviour and their conclusions about it. Their interpretation of his conduct turned out to be correct. These facts were admitted into evidence at the trial for this reason, and the judge was quite entitled to deal with them. In doing so, he was not expressing hostility to Mr. Goodenough but simply setting out the unchallenged facts. I do not accept that the language used was “sarcastic”, or that it “contrasts uneasily with the overly sympathetic approach to the officers’ suffering”. At [35] above, I have set out a section in the judgment in which the judge addresses the relevance of those sufferings in terms. The officers were not “detached observers” because they had been suspected of, and prosecuted for, manslaughter. They had every reason to want to protect themselves by giving exculpatory evidence, and by the time of the civil trial they had been through two criminal trials in which they had given such evidence. The judge was not here expressing any sympathy for them. He was directing himself that he had to bear in mind that their “suffering” should make him cautious about their evidence.

Grounds 2 and 3

59. Although the attack on the judgment is broadly based, in my judgment it resolves into a single question. The attempt to show that the judge was obviously wrong about every issue is ambitious and tends to obscure the real point. The judge found that the three relevant officers in fact genuinely believed that Mr. Goodenough presented a risk. I have quoted above from their sergeant who said the same thing in his pocket notebook which was completed on the same day as the incident. The only real reason for not accepting this evidence could be the inconsistency with the account given to

Superintendent Chesterman at about 0300am. I will deal with the judge's treatment of that below. The judge found that the officers' beliefs of the risk posed by Mr. Goodenough were mistaken, but reasonably held. Those were matters of fact on which he, as trial judge, was in the best position to form a view. He heard two of them explain what they believed and why they believed it. It is plainly material that in accepting the sworn evidence of the officers, he was accepting evidence on these issues which was uncontradicted by any other direct evidence.

60. Mr. Laddie in his written and oral submissions placed emphasis on the contention that that the judge should have found that Mr. Goodenough was pulled from the car and then, in a second movement, thrown to the ground by Constables Shatford and Summerville, having been persuaded to stop resisting by Constable Shane's two punches. I have described this at [6] above as an extremely important part of the appellants' case. If there was a second deliberate use of force, a deliberate throwing of Mr. Goodenough to the ground so that his face hit the road surface with force, it was, on any view, unjustified. No officer sought to justify it: they said it had not happened. If it did not happen, then it would appear that the force used was limited to pulling him out of the car and the infliction of two punches which did not cause injury, except indirectly by contributing to the sudden ending of his resistance to being pulled out of the car. That level of force, but for the butane and the unintended striking of his face against the road surface, would not have caused death and would not have caused any significant injury at all. If Mr. Goodenough landed on the ground as an unintended and accidental consequence of being pulled out of the car, then the level of force used would be clearly proportionate to the risks which the judge found that the officers perceived.
61. In truth, however, there was no evidence that the officers threw Mr. Goodenough to the ground as a separate and deliberate movement after he had exited from the car. Mr. Sayers, as explained above in some detail, said it did not happen. The judge thought that his first statement suggested otherwise, but discounted his reliability because of his allegation about kicking. On examination of his later statements and his oral evidence at the trial it becomes clear that his evidence was actually consistent with that of the police. Mr. Goodenough came out of the car sideways and then fell, in one movement, to the ground. Mr. Sayers' evidence about kicking was a careful explanation of what he had inferred from what he could see, which was not very much. Whether it forms a proper basis for doubting his reliability falls away as an issue once it is appreciated what he actually said about the way in which Mr. Goodenough hit the ground. The evidence he gave in the criminal trials removes a principal plank of the appellants' case on this issue.
62. The record in the Chesterman note that the officers "took [Mr. Goodenough] to the ground" does not take the matter any further, because it is not in dispute that their action caused him to strike the ground. It would over-interpret the phrase "took to the ground" to conclude that it was only consistent with a second and deliberate movement. It would also attach too much weight to what was just as likely to be Mr. Chesterman's choice of phrase as that of any witness. I deal further with that note below.
63. The only other piece of evidence which was identified as supporting the "two movement" theory is the photograph of the scene which shows blood on the pavement some little distance from the car door. Mr. Laddie submits that this shows that Mr. Goodenough, a 69kg deadweight, must have travelled some distance through the air and therefore that he must have been thrown with force. The blood stains do not

necessarily mark the point of impact when Mr. Goodenough's face first hit the road surface. The most that can be said is that they may mark the point where his head was when he was bleeding from his face. Mr. Goodenough was handcuffed before the officers realised he was injured. This involved moving him. At that point Sergeant Bates said that he identified a risk of positional asphyxia and instructed Constable Shatford to move him onto his side, which was done "immediately", and then into a sitting position. I consider that the appellants are inviting the court to draw what may be an entirely false inference from the photograph.

64. For these reasons, the judge was not driven to the conclusion that Mr. Goodenough had been deliberately thrown to the ground. He declined to make that finding and it was open to him to do that. He dealt with this in the first two sentences of his paragraph [55] which I have set out at [24] above. The judge said that it was "unsurprising that he emerged from the car and landed with some force on the road surface thereby suffering the facial injuries." The word "unsurprising" in this context means that the event is explicable on the evidence given by the police officers, and there is no reason to conclude that something must have happened beyond what they described. The decision is given in succinct terms, but is entirely clear and intelligible. In the absence of any evidence of any such thing, this was a proper, and perhaps the only proper, finding.
65. That means that Mr. Goodenough died because of reasonable force which was applied which was intended to remove him from the car, but not to hurt him. In my judgment, it is unhelpful to cite Sir Brian Leveson's observations in *E7*. That was a case where a police officer had deliberately shot a man to death. That is the context in which he said:-

"The use of fatal force by police officers rightly requires the most detailed and rigorous examination."
66. In this case the officers had no intention to use fatal force. There has in any event been a "most detailed and rigorous examination" in the course of the criminal investigation, which resulted in two criminal trials. That would probably satisfy the state's obligation in this respect whether or not civil proceedings followed, except in respect of the narrow basis on which the judge upheld the Article 2 claim. These civil proceedings were a further stage in that examination, but conducted long after the event and, for the reasons given by the judge, in less than ideal circumstances. If it was being submitted that the dictum of Sir Brian Leveson required some special approach by the judge at this civil trial when finding facts, then I do not agree. The judge was required to decide the factual issues fairly and carefully, and to apply the law to those findings in deciding whether the claim should succeed or fail. Of course, that approach is informed by the fact that the case concerned the death of a man as a result of the use of force on him by police officers. The observations of the court in *E7* were concerned with the necessary process and not intended to mandate any particular conclusion which that process should reach.
67. In relation to the other substantial point which Mr. Laddie made, concerning the Chesterman note, I accept that on the face of it, it is surprising that he did not record anyone as saying that the force had been used because of a fear that Mr. Goodenough was going for a weapon (Shatford) or because of a fear that he was going to drive off (Shane and Bates). These explanations first appeared in the pocket notebook entries in

the early evening of the same day. The judge declined to find that this meant that the notebook entries were fabricated in this respect. The reason recorded by Superintendent Chesterman for the use of force (including the punches) was that they were trying to get him out of the car, and he was being “uncooperative”. Constable Shane said that Mr. Goodenough was “difficult to remove from the car”. This was true, as far as it went. There is no record in the note of Chesterman asking questions or challenging this account which was given by Bates and Shane. There is no record of Shatford saying anything. The note records the Superintendent as saying to the officers:—

“I told them I do not want any form of statement (written) from them tonight, but I would like a verbal account to inform my investigation”

68. This was a preliminary investigation probably concerned with addressing the immediate aftermath of the incident and preserving the evidence for later investigation by another police force. The witnesses were told that they would not be asked for any written explanation then, but to give an account so that these functions could be informed by an understanding of what had happened. That account was largely given by Sergeant Bates. The judge set out his conclusions on this point at his [50] and [51], set out above at my [33]. Again, these conclusions are succinct but entirely clear. Constable Shatford’s evidence at the civil trial was that the Sergeants at the de-brief, Bates in particular, had taken the lead in explaining what had happened and he did not think it necessary to say anything. Constable Shane said in his evidence that he had said that he had hit Mr. Goodenough twice but was sure that he did not say, and was not asked, why he had done that. The explanation came from Sergeant Bates. Constable Shane said that he did not use the phrase “distraction blows”.
69. Given the limited purpose of the de-brief, and the fact that it was Sergeant Bates who did almost all of the talking, the failure of Shatford and Shane to come up with their explanation for what they did does not inevitably generate the inference that it must have been fabricated between the time of the de-brief and the time when the pocket notebooks were written up. Shane’s evidence was that he was crying in Alma Place after he learned that Mr. Goodenough had died, and the emotional state of the men whose actions had caused his death is relevant to whether such inferences can fairly be drawn. Certainly, it is relevant to the soundness of the proposition that any reasonable judge fairly applying himself to the evidence must have drawn that inference. That is the proposition which the appellants must make good in order to succeed on this issue.
70. I agree with Mr. Laddie that the judge’s point in the last sentence of his paragraph [50] (set out at my paragraph [33]) is not very persuasive. I doubt if Superintendent Chesterman would have thought it was his responsibility to probe or assess the actions of the officers. Otherwise, he would have secured an account from each of them separately. However, the other points the judge makes are all appropriate, and, as I have said, the decision not to draw an inference of subsequent fabrication was open to him.
71. The judge set out the facts as he had found them to be and expressed, again succinctly, the decision that the beliefs held by the officers were reasonable ones for them to hold. Although the authors of the appellants’ Skeleton Argument are willing to assert that cases where drivers drive at police officers are “exceptionally rare”, see [45] above, I do not know what the basis for that assertion is. Cases where people drive irrationally

and cause danger to police officers and others are not particularly rare in my own experience. Even if they are, that might be because police officers are aware of the risk and often take effective steps to avert it. However frequently situations occur where drivers have been trying to get away, and come to a halt with their engine running and refuse to get out of the car, when they do occur they might be thought to speak for themselves. It is obviously reasonable to decide that these circumstances involve a risk and to take steps to address it.

72. Given the level of force which was actually used, on the judge's findings, there was no difficulty in deciding that it was proportionate to the believed risks which he had accepted. Indeed, on those findings this hardly arose as a serious issue.
73. That disposes, in my judgment, of the real meat of Grounds 2 and 3. On the judge's findings the beliefs of Constables Shane and Shatford that force was necessary for the reasons given were honestly and reasonably held. Those are matters of fact and the two main points of attack, as I have sought to show, do not undermine the judge's findings. The subsidiary points, however numerous, cannot succeed where the best points fail and, like the judge, I do not think it necessary to set them all out and explain why they do not change the result. The real answer to them was identified by the judge when he explained that they involve a minute "frame by frame" analysis of a very short, fast moving incident which does not lend itself to illumination by this kind of wholly artificial exercise. This was a simple case in which the judge had to decide whether to accept the uncontradicted evidence of the relevant police officers. A simple case of this kind lends itself to a relatively short judgment and its succinctness does not evidence any lack of care in its development.
74. It follows from my rejection of Grounds 2 and 3 that I also reject them when they are re-fashioned into an attack on the fairness of the judge's judgment in Ground 4. The points are summarised at [52] above. My short answers are as follows:-
 - i) I have said that I do not accept that the description by the judge of Mr. Goodenough's history was "sarcastic" or that it gave undue prominence to something which was prejudicial but irrelevant.
 - ii) I have dealt fully above with the Chesterman note and the judge's treatment of it which was succinct but not " cursory", nor was it "extraordinarily benign".
 - iii) The treatment of Mr. Sayers' evidence only resulted in the rejection of anything he might have said about the removal of Mr. Goodenough from the car which differed significantly from the account of the police officers. In fact, what he said did not differ from what they said, so this issue does not arise.
 - iv) I do not accept the four points made about the judge's decision not to set out each submission made about why the officers' evidence about their belief and its reasonableness and to explain why he rejected it. I have explained why above.
 - v) The last three points listed at [52] above do not need any further treatment.

Conclusion

75. For these reasons I would dismiss this appeal.

Lord Justice Nugee

76. I agree.

Dame Victoria Sharp, P

77. I also agree.