

Paragraph 110 of this judgment is corrected by Mrs Justice O'Farrell on 22nd May 2019 pursuant to CPR 40.12.



Neutral Citation Number: [2019] EWHC 1233 (QB)

Case No: D90MA153

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Date: 15/05/2019

Before:

MRS JUSTICE O'FARRELL DBE

Between:

MICHAEL GILCHRIST
(by his Mother and Litigation Friend, NOVLYN
GRAHAM)

Claimant

- and -

THE CHIEF CONSTABLE OF GREATER
MANCHESTER POLICE

Defendant

Marc Willems QC & Peter Edwards (instructed by Lexent Partners Ltd) for the Claimant
Graham Wells (instructed by Greater Manchester Police Legal Services) for the Defendant

Hearing dates: 19th, 20th, 21st, 22nd & 26th March 2019

Approved Judgment

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

.....
MRS JUSTICE O'FARRELL

Mrs Justice O'Farrell:

1. The claimant, Michael Gilchrist, was born on 12 December 1959 and is aged 59 years. He has significant learning difficulties and has been diagnosed as suffering from autistic spectrum disorder and bi-polar disorder. He lives alone in a flat on the Bideford Drive Estate with support from family members who live nearby. Prior to the incident the subject of these proceedings, he was an active and sociable member of the local community. He worked as a gardener for four days each week having obtained the employment through a social centre.
2. In the early hours of 6 June 2014, the claimant suffered an episode of acute behavioural disorder and became distressed. He caused damage to his flat. He broke a window in his flat and a window in the communal stairwell, cutting his hands. He left the block of flats and went outside, wearing only tracksuit bottoms, his hands covered in blood.
3. At 05.56 hours a member of the public telephoned the Greater Manchester Police ("the GMP") stating that there was a man covered in blood walking around and smashing things on Bideford Drive, heading towards Moor Road. The police arrived and found the claimant in the street. Their assessment was that the claimant was acting aggressively and presented a danger to himself and others. They attempted to subdue him using 2-Chlorobenzalmalonitrile gas ("CS gas") and Taser. This proved to be ineffective. The police brought the claimant to the ground and physically restrained him. He was transported to hospital by ambulance where he received treatment.
4. The claimant lacks capacity to conduct proceedings and therefore this claim is brought by his mother, Novlyn Graham, acting as his litigation friend.
5. The claimant's case is that it was unnecessary for the police to use any force. Further, the methods of force used, namely CS gas and Taser, were inappropriate and unnecessary, and the extent of force used was unjustified. The claimant has suffered severe, life-changing psychological injuries as a result of this incident and claims damages for personal injury.
6. The defendant's case is that the claimant was suffering an episode of mental illness which caused him to act aggressively and potentially dangerously. It was appropriate and necessary for them to control him. The methods and extent of force used were reasonable and proportionate in the circumstances.
7. This hearing was fixed as a preliminary trial to determine all issues of liability.

Timeline of events

8. The following timeline of events is taken from the force wide incident number ("FWIN") entries, taser downloads (indicating the accurate duration of each discharge but incorrect times, which can be corrected by cross-referencing them to the FWIN entries), ambulance and hospital notes, footage from a webcam worn by PC Millington and witness accounts of facts that are not disputed.
9. On 6 June 2014 at 5.56am an emergency call was made by a member of the public to the police, concerned that he had heard smashing glass and saw a man, wearing only

trousers and covered in blood, walking in the road on Bideford Drive, shouting. Officers were dispatched to the scene.

10. At 5.59am an ambulance was called and gave an estimated time to arrival of 7 minutes.
11. At 6am PC Hunt and PC Webb arrived at Bideford Drive in a police van and by 6.01am they were with Michael Gilchrist.
12. During this initial encounter, PC Webb sprayed CS gas into Mr Gilchrist's face.
13. PC Farrell arrived at 6.02am. He deployed his taser and discharged it once, using two cycles:
 - i) the first cycle lasted 4 seconds; and
following a 10 second gap
 - ii) the second cycle lasted 2 seconds.
14. Almost immediately afterwards, PC Webb sprayed CS gas into Mr Gilchrist's face for a second time.
15. At 6.02am PC Millington reported that: "Male has poss self harmed his wrists".
16. At 6.03am PC Millington reported: "Male has been tasered twice."
17. Between 6.03am and 6.04am:
 - i) PC Millington reported that: "Male is Michael Gilchrist 53 yrs", and gave his address (although the flat number was incorrect); and
 - ii) PC Hunt reported that: "Male is bleeding heavily from both wrists."
18. At about 6.03am PC Schofield arrived. He deployed his taser and discharged it twice, using eight cycles, lasting for a cumulative duration of 72 seconds over a period of 113 seconds. There was almost no gap between the three cycles during the first discharge:
 - i) the first cycle lasted 7 seconds;
 - ii) the second cycle lasted 5 seconds; and
 - iii) the third cycle lasted 2 seconds.

There was then a gap of 5 seconds during which PC Schofield re-loaded the cartridge and discharged the taser for the second time, with short gaps of about 1 second between the cycles:

 - iv) the fourth cycle lasted 29 seconds;
 - v) the fifth cycle lasted 5 seconds;
 - vi) the sixth cycle lasted 6 seconds;

- vii) the seventh cycle was discharged in angle drive against the claimant's upper back/shoulder and lasted 13 seconds.

There was a gap of 27 seconds and:

- viii) the eighth cycle was discharged whilst the claimant was lying on the ground and lasted for 5 seconds.

19. At 6.05am it was recorded in FWIN that the ambulance was en route.
20. At 6.05am PC Farrell reported that: "Male has been tasered and sprayed with CS spray and PC Millington reported that: "Male has been tasered again, he has now been tasered 4 times."
21. At 6.06am PC Millington reported that:

"Male is now on the floor secure."
22. At 6.13am PC Hunt reported:

"Male has deep laceration to left wrist. No officers injured."
23. At 6.15am Sergeant Morris reported that:

"It is apparent this male is in need of urgent medical treatment as a result of cuts to his wrist and as such, officers are attempting to restrain him in order that he can receive medical treatment to stop bleeding."
24. At 6.18am PC Evans stated:

"Once a patrol comes free please can we consider a check at his h/a... according to housing he is only tenant but [n]eed to check there are no other injured parties."
25. Mr Gilchrist's blood was on the front of the police van and on another car parked in the vicinity. A trail of blood was found leading to Mr Gilchrist's flat. He had caused extensive damage to the kitchen, broken a window in his flat and broken a window in the stairwell.
26. At 6.55am the ambulance arrived at University Hospital, Wythenshawe. At 7am the triage nurse in the emergency department noted that, on admission to the department, Mr Gilchrist presented as highly agitated, mumbling incoherently and was restrained by three officers with handcuffs and leg restraints in place.
27. At 7.15am section 136 of the Mental Health Act 1983 was applied to Mr Gilchrist.
28. At 7.22am it was recorded that Mr Gilchrist was being restrained and still quite volatile.
29. Haloperidol medication was given at the hospital, following which he relaxed and remained calm thereafter. The hospital notes state that by 7.50am he was coherent but

did not remember the incident. The leg restraints were removed but the handcuffs were retained. The cuts on his hand were closed using steri-strips and the hand was bandaged.

Proceedings

30. On 18 May 2017 the claimant issued an application for permission to bring proceedings against the defendant pursuant to section 139(2) of the Mental Health Act 1983.
31. By a consent order dated 16 June 2017, approved by King J, permission was granted to bring proceedings against the defendant for damages based on claims in trespass to the person and negligence.
32. By an order made by consent dated 11 June 2018, District Judge Manasse directed that there should be a preliminary trial to determine all liability issues.
33. I am grateful to counsel for their clear and concise skeletons and helpful submissions.

The issues

34. It is common ground that the key issues in this case are:
 - i) Was the use of any force justified?
 - ii) If so, were the methods of force used justified?
 - iii) Was the extent and level of force used justified?

Legal principles

35. The claim against the defendant is made in trespass to the person and in negligence.
36. Trespass to the person by battery is the intentional use of force against a person without lawful justification.
37. Intentional use of force must be justified in law, that is, the use of any force must be justified, the nature of the force used must be justified and the extent of force used must be justified.
38. Section 3 of the Criminal Law act 1967 provides:
 - “(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”
 - (2) Subsection (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.”
39. The relevant principles were set out in *McCarthy v Chief Constable of Merseyside Police* [2016] EWCA Civ 1257 by Hallett LJ at [6]:

“The tort of battery requires the actual infliction of unlawful physical contact. The act of battery itself may be intentional or reckless but an intention to injure is not required. Once a prima facie battery is established the burden of proof in a civil action shifts to the Defendant to justify the battery, in this case by the Appellant’s establishing that his officer acted in lawful self-defence, the prevention of crime or to effect an arrest. Section 3 of the Criminal Law Act 1967 empowers any person to use *such force as is reasonable in all the circumstances*. Section 117 of the Police and Criminal Evidence Act 1984 provides that a constable exercising any powers under the Act (for example arrest, search, and detention) may use reasonable force.”

40. The conditions in which the police were operating must be taken into account when assessing whether the force used was reasonable in all the circumstances: *McCarthy* per Hallett LJ at [19]:

“Officers are trained where to aim, the likely effects of the discharge, the particular vulnerabilities of some individuals, and how to assist those hit by a Taser. They are trained to use the Taser in an initial five second burst and discouraged from keeping their finger on the trigger longer, but it is accepted that a longer discharge may be necessary. Conditions on the street cannot be replicated in a training centre and those responsible for the training recognise that one five second burst may not suffice to subdue a suspect. Further, an officer is unlikely to have the luxury of mature reflection. He will not have the time to reflect upon his target or the precise length of time for which he discharges his weapon. He may even freeze in a highly charged situation such as the present. Thus, the courts must have regard not only to the rights of the person at the receiving end of the Taser but also to the challenges facing a police officer endeavouring to maintain law and order in a volatile situation.”

41. Burnett LJ stated at [30]:

“It is lawful for one person to use force towards another in self-defence or in defence of another. He may use only reasonable force, that being a question of fact. The law does not require those faced with circumstances of this kind to weigh carefully the degree of force used. To a considerable extent, reactions will be instinctive. What is reasonable in all the circumstances calls for an evaluative judgment having found the facts... the defendant must show that he honestly and reasonably believed that it was necessary to defend himself or defend another, in addition to showing that the force used was reasonable in all the circumstances.”

42. The seriousness of any injury inflicted does not affect the decision as to the reasonableness of the force used: *McDonnell v Commissioner of Police for Metropolis* [2015] EWCA Civ 573 per Bean LJ at [26] to [28].

43. When using force against an individual, the police owe a duty of care to avoid causing reasonably foreseeable personal injuries where such duty would arise according to ordinary principles of the law of negligence: *Robinson v Chief Constable of West Yorkshire* [2018] UKSC 4. Having reviewed the relevant authorities, Lord Reed stated at [70]:

“... there is no general rule that the police are not under any duty of care when discharging their function of preventing and investigating crime. They generally owe a duty of care when such a duty arises under ordinary principles of the law of negligence, unless statute or the common law provides otherwise. Applying those principles, they may be under a duty of care to protect an individual from a danger of injury which they have themselves created, including a danger of injury resulting from human agency ...”

44. Lord Hughes stated at [101]:

“The four cases of *Hill*, *Brooks*, *Smith* and *Michael* make it clear that they do not touch on the liability of police officers if by positive negligent act they cause physical harm to individuals or damage to property. That is apparent from:”

i) the approval in those cases of the decisions in *Rigby v Chief Constable of Northamptonshire* (negligent use of a CS gas canister in an attempt to force an armed psychopath from a shop in which he had gone to ground) and *Knightley v Johns* (negligent organisation of traffic in an emergency situation); and

ii) the explicit statement by Lord Keith in *Hill* at 59B, approved in subsequent cases, that:

“There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts ...”

45. When assessing whether there has been any breach of such duty, it is important for the court to consider all the circumstances faced by the police officers at the time of the incident, including the speed with which events unfolded as explained by Lord Hughes at [75] and [76]:

“[75] The Court of Appeal was correct to emphasise the importance of not imposing unrealistically demanding standards of care on police officers acting in the course of their operational duties. That is most obviously the case where critical decisions have to be made in stressful circumstances with little or no time for considered thought. This point has long been recognised. For example, in *Marshall v Osmond*, concerned with a police driver engaged in the pursuit of a suspect, Sir John Donaldson MR stated, as noted at para 47 above, that the officer’s duty was to

exercise “such care and skill as is reasonable in all the circumstances”. He went on to state that those “were no doubt stressful circumstances”, and that although there was no doubt that the officer made an error of judgment, he was far from satisfied that the officer had been negligent (p 1038). The same point was made, in a context closer to that of the present case, by May LJ in *Costello v Chief Constable of Northumbria* [1999] ICR 752, 767, where he remarked that “liability should not turn on ... shades of personal judgment and courage in the heat of the potentially dangerous moment”.

[76] It is also necessary to remember that a duty to take reasonable care can in some circumstances be consistent with exposing individuals to a significant degree of risk. That is most obviously the case in relation to the police themselves. There are many circumstances in which police officers are exposed to a risk of injury, but in which such exposure is consistent with the taking of reasonable care for their safety. Equally, there may be circumstances which justify the taking of risks to the safety of members of the public which would not otherwise be justified. A duty of care is always a duty to take such care as is reasonable in the circumstances.”

The use of Taser

46. Taser is a conductive energy device designed to cause stimulation of the sensory and motor nerves, resulting in temporary neuromuscular incapacitation (“NMI”).
47. A taser weapon is shaped like, and has the handling characteristics of, a modern self-loading pistol. When discharged, two barbs attached to the weapon by fine insulated wires are fired into the subject’s skin or clothing. The device delivers a sequence of high voltage pulses of very short duration through the wires. The electrical flow can also be delivered by direct contact with the device in stun drive mode.
48. The maximum range of the X 26 Taser (the material device in this case) is 6.4 metres, fixed by the length of the wires that carry the current and attach the barbs to the weapon.
49. To be effective, both barbs must make contact with the subject’s body or clothing. On discharge, 20 to 30 small confetti -like Anti-Felon Identification (“AFID”) tags are ejected. Each AFID is printed with the serial number of the cartridge deployed. This identifies which cartridge was fired and the approximate location of the person who fired it.
50. When the trigger is depressed, the taser delivers its electrical charge in a 5 second cycle. The cycle can be broken (by applying the safety catch), extended (by continuing to depress the trigger) or repeated (by re-pressing the trigger). Once the cycle ends or is broken, the direct incapacitation effect ceases.
51. Taser normally causes immediate incapacitation and its effect may also cause muscles to contract.

Policy documents

52. The Operational Use of Taser policy document dated June 2013 states:

“Managing conflict and responding to violence are core policing functions. The police response is underpinned by the Human Rights Act and in particular the obligation under article 2 of the European Convention on Human Rights to uphold the right to life.

In light of the Human Rights Act the need for a range of options by the police for dealing with conflict management situations has become imperative for the service. The service is required to justify that any use of force is lawful, proportionate, necessary and reasonable in the circumstances.”

53. Section 1.1 states:

“... The extension in the use of Taser is intended to provide officers with a differentiated use of force. Taser will be deployed alongside other personal safety equipment, work-related equipment and tactical options already available. It is intended to complement and not replace alternative equipment and strategies.

The use of Taser should be regarded as one of a number of tactical options available to an officer who is faced with violence or the threat of violence. Its purpose is to temporarily incapacitate an individual in order to control and neutralise the threat that they pose.

It is not to be used to inflict severe pain or suffering on another in the performance or purported performance of official duties...

...

The use of Taser will be informed by reference to the ACPO National Decision Model and is intended to provide Taser trained officers with an additional means of dealing with violence or threats of violence of such severity that it is likely that they will need to use force in order to protect the public, themselves and/or the subject(s).

The tactical option and use of the X26 Taser, as a less lethal option, in situations other than public disorder, will be governed by the overarching principles and guidance contained in the COP – Authorised Professional Practice – Armed Policing (APP – Armed Policing) ...

The X 26 Taser is not a replacement for conventional firearms. It is a less lethal option that should be considered and managed alongside conventional firearms and other tactical options...”

54. The effects of Taser are set out in section 2.2:

“Experience has shown that the visible presence, drawing of the Taser from the holster, placing the red dot of the laser sighting system or arcing of the Taser is often sufficient to deter an offender and therefore peacefully resolve a potentially violent incident.

The normal reaction of a person exposed to the discharge of Taser is the loss of some voluntary muscle control resulting in the subject falling to the ground or freezing on the spot. This may result in immediate and involuntary clenching of the fingers and or the arms rising uncontrollably...

In most cases Taser application will be sufficient to render a subject incapable of commencing or continuing an attack and is likely to result in the subject collapsing to the ground. The effect is not intended nor is it likely to render the subject into a state of unconsciousness. The device relies on physiological effects other than pain alone to achieve its objective, although pain is the main factor when it is used in drive stun mode.

When both barbs attach correctly with sufficient spread, the effects are likely to be instantaneous. It should, however, be remembered that no incapacitating device is universally effective and there may be individuals on whom Taser may not be effective at all or only partially so.”

55. The direct incapacitating effect is only likely to last for as long as the electrical charges being delivered. The subject may recover immediately afterwards and could continue with their previous behaviour. Therefore, it is recommended that an incapacitated subject is approached and restrained quickly and effectively. Caution is urged where Taser is not immediately effective:

“Whilst the 5 second cycle can be repeated if the incapacitation effect does not appear to take effect, officers should consider other options, as there may be technical or physiological reasons why the device is not working as expected on a particular individual.”

56. Section 2.3 sets out circumstances in which Taser should not be used, including:

- i) where it has been employed without success in neutralising the threat posed and having reconsidered the intelligence and threat assessment its reapplication would be unlikely to be effective; and

- ii) where there is a risk of flammability, including where a person has been sprayed with an incapacitant containing a flammable solvent, such as CS spray.

57. Section 4.2 provides that all incidents will be assessed using the National Decision Model and deployment will be proportionate to the perceived level of threat. The National Decision Model provides for the following steps to be undertaken, each by reference to the police force statement of mission and values:

- i) gather information and intelligence;
- ii) assess threat and risk and develop a working strategy;
- iii) consider powers and policy;
- iv) identify options and contingencies;
- v) take action and review what happened.

58. The College of Policing provides guidance for operational officers who deal with vulnerable people whilst in possession of Taser:

“The term emotionally or mentally distressed (EMD) is used to describe individuals who may behave in an unexpected, extreme or challenging manner as a result of a mental health issue, or emotional distress.”

The fact that the subject is EMD does not in any way reduce the harm they may cause to themselves or others if the incident is not resolved. However, officers must be aware that an inappropriate or disproportionate response to someone experiencing EMD could, itself, escalate the situation, causing greater harm to the subject or to others...

A person that is mentally vulnerable is someone because of their mental state or capacity may not understand the significance of what is said to them...

If information and intelligence reveals the presence of a factor which can influence behaviour and alter response, police should take this into account when considering their approach.

Officers must be aware of how their presence and tactics might be interpreted by the subject. It is important, however, that the basic principles of tactics are complied with in order to reduce the potential threat by and/or to the subject as soon as practicable.

The following actions can help create opportunities for the subject and officers to have more time and space to defuse the situation:

- Be prepared to back off

- Use of effective cover
- Give space and time if possible
- Early negotiation
- Evacuate immediate area.”

Use of force

59. It is necessary for the Court to consider whether each of the following incidents of the use of force against Michael Gilchrist were justified:

- i) PC Webb's first use of CS spray;
- ii) PC Farrell's use of Taser;
- iii) PC Webb's second use of CS gas;
- iv) PC Schofield's use of Taser;
- v) PC Schofield's kick to the claimant's legs;
- vi) PC Webb's tackle to bring the claimant to the ground;
- vii) detention on the ground using handcuffs (front or rear stack) and leg restraints; and
- viii) the disputed third use of CS spray.

60. In determining each incident, the Court must consider whether (i) any use of force, (ii) the type of force used and (iii) the level and extent of force used were justified and reasonable in all the circumstances.

Evidence

61. The Court heard evidence from the following witnesses:

- i) Mr Andrew Gilchrist, Michael's brother;
- ii) Mrs Tracey Gilchrist, Andrew's wife (Michael's sister-in-law);
- iii) Ms Justine Agnew, Michael's neighbour;
- iv) Mr Dwayne Gilchrist, Andrew's son;
- v) Mrs Novlyn Graham, Michael's mother;
- vi) Mr Robert Hunt, retired Police Constable;
- vii) Mr Stephen Webb, retired Police Constable;
- viii) PC Mark Farrell;

- ix) PC Samuel Schofield;
 - x) PC James Lovelady;
 - xi) PC Andrew Wild;
 - xii) Mr Carl Morris, retired Police Sergeant;
 - xiii) PC Raza Afzal;
 - xiv) Mr Philip Mack, GMP's Force Taser Officer working within the Firearms Policy and Compliance Unit;
 - xv) Mr Colin Wilbraham, a Force Taser Officer working within the Firearms Policy and Compliance Unit.
62. The Court also had the benefit of seeing the webcam footage taken shortly after the incident, a TV report on the incident and a recorded interview with Assistant Commissioner Neil Basu of Metropolitan Police on the use of Taser.
63. All the factual witnesses had some difficulty in recollecting events when giving evidence about the incident. All witnesses gave evidence that conflicted in some details with the evidence of other witnesses. By way of example, the police officers gave conflicting accounts of the location of vehicles and movement of people during the incident. Andrew Gilchrist, Tracy Gilchrist and Novlyn Graham stated that dressings were not applied to Michael Gilchrist's hands but this evidence was contradicted by the contemporaneous hospital notes. These inconsistencies are not surprising. The events were of short duration. They were very stressful and emotional. They occurred five years ago. Having watched and listened carefully to the witnesses give their evidence, I am satisfied that they were all trying to give a truthful account of what happened. However, given the stress of the incident, the passage of time, subsequent discussions of the events and consideration of the documents for the purpose of these proceedings, it is unsurprising that accounts include gaps, inaccuracies, and confuse or conflate separate events. It does not follow that the witnesses lack credibility or are generally unreliable. However, it is necessary to give careful attention to the available objective or agreed evidence when determining the disputed accounts of events.

Context of the incident

64. Andrew Gilchrist explained that, although Michael Gilchrist exhibited a similar episode of hostility and violence some 20 years' ago, his behaviour on 6 June 2014 was out of character. The medical notes and evidence of his family did not provide an explanation or identify any trigger for his behaviour, either then or in 2014.
65. The member of the public who made the emergency call to police described the initial scene as follows:
- “There is one guy on Bideford drive... Covering in blood, walking around and smashing things around... The guy's just outside... You know broken glass, I've seen a guy walking through, he's going to... Moor Road now... The guy, the black guy who does it is just wearing trousers, he's covered by blood...

It's a black guy, just with trousers, wearing trousers, shouting, and I heard just the broken glass..."

66. Andrew Gilchrist explains in his first witness statement that he was woken by his son, Dwayne, who told him that Mr Gilchrist was at the door:

"... I got up and looked out of the back window of my bedroom. I saw Michael walking around the back of the house looking towards his own flat. Michael did not look right.

"I then saw a police van coming around the corner. The van stopped outside my father-in-law's (Frank's) house. It stopped at the side of the road. It was positioned so that it was driving into the Estate. It blocked my view of Michael, who was on the footpath opposite Frank's house. At this stage Michael was standing outside Frank's house.

Two policemen jumped out of the van and went towards the front of the van. My view was somewhat obstructed from the window. I could not see or hear Michael from where I was standing at the window. I waited briefly at the window and expected to see the policeman get hold of Michael...

The policemen then came back into sight. They were walking backwards. Michael then came into view. He was roughly 6 yards away from the policemen at this stage. Michael was walking from side to side and not directly at the policemen...

"I ran down the stairs and out of the front door... it would have taken me no more than 30 seconds from the time that I left the window until I arrived on the street to talk to Michael and the policemen.

I ran around the bend at the side of my house and came to the straight road. I could see Michael and the 2 policemen, who were further up the road. The police van was parked up on the left-hand side of the road. Michael was standing still. He was before the ginnel and the police officers were about 5 yards from him. Michael was standing still and repeating the words "yeah, yeah, yeah.""

67. In cross-examination, Andrew Gilchrist stated that he did not see Michael hit anyone or lunge at them but, when it was suggested to him that Michael's behaviour was aggressive, he replied: "OK, fair enough". He accepted that the police officers would not know whether the blood on Michael emanated from Michael or another person.
68. Dwayne Gilchrist states in his first statement that:

"My uncle was shouting my Dad's name repeatedly, saying "*Andrew, Andrew, Andrew*". He was also banging on the front door. I remember being very worried so I jumped out of my bed

and looked out of my window. I could see my Uncle standing outside the front of our house without a shirt on. He had blood on his body...

Both myself and my Dad ran towards my Uncle. As we were running down the road towards him the police officers and cars arrived at the same time. I think there were about 4 police officers to begin with, although I am not sure how many vehicles they arrived in ...

We all arrived to near where my uncle was stood at about the same time ...

My Uncle was standing in front of my Grandfather's house when the police officers approached him. He looked incredibly scared and his movements were very slow and robotic. It was clear that he was very disorientated and was not sure where he was or what was happening to him."

He did not consider that Mr Gilchrist presented as aggressive but noted that he had blood on his hands and one fist was clenched.

69. Former PC Robert Hunt was the first to arrive at the scene with PC Webb at 6am:

"We drove into Bedford Drive and as we turned the corner heading in the direction of the flats at the end of the road we could see a black male in the middle of the road... The claimant appeared to be staggering in the direction of our police vehicle...

We drove straight up to the claimant and as we stopped the police van and were about to get out to see if he needed assistance, the claimant lunged forward, raising both arms into the air. Roaring, he slammed his hands down onto the bonnet of the van ...

The claimant was about 5'10" tall. He was of heavy build with short black hair. He was bleeding heavily from his wrists and this sprayed onto the bonnet and up the windscreen. He had a glaring, vacant expression on his face and looked extremely angry...

PC Webb reversed the van away from the claimant, about 30 yards and we both got out of the van. A few minutes later I was aware of other patrols pulling up behind a vehicle.

The claimant was on the nearside of the police vehicle and closest to me so I held out my hand to him and asked if there was anything I could do and whether he was okay. The claimant lunged towards me trying to grab my coat which was splashed with his blood. The claimant was making a repetitive grunting sound and never actually spoke any words. I stepped away from the claimant ...

It was obvious to me that the claimant was suffering from some form of mental illness or condition or that he was under the influence of alcohol or drugs.

It was my view that the claimant needed to be detained so that he couldn't cause further harm to himself or to anybody else... PC Webb and I did not know anything about the claimant other than that he was incoherent, appeared to be very angry and had a lot of blood on him. We didn't know whether he had a weapon on his person or whether he was a victim of crime or an offender. It seemed to me more likely that he was an offender, given his anger and aggression.

I recall that PC Webb and I initially tried to get the claimant to calm down and to stay back. He was also told to get down on the floor. The claimant did not respond to any of our commands."

70. In cross-examination, Mr Hunt disputed that they startled Mr Gilchrist because they drove slowly up to him and he did not appear to be shocked. He said that when Mr Gilchrist lunged towards him: "I was nervous but I didn't feel any particular threat."
71. Former PC Stephen Webb accepted that at this stage Mr Gilchrist: "clearly was not intending to attack me". His account was similar, but not identical, to Mr Hunt's:

"I parked the police van on Bideford Drive near to a passageway that I now know to be Wellesbourne Drive."

My recollection is that the male who I now know to be the claimant appeared almost from nowhere. He was bare chested. He was wearing jogging bottoms or shorts, I cannot remember which. He was quite big and looked muscular. His fists were clenched and there was blood all over his hands. The claimant had something in his hand. I think that it was in his right hand. It was something dark coloured and I couldn't tell what it was.

The police van was stationary in the street. The claimant came up to the van and he banged his clenched fists down on the bonnet. Blood sprayed up onto the windscreen.

My first impression was that the claimant was very, very irate. He was showing aggression to us by coming up to the van and basically attacking it. My first thought looking at the blood and the way he was dressed and because of his demeanour was that he had assaulted someone. He looked like an aggressor. I was thinking to myself he's really hurt somebody.

PC Hunt and I were still in the police van and the claimant then turned around and started to head back towards the high-rise flats. I now know that this was in the direction of his home address but I did not know that at the time.

I got out of the police van and I ran and got round the front of the claimant, so that I was facing him (and the police van) and I stood still. My thoughts were that the claimant had injured somebody and I did not want him to continue going where ever he was going. I needed to stop him; it was urgent and I had to find out what had happened.

The claimant was standing still. He had his arms tensed at about a 30 degree angle from his body, slightly in front of him and his fists were clenched by his side. The claimant was grunting repetitively uh, uh, uh. He was not saying any words.”

72. Mr Webb’s evidence when cross-examined was that they did not drive up to Mr Gilchrist and then reverse. He also gave a different account to Mr Hunt as to where they parked the van. Despite these discrepancies, they agree that they stopped the van near to Mr Gilchrist, the van was stationary when Mr Gilchrist banged his hands on the van and they then got out to speak to him. Mr Willems QC, counsel for the claimant, submits that the police van drove up close to Mr Gilchrist from behind, startling him, and that this precipitated Mr Gilchrist’s hitting his hands on the front of the van. I do not accept that interpretation of what occurred. It is disputed by both Messrs, Hunt and Webb that they startled Mr Gilchrist. No witness suggested that Mr Gilchrist made any sudden movements; on the contrary, the consensus was that he moved slowly and appeared to be oblivious to events around him. The evidence from the webcam shows that Mr Gilchrist made contact with another car that was simply parked in the area; there is no evidence of the involvement of anyone else in respect of that matter. Hence, although Mr Gilchrist later stated that: “he had tried to stop a police van” there is no evidence that this was provoked by the actions of Messrs Hunt and Webb.
73. Drawing together those initial accounts, it is clear that Mr Gilchrist was perceived to be a potential threat by those who did not know him. He was covered in blood, the origin of which was not known. He appeared to be angry and was making noises but was unable to communicate. He displayed physical aggression by banging his hands on the police van, spraying it with blood. His fist was clenched and he was holding an unidentified object. He lunged at PC Hunt when he was approached but otherwise did not attack the officers and they acknowledged that they did not fear an imminent attack. PC Hunt and PC Webb were entitled to conclude that Mr Gilchrist was a potential aggressor who had probably assaulted someone and needed to be detained.

PC Webb’s first use of CS spray

74. PC Webb had not used CS spray before this incident. He stated in his witness statement:

“I started to talk to the claimant along the lines of stay there just stop don’t come any closer. I was not shouting at him; I was speaking firmly and clearly. I put my hand up, palms facing him, in a stop gesture...

The claimant then started to come towards me...

Everything about the way he was behaving caused me to believe that he had attacked somebody, causing that person serious

injury (as evidenced by the blood), and he was now coming towards me.

I took my CS gas off my belt and held it up, to give the claimant a visual warning. I estimate that I was about 15 feet away from the claimant and I sprayed the CS towards his face. I am pretty sure that this was the first time I had ever used my CS gas. After I sprayed the CS gas towards the claimant, he rubbed his eyes for a second. That was the only effect that it seemed to have on him and he continued to come towards me.”

75. In cross-examination Mr Webb stated that he was backing up and Mr Gilchrist was closing in. Mr Gilchrist did not try to attack him but came towards him in an aggressive manner with his hands clenched:

“I thought he'd hurt someone. I thought he was the aggressor. I was concerned about his aggression. I thought that it was appropriate to use the spray because I felt vulnerable. Michael Gilchrist was closing in on me. I could have moved back and waited for back up but we were short of resources and that could take some time. I was concerned as to what he had done.”

76. It is submitted by Mr Willems that there was no justification for this use of force. Mr Gilchrist's family members could have calmed him down and avoided the use of any force to restrain him. However, both Messrs Hunt and Webb stated that Andrew Gilchrist was not present when PC Webb first used the CS gas and therefore not available to assist. I accept that account. The first use of CS gas was between 6.01am, when the officers stopped the van near Michael Gilchrist, and 6.02am when PC Farrell arrived. Andrew Gilchrist had not then left his house. He witnessed through his bedroom window the officers get out of the van and move towards the front of it. Andrew Gilchrist could not see Michael at this stage because he was obscured by the van. During this time PC Hunt approached Michael but retreated when he lunged at him and then PC Webb used the CS gas. Andrew Gilchrist saw from his bedroom window the officers retreating, walking backwards. This occurred after the officers' first encounter with Michael and after the first use of CS gas.
77. PC Webb thought that Michael Gilchrist had attacked someone, causing that person serious injury; hence the presence of blood. He took the view that it was necessary to stop Mr Gilchrist. That was sufficient to engage section 3 of the Criminal Law Act 1967 and justify the use of reasonable force.
78. PC Hunt stated in cross examination that he would not have used CS gas and agreed that “maybe” it was inappropriate. His instinct, which was to retreat and give Mr Gilchrist space, was correct, given what was subsequently learnt, namely, that Mr Gilchrist suffered from mental health disorders, had not assaulted anyone and was not violent. However, this information was not available to PC Webb at the time that he had to make a swift decision as to whether or not to use his CS gas. There wasn't time to ask for backup and he felt vulnerable because Mr Gilchrist was closing in on him. He considered that the threat was sufficiently serious for him to use CS gas despite the fact that he had not felt the need to use it on any previous occasion in his police experience.

79. Based on the above analysis, in my judgment, the use of CS gas on Michael Gilchrist was a justifiable and reasonable use of force as an available method of detaining a suspected offender.

PC Farrell's use of taser

80. PC Mark Farrell arrived at the scene at 6.02am and deployed his taser. He gave the following account in his witness statement:

“In my service to date I have never used my CS spray or struck anyone with my baton ... The incident giving rise to this civil claim was the first occasion on which I had deployed my Taser...”

As I walked over, I could hear that the claimant was making a loud noise, a repetitive grunting sound. He was also making a strange forward movement towards PC Hunt and PC Webb. He was close to the officers and was pacing, stepping on and off the pavement, stepping towards the officers and then stepping back but remaining close in front of them. I would describe his behaviour as odd and unpredictable. He appeared to me to be working himself up to something. The grunting noise was very clearly audible and he presented as aggressive and threatening.

There was no obvious explanation such as an accident scene or anyone else who could explain whether the claimant had committed a crime or was a victim of crime. His behaviour was aggressive and I could not definitively attribute it to anything. It could have been the result of intoxication (drink and/or drugs), some kind of mental breakdown or the response to having committed a crime or having suffered a trauma. I was concerned for the safety of PC Hunt and PC Webb.

It was very clear to me that the claimant needed to be stopped, detained and treated for whatever injuries he had sustained or whatever the cause of his behaviour...

I have recorded in my pocket notebook that I saw the claimant turn aggressively towards PC Hunt and noticed that the claimant had a black unknown object in his right hand...

As I approached, suddenly, the claimant turned around and faced me. I have recorded in the Taser deployment form that he walked towards me with clenched fists and was shouting and appeared to be out of control. I need to clarify that the claimant was not shouting words or anything coherent; he was making the loud grunting noise that I have described. I also want to emphasise that this happened very quickly. The claimant was only about 4 to 5 feet away from me and based on what I had already witnessed, this was now a change and an escalation in the situation and the threat posed by the claimant.

I deployed my Taser at the front of the claimant's body. My recollection is that the claimant froze momentarily and dropped towards the pavement and then sprang up again. He didn't fall fully to the floor. It was as if the Taser had only a momentary effect."

81. PC Farrell's pocketbook recorded the following:

"Deployed Taser. Barb connected to front of male's stomach. 5 sec deployment. No effect. Second barb has displaced. Further 5 secs. No effect - male fell forward onto front of police vehicle to floor."

82. The policy documents referred to above caution against the use of taser where an inflammable agent, such as CS gas, has been used. PC Farrell stated that when he discharged his taser he was unaware that PC Webb had already used CS spray. Mr Hunt confirmed in evidence that when PC Farrell arrived, PC Webb was moving backwards, away from Mr Gilchrist, with the CS cannister in his hand but that no one spoke to PC Farrell or told him not to use his taser: "It happened very quickly."

83. PC Farrell advanced on Mr Gilchrist from behind. He stated:

"[Michael Gilchrist] turned and came towards me. I felt threatened and therefore deployed my taser... I fired into his chest."

84. In cross-examination, he accepted that possibly he should have held back and not got so close to him. He didn't know whether this might have surprised Mr Gilchrist:

"When Michael turned, I took a step back. He was coming at me, covered in blood. I didn't want him to grab me. I still had distance but he was closing down on me. It happened in a matter of seconds... I felt a threat; he came at me too quickly."

85. PC Farrell discharged the taser and fired two cycles: the first for 4 seconds, during which he applied the safety catch (to stop the automatic 5-second cycle). He saw Mr Gilchrist freeze and go down but spring up almost immediately. He fired a second cycle for 2 seconds; again he must have applied the safety catch to stop the automatic 5-second cycle. Mr Gilchrist fell forward onto the front of the police vehicle but got up immediately.

86. I accept PC Farrell's evidence that he did not know that CS gas had been used on Mr Gilchrist when he fired his taser. No one communicated this to him and events unfolded very quickly. His perception of the situation was that Mr Gilchrist posed a threat to the officers at the scene. Given Mr Gilchrist's presentation and behaviour, this was a reasonable assumption to make. The use of Taser in these circumstances was justifiable and reasonable as a method to attempt to control Mr Gilchrist so that he did not hurt himself or anyone else.

PC Webb's second use of CS spray

87. PC Webb's evidence in his statement was as follows:

"PC Farrell deployed his Taser and I saw straightaway that the barbs did not connect properly with the claimant's body. I did not see the Taser have any effect at all on the claimant and he continued coming towards me.

I sprayed my CS gas a second time. On this occasion, I estimate that the claimant was about 10 feet away from me. As I did, PC Farrell shouted he's been tasered and I replied it didn't connect.

When I used the CS gas a second time, the effect was exactly the same as the first. The claimant just rubbed his eyes and carried on coming towards me.

...

On both occasions I used my CS gas in circumstances in which the claimant was coming towards me with his arms tensed by his side, fists clenched, his eyes fixated on me and giving me cause to believe that I was going to be attacked."

88. The second use of CS gas immediately followed PC Farrell's use of taser. In cross-examination, he explained that he told PC Farrell that the barbs had not connected and he very quickly used his CS spray. PC Webb stated that he was aware of the risk of flammability but he was concerned for his safety; he noted that one of the barbs had not connected and the taser had no apparent effect on Mr Gilchrist. He chose to try a second deployment of CS gas rather than a physical take-down manoeuvre because he was concerned that could cause injury to Mr Gilchrist, he held something unknown in his hand and he was covered in blood. This was a very challenging situation and PC Webb had to make a decision within a very short timescale. I accept that he honestly and reasonably believed that it was necessary to use CS gas to defend himself and the other officers. In those circumstances, it was reasonable for PC Webb to use CS gas for a second time and such use of force was justifiable.

Michael Gilchrist's family involvement

89. Andrew Gilchrist's evidence was that he arrived at the scene before any use of CS gas or taser:

"I am absolutely certain that by this stage, when I arrived, no tasers had been deployed and neither had any pepper spray. There were only 2 police officers present at this time, both of whom were men."

90. I find that he is mistaken about this. He could not know whether the CS spray or taser had already been used when he arrived. As set out above, he was standing in his bedroom looking out of the window when the first encounter took place and PC Webb used his CS gas. I also find that he did not see PC Farrell use his taser, one minute later. Andrew Gilchrist's recollection was that he saw the first taser barbs connected with Mr

Gilchrist's back and this is the pleaded case. Those barbs were fired later by PC Schofield; PC Farrell fired barbs into the chest area.

91. Andrew Gilchrist's evidence is that his first action was to speak to his brother to ascertain what had happened:

My instinctive reaction was to go straight to Michael and stand right next to him on the pavement. I was not at all worried that Michael would be violent. That was just not how he was. I went to touch Michael's hands and said to him:" Michael what have you done?" I asked him this because I could see the blood and from the location of the blood it looked as though Michael had cut his wrists... when I looked again I could clearly see that Michael had not cut his wrists. The cuts were on the back of his hands.

92. I accept that he attempted to talk to his brother; it was a natural reaction to try and establish communication with him. I do not accept that he got close enough to touch Michael Gilchrist's hands; I note that he clarified in cross-examination that, contrary to his written statement, he was not standing between the police and Michael.

93. He then spoke to PC Hunt and gave him details about Michael Gilchrist:

"I explained to a male police officer that Michael was my brother, that he suffered from autism, that he lived in the flats on the estate and that he was mild mannered ... The police told me to get back."

94. Mr Hunt's evidence was that this information was provided by Andrew Gilchrist after the initial use of CS gas and Taser:

"My recollection then is of PC Mark Farrell arriving, drawing his Taser and I think, telling the claimant to get down on the ground. There was no change in the claimant's behaviour and PC Farrell discharged his Taser. One of the 2 barbs missed the claimant and it appeared as if nothing had happened...

I was standing behind PC Farrell at this point and a male approached me and tapped me on the shoulder. He told me that he was the claimant's brother and that the claimant suffered from mental problems but hadn't had an episode like this for over 20 years. He pleaded with me not to hurt his brother.

...

My recollection is that it was not until later and after PC Webb had used his CS gas and PC Farrell had deployed his Taser that the claimant's brother made himself known to me and asked that officers not hurt his brother ..."

95. PC Hunt's recollection is consistent with the FWIN records. PC Farrell arrived at 6.02am. At 6.03am PC Millington reported that Mr Gilchrist had been tasered twice. At 6.04am there is an entry in FWIN recording Mr Gilchrist's name, age and address, details that must have been provided by Andrew Gilchrist.
96. Andrew Gilchrist stated that these events were "a bit of a blur". He witnessed the use of CS gas by PC Webb, as did his son, Dwayne. This must have been the second CS spray because by then, other officers had arrived at the scene:

"The next thing that I remember is four or five policemen were facing and looking at Michael, standing in a semicircle around the front of him. They were relatively close to the van and about 3 to 4 yards away from Michael. Michael was not moving toward them. He was standing on the sport and rocking from side to side.

The next thing that I saw was a policeman moving towards Michael. Michael did not respond to this at all... The officer was holding the canister no more than a metre away from Michael's face and something was discharged. I could hear some sort of spray being discharged at least twice. Michael's response was to stagger backwards. He was clearly in visible distress with his hands covering his face."

97. Tracy Gilchrist, Andrew Gilchrist's wife, also must have arrived after the first use of CS spray, which occurred when only PC Webb and PC Hunt were present, and after the first use of Taser, when they were joined by PC Farrell and PC Millington. She arrived on the scene after Andrew Gilchrist. Her recollection was:

"When I got outside, I could see lots of police officers. I would say 7 or 8 police officers were there. I could also see a number of police cars. I could see Michael standing in the middle-of-the-road outside number 6 Bideford Avenue. I could see my husband standing nearby on the curb and the police surrounding Michael...

I could hear Michael repeatedly saying yes yes yes... He looked to me to be confused but not angry or aggressive..."

Within minutes of me being outside a male police officer stepped towards Michael and sprayed him in the face with pepper spray... No warning was given...

Pretty much immediately after the male police officer pepper sprayed Michael within seconds or perhaps a minute another police officer tasered him. Again no warning was given to Michael before he was tasered...

I believe that this first Taser was to Michael's chest. I say this because I recall that when he was later tasered in his back, he already had probes sticking out of his front...

Michael's reaction to each Taser was to stop moving for a second and then he just carried on doing what he was doing previously, trying to walk away from the police officer... After Michael was tasered in the back, he was immediately tasered again in the back of the leg and I saw Michael buckle to his knees... I recall Michael was tasered 3 times in quick succession..."

98. In cross-examination, Mrs Gilchrist was frank in admitting that she could not recall the precise number of times that Michael was tasered. She recollected that he was tasered first in the chest because when he was tasered in the back, he already had barbs in his chest. This is inconsistent with her husband's evidence and the pleaded allegation but consistent with the evidence of PC Schofield, that he fired the barbs into Michael's chest and then into his back. The use of pepper spray she referred to must have been PC Webb's second use of CS gas.
99. In his second witness statement, Andrew Gilchrist stated that he had additional contact with Michael in front of the officers:
- "Whilst I was checking Michael's hands he opened his hands and he was holding his watch in one of his hands. I am sure the police officers who were present saw Michael open his hands and saw the watch. I also said to Michael something like you've not broken your watch have you?" Because I knew he was very fond of his watches and in attempt to try to get him to converse with me... I do not accept it could have been mistaken for a weapon."
100. Andrew Gilchrist's recollection is mistaken. I do not accept that this happened during the incident. This conversation could well have taken place later at the hospital. The hospital notes state that at hospital Mr Gilchrist was very possessive and anxious about his watch. Although the alleged earlier contact between Andrew Gilchrist and his brother is supported by Dwayne Gilchrist's second witness statement, neither witness made any reference to this significant event in their first statements and it is not pleaded in the Amended Particulars of Claim.

State of knowledge of the police

101. By about 6.03-6.04am the police officers knew from Andrew Gilchrist that his brother suffered from mental health problems. As recorded in the FWIN records, they were aware that Michael Gilchrist was bleeding heavily from both wrists or hands. It did not follow that he posed no threat and there were grounds for believing that he might have injured others. However, now the police had knowledge that should have indicated to them that he was a vulnerable person and that particular care was required to be taken in respect of their management of the situation.
102. Attempts had been made to bring Mr Gilchrist under control using Taser and CS gas. Those attempts had failed. Contrary to Mr Willems' submissions, the evidence is that the use of Taser and CS gas did not agitate him. The initial application of Taser would have been very unpleasant but was of relatively short duration. It was not used in angle drive mode at this stage, which would cause greater pain. Although CS gas produces a burning sensation, Mr Gilchrist simply wiped his eyes and was not incapacitated. It is evident that the use of these weapons had little or no effect on him.

103. By this stage, the officers could see that, although Mr Gilchrist's presentation was aggressive, he was moving slowly and did not appear likely to launch an immediate physical attack on anyone. There were now sufficient officers at the scene to act together to restrain him without using any further weapons.

PC Schofield's use of taser

104. PC Farrell's evidence is that he decided not to use his taser again because he had seen PC Webb use CS spray and he was aware that taser should not be used in such circumstances:

"I know that shortly after I deployed my Taser, PC Webb deployed his CS incapacitant spray. I saw PC Webb use his CS spray and that it had no obvious effect on the claimant. I decided not to deploy my Taser again. I know that there are risks associated with using Taser and CS spray in proximity. I believed that I had deployed my Taser effectively and that despite this, the Taser had had no incapacitating effect on the claimant. I had also watched PC Webb's use of the CS spray having no real effect... The records that at 0605 I spoke to comms on my radio and reported male has been tasered and sprayed with CS spray.

Almost immediately I became aware of PC Schofield arriving. I knew that PC Schofield was Taser trained and as he passed me, I said words to the effect of he's been gassed."

105. PC Samuel Schofield arrived at about 6.03am with PC Lovelady. He states in his witness statement the following:

"I have deployed a Taser on many occasions in the course of my police service, both before and after 6 June 2014."

I recall that PC Farrell said something to the effect of Sam, he's been sprayed with CS...

My immediate thought on seeing PC Farrell was that he had used his Taser and had been incapacitated due to exposure to CS spray. I believed that the claimant had somehow withstood the effects of CS gas and the Taser. I drew my Taser from its holster so that it was ready for use.

I had no way of knowing why the claimant was behaving as he was ... The presence of so much blood and the state the claimant was in made me think it more likely that he had attacked someone than that he had been attacked ...

I formed the view that he had swung at the officers. I was around 2 m away and I knew that the Taser could be effective in incapacitating the claimant and preventing harm coming to PC Hunt and PC Webb.

I aimed my Taser at the claimant's chest area. The Taser barb was connected and I couldn't see any problem with the spread but it had absolutely no effect on the claimant. There was no evidence of NMI... The claimant was not incapacitated in any way; he remained upright and came towards me. He still had the same look of anger on his face, his eyes were bulging and staring and he was frothing at the mouth. I backed off and reloaded my Taser as I have been trained to do in such a situation. There were other officers around who were continuing to speak to the claimant.

I reloaded the Taser and aimed a second time and this time I kept the Taser cycling. The claimant was slowed down by this but remained upright.

... I used my Taser to angled drive in his upper back shoulder blade, whilst holding onto his opposite upper shoulder. The Taser did not incapacitate the claimant and he swung round with his arm..."

106. PC Schofield was aware of the risks of using taser where CS gas had been used. He considered that Mr Gilchrist was a violent individual and the safest course of action was to detain, cuff and contain him. I accept that PC Schofield honestly believed this and it was a reasonable assumption for him to make. However, it did not justify the use of multiple and prolonged cycling of the taser on Mr Gilchrist. Such further use of Taser was contrary to policy and unjustified for the following reasons. Firstly, Mr Gilchrist was a vulnerable person and had been identified as such by Andrew Gilchrist to the officers. Secondly, although it was not known whether he had assaulted anyone, his actions since the police arrived did not indicate that an attack was imminent. He had lunged or swung at officers who approached him but this was more likely to be defensive than offensive. Thirdly, this was no longer an emergency calling for immediate action. This was not a fast, dynamic situation. Mr Gilchrist was moving slowly and there was time to step back, give him space and use persuasion to gain his co-operation. Fourthly, CS gas had been used, a contra-indication for further use of Taser. Fifthly, Taser had already proved to be ineffective and, as confirmed by PS Colin Wilbraham, in those circumstances, other methods of restraining Mr Gilchrist, such as direct physical force, should have been considered. The further use of Taser for a cumulative period of 72 seconds was unjustified and unreasonable.

Physical force to bring Michael Gilchrist to the ground

107. Former Police Sergeant Morris arrived whilst PC Schofield was using his taser on Mr Gilchrist. His assessment was that physical force should be used to bring Mr Gilchrist to the ground. This was a reasonable decision for him to make to bring this incident to a swift resolution. There was a risk at this stage that the situation could escalate and Mr Gilchrist or the officers could be seriously hurt.
108. PC Schofield attempted to trip up Mr Gilchrist. That was unsuccessful. PC Webb then tackled Mr Gilchrist and brought him to the ground. These assaults were justified use of reasonable force to bring Mr Gilchrist under control.

109. The evidence of Andrew, Tracy and Dwayne Gilchrist is that the police officers then jumped on Michael Gilchrist and restrained him on the ground. Clearly, there was a scuffle. Dwayne Gilchrist's view was that Michael Gilchrist did not struggle but this is not consistent with the evidence of the officers involved. PC Andrew Wild stated that once on the ground, Mr Gilchrist continued to cause problems; he was not relaxed and compliant and he needed to be restrained and handcuffed. PS Morris assisted in taking Mr Gilchrist to the ground and stated that even once he had been taken to the ground, he continued to struggle violently. He was held on the ground whilst officers struggled to place him in handcuffs and leg restraints. The notes made by the triage nurse when he arrived at hospital supports the officers' evidence that he continued to struggle. The weight of the evidence is that Michael Gilchrist did offer resistance to the efforts to restrain him and, therefore, it was necessary for the officers to apply physical restraints and keep him on the ground.
110. Whilst Mr Gilchrist was on the ground, PC Schofield used his taser again. There was no justification for this additional use of taser and it would have inflicted unnecessary pain. Although he was struggling, there were sufficient officers at the scene to restrain Mr Gilchrist and he was already on the ground.

Detention on the ground using handcuffs (front or rear stack) and leg restraints

111. PC Webb's evidence is that he took Mr Gilchrist down on his side and then onto his back. PC James Lovelady recalled that Mr Gilchrist was lying on his back and was handcuffed in the front stack position. PC Hunt stated that he could see Mr Gilchrist on the floor on his back, with his hands cuffed in the front stack position. PS Morris recalled that Mr Gilchrist was placed on his back. PC Raza Afzal recalled that Mr Gilchrist was on his back and side when on the ground. PC Wild stated that he was at Mr Gilchrist's head when Mr Gilchrist was on the ground on his back.
112. Andrew Gilchrist's recollection is that, initially Michael Gilchrist was on his back but then he was put into the prone position on the ground by the police officers and his hands and feet were handcuffed. This was confirmed by Tracy and Dwayne Gilchrist. Justine Agnew accepted that she could see only Mr Gilchrist's legs and therefore couldn't assist.
113. Police Staff Colin Wilbraham explained to the Court that prior to April 2015, all officers receiving either initial PST training or refresher training were taught three handcuffing techniques: i) the front stack, ii) the rear stack and iii) the rear back to back stack. He confirmed that, although there can be a risk of assault associated with the front stack by the person restrained, it is still taught in the PST initial training and remains a valid option.
114. I am satisfied that the police officers restrained Mr Gilchrist on his back, using the front stack position. They had no reason to turn Mr Gilchrist onto his front and whilst he was on his back, front stacking was a sensible option. The Gilchrist witnesses will have seen the struggle that occurred when the officers were attempting to secure him but they are mistaken that Mr Gilchrist was placed on his front with his hands handcuffed behind him.
115. The FWIN record shows that an ambulance was called at 5.59am and indicated an estimate time to arrival of 7 minutes. PS Morris's evidence was that the Mr Gilchrist

was in the ambulance by about 6.21am. Mr Gilchrist continued to be agitated and to struggle, as evidenced by his presentation on arrival at hospital. Therefore, it was reasonable for the police to continue to restrain him on the ground until he was placed in the ambulance.

The disputed third use of CS spray

116. Andrew, Tracy and Dwayne Gilchrist state that whilst Michael was restrained on the ground, one of the police officers pepper sprayed him in the face. The officers dispute that this occurred. If CS gas had been used when Mr Gilchrist was being restrained on the ground, it would have affected those officers. None of the officers was so affected, indicating that this did not occur.

Conclusion

117. I recognise that this was a challenging situation for the police officers. They were faced with an individual who presented as very angry, covered in blood and with whom they were unable to communicate. Prior to Andrew Gilchrist's explanation, their assumption that Michael Gilchrist was an aggressor who, probably, had assaulted someone and needed to be detained, was reasonable. In those circumstances, their initial actions to attempt to bring him under control using CS gas and Taser were justified, reasonable and proportionate. However, once they were apprised of his vulnerability as an autistic man, and his behaviour suggested that he was defensive rather than aggressive, a more cautious approach should have been adopted. The further use of Taser, which had already proved to be ineffective, and following the use of CS gas, was inappropriate. The alternative course mandated by PS Morris, namely, using the force of the officers available to take Mr Gilchrist to the ground and restrain him without using weapons was a reasonable and proportionate response.

118. For the reasons set out above, my conclusions are as follows:

- i) PC Webb's use of CS gas on two occasions was justified use of reasonable force.
- ii) PC Farrell's use of Taser was justified use of reasonable force.
- iii) PC Schofield's use of Taser was not justified and the extent of the force used, namely eight cycles for a cumulative period of 72 seconds, was not justified. This deployment of Taser was unnecessary, unreasonable and inappropriate. It amounted to trespass to the person and the injury inflicted on the claimant was a breach of the defendant's common law duty of care.
- iv) The tackles by PC Schofield and PC Webb to bring the claimant to the ground were justified use of reasonable force.
- v) The defendant was justified in restraining the claimant on the ground, on his back with his hands cuffed in the front stack position, pending safe transportation by ambulance to hospital.
- vi) I find that there was no further use of CS gas on the claimant once he was restrained on the ground.

119. To the extent set out above, I find that the claimant has established liability against the defendant for trespass to the person and in negligence.