

ENGLAND AND WALES / JUDGMENT

Dilon Curwen v Chief Constable of Cumbria Constabulary

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[2026] EWHC 115 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY Case No: KB-2024-MAN-000109 Date: 23 January 2026
Before : THE HONOURABLE MRS JUSTICE DIAS DBE

- ----- Between : DILON CURWEN (by his Litigation Friend MRS ELIZABETH CURWEN)
- and - CHIEF CONSTABLE OF CUMBRIA CONSTABULARY Claimant Defendant
- -----
- ----- Mr Edwin Buckett (instructed by Ross Aldridge Solicitors Limited) for the Claimant Mr Elliot Gold (instructed by DWF Law LLP) for the Defendant Hearing dates: 27-29 October, 12 December 2025
- ----- Approved Judgment This judgment was handed down remotely at 10am on 23 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. MRS JUSTICE DIAS Approved Judgment Mrs Justice Dias : A.

INTRODUCTION

Curwen v CC Cumbria

1. At about 0830 on 6 June 2021, Cumbria Police received a report that a man had been seen in a rural area of the county near Egremont in an agitated state and carrying a knife in his right hand. The man was later identified as the Claimant, Mr Curwen, who was born on 28 June 1994 and was then aged 27. Mr Curwen was not wearing any shoes and was accompanied by a Staffordshire Terrier which was not on a lead. Although the police did not know this at the time, he suffered from bipolar disorder. Three police officers responded separately to the call: PC Hanna, PC Woodcock and PC Dunne. Each proceeded in their own vehicle and arrived at the Claimant's location at about the same time. As the police drew near, Mr Curwen discarded the knife.

2. Roughly two minutes later, Mr Curwen had been handcuffed and was lying on the ground with a bleeding head injury, breathing erratically and convulsing, having been tasered five times and had PAVA spray discharged at close range into his eyes.
3. He was taken to hospital where it transpired that he had sustained a skull fracture and a traumatic brain injury as well as various cuts and bruises. Since the incident, he has suffered from ongoing memory impairment with recurrent headaches, bilateral tinnitus, impaired sense of smell, gait imbalance and has developed post-traumatic epilepsy. His mental health issues have worsened since the incident.
4. At no stage during the incident or until some days later was he formally arrested and charged with any offence. 5. 6. In these circumstances, Mr Curwen now sues the Cumbria Police by his Litigation Friend for damages for false imprisonment, assault and battery and negligence. It is not accepted by the Defendant that all of Mr Curwen's injuries and ongoing problems were necessarily caused by the incident and the present trial is concerned only with the issue of liability.
7. The essential questions which the court has to decide are whether the three police officers used excessive and unreasonable force in the detention of Mr Curwen, whether they were in breach of an alleged duty of care to avoid causing Mr Curwen personal injury when using force against him, and whether his arrest and detention was unlawful. B. TASERS, PAVA SPRAY AND THEIR DEPLOYMENT
8. Before turning to the facts of the incident in more detail, it is helpful to describe Tasers and PAVA spray, and the nature of the training given to police officers regarding their deployment and the use of force generally. Much of this section is taken from the evidence given on behalf of the police by a civilian Specialist Training Leader, Mr Norman Ambrose. Unsurprisingly, his evidence on the technical aspects of Tasers and PAVA, the guidelines which applied to their use, and the nature of the training given to Taser-authorised officers in the Cumbria force was largely uncontentious. The main debate was rather as to whether the relevant training and guidelines had been appropriately followed in this case. Use of force Page 2 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria
9. The use of force encompasses the use of unarmed skills, such as physical restraint, handcuffing or limb restraints, the use of personal protective equipment such as a Taser, baton or PAVA spray, through to the use of police dogs and firearms.
10. Use of force within the police is governed by the common law, section 3 of the Criminal Law Act 1967 and section 117 of the Police and Criminal Evidence Act 1984 ("PACE").¹ Police officers should also conduct themselves consistently with the College of Policing ("COP") and National Police Chiefs' Council ("NPCC") principles and guidance.

11. Recognising that every situation is different, the police service has adopted a single National Decision Model (“NDM”) to assist with decision-making and provide a framework within which officers can operate and against which their conduct can be assessed. The NDM consists of six key elements:
 - (a) Gather information and intelligence
 - (b) Assess the threat and level of risk to officers, the public and the subject
 - (c) Develop a working strategy
 - (d) Consider available powers and policy
 - (e) Identify options and contingencies
 - (f) Take action and review outcome.
12. It is recognised that, particularly in fast-paced incidents, there will not necessarily be time to take a considered view of each of these elements in turn. As was said in *McDonnell v Commissioner of Police for the Metropolis*, [2015] EWCA Civ 573 at [26], there may not always be scope for “nicely calculated less or more”. Nevertheless, the main priority of the decision maker should always be to act with integrity to protect and serve the public in accordance with their overarching mission.
13. The training given to all police officers also incorporates COP’s statement of Authorised Professional Practice (“APP”). This provides that officers should consider whether the use of force would have a lawful objective (such as the prevention of injury to others or damage to property or the effecting of a lawful arrest). If so, they should further consider the immediacy and gravity of the threat and the potential for the use of force to have adverse consequences (such as the risk of escalation and harm to others). Finally, they need to identify the minimum level of force required to attain the objective identified and whether it would be proportionate or excessive.
14. Both the safety of the officers concerned and the safety of the subject are relevant to any decision about which method of force to use. In a violent incident involving the use of a knife, physical restraint or use of a baton would carry an obvious risk of stabbing and would not normally be appropriate. In such a situation it would be necessary to use distance control tactics. Tasers 1 See further paragraph 108 below. Page 3 MRS JUSTICE DIAS Approved Judgment *Curwen v CC Cumbria*
15. A Taser is a single shot conducted energy device designed to induce temporary incapacitation through the administering of 50,000 volt electrical pulses. Under the Firearms Act 1968, a Taser is classed as a firearm and as a prohibited weapon. It is potentially lethal.

16. A Taser has two contacts at the end to which a cartridge is attached. When the Taser is discharged, the cartridge fires two probes or barbs which are intended to puncture the skin and remain attached until removed. Each probe is attached to the Taser by an insulated copper wire. When they attach to the subject and the trigger is depressed, an electric circuit is completed and the device delivers an electrical discharge.
17. When fired, the Taser delivers a 5-second cycle of current automatically. It is not necessary to keep the trigger depressed. It can only be fired once, but so long as the probes remain attached, the electrical cycle can be extended (by maintaining pressure on the trigger) or repeated (by re-pressing it). Officers have a second cartridge which can be reloaded if it is necessary to fire the Taser again.
18. A police officer cannot use a Taser unless he or she has been appropriately trained and authorised. The Taser training course is an intensive four-day course which takes place at the force Headquarters. It follows national standards set by the College of Policing and the National Police Chiefs' Council guidance. The course includes detailed assessments on decision-making, scenario-based incidents, the use of force, dealing with vulnerable people and the medical implications of Taser usage. It has a high failure rate.
19. In accordance with national directives, the Tasers used in training are not "live". Thus, they do not conduct electricity and Velcro probes are used instead of actual barbs. Taser officers will therefore never have experienced for themselves the power of a Taser, although the National Lead Trainers will have been tasered and will be able to explain the effects.
20. Use of Tasers within the Cumbria Police is governed by the APP. The force also has a Standard Operating Procedure ("SOP") for the use of Tasers and a Policy Statement which applies to all Taser authorised officers. Both documents are used in training.
21. In addition, the College of Policing published a Code of Practice in January 2020 on the use of less lethal weapons. This provided in paragraph 1.3 that the use of firearms (which includes Tasers) should always be a last resort and considered only where there is a serious risk to public or police safety, in which case the force used must be reasonable and proportionate. This is consistent with the Ten Key Principles Governing the Use of Force by the Police Service published by His Majesty's Inspectorate of Constabulary following the civil disorders of August 2011 which Mr Ambrose agreed that officers should follow. These include:
 - (a) using non-violent methods as far as possible before resorting to the use of force;
 - (b) only using force when other methods have proved ineffective or where it is honestly and reasonably judged that there is no realistic prospect of achieving a lawful objective otherwise;
 - (c) exercising force with restraint and only to the minimum extent honestly and reasonably judged necessary. Page 4 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria

22. These principles are reflected in the Guidelines on Conflict Management published by the College of Policing, pursuant to which officers are trained to consider de-escalation techniques which might avoid the need to use force by applying the BUGEE mnemonic. This is designed to create time and space for officers to assess the risk and decide on the most appropriate course of action as follows: 1. 2. 3. 4. 5. Be prepared to back off if safe; Use effective cover; Give space and time if possible; Early negotiation; Evacuate the immediate area
23. The principles are discussed during both Taser and personal safety training. There was some debate at trial as to whether safety was an explicit qualification to the first step in
2021. However, I do not regard this as material since, in my judgment it only expresses what would have been implicit in any event.
24. An officer can consider using a Taser in a number of ways:
- (a) Drawn : This is where the Taser is simply withdrawn from the officer's holster.
 - (b) Aim : The Taser is aimed at the subject which may in itself operate as a sufficient deterrent.
 - (c) Arc/arcing : The trigger may be squeezed without a cartridge attached so that electric current sparks between the two contacts at the end of the Taser. This creates an audible and visual deterrent.
 - (d) Red dot : This refers to the laser sight which allows the officer to target the subject and should be accompanied by a warning that they had been targeted. Whether a red dot is readily visible to the subject depends on the circumstances and the surface on to which it is projected. In bright sunlight, it might be visible but it would be necessary to stop and have a good look.
 - (e) Angled drive stun : Sometimes a Taser discharge is not fully effective, for example if only one probe attaches or if the probes are too close together to achieve muscular incapacitation. The officer can then place the end of the Taser on to the subject directly at an angle so that only one of the two contacts touches the skin. This should be approximately 9 inches away from the nearest probe so as to maximise the effect (see paragraph 27 below).
 - (f) Stun mode : The Taser makes direct contact with the skin without a cartridge attached. This inflicts localised pain and does not result in muscular incapacitation.
 - (g) Fire : The trigger is pulled and the probes are fired.
25. Only the last three of these options involve the discharge of an electrical current. Experience suggests that in 80%-90% of all Taser incidents, actual firing is not required Page 5 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria and that generally the situation can be resolved in a non-violent way. Accordingly, officers are trained so as to help them select the correct tactical option.

26. If intending to use a Taser, the officer should where possible give an oral warning of “Taser, taser” and allow sufficient time for the warning to be observed unless this would be dangerous or pointless in the circumstances. The warning is also for the safety of colleagues allowing them an opportunity to step back out of the way. It is also usual practice for the contact officer to maintain verbal communication.
27. Tasers are most effective if the probes are embedded in the subject’s skin, whether directly or through clothing. Generally, a Taser should be aimed to strike the major muscle groups below the neck, in particular the postural muscles. Ideally one probe should be attached above the belt line and one below. However, this may not always be possible and officers are taught to identify suitable alternative muscle groups. The greater the distance between the probes, the more effective its use is likely to be. A spread of at least 9 inches is desirable which, since the probes are angled at 8°, is achieved from a distance of about 5 feet. Tasers are thus designed as distance control weapons. Although close range deployment is a tactical option, it entails greater risk for the officers concerned and is less likely to be effective since it will not be possible to achieve the desired spread. The ideal firing range is therefore 7-14 feet as this increases the spread and, consequently, the likelihood of robust incapacitation. Incapacitation will not be achieved if there is insufficient spread or if only one probe attaches, in which case the initial use may need to be followed up with an angled drive stun. When applying an angled drive stun, officers are trained to avoid sensitive areas such as the head, neck and groin where possible. While this is not a blanket prohibition, it constitutes a training failure and an officer would be expected to avoid the neck if they had a choice.
28. All Taser use inflicts severe pain for so long as the current is running. Where a sufficient spread is obtained, it will also produce temporary neuromuscular incapacitation (“NMI”). An effective Taser deployment is one which subdues the subject sufficiently to mitigate or remove the threat by causing partial or complete incapacitation or resulting in a behaviour change. Sometimes the mere threat of use is sufficient. However, it is possible that a Taser discharge may not achieve its objective, in which case an officer can repeat or extend the Taser cycle if the further use of force is reasonable and proportionate. Since there may be technical or physiological reasons why the device has not worked, they should also review other options.
29. A Taser should only be used as a proportionate way of mitigating a threat through temporary incapacitation. It should not be used solely to inflict severe pain or simply to compel compliance with instructions where compliance is not linked to such a threat or where the threat has been reduced to a level where Taser use would no longer be proportionate. Thus the duration of any initial or subsequent discharge must always be limited to that which is necessary to achieve the desired effectiveness. Multiple discharges should be avoided as there is an increased risk to the subject associated with repeated or prolonged exposure. If Taser use has proved ineffective after three or more attempts, then officers should look at other tactical options, for example by standing back and trying to gain verbal dominance.

30. The expected reaction of a person exposed to Taser discharge is loss of some voluntary muscle control accompanied by involuntary muscle contractions. During the discharge, the subject may lose control of their posture; their legs may go rigid (which can be Page 6 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria mistaken for kicking out); they may convulse, curl up in a ball, go into spasm, stiffen, experience intense pain, call out or make involuntary noises; they may be unable to respond to verbal commands during the discharge; they may be confused, disorientated and exhausted after the cycle; or they may freeze on the spot. Loss of posture and muscle control can lead to uncontrolled falls with a risk of head injury. There is also a risk of heart arrhythmia.
31. If both probes attach to the subject's skin or clothing with sufficient spread, the effects are likely to be almost instantaneous, although muscle incapacitation is only likely to last while the electrical charge is actually being delivered. Recovery should be almost immediate once the current has been turned off. Anything other than a rapid recovery requires careful scrutiny. Officers should be aware of the possible onset of Acute Behavioural Disturbance ("ABD") where the subject appears more aggressive or irrational than expected, or stronger and non-pain compliant. ABD includes Excited Delirium, Substance Induced Psychosis and Sudden Collapse Syndrome.
32. The probes should only be removed by a medical professional unless operationally necessary when they should be taken out by a Taser officer. PAVA spray
33. PAVA is a synthetic irritant spray carried by all officers. Irritants are designed to incapacitate violent and aggressive individuals who cannot otherwise be restrained without risk to the officer. PAVA contains an active incapacitating ingredient which replicates the natural chemical in chilli peppers and is approved as a tactical option to manage conflict. Its use is subject to the guidance set out in the NPCC and COP Personal Safety Manual.
34. The ideal range for deploying PAVA spray is 3-10 feet. The minimum distance is 3 feet in order to avoid injury to the eyes of the subject. The maximum spraying distance is 12- 14 feet in ideal weather conditions. Obviously the prevailing weather and especially wind conditions are relevant considerations when deploying PAVA. Nonetheless there may be circumstances where it is necessary and proportionate to use it at greater or lesser distances than those recommended.
35. PAVA is delivered from a pressurised container and should be aimed directly at the subject's eyes. The canister contains six seconds' worth of spray and it is recommended to use it in three short pulsing bursts rather than as a single spray. Pulsing uses less spray in the same amount of time and is more accurate. Ideally PAVA should not be used alongside a Taser because it contains alcohol and there is therefore a very slight risk of flammability. However, it is for the deploying officer to assess the risk at the time.

36. When using PAVA, the officer should maintain verbal commands throughout, although it is a tactical decision whether to inform the subject that they have the spray and are about to use it. Sometimes advance warning may de-escalate a situation; sometimes it may only prepare the subject to take evasive or counter-action.
37. PAVA usually affects the eyes, skin and (if inhaled) the respiratory system. The extent of the symptoms experienced varies from person to person and will also depend on the amount sprayed and the range at which it was deployed. Some subjects may find it very painful and this in turn can lead to high stress, anxiety, panic and aggression. They may Page 7 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria move their hands to their face and drop anything they are holding; their legs may become weak; their torso may bend forward; they may suffer from impaired hearing and so not hear what the officer is saying; their muscles may tense and they may not respond immediately to instructions.
38. The effect of PAVA can be virtually instantaneous, delayed or non-existent. If it does not have the desired effect, that might be because the subject is under the influence of drink or drugs, or has a positive or determined state of mind. Or, more prosaically, the spray may never reach its intended target because the subject protects their eyes or the officer misses the mark. As such, PAVA can never be the only option and an officer must be prepared to consider other tactical means.
39. In terms of aftercare, the effects of PAVA should start to subside within 1 to 15 minutes and should have dissipated naturally within 35 minutes. The best form of decontamination is fresh air. Immediate application of water is not recommended as this only increases the burning sensation. C. THE WITNESSES
40. Mr Curwen did not give evidence before me on the basis that he has no recollection of the incident. In his closing written submissions, Mr Gold criticised the lack of evidence from either Mr Curwen or his Litigation Friend as to his ability to recall what happened and his lack of capacity to give evidence. These points were not pressed in oral argument and I proceed on the basis that Mr Curwen is indeed, as alleged, unable to recall sufficient about the events in question to enable him to provide any meaningful assistance to the court. Accordingly, the only evidence of what happened that day consisted of the contemporaneous incident logs and records, body worn video ("BWV") footage from PCs Hanna, Woodcock and Dunne, and their written and oral evidence.
41. PC Jonathon Hanna joined the Cumbria Constabulary in June 2017 after serving as a Special Constable and then a PCSO for 18 months. In 2018 he applied to become a Taser Officer and qualified in 2019. His most recent refresher course before the incident was in February 2021. At the time of the incident he was based at Whitehaven but was working in Cleator.

42. PC Joseph Woodcock joined the Cumbria Constabulary in March 2018 after serving as a PCSO for Greater Manchester Police for 3½ years. At the end of his two-year probationary period he applied to become a Taser Officer and qualified in February 2020 after attending an intensive training course. He had therefore been a qualified Taser Officer for just over one year at the time of the incident and had completed an annual refresher course in March 2021. He had also been trained in personal safety and first aid.
43. At the time of the incident, he was based at Workington Police Station but had been deployed to Whitehaven to provide cover for that area. He had never previously fired a Taser until this incident. Indeed he thought this was the first time that he had seen a Taser used.
44. PC Nikki Dunne was not authorised to carry a Taser. At the time of the incident she had been in service for three years. She also was based at Whitehaven Police Station. Page 8 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria
45. I have considered all of the evidence, both written and oral, with the greatest care. Much of it was not disputed; indeed the BWV footage speaks for itself, although it proved necessary to adjourn closing submissions in order to obtain an enhanced recording of one specific portion of the footage.
46. In assessing the witnesses, I bear in mind that there is now an accepted body of learning to the effect that different people can perceive the same events in different ways and that all “memory” of distant events in fact depends on a process of reconstruction which is inevitably influenced, whether consciously or not, by a multitude of factors: see, for example, *Gestmin SGPS SA v Credit Suisse (UK) Ltd*, [2013] EWHC 3560 (Comm) at [15]-[22]; *Amadu-Abdullah v Commissioner of Police of the Metropolis*, [2024] EWHC 3162 (KB) at [31]. These include the particular materials from which the witness may have been invited to refresh his or her memory as well as the fact that preparation for trial may well result in the witness becoming increasingly reliant on the reconstructed memory rather than on his or her original experience of events.
47. In this case, it seems to me that there are two further, very pertinent, considerations. The first is that the real-time perception of participants in events as they unfold at high speed in an intense and pressurised situation may be significantly different – not only for each of them – but also as compared with the perception of a disinterested non-participant who watches footage at leisure (and possibly at slow speed) after the event. This is particularly likely to be the case if the participants were fearful for their own and their colleagues’ safety and had adrenaline coursing through their bodies. Each participant may well therefore have perceived things in a different way from the other participants.

48. To this I would add the very natural human instinct, when one's past behaviour is subjected to critical scrutiny, to reconstruct events in such a way as to put oneself in the most favourable light possible, especially, for example, when the witness has a stake in the outcome of the proceedings through a tie of loyalty to one of the parties or a concern for their own reputation.
49. Even so, for the most part I found all three officers to be open and frank in their evidence and I accept that they were honestly trying to recount the events of that day to the best of their recollection. As they all pointed out with some force, this was a fast-paced incident and they did not necessarily have the luxury of time for considered reflection and assessment. This is something which I bear well in mind.
50. PC Hanna and PC Dunne in particular were prepared to make concessions where appropriate in the light of the BWV footage. PC Woodcock was rather more defensive in his evidence and less prepared to make such concessions and I did not accept his evidence in every respect. However, I am satisfied that none of them was in any way trying to mislead the court and that they were all trying to state honestly what they thought they saw at the time and how they interpreted it, whether for better or for worse.
51. In closing, Mr Buckett suggested that the officers had "firmed up" their initial evidence after reviewing the BWV. He gave two examples:
- (a) PC Dunne in her second witness statement made after watching the BWV said that she had thought Mr Curwen was reaching for a knife when he was struggling on the ground, something that she had not mentioned in her first statement. Page 9 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria
- (b) PC Hanna said in his oral evidence that one of the eye witnesses to whom he had spoken was scared and that this had affected him, when he had not previously suggested that the witness was scared.
52. I am not persuaded that either of these suggested discrepancies represents such a departure from the officer's initial evidence that it could even begin to cast doubt on their general credibility. In my judgment, this is nothing other than the normal vagaries of memory where a witness may not recall everything immediately or at once but may find specific memories triggered by different things at different times. D. THE FACTS AS FOUND
53. As I have already indicated, there were comparatively few disputes of primary fact, although the interpretation of the situation inevitably differed between witnesses. To the extent there were any such disputes, the following represents the facts as I find them to be.

54. In the morning of 6 June 2021, Mr Curwen was walking his dog in the Woodend area of Egremont without any shoes on. The initial report to the police was made at 0829 by an off-duty CSI (Crime Scene Investigator) who reported that a man had been seen in an agitated state carrying a knife with a 6" blade and the handle tucked into his wrist. He was said to be dark-haired, about 5' 7", of slim build and accompanied by a brown Staffordshire terrier which was not on a lead.
55. This was categorised as a Grade 1 matter requiring an Emergency Response to be resourced with Taser staff if available. PCs Hanna, Woodcock and Dunne all accepted the call to respond. PC Hanna and PC Woodcock both took their Tasers with them while PC Dunne had her PAVA spray with her. Each officer attended in their own vehicle, with PC Woodcock following PC Dunne due to her superior knowledge of the area.
56. At about 0837, while he was travelling to the location, PC Hanna saw and spoke to the original informant and also another witness, both of whom said that the man looked very agitated and had a knife sticking out of his right jeans pocket. They said that the man was heading towards Egremont.
57. The incident took place at a junction where a minor road diverged from the A5086 at a tight angle to the left away from Egremont. There was a grass verge separating the minor road and the main road at the junction. It was a relatively remote part of the country. There were no members of the public in the immediate vicinity, the nearest town was a mile away and the nearest houses about 100-150 yards distant. There was little traffic on the road. Mr Curwen was walking along the minor road towards the junction with the A5086. PC Hanna approached him along that minor road from behind while PC Woodcock and PC Dunne arrived from the opposite direction along the A5086 and pulled into the minor road.
58. Prior to their arrival, the police officers were communicating on the general channel. This is an open talk group which means that every officer can hear and be heard. It is common ground that there had been no prior discussion between them as to how to handle the situation or who was to take the lead, and that each made his or her independent assessment of the situation when they arrived. Indeed this would not have been practical on an open talk group, and point-to-point conversation (i.e. conversation Page 10 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria between individual officers) could not have been safely conducted by a single officer while driving.
59. By 0839, all the officers were at the scene. PC Dunne was the first to arrive, followed almost immediately by PC Woodcock and then PC Hanna. Immediately before the police arrival, Mr Curwen can be seen on PC Hanna's BWV walking along the minor road towards the junction and scratching his head with his left hand.
60. It is not in dispute that PC Woodcock saw that Mr Curwen was carrying something in his hand which he discarded into the verge as the police arrived. This was later recovered by him and found to be a knife. Neither of the other officers saw Mr Curwen either carrying or discarding anything. Although PC Woodcock denied in oral evidence having seen that it was

a knife which Mr Curwen discarded, I do not accept this. While he may not have remembered it by the time of the trial, he confirmed in more than one contemporaneous statement that he had seen a knife in Mr Curwen's hands which he was able to describe. The BWV also records him saying immediately after the event that he was sure he saw Mr Curwen throw the knife down. There was no reason for him to lie about any of this. If he was trying to justify the officers' actions, he would hardly have volunteered this fact.

61. When PC Dunne got out of her vehicle, Mr Curwen was standing in the minor road next to the grass verge with his hands in the pockets of his jeans. He was not carrying anything and he did say or do anything threatening. His dog was running around in front of her. Her first interaction with him was to ask, "Have you got anything on you that could hurt me or hurt yourself." Mr Curwen did not respond instantly and at the same time, PC Woodcock ran at him from his left side with handcuffs in hand. A split second later, PC Hanna ran towards him from the opposite direction, pointing his Taser at Mr Curwen and shouting "stand still, stand still." At this point, Mr Curwen can be seen on the BWV footage standing still and cowering in a defensive position with his hands up and obviously not holding anything.
62. PC Woodcock grabbed Mr Curwen's left wrist to apply the handcuffs and at more or less the same time, PC Hanna grasped his right wrist with his own left hand, still aiming his Taser at Mr Curwen with the other hand. Mr Curwen said, "I haven't done nowt" and struggled and tried to pull away. PC Hanna shouted to Mr Curwen to, "Get on the floor, Get on the floor, Get on the floor now" and Mr Curwen repeated, "I haven't done nowt". Mr Curwen stepped back on to the grass verge and went to ground. Neither PC Hanna nor PC Woodcock could recall whether this was because he was pushed, or because he stumbled, and the BWV footage is inconclusive. It is possible that Mr Curwen was in fact trying to do as he had been instructed. At this stage he did not have any obvious injury to his head.
63. PC Hanna then shouted at Mr Curwen to, "Put your hands behind your back and get on your front. Put your hands behind your fucking back," although he and PC Woodcock were still gripping Mr Curwen's wrists at this point. Mr Curwen was pushing up trying to sit upright and PC Dunne restrained him by the shoulders. PC Woodcock pushed him back down on to the ground and continued to hold his left arm but Mr Curwen tensed up and he was unable to apply the handcuffs.
64. At this point, PC Hanna decided to deploy his Taser. At the same time as PC Dunne was repeating, "Put your hands behind your back now," he shouted, "Stand back, stand back," and discharged his Taser into Mr Curwen's chest at close range without having Page 11 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria given any prior warning to Mr Curwen. He then placed his hand on the back of Mr Curwen's head, pushed his face down to the ground, shouted "Joe, stand back" and applied his Taser to the base of Mr Curwen's neck where it joins the shoulder while shouting "Taser, taser." At the same time PC Dunne cried out "There's a police officer with a Taser." Mr Curwen can be heard crying out and gurgling. I am satisfied that this was intended to be an angled drive stun rather than a bare attempt to inflict pain by using the Taser in stun mode. This was the evidence of PC Hanna which, in

my view, is supported by the BWV footage. However, since Mr Curwen was struggling and wriggling it may well be that it was not perfectly executed.

65. At this point, I interpolate to make specific reference to a dispute at the hearing as to whether PC Hanna actually said “Do you want some more?” rather than “Joe, stand back”. The former was not pleaded by the Claimant but was put to PC Hanna in cross-examination who vehemently denied having said any such thing. As will be obvious, the potential implications if he had in fact said this and then denied it were extremely serious and almost certainly career-ending. Although Mr Buckett indicated that he was prepared to proceed without relying on the allegation, I took the view that the point could not be left unresolved, and certainly not after it had been aired in open court. I therefore adjourned closing submissions to give the parties an opportunity to obtain a clearer audio transcript. This was done, following which there could be no doubt that PC Hanna in fact said “Joe, stand back” and did not at any stage say “Do you want some more?” I make positive findings to this effect.
66. While PC Woodcock and PC Hanna still had hold of Mr Curwen’s arms, PC Dunne was shouting at him to “Put your fucking hands where we can see them. Keep your fucking hands still. Get on your front now. Turn round.” At the same time, PC Hanna was also ordering him to “Get on your front now.” By this time, Mr Curwen had an obvious bleeding injury to the right side of his head. PC Dunne repeated that Mr Curwen should “Turn yourself round now” while PC Hanna recycled his Taser. Meanwhile, Mr Curwen’s dog was running and jumping around, barking and whining in a state of obvious agitation and distress, and generally contributing to the chaos and confusion.
67. PC Hanna brought his Taser close to Mr Curwen, who attempted to push it away. Mr Curwen managed to get to his feet and run off pulling at the Taser wires while the dog continued to bark and jump up at the officers. The officers followed with PC Hanna reactivating his Taser repeatedly and PC Dunne continuing to shout at Mr Curwen. PC Woodcock grabbed Mr Curwen from behind and took him to the ground, placing his foot on Mr Curwen’s chest while PC Hanna tried to grab his shoulders but Mr Curwen punched him on the nose.
68. At this point, PC Dunne shouted “PAVA” and deployed her PAVA spray in Mr Curwen’s face ordering him to “Put your fucking hands where I can see them.” However, the PAVA did not have any significant effect as Mr Curwen’s face was partially shielded by PC Woodcock’s leg. He covered his face with his hands whereupon PC Hanna got hold of his right arm in an attempt to try to restrain him on the floor at the same time as recycling his Taser.
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his shoulders but Mr Curwen punched him on the nose.

70. At this point, PC Dunne shouted “PAVA” and deployed her PAVA spray in Mr Curwen’s face ordering him to “Put your fucking hands where I can see them.” However, the PAVA did not have any significant effect as Mr Curwen’s face was partially shielded by PC Woodcock’s leg. He covered his face with his hands whereupon PC Hanna got hold of his right arm in an attempt to try to restrain him on the floor at the same time as recycling his Taser.
71. At 0841, PC Hanna requested additional assistance, stating that Mr Curwen had been tasered numerous times.
72. While on the ground, Mr Curwen was initially reasonably still. One Taser barb was still attached to him and he was warned that the Tasers were still connected and not to make any sudden movements. Meanwhile, the officers attempted to elicit a response from Mr Curwen but he was unresponsive. His breathing was erratic and laboured.
73. At 0844, PC Hanna reported that Mr Curwen had sustained a head injury and that his breathing was laboured and he requested an ambulance. He was placed in the recovery position but, after a few minutes, began jerking and trying to lift his head. The officers kept shouting at him to remain calm and keep still, but the jerking continued and the officers had difficulty in maintaining him in the recovery position. PC Woodcock fetched a first aid kit from his van, although no first aid was actually administered beyond removing one of the Taser barbs and telling him to calm down and keep still. At 0850, PC Woodcock located the knife that Mr Curwen had thrown into the grass.
74. After approximately 16 minutes, another police unit arrived and after about 18 minutes, something was placed under Mr Curwen’s head. At 0855, an ambulance arrived and Mr Curwen was placed on a stretcher and taken to West Cumberland Hospital. E. DISCUSSION AND ANALYSIS
75. These unfortunate facts suggest an incident which got tragically out of hand. The root of the problem was that three different officers, each attending on their own, arrived at the scene at more or less the same time without any co-ordinated plan as to how they were going to deal with it. However, since they were all in single-crewed vehicles, I accept that there was no opportunity for prior co-ordination. Nor, in any event, would it have been practical to formulate a plan in advance since none of them knew exactly what they would find. If they had each had someone else with them, they could at least have been able to agree that one of them should take the lead, which might have avoided some of the subsequent problems. However, that was not an option open to them.
76. As it was, each officer arrived and made his or her individual assessment of the situation. I have no doubt that each of them considered, - with justification – that an agitated young male carrying a knife in public was a high-level threat and that there was a real risk of injury to themselves, to Mr Curwen and to the public.

77. PC Dunne was the first on the scene by a margin of one second, if that. She was the only one of the three officers to notice that Mr Curwen was wearing no shoes or socks and Page 13 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria seemed “vacant”. His hands were obviously empty when the police arrived and he was not acting aggressively or being physically or verbally threatening. Her strategy was accordingly to engage him verbally and talk to him with a view of searching him and, with the considerable benefit of hindsight, this would almost certainly have been the best approach. It is therefore unfortunate that he did not have a longer opportunity to respond to PC Dunne’s question. However, I accept her evidence that there was no time to make much of an assessment because her initial contact was almost immediately overtaken by the intervening actions of PC Woodcock and PC Hanna. Unfortunately, PC Woodcock did not hear PC Dunne asking the question. If he had, he might well have held back until Mr Curwen had answered but I accept his evidence that he had not heard anything. In his mind, it was necessary, reasonable and proportionate to handcuff Mr Curwen in order to gain control over him and prevent him using any other weapon that he might have concealed on him. Accordingly, he had his handcuffs out when he ran up to Mr Curwen which was not more than 1-2 seconds after PC Dunne had asked her question.
78. Even that might not have been problematic if PC Hanna had not arrived a split second later and run in from Mr Curwen’s other side. I accept that he must already have drawn his Taser as he got out of the car but as he ran in he saw PC Woodcock take hold of only one of Mr Curwen’s arms. This caused him serious alarm and concern because it left Mr Curwen free to stab PC Woodcock with his free right arm (likely to be his dominant arm) and this was uppermost in his mind. In addition, PC Hanna had neither heard PC Dunne’s verbal engagement nor, critically, seen Mr Curwen discard the knife.
79. On the basis of what was known to and perceived by each officer, one can see why they each reacted as they did. Thus, PC Hanna and PC Dunne believed that Mr Curwen was still armed, while PC Woodcock thought he might still be in possession of another weapon. All three were throughout the incident afraid for their own safety and that of their colleagues and it is quite clear that an element of panic set in when the three of them proved unable to control him. It is a misfortune that the actions of each individual officer – each responding to their own perception of the threat posed and making their own risk assessment – had the combined effect of creating a high-octane, fast-paced situation from the outset.
80. On top of that, Mr Curwen was not compliant. The officers described him as violent, although I would not accept this as a fair description, at least at the outset. As stated, Mr Curwen was not verbally or physically aggressive to start with, and while he was not being what a layman would describe as violent, he was certainly actively resisting with considerable strength and struggling to free himself and get out of the officers’ grip. Of course, if the situation was stressful and frightening for the officers, the same must equally have been true for Mr Curwen confronted with three officers converging on him more or less simultaneously from different directions - even if one ignores what we now know about

his mental health. One might therefore think that his was a natural and instinctive reaction when he had not fully grasped what was happening.

81. Be that as it may, the officers were thereafter engaged in trying to subdue him sufficiently in order to handcuff him but, for whatever reason, nothing worked. I accept the evidence of all three officers that Mr Curwen was exhibiting surprising strength – “almost superhuman” – which may well have been due to the effects of drug intoxication. It is also true that Mr Curwen became more aggressive as events unfolded, punching PC Hanna in the face. The situation was also not helped by Mr Curwen’s dog which was Page 14 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria running around in a state of great agitation, generally getting in the way and eventually biting PC Hanna.
82. However, a generalised impression that something went wrong and that things got out of hand is not in itself sufficient for this claim to succeed. If the Defendant is to be liable in this case, Mr Curwen must establish at least one of the three causes of action on which he relies, namely (1) wrongful arrest/false imprisonment, (2) assault and battery (3) negligence. I therefore turn to each cause of action in the order in which they were presented by Mr Buckett.
 - (1) False imprisonment and wrongful arrest The applicable legal principles
83. Section 24 of PACE provides that a police officer may arrest a person where they have reasonable grounds to suspect that they have committed an offence and they have reasonable grounds for believing that it is necessary to arrest that person for one of a number of stipulated statutory reasons, including to prevent them causing physical injury to themselves or any other person, or to allow the prompt and effective investigation of the offence.
84. It is not contested in this case that the officers had reasonable grounds for suspecting Mr Curwen of having committed the offence of being in possession of a bladed article in a public place.
85. In relation to having reasonable grounds for believing that arrest is necessary for one of the statutory reasons, the officer need not consider all possible alternatives to arrest: Hayes v Chief Constable of Merseyside, [2011] EWCA Civ 911; [2012] 1 WLR 517 at 529A. It is sufficient if they consider arrest to be the practical and sensible option: Re Alexander’s Application for Judicial Review, [2019] NIQB 20 at [28].
86. Section 28 of PACE further provides as follows: “(1) Subject to subsection (5) below, when a person is arrested, otherwise than by being informed he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as practicable after his arrest. ...
 - (3) Subject to subsection (5) below, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as practicable after, the arrest. ...

- (5) Nothing in this section is to be taken to require a person to be informed –
- (a) that he is under arrest; or
- (b) of the ground for the arrest, Page 15 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.”
87. Informing a person that he is under arrest and the basis upon which he has been arrested is a fundamental common law right. A person need not submit to an unlawful arrest and may use all reasonable force to resist: *Christie v Leachinsky*, [1947] AC 573.
88. If an officer fails to state the grounds of arrest at the point of arrest because it is impracticable to do so, for example because the defendant makes it impossible by his violent or aggressive conduct, the arrest will nonetheless become unlawful at the point (if any) at which it becomes practicable to give him the reasons for the arrest: *DPP v Hawkins*, [1988] 1 WLR 1166 at 1170C-F. Discussion
89. The burden of pleading and proving a defence to a claim of false imprisonment is on the Defendant. It is, however, important to analyse the cause of action correctly. The first question, on which the Claimant bears the burden of proof, is whether Mr Curwen was directly and intentionally imprisoned. Only if that question is answered affirmatively does the burden shift to the Defendant to justify the imprisonment on the grounds of lawful arrest.
90. Mr Buckett’s submissions were largely directed at the second question. He submitted that there was never any lawful arrest in this case because (i) no words or grounds of arrest were given as required by section 28(3) of PACE and (ii) in any event, the Defendant’s evidence did not establish that any of the officers had reasonable grounds for believing that it was necessary to arrest Mr Curwen for one of the stipulated statutory grounds set out in section 24(5) of PACE. However, the lawfulness of the arrest cannot arise at all unless and until it is demonstrated that Mr Curwen was actually imprisoned or detained.
91. It is common ground that he was imprisoned and detained at the latest when he was handcuffed. The critical question is whether he was imprisoned at any prior stage. Imprisonment requires some constraint on the subject’s movements in the sense that he is no longer able voluntarily to decide for himself where he will go. If the subject is not physically restrained, he must at least be in a position where he is not legally able to dictate for himself where he will go, for example by being placed under arrest.
92. Mr Buckett submitted that Mr Curwen was wrongfully arrested and falsely imprisoned from the time that PC Woodcock first used physical force by laying hands on him. However, the evidence shows that PC Woodcock’s priority when he ran in was the safety of himself and his colleagues and that he wanted to get Mr Curwen under control and eliminate any risk first in order to have the option to search and/or arrest him for possessing a bladed article in a public place. Thus, the purpose of the first laying on of hands was not to arrest Mr Curwen

but to gain control. He did not at that stage purport to arrest him and so there was no legal restraint on Mr Curwen. Imprisonment/detention could therefore only have occurred by physical restraint.

93. I have watched and re-watched the BWV footage and at no point until Mr Curwen was handcuffed was he brought fully under control to a point where he could not have escaped. Until then, he was resisting the officers successfully and although they came close to subduing him, they never quite managed to gain the upper hand. On the contrary, Page 16 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria Mr Curwen's resistance meant that, very far from being brought under control, he in fact managed to free himself twice and get away until he was finally brought to ground after PC Woodcock tasered him for the second time.
94. In these circumstances, I find that there was no sufficient physical restraint to amount to an imprisonment or detention prior to Mr Curwen being handcuffed. Accordingly, the question of whether there was a failure to comply with sections 24 and 28 of PACE before then does not arise.
95. The case of Hart v Chief Constable of Kent, [1983] RTR 484 on which Mr Buckett relied is not really in point. In that case, the police had undeniably arrested the defendant and the only question was whether the arrest had taken place outside the defendant's house where the police were lawfully present or only inside where they had no permission to be. The court held that in the circumstances of the case, the arrest had commenced as soon as the police laid hands on the defendant to arrest him. This occurred outside and was therefore lawful such that the defendant was not entitled to try to escape by going inside his house. Here, by contrast, there was never any attempt by PC Woodcock to lay hands on Mr Curwen in order to arrest him (as opposed to gaining control).
96. In deference to Mr Buckett's submissions, however, I express my view briefly on the assumption that Mr Curwen was under sufficient restraint by virtue of PC Woodcock laying hands on him. His principal arguments were that (a) no words or grounds of arrest had been spoken by PC Woodcock and (b) there was no evidence that he reasonably believed it was necessary to arrest Mr Curwen. The other grounds initially pleaded under this head were not ultimately relied upon.
97. As to (a), it was not disputed that relatively informal language would be sufficient to inform the Defendant that he was under arrest and the reasons why. However, from the BWV footage, I conclude that the only time when PC Woodcock could conceivably have given words and grounds of arrest would have been when he was first running in. He accepted in cross-examination that he could have done so but pointed out that his primary concern at that stage was to gain control in order to eliminate any threat before deciding what to do thereafter.

98. In these circumstances, I consider it reasonable for him not to have shouted words or grounds of arrest at the outset. Not having done so, there was thereafter no further opportunity for him to do so. From the moment he laid hands on Mr Curwen, events unfolded at such speed and against a background of such chaos that it was wholly unrealistic to have expected any of the officers to utter words or grounds of arrest until he was properly under control which, in the event, was not until he was handcuffed.
99. As to (b), there is no dispute that PC Woodcock had reasonable grounds for believing that Mr Curwen had committed an offence of carrying a bladed article in public. However, Mr Buckett took a number of highly technical points on the Defendant's pleading and witness evidence regarding belief in the necessity for arrest. Relying on the case of *Alger v Commissioner of Police of the Metropolis*, [2023] EWHC 1582, he submitted that the test for necessity sets a high bar and involves a fact-specific objective assessment.
100. First he argued that the Defence only asserted that PC Woodcock had reasonable grounds to believe that arrest was necessary for the protection of the public which is not, in itself, a statutory ground under section 24(5) of PACE. I consider this to be an unduly Page 17 MRS JUSTICE DIAS Approved Judgment *Curwen v CC Cumbria* restrictive approach to the pleadings. Given the nature of the offence in question, the only danger from which the public could possibly have required protection was the infliction of physical injury from the use of a knife and, in my judgment, this is sufficiently covered by section 24(5)(c)(i) of PACE which refers to "causing physical injury to himself or any other person".
101. Secondly, he argued that even if the pleading was technically sufficient, that did not cure what he said was a deficiency in the evidence. In his written statement PC Woodcock said that he could not assume that Mr Curwen was unarmed, despite having seen him discard the knife, and was of the view that he remained a high-risk threat. He therefore considered it necessary, reasonable and proportionate to handcuff him so as to gain control and prevent him from using any weapon against himself or others. He also stated that it was his intention to arrest Mr Curwen for possession of an offensive weapon in a public place. In his oral evidence, he clarified that his initial actions were to gain control so that he would then have the option either to arrest or search him and that he wanted to handcuff him to stop him stabbing any of the officers.
102. Mr Buckett submitted that PC Woodcock's written evidence was directed only at the necessity to use force, not the necessity to arrest, and that there was no evidence at all about the latter. It was not incumbent on a claimant to cross-examine so as to enable a defendant to plug holes in its evidence, and he had therefore not sought to address the point in cross-examination.
103. Again, I regard this as an excessively technical point. I accept that where a defendant bears the burden of proof on a particular point but adduces no evidence, the claimant cannot be criticised for declining to cross-examine to fill the gap. However, that is not this case. The relevant paragraphs of PC Woodcock's statement are not expressly confined to the necessity

to use force and I see no reason why they should be read in such a limited fashion. PC Woodcock gives evidence as to his state of mind and if he believed it necessary, reasonable and proportionate to handcuff Mr Curwen to gain control and prevent the use of a weapon, I fail to see why that cannot also be evidence in support of a belief that it was necessary to arrest Mr Curwen even if that was not his immediate priority. Mr Buckett argues that necessity to handcuff a subject to neutralise a threat is not the same as a necessity to arrest. That may be so, but it is a point which goes to the strength and weight of the evidence and having considered PC Woodcock's written and oral evidence in its totality, I am satisfied that it is sufficient to support the Defendant's pleaded case.

104. Accordingly, even if Mr Curwen had been imprisoned or detained prior to handcuffing, I would have held that the arrest was not rendered unlawful for failure to comply with PACE. As it is, the question does not arise.
105. It is nonetheless necessary to consider whether the failure to comply with the requirements of PACE after Mr Curwen had been handcuffed rendered his detention unlawful from that point. By this time, Mr Curwen was lying unresponsive on the ground. He had been searched and no weapon had been found on him. The discarded knife had been recovered. It might therefore be said that it was no longer necessary to arrest or restrain him. However, the officers had no way of telling whether he might recover sufficiently to break away again. I therefore accept that it was reasonable to put him in handcuffs but while it was certainly practicable at that stage to inform Mr Curwen of the fact and grounds of his detention, it is unlikely that it would have served any useful Page 18 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria purpose as it is very doubtful whether he would have heard or comprehended anything that was said to him. Indeed, Mr Buckett did not argue with any vigour that he should have been given words and grounds of arrest at that point and I decline to hold that Mr Curwen was unlawfully detained after being handcuffed because of a failure to comply with the requirements of PACE. In any event, if the point had been live, I anticipate that it would have given rise to issues on causation and quantum, albeit those are not matters for this trial.
106. For these reasons, the claim based on false imprisonment/wrongful arrest fails.
- (2) Assault and battery The applicable legal principles
107. Battery is an act by which the defendant intentionally or recklessly touches or applies force to another person's body without lawful excuse: *Wilson v Pringle*, [1987] QB 237. Assault is any act by which the defendant intentionally or recklessly causes the victim to apprehend immediate unlawful violence: *R v Ireland and Burstow*, [1988] AC 147. There is no requirement to show any separate fault or actionable damage. The touching or application of force is itself a legal wrong.

108. A police officer may use reasonable force in order to prevent crime or to effect or assist in the lawful arrest of a suspected offender: section 3 of the Criminal Law Act and section 117 of PACE. It follows that the use of reasonable force for these purposes is a defence to a claim for assault or battery. The burden of proof is on the defendant.
109. In *Afriye v Commissioner of the City of London Police*, [2024] EWCA Civ. 1269;
- [2024] 4 WLR 86 the claimant was stopped on suspicion of driving at excessive speed. An initial breathalyser test was ineffective, and he waited on the pavement for some time before another test could be administered. Following that further test, the officers attempted to arrest the claimant who pulled his arms away and continued to talk to a friend who was present while refusing to put his hands out to be handcuffed. One of the officers drew his Taser and “red dotted” the claimant who, after around 20 seconds, folded his arms. The officer took this as a sign of belligerence and discharged his Taser, causing the claimant to fall backwards and hit his head on a ledge.
110. The court considered in some detail the appropriate test for assessing whether the use of force was reasonable. As the court pointed out at [33], in the context of criminal proceedings section 76 of the Criminal Justice and Immigration Act 2006 requires a person who uses force to be judged on the basis of the circumstances as they perceived them. However these were civil proceedings and at [34], it went on to say: “In a civil claim, 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: see *Ashley v Chief Constable of Sussex Police*, [2008] UKHL 25; [2008] 1 AC 962, *McCarthy v Chief Constable of Merseyside Police* [2016] EWCA Civ. 1257 at [30]... The requirement that the defendant must prove that the force used was reasonable in all the circumstances involves an assessment of the proportionality of the force used. The issue is not just whether the use of force was reasonable in the circumstances as the defendant believed them to be. The question is whether the degree and nature of the force used was reasonable... an Page 19 MRS JUSTICE DIAS Approved Judgment *Curwen v CC Cumbria* assessment of the reasonableness of the force used must involve a consideration of how proportionate that response was to the overall circumstances facing the defendant.”
111. The test is therefore threefold and incorporates both subjective and objective elements:
- (a) Whether the officer honestly believed it was necessary to use force at the time it was used;
 - (b) Whether that belief was objectively reasonable;
 - (c) Whether the degree and nature of the force used was no more than was objectively reasonable in the circumstances, which requires an assessment of whether it was proportionate to the overall circumstances.

112. On the facts, the Court of Appeal upheld the trial judge's finding that officer honestly believed that it was necessary to use force against the claimant and that this belief (i.e., that it was necessary to use force) was objectively reasonable. However, it held that the use of the Taser was not a reasonable or proportionate response to the circumstances as the judge had found them to be. The defence therefore failed.
113. I was referred by Mr Buckett to a number of cases where liability for assault and battery had been established on the basis that the use of a Taser could not be properly justified: for example, *Gilchrist v Chief Constable of Greater Manchester*, [2019] EWHC 1233; *McCarthy v Chief Constable of Merseyside*, [2016] EWCA Civ 1257. In *Amadu- Abdullah v Commissioner of the Police of the Metropolis*, [2024] EWHC 2162, liability was established in a situation where insufficient warnings were given and the subject had not been allowed sufficient time to respond to instructions. Even though the situation was considered to be "scary and difficult", use of a Taser was not considered to be objectively reasonable or proportionate in the circumstances.
114. I did not find any of these cases to be of material assistance. As will be obvious, the questions to be addressed are intensely fact specific and attempting to draw analogies for different factual situations is dangerous. Discussion
115. It is undeniable that an assault and battery was committed on Mr Curwen. It was also common ground that the police had lawful justification to arrest him for unlawful possession of a bladed article in public and also to stop and search him. The question is therefore whether the officers used excessive or unreasonable force in his apprehension and detention. As to this, the courts have repeatedly warned against a "frame by frame examination of events" when considering the actions of individual police officers over a short space of time in a highly stressful situation when their reactions are very likely to be instinctive: see, in particular, *Goodenough v Chief Constable of Thames Valley Police*, [2020] EWHC 695 (QB) and *McCarthy* (supra).
116. It was not expressly pleaded that any of the officers acted in self-defence. I would in any event have rejected any such suggestion. As I have noted above, at no stage was Mr Curwen acting aggressively towards the officers. The highest it can be put is that he was struggling to resist them. It is true that he punched PC Hanna on the nose but that was in response to the force being used on him. As I put to Mr Gold in argument, the Page 20 MRS JUSTICE DIAS Approved Judgment *Curwen v CC Cumbria* apprehension by the officers that Mr Curwen might be armed and so possibly might use a knife on them is not the same as being under threat of imminent attack or threat of attack. The situation would have been very different if he had had the knife in his hand and was brandishing it. As it was, he was cowering in a wholly submissive pose at the outset and while they might have feared that he had a weapon concealed somewhere on his person, this at all times remained no more than a possibility.

117. Mr Buckett's first point in closing was that the burden was on the Defendant to show that the officers only used reasonable force and that there was no positive plea to this effect. However, the Defence not only denied any use of unreasonable force but pleaded affirmatively that the officers used "such force as they each honestly and reasonably believed was necessary" and set out the reasons relied on for that belief. While it could perhaps have been put more clearly, I agree with Mr Gold that if the officers had an objectively reasonable belief that a particular degree of force was necessary, it is difficult to see how actual use of that force could have been unreasonable. I therefore decline to rule out the defence on this technical pleading point.
118. More pertinently, Mr Buckett submitted that the force used was not reasonable or proportionate because:
- (a) The Taser was used extremely early as a compliance tool at a time when Mr Curwen was not posing any overt or obvious threat;
 - (b) Insufficient warning was given;
 - (c) Mr Curwen was given no realistic chance to comply with the officers' instructions or to answer PC Dunne's questions;
 - (d) He was rushed by the officers and was therefore bound to recoil to some degree;
 - (e) The officers ignored their training and unreasonably used the Taser against Mr Curwen's neck;
 - (f) PC Hanna was determined to use his Taser irrespective of anything that Mr Curwen said or did.
119. While he accepted that the police were entitled to a margin for error, he submitted that this was not such a case. On the contrary, he submitted that the police treated Mr Curwen with contempt and subjected him to a shocking and extreme level of force when he posed no justifiable threat. The use of force was unreasonable and unlawful from the outset.
120. In response, Mr Gold argued that the use of force was based on reasonable grounds in circumstances where the evidence showed that:
- (a) Mr Curwen knew he was breaking the law by carrying a knife in a public place;
 - (b) He dropped the knife into the grass rather than by the verge;
 - (c) He was not capable of being trusted or behaving rationally;
 - (d) It was unrealistic for PC Woodcock to have shouted that he was under arrest; Page 21 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria
 - (e) The use of a Taser was reasonable;
 - (f) PC Hanna never said "Do you want some more?"

- (g) Mr Curwen was able to co-operate but failed to do so and clearly resisted the officers.
121. As to the first three of these points, I am not prepared to make a finding that Mr Curwen knew he was breaking the law by carrying a knife. There was evidence before the court that he had claimed to be the Angel Gabriel and was being told by dark spirits to kill the devil, in which case he may well not have thought that he was doing anything wrong at all. Statements that he “hadn’t done nowt” were true in the sense that he had not actually attempted to deploy the knife at any stage. But in any event, Mr Curwen’s subjective beliefs as to what he was doing are entirely irrelevant to anything that I have to decide.
122. I am also not prepared to find that he consciously chose to discard the knife into the grass rather than on the pavement. He was standing at the very edge of the grass and it would therefore have been largely a matter of happenstance where the knife landed. As to whether he was capable of being trusted or behaving rationally, the officers were unaware of his mental health history and, given the manner in which events unfolded, had no chance of assessing his mental capabilities. That cannot therefore have been a factor in their decision-making; as far as they were concerned, he was either complying with their instructions or not. His capacity and capabilities did not enter into the equation.
123. In relation to the remainder, I have already held in favour of the Defendant that it was not unreasonable for PC Woodcock to have run in without shouting that Mr Curwen was under arrest, and that PC Hanna did not at any stage say “Do you want some more?”
124. Knowing what we now know about Mr Curwen’s mental health issues and the fact that he was unarmed after discarding the knife, it is easy to say that the overall force used on him was more than was in fact necessary. However, the officers on the ground did not have the luxury of considered reflection, still less hindsight. PC Hanna and PC Dunne did not know that Mr Curwen was unarmed and even PC Woodcock could not be entirely sure that he did not have access to another weapon. None of them knew that he was vulnerable and only PC Dunne noticed that he did not have shoes or socks on and was looking vacant.
125. I have no doubt that the scale and pace of the incident was dictated by the police actions. However, it is clear that things got off on the wrong foot because all three officers had different perceptions of the threat and made different risk assessments and their initial actions occurred in the space of no more than a couple of seconds when they had had no time for any discussion and were faced with a suspect who was possibly armed. Thus, although Mr Curwen was not given time by PC Woodcock or PC Hanna to respond to PC Dunne’s question they were unaware that any question had been asked. For his part, PC Hanna did not know that Mr Curwen had thrown away a knife but had spoken to two witnesses who had seen him with a knife and whom he assessed as being very concerned. As a result, the situation escalated from the outset beyond what in hindsight was in fact necessary.

126. In situations like this, it is important to avoid imposing unrealistic standards on the police. PC Hanna accepted that he could have handled the situation differently if things Page 22 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria had happened differently. As it was, each officer had an honest and objectively reasonable belief that Mr Curwen needed to be restrained but each had a different perception as to how best to achieve this. It is deeply unfortunate that the combined effect of their actions was to induce a confrontational situation from the start when they might have been able to defuse matters if they had had the opportunity to conduct a considered assessment.
127. In this case, there were multiple individual applications of force to Mr Curwen, including each separate Taser use and the application of PAVA spray. I canvassed with counsel the correct approach in these circumstances and, in particular, whether each application of force should be considered separately and in isolation, or whether and, if so, to what extent I should look at them cumulatively. Mr Gold correctly pointed out that in order to succeed, Mr Curwen needed to establish that a particular officer had acted unreasonably since that is the only basis on which the Chief Constable can be held liable. If no individual officer had acted unreasonably, it was not permissible to add up their non-culpable actions to create a compendious culpable whole.
128. In some cases it will be appropriate to consider separate applications of force in isolation from each other, particularly when they are clearly separated in time. However, that will always depend on the circumstances. In a case such as the present where there was an evolving situation over a very short period of time, it seems to me that the correct approach is to look at the reasonableness and proportionality of each application of force in the light of what has gone before. That avoids the vice of compartmentalising each action while still focusing on the conduct of each individual officer. Mr Buckett did not dissent from this approach but invited me to look at the final Taser use by PC Woodcock as a free-standing incident on the grounds that Mr Curwen was by then confused, debilitated and disoriented and had gone well past the point at which he might realistically have been looking to pick up the discarded knife. First Taser use
129. PC Hanna's initial intention had been to stop and search Mr Curwen but when he arrived, what he saw was PC Woodcock in a position of danger from Mr Curwen drawing the knife and stabbing him. As we now know, PC Hanna's belief that Mr Curwen was armed was mistaken but I am satisfied that he honestly believed it was necessary to use force in order to prevent Mr Curwen from stabbing PC Woodcock or any other officer. I am also satisfied that his belief was objectively reasonable. He had not seen Mr Curwen discard the knife and did not know that he was in fact unarmed. Mr Curwen was struggling and actively resisting and his hands were moving. He could not therefore entirely discount the possibility that he was trying to reach a weapon.
130. The remaining question is whether the use of the Taser was objectively reasonable in this situation. I have not found this entirely straightforward. If PC Woodcock had not already grabbed hold of Mr Curwen but was simply standing by him without Mr Curwen making any

overt attempt to assault or threaten him, I would have had little hesitation in saying that running straight in with a Taser drawn was excessive. Instead, however, PC Woodcock had placed himself in a situation which in PC Hanna's mind carried considerable risk. I accept that when dealing with a man whom he reasonably supposed to be armed with a knife which he was in a position to use and where his colleague was in a position of danger, it was not unreasonable for PC Hanna to have decided not to back Page 23 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria off, but to draw his Taser and run in. This was a split second decision which cannot be regarded as unreasonable.

131. I bear well in mind, that Mr Curwen's initial reaction as PC Hanna ran up was to cower with his empty hands raised. If he was going to pull a knife, that would have been the obvious time to do it and it is undeniable that he did initially stand still. But by that time, both PC Woodcock and PC Hanna were committed to a course of action to detain him.
132. Even so, I reject Mr Buckett's submission that PC Hanna was always determined to use his Taser come what may. On the contrary, both PC Woodcock and PC Hanna initially attempted to restrain Mr Curwen physically, even though PC Hanna was somewhat hampered by his drawn Taser and PC Woodcock by the handcuffs so that they each only had one free hand. They were then faced with active and sustained resistance and non-compliance by Mr Curwen to which they responded by shouting at him to get on his front and put his hands behind his back.
133. All the officers accepted that, as they were still hanging on to him, it might have been difficult for him to comply with these instructions but their evidence was that he did not even attempt to do so but was lunging forward attempting to break free. This may be somewhat unfair to Mr Curwen. I would have thought it was virtually impossible for him to have turned on to his front when his hands were being held. It was certainly impossible for him to have put them behind his back when they were being held to the front. I also accept that from Mr Curwen's point of view, the situation must have been terrifying and confusing. He had suddenly been set upon by three police officers, at least two of whom were yelling at him in perhaps unnecessarily foul language which could only have increased the tension. It may even have been that he was trying to sit up so that he could turn over.
134. However, the officers were not privy to Mr Curwen's thought processes. Nor is the objective bystander. Objectively, the officers were confronted with someone who was potentially armed and not co-operating. The commands which they were giving were at least consistent, even if they may have been difficult to obey. However, Mr Curwen did not at any stage become compliant but continued to struggle and was obviously exhibiting considerable strength. PC Hanna described him gritting his teeth and pushing up. The combined efforts of all three officers to subdue him physically were unsuccessful and they were entitled to assume that he might still be armed. I accept that PC Hanna and PC Dunne honestly believed that Mr Curwen might be moving his hands in attempt to pull out his knife in circumstances where they were unaware that he had already thrown it away. I also accept that they were frightened and scared and had a justifiable concern for their own safety and

that of their colleagues.

135. At this point, it was too late for the officers to back off altogether. Use of a baton on Mr Curwen would not have been appropriate at close quarters and in terms of the other available options, there was probably little to choose between the Taser or PAVA spray. The effects of PAVA spray are longer lasting, whereas the effects of a Taser stop when the current stops. On the other hand, PC Hanna's Taser was already drawn. Having reviewed the BWV footage with care, I find that the first use of the Taser by PC Hanna was reasonable and not disproportionate in principle. Given where everyone was placed in relation to Mr Curwen, he had little option but to discharge it into his chest. Page 24 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria
136. As to the lack of prior warning, ideally a warning should have been given as PC Hanna ran up. That said, the warning is at least in part for the protection of colleagues and bystanders and Mr Curwen must in any event have seen the Taser and a warning would have been pointless where they were already engaged at close quarters. The situation was very different from that in Amadu, where the officer had not engaged with the claimant at all before tasering him. I do not find that the use of the Taser, which was reasonable and proportionate in principle, was nonetheless rendered unlawful because no prior warning was given in the particular circumstances. Angled drive stun
137. Mr Buckett submitted that this was a turning point. However, given that PC Hanna had discharged his Taser at such close quarters, it was inevitable that it would not have been fully effective and needed to be followed with an angled drive stun. As already stated in paragraph 64 above, I am satisfied that PC Hanna was trying to achieve an angled drive stun in order to achieve NMI when the initial discharge had not been at a sufficient spread. True it is that PC Hanna was trying to achieve compliance but this was for the purpose of bringing Mr Curwen under control when (so far as he knew and believed) he was still armed in a public space and therefore posed at least some risk to the public and the officers. I therefore reject the suggestion that he only used his Taser at this point for the sole purpose of achieving compliance and inflicting pain without justification.
138. Mr Buckett further argued that the application of the Taser to Mr Curwen's neck was unreasonable and contrary to training. However, as stated in paragraph 27 above, there is no blanket prohibition on applying a Taser to a subject's neck; it is simply to be avoided if there is a choice. In this case, everything was happening very quickly. Mr Curwen was struggling and presenting a constantly moving target. I am satisfied that PC Hanna had limited options and did not deliberately target the neck but applied the Taser as best he could to a part of Mr Curwen's body that was accessible.
139. As for the recycling of the Taser by PC Hanna, if there was insufficient spread for the first activation to be effective, recycling would not have achieved anything further. This did not amount to an unreasonable use of force. PAVA spray

140. By the time PC Dunne discharged her PAVA spray, Mr Curwen had punched PC Hanna on the nose. He was still struggling and the use of the Taser had failed to subdue him. PC Dunne still believed (reasonably, as I have found) that Mr Curwen was armed and possibly trying to reach for a weapon. In those circumstances, I find that she honestly believed it was necessary to use her PAVA spray in order to prevent this and get him under control and that there were reasonable grounds for this belief. This was the least intrusive method at her disposal and it was reasonable and proportionate in the circumstances to deploy the spray to enable Mr Curwen to be detained. First Taser use by PC Woodcock
141. At this point, Mr Curwen had broken free and was running away, somewhat unsteadily. He was therefore obviously not posing any direct threat to the officers themselves. No-one else was around at that precise moment and there was hardly any traffic. Mr Curwen was not running towards the road or the grass. However, the officers could not have Page 25 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria known in advance who might appear or when, and in fact the BWV shows several members of the public and some cars passing by the scene at various points.
142. All attempts to restrain Mr Curwen physically had failed which gives some idea of the strength that he must have been displaying as attested to by all three officers. While this may well have been due to drug-induced resistance to the effects of the Taser and PAVA spray, I accept that the officers honestly believed that Mr Curwen was willing and able to do whatever it took to get away and that it was therefore necessary to use force to incapacitate him. They had reasonable grounds for that belief. Given his resistance so far, clearly more force was required than their training might have suggested and, in so far as Mr Curwen was possibly still armed, he still posed a threat.
143. In these circumstances, where there were no other realistic means of gaining control of Mr Curwen, I am satisfied that PC Woodcock's decision to use his Taser was objectively reasonable and proportionate, both as regards its initial firing and any subsequent recycling. Final Taser use
144. PC Woodcock's use of the Taser brought Mr Curwen to the ground, although he again managed to struggle up and run off. By this stage, he did not pose any overt threat. PC Woodcock said that he thought he might be going back to pick up the discarded knife but while I accept this was an honest belief, I do not accept that there were reasonable grounds for it. Nothing in Mr Curwen's demeanour suggested that he was looking for a weapon. On the contrary, he was running away shouting for help and had in any event already passed the place where the knife had been dropped.
145. On the other hand, it cannot be said that it was unreasonable for PC Woodcock to have wanted to restrain Mr Curwen and prevent him getting away. He had previously been armed, even if it was now less likely that he had another knife on him. He had resisted and evaded arrest and posed at least some risk to the public, whether by running across the road in front of a passing motorist or by arming himself with another weapon. The police did not

have a crystal ball and could not know that there would not be another incident if they let him escape. The fact that Mr Curwen was in a confused, debilitated and disoriented state, far from lessening the risk of harm to the public could be said, if anything, to have exacerbated it.

146. In these circumstances, I accept that PC Woodcock genuinely believed that further use of force was necessary to prevent Mr Curwen's escape and that his belief was objectively reasonable given the circumstances as they had transpired to that point.
147. The only remaining question, therefore, is whether it was objectively reasonable and proportionate to Taser Mr Curwen in the back as he was running away. Not without some hesitation, I have concluded on balance that the use of the Taser even in these circumstances was reasonable and proportionate. Given the pace of the entire incident and its very short compass (less than 2 minutes), I do not consider that this particular use of force can be considered entirely in isolation from what had gone before. From PC Woodcock's perspective, the threat posed by Mr Curwen remained as substantially the same and all other realistic options had been exhausted. None of the officers had all the information now available to the court and the proximity of Mr Curwen to a major road and the fact that he was clearly trying to make good his escape, despite being unsteady on Page 26 MRS JUSTICE DIAS Approved Judgment Curwen v CC Cumbria his feet, makes this one of those situations where it seems to me that the police are entitled to be accorded a margin of error.
148. I therefore find that there was no unreasonable or excessive use of force on Mr Curwen by any individual police officer. The claim for assault and battery accordingly likewise fails. Negligence
149. There was a debate between the parties as to whether the Defendant in this case owed Mr Curwen a duty of care before he was arrested and detained and under their control. On behalf of Mr Curwen, it was argued that he was owed a duty as a person being arrested, especially when the danger of injury had been created by the police themselves: *Robinson v Chief Constable of West Yorkshire* (supra) at [70]. On behalf of the Defendant, Mr Gold submitted that negligence was irrelevant in this case since the essence of negligence is inadvertence or carelessness and there was no suggestion that any of the officers acted inadvertently or carelessly.
150. Ultimately, it was common ground that (save in one limited respect) negligence does not arise as a separate question but stands or falls with liability for assault and battery, in the sense that if the force used against the subject is unreasonably excessive, then there will be a breach of duty.
151. However, Mr Buckett relied on the case of *Robinson* for the proposition that the police generally owe a duty of care to protect an individual from a danger of injury which they themselves have created. He argued that it was the police themselves who had created the situation of danger here by their heavy-handed overreaction to the threat posed by Mr

Curwen. I do not accept this. On the basis of the facts as I have found them, this was not a situation of danger which the police brought into being. On the contrary, they were responding to a dangerous situation created by Mr Curwen being in possession of a knife in a public place and I have held that their reaction to that situation was not unreasonable. It is therefore impossible to say that this was a situation created by them, as opposed to one which developed from the circumstances which they encountered and to which they responded reasonably.

152. Accordingly, I hold that there was no negligence in respect of the period before Mr Curwen was handcuffed.
153. It was nonetheless common ground that the police owed Mr Curwen a duty of care after handcuffing him and I am more doubtful as to whether they exercised all reasonable care in the provision of first aid and assistance, for example by putting something under his head or possibly attending to his head injury. However, the question of what the officers ought reasonably to have done or not done at this point is inextricably bound up with the nature of Mr Curwen's injuries. I did not hear evidence on any of these points which were dealt with as a matter of submission and I prefer not to express a view one way or the other. It seems to me that any claim that Mr Curwen's injuries were caused or exacerbated by a negligent failure to attend to him after he had been handcuffed can only realistically be determined at the same time as questions of quantum. Whether such a claim is to be pursued given the dismissal of the remainder of Mr Curwen's claims is of course entirely a matter for him and his legal advisers. Page 27 MRS JUSTICE DIAS Approved Judgment E.

CONCLUSION

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154. For all the reasons given above, the claims for false imprisonment and assault and battery fail, as does the claim in negligence prior to the point at which Mr Curwen was placed in handcuffs. I appreciate that this will come as a profound disappointment to Mr Curwen and his family. The entire episode was a tragedy for Mr Curwen who has been left with potentially life-changing injuries as a result and the Court expresses its deep sympathy for his plight and that of those who must now care for him. It will be of no consolation that none of the officers wanted or intended such an outcome but were trying to do their best in what was no doubt for them a frightening situation which spiralled out of their control. These events will have affected them as well.
155. It is always easy to criticise after the event on the basis that the officers could have made different decisions at various points. Obviously they could have done, in which case the outcome might have been very different. However, that is not the issue. There was a range of decisions open to them and the question is whether the decisions they did make were unreasonable in the circumstances as they honestly and reasonably perceived them to be. In this case I have concluded that they were not and, while I have not in any way relied on this

in coming to my decision, I note that my conclusion is consistent with the outcome of the IOPC investigation which determined that that there had been no breach of standards by any of the officers justifying disciplinary action. Page 28

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