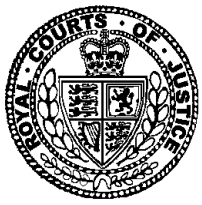

Neutral Citation Number: [2024] EWHC 3162 (KB)

Claim No.: KB-2022-005059

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
THE ROYAL COURTS OF JUSTICE

Date: 6/12/2024

Before:
MR JUSTICE RITCHIE
- -

BETWEEN

MR DALE JAMAL AMADU-ABDULLAH

Claimant

AND

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Defendant

Alison Gerry of counsel (instructed by **Hodge, Jones and Allen solicitors**) for the **Claimant**
Russell Fortt (instructed by **DWF solicitors**) for the **Defendant**

Hearing dates: 25-27 November 2024
- -

APPROVED JUDGMENT

Judgment approved by the Court for handing down. This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be at 10:00 am on 6.12.2024

Mr Justice Ritchie:

The Parties

1. The Claimant is a member of the public who was brought down by a police Taser when he was 14 and suffered facial injuries when he hit the road surface. The Defendant is the Commissioner for Police for the Metropolis of London who is responsible for the actions of the police officer involved in this claim.

Bundles

2. For the hearing I was provided with two lever arch files containing the trial bundle, an authorities bundle, two skeleton arguments and a video of the body worn camera (BWC) of Police Constable Adamson (PCA).

Neutral summary before determining the facts

3. The Claimant was part of a group of teenagers who, after dark, were either fighting or playing around in an Estate in Watermill Lane, Edmonton, London, N18 (the Estate) on 7th February 2020. A member of the public called the police and reported a group were running around on the Estate and fighting, a knife had been seen and they had been knocking on doors. The police attended in a van. The youths scattered by running off as soon as they saw the police van. The police gave chase and caught all of the youths. PCA saw the Claimant running past him, shouted a warning about his Taser and discharged it immediately. The Taser contacts hit the Claimant and brought him down onto the road surface causing a large deep gash above his left eye and fracturing his eye orbit bone. PCA handcuffed the Claimant, questioned and searched him. Nothing illegal was found and certainly no knife. One of the other young men had an imitation firearm in his pocket. The Claimant sued the police for assault and false imprisonment. The false imprisonment claim was settled. The claim for assault due to being handcuffed was also settled. The issue for this Court is whether PCA used reasonable force when deciding to "Taser" the Claimant. There are guidelines on when Tasers should be used and the Claimant asserted those were breached.

The Issues

4. Firstly, I must decide the facts. Then I must answer the following questions posed at the time the Taser was fired:
    - 4.1 Subjectively, did PCA suspect that the Claimant was carrying a knife and chasing other youths?
    - 4.2 Objectively, did PCA have reasonable grounds for suspecting, that the Claimant was carrying a knife and chasing other youths?
    - 4.3 Has the Defendant, via PCA, proven that the Claimant posed sufficient risk to the men he was chasing to justify using the Taser when balanced against the risks to the Claimant of injury from being zapped by the Taser?
    - 4.4 Did PCA fire the Taser in accordance with the police guidance? Did he give sufficient warning to the Claimant in the circumstances?

4.5 Overall, was the firing of the Taser the use of reasonable force in all of the circumstances?

4.6 If the Claimant succeeds on the claim for assault by Taser, what is the appropriate quantum of damages?

Pleadings and chronology of the action

5. Ignoring the allegations of false imprisonment and assault through using handcuffs, the relevant pleadings may be summarised as follows. In the Particulars of Claim (POC) the Claimant asserted he had never previously been in contact with the police and was aged 14. Although the police had been called by a member of the public and informed that "boys" were fighting on the Estate and one was seen with a knife, this was quickly clarified as not being the case. The police arrived and the "boys" ran and were chased and PCA tasered the Claimant, who dropped and hit his head on the road. The Claimant asserted this was an unreasonable and disproportionate use of force, was an assault and battery. The Claimant was a talented footballer with a 2 year contract issued by Leighton Orient Academy who had gone onto the Estate to meet friends. They played tag and were running and laughing but not arguing or fighting. Then they decided to walk to the shops. Some were in school uniform. Six officers attended and when the boys saw the police van they turned and ran into the Estate including the Claimant who did a U-turn to run away. The Claimant was worried because the boys had been noisy, he was afraid of getting into trouble and fearful of the police. One boy stopped under the threat of being tasered and was detained by PC Day, PC Willmott and PCA. This occurred at 19.56 hours. PC Day then chased onwards after two boys, threatened them with a Taser and they stopped. PC Day told PCA (over the radio) that he thought other boys were running back towards him, so PCA chased a group including the Claimant. The Claimant was not aware of being chased at this time, he had run in a loop and as he ran back past PCA towards the shops, on his own, at 19.57 PCA shouted a Taser warning, fired his Taser and hit the Claimant on the left shoulder. The Claimant heard no warnings. The POC then set out the conversation between PCA and the Claimant after the Claimant had fallen. The pleading stressed that the Claimant showed no aggression, no resistance, said he felt dizzy, PCA expressed concern and asked for first aid to be given. PCA hand cuffed the Claimant, stood him up then sat him down, then stood him up again and during the course of about 25 minutes searched him, but mainly did so in the first 6 minutes. An ambulance was called at 20:05. PCA found a pair of black gloves in the Claimant's possession which he said he had found. PCA asked why the boys had run off and the Claimant said he thought they were not allowed on the Estate. PCA told the Claimant it was stupid to run when the police shouted "armed police" and the Claimant said he didn't hear. When asked by PC Wild why he ran when the police arrived the Claimant said he had been playing hide and seek. Eventually, at 20:20, the Claimant's mother was called by a bystander. PC Wild asked PCA why the handcuffs had not been removed and PCA then removed them approximately 25 minutes after they had been put on. An ambulance took the Claimant to hospital. The Claimant was

later transferred to the Royal London Hospital and the Claimant's mother felt pressured into signing a document about medical records at the hospital. The Claimant was discharged some six days later, having suffered a fractured skull and damage to his optic nerve. He has long term blurred vision and left eye vision which is severely impaired. It was pleaded he is unlikely to play football at a high level. The particulars of assault were that: there were no reasonable grounds to suspect that the Claimant had a knife and that excessive and unreasonable force was used in deploying the Taser; insufficient warning was given; insufficient time to respond to any warning was given and it was alleged there was no need to discharge the Taser. It was alleged that the Claimant was of "slight build" and of young age and hence the Taser was more dangerous to deploy against him and that PCA failed to consider the risk of falling and head injuries. It was also pleaded that the Taser had been used for the purposes of stop and search. In relation to the handcuffs the Claimant pleaded that he was obviously injured and in pain, fully compliant, not aggressive, incapable of running away and dizzy, yet the handcuffs were deployed for 20 minutes after PCA completed his search. The Claimant was not arrested. It was also pleaded that the Claimant has a scar on his left shoulder from the Taser. Aggravated damages were pleaded inter alia because the use of the Taser was asserted to have been influenced by racial stereotyping of the Claimant as a black youth and hence PCA considered it more likely that he was involved in a gang and carrying a knife.

6. In the Defence and Amended Defence the claim was denied. The italic highlighting below is mine. The Defendant pleaded that the caller initially made his report and then *subsequently* retracted any assertion of seeing a knife and asserted he assumed it was a knife because something was seen being put into the jacket of one of the young men in the group. Later in the same report the caller said somebody was being beaten up "right now". PCA did not receive the *subsequent information* so was entitled to and did proceed on the basis that one or more of the youths had or may have had a knife. PCA believed that he saw "an article" in the Claimant's hand before Tasering. After PCA was told the youths were running towards the police van, he ran in that direction and saw the Claimant *chasing other youths and feared he was trying to assault them.* The Claimant had been told to stop "a number of times" and ignored these commands. PCA *saw something shiny* in his hand and feared he had a weapon. PCA shouted at the Claimant to stay where he was and that he had a Taser. Paragraph 16 of the POC was admitted (save that it was asserted that the Claimant heard what PCA shouted as he fired the Taser) namely: *"At 19:57:17 PC Adamson shouted he had a taser and for the boys to stay where they were, immediately deployed his taser while pointing it at the Claimant."*. PCA told the Claimant he was detained for a search. In para. 29 it was asserted that the force used was in accordance with the *Criminal Law Act 1967*, S.3 because of: the possibility that the Claimant had a weapon; his determination to make off despite repeated commands to stop and PCA's perception that the Claimant was chasing after other youths with an intention to cause them harm, so he had to be stopped urgently and the use of the Taser was the most

appropriate means of doing so without placing PCA in close proximity to a potentially armed man. The information which PCA had was: (1) a fight had occurred; (2) one man had a knife; (3) he saw a shiny object in the Claimant's hand; (4) the Claimant had run from the police and this was justification for a search. The IOPC found the Claimant was of adult build. PCA gave a warning and had to use the Taser immediately to prevent the Claimant from pursuing other youths. The Claimant was not in school uniform. He made no attempt to stop. The Taser was not deployed to carry out a stop and search. Racial stereotyping was denied. PC Willmott searched two boys and found an imitation gun, a balaclava and two pairs of gloves. The Claimant was put to proof on quantum.

7. The amended POC deleted the litigation friend because the Claimant had reached adulthood. The re-amended POC deleted reference to false imprisonment (that claim had been settled).

8. The amended schedule of loss came to £81,457.77 excluding pain, suffering and loss of amenity. The heads of loss were: A. pain, suffering and loss of amenity; B. past loss for a damaged jacket; C. future loss and expense relating to medical procedures and loss of earning capacity under the principle in *Smith v Manchester*. The Defendant's counter schedule amounted to £42,411 excluding pain, suffering and loss of amenity but was added up inaccurately and the actual total was £48,457.77.

The Law

9. The parties agree the relevant law. The tasering was an assault and battery unless PCA came within his powers to use force set out in S.3 of the *Criminal Law Act 1967* or S.117 of *The Police and Criminal Evidence Act 1984* (PACE)*:*

> **"3. Use of force in making arrest, etc.**
> (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."

> **"117. Power of constable to use reasonable force.**
> Where any provision of this Act—
> (a) confers a power on a constable; and
> (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer, the officer may use reasonable force, if necessary, in the exercise of the power."

10. The case law interpreting these sections provides guidance to this Court. The burden of proving that the force used was reasonable falls on the Defendant. The test the Courts apply when considering whether the use of force was reasonable has two steps: trigger and response. Firstly, the trigger: the Court determines what the police officer subjectively, honestly understood the facts to be which he asserts justified the

use of force. Secondly, the response: the Court decides objectively whether the use of force was reasonable on those facts. There is a finesse within step one. If the officer made a mistake as to fact he can only rely on it if the mistake was a reasonable one to have made.

11. In *R (Officer W80) v Independent Office for Police Conduct* [2023] UKSC 24; 1 WLR 2300; the Supreme Court (Lords Lloyd-Jones, Stephens, Sales, Leggatt and Burrows) considered the civil test and ruled as follows:

> "*The law as to the use of force in self-defence*
> (a) *Two limbs to self-defence*
> 14 There are two limbs to self-defence in both criminal proceedings and in civil actions. They can be conveniently described as the trigger and the response.
> 15 The first limb, the trigger, is a factual question; what did the individual genuinely believe was happening to cause him to use the violence that he did?
> 16 The second limb, the response, is a question of reasonableness; was the individual's response reasonable in all the circumstances?"
> …
> "(c) *Self-defence in civil actions*
> 27 In *Ashley v Chief Constable of Sussex Police* [2008] AC 962 the chief constable faced, inter alia, a civil claim for the tort of battery, arising out of an incident in which a person had been shot and killed by a police officer. Lord Scott of Foscote (at para 16) adopted from the judgment of Sir Anthony Clarke MR in the Court of Appeal in that case the identification of three possible approaches to the criteria requisite for a successful plea of self defence, namely:
> (1) The necessity to take action in response to an attack, or imminent attack, must be judged on the assumption that the facts were as the defendant honestly believed them to be, whether or not he was mistaken and, if he made a mistake of fact, whether or not it was reasonable for him to have done so (solution 1).
> (2) The necessity to take action in response to an attack or imminent attack must be judged on the facts as the defendant honestly believed them to be whether or not he was mistaken, but, if he made a mistake of fact, he can rely on that fact only if the mistake was a reasonable one for him to have made (solution 2).
> (3) In order to establish the relevant necessity the defendant must establish that there was in fact an imminent and real risk of attack (solution 3)."
> "32 Under the civil test the first limb (the trigger) is addressed on the basis of the facts as subjectively understood by the individual. However, under the civil test if an individual made a mistake of fact he can only rely on that fact if the mistake was a reasonable one to have made. So far as the second limb (the response) under

> the civil test is concerned, the objective standard of reasonable use of force is to be assessed against the background of the facts as subjectively understood by the individual, subject to the qualification that if an individual made a mistake of fact he can only rely on that fact if the mistake was a reasonable one to have made. Once again, there are both objective and subjective elements. Although the civil test has
> been termed "objective", it combines both subjective and objective elements and it is therefore more accurate to refer to it as "the civil law test".

The relevant Guidance

12. All Tasers are yellow and one type looks like this:

Guidance on using a Taser was issued in 2019. Officers must be trained before they are authorised as authorised forearms officers (AFOs). Under para. 5.4 they must be carried overtly by AFOs. I set out a relevant paragraph below:

> "5.9 General
> TASER will not be used as a compliance tool. This is to say that TASER is not to be used to impose the will of the officers on a subject who is failing to respond to their instructions. TASER must only be used in accordance with the NDM."

13. In February 2020 the College of Policing issued Guidance on Taser use. This describes that the X2 Taser, which PCA used, as having an operating range of 7.6 metres. The effects of the use of the Taser were described as follows:

> "**Effects**
> The usual reaction of a person exposed to CED discharge in probe mode is loss of some voluntary muscle control accompanied by involuntary muscle contractions. During the discharge the subject may:
> • not be able to control their posture – consider risk of injury from uncontrolled fall
> • experience their legs going rigid, which could be mistaken for kicking out
> • (especially if they are in prone position) convulse, curl up in a ball, spasm, or stiffen (plank)
> • experience intense pain
> • call out or make involuntary vocal noises

• not be able to respond to verbal commands during the discharge
• be confused or disorientated after the cycle
• feel exhausted after cycle
• 'freeze' on the spot.

Loss of posture and resulting falls could result in head injury, either from the subject's head hitting the ground or from collision with nearby rigid objects (e.g. tables, chairs or walls). This may result in the subject falling to the ground, causing various secondary injuries, or being exposed to other risks."

…

"**Deployment**

The term 'deployed' means that an officer has been tasked to an incident (by a supervisor trained in the use of the National Decision Model (NDM)).

The CED may be deployed and used as one of a number of tactical options only after application of the NDM. It should be readily available, and once deployed, normal supervision practices will apply. It is not practicable or possible to provide a definitive list of circumstances where a CED would be appropriate. The information and intelligence informing the decision to deploy an officer with a CED is significantly lower than that required to inform its use."

…

"The duration of the initial discharge and any subsequent discharge must be proportionate, lawful, accountable and absolutely necessary (PLAN).

Incidents where subjects are already contained or restrained may be subject to closer scrutiny or interest. Any medical risk may be increased the longer or more often the device is discharged."

…

"Verbal warning and contact

On first verbal contact, officers should normally:

• identify themselves as police officers and state that they are equipped with a CED
• clarify who it is they are seeking to communicate with
• communicate in a clear and appropriate manner.

Where weapons are fitted with torches or laser sights, officers should consider the effects of their use during any confrontation.

Oral and visual warning to the subject

Where circumstances permit, officers should provide the subject with a clear warning of their intention to use a CED.

They should give sufficient time for the warning to be heeded, unless to do so would unduly place any person at risk, or would be

> clearly inappropriate or pointless in the circumstances of the incident"
> …
> **"Risk factors**
> There are a number of factors which may influence the operational use of CEDs. These include, but are not limited to:
> • head injuries from unsupported falls
> • repeated and/or prolonged application of discharge
> • avoidance of sensitive areas (primarily head, neck or genitalia)
> • pre-existing medical conditions
> • positional asphyxia
> • subjects already restrained
> • acute behavioural disturbance
> • vulnerable people
> • children and people of small stature
> …"

I work on the basis that PCA knew all of the above and he accepted that he did in his evidence.

The witness evidence

14. I heard evidence from the Claimant and PCA. I read the witness statements of Ayisha Amadu and Dean Dennis. I read the medical reports of Doctor Starr, Doctor Cubison and Mr Parkhouse. I viewed the BWC video many times.

The Claimant

15. The Claimant's earliest witness statement was dated 12 April 2020, two months after the incident and was given as part of his complaint to the police/IOPC. He asserted that on the 7th of February 2020 he was not well, felt sick and was coughing so stayed off school at home but felt better by 15:00 to 16:00 in the afternoon and arranged to meet a friend after school at the Estate. They texted more friends from school and from the White Star football club and a total of around seven met, hung out and chilled, playing games including Family IT tag on the Estate. This game involved running around and touching the target but not grabbing. They were laughing and quite noisy but they were not arguing or fighting and they had no weapons. They were all male, six were black and one was white, but the white male left before the incident. They eventually decided to go to the shops. The Claimant was walking a bit ahead of the group with one friend when he spotted the police van, with its indicators on turning right into Watermill lane. They all did a U-turn and ran back into the Estate in different directions. The Claimant was worried that the residents had called the police because they had been making too much noise and he was afraid. He did not see the police van stop or the police get out. He turned right off Watermill Lane's West/East branch onto the North/South branch. He ran a loop coming back down to the West/East branch leading to the shops and was not aware of

police officers chasing him. When he reached the West/East branch he saw a male officer and he ran past the officer, leaving the officer to his left hand side. He had nothing in his hands. He could see the police officer. He could not see a Taser. The police officer did not tell him to stop and did not warn the Claimant that he would use his Taser. He did not say anything. The police officer tasered the Claimant almost immediately and things happened fast. A couple of seconds after running past the officer he felt himself dropping. The Claimant then gave details of what happened after he fell to the ground and the conversation with the police officer. He said he had three or four "friends" nearby and more officers stopped and searched them. Then he was wrapped in foil and an ambulance called. He was not arrested but was taken to hospital. He asserted he was really shocked at being tasered. He was 14, doing nothing wrong, did not threaten anyone, had no weapon, had nothing in his hand, was not told to stop and was not warned that he would be tasered. The Claimant asserted he wanted to know why the officer tasered him.

16. The Claimant's second witness statement was dated the 14th of June 2020 and in that he asserted he had worn no watch and no jewellery. He had a phone in his pocket. One of the officers told him at the hospital that "the officer" thought he had a knife and was about to stab somebody. He asserted this was totally untrue and he was upset by this. He was also upset that the social services had contacted his school to ask if he was in a gang. He asserted that the police thought he was in a gang because he was black and he believed he was discriminated against because if he had been white the officers would simply have spoken to him. He asserted the officers thought he was a ringleader because he was tall.

17. In his witness statement for the civil claim, which was sworn on the 27th of March 2024, he set out his life before the incident which I will deal with later. He had never been in trouble with the police and was a very talented footballer who had been signed up by Leyton Orient on a two year contract, having trialled twice for Chelsea Football Club. He said his mum trusted him to go out and he often did, with friends, using pocket money his mum gave him. He said she had warned him not to go into buildings and not to make too much noise. He relied on his earlier witness statements but went on to assert that he did not hear PCA warn him and that he would have stopped if he had heard. He said he had found the rubber gardening gloves outside his school a few days before and kept them. I shall deal with his post-incident injuries and recovery later in this judgment.

18. In his evidence in chief the Claimant stated that he and his friends had been playing in the grassy area on the Estate between the Eastern block and the central block (there is a map later in this judgment). He asserted that there were six of them who decided to walk to the shops aged between 13 and 14 and that one was white and the rest were black. I note that this contradicts the evidence he gave in his first witness statement that the white friend had left by this stage. He explained that when he ran from the

police up the North/South branch of Watermill Lane he then turned left down a path past the North end of the East block on the Estate and then turned left again, either through the play area they had previously been playing in or ran past that and past the central block and turned left through the car park, eventually turning left again onto the West/East branch of Watermill Lane. He said he was not aware of where any of his friends were, saw no one in front of him and was not aware of any officers behind him. As he turned on to the West/East branch of Watermill Lane he ran back towards Bull Lane and heard nothing. He was not aware of being chased. As he was running, for a split second he noticed PCA on the path at the intersection of the West/East branch and the North/South branch of Watermill Lane. This was near the square electricity substation building numbered 14 on the map set out below. It was so fast he barely saw anything and he heard nothing.

19. In cross examination the Claimant asserted he had never been in trouble with the police, had never been stopped and had no reason to fear the police. He accepted that previously when he had seen police officers he had not run away. When it was put to him that the police van had no blue lights flashing and no sirens and he had no reason to run away on his case, he stated that he initially thought that they were not allowed on the Estate because it was "gated". However, he accepted that he had been on the Estate many times before with his friends and that children often played on the Estate. He accepted there was nothing suspicious in children playing on the Estate. He could not recall whether the police van had blue lights on or sirens on. He denied he had been fighting. He denied knowing anything about anyone putting a weapon in their jacket. He denied knowing that one of his friends had a BB gun in his pocket. He denied that that was the reason why they all ran. He accepted that they split up suddenly in a starburst pattern. He stated he had no concern about his friends when he was running and he did not look back. He asserted he could not recall running with anyone. He recalled nobody running ahead of him, they were all behind him and he asserted he never looked back. He asserted that despite fleeing himself he was not worried about his friends who were also fleeing. When challenged that he had been fighting, he stated he would not say he was fighting, he was playing Family IT with his friends. He denied having a weapon in his hand and he denied being aware that officers had told him to stop. He denied hearing anything. He said that he was hit "out of the blue" and denied hearing any shout and stated things happened in a split second. Having seen the BWC video he accepted the officer did shout but he said he did not hear it. He accepted he was well over 6 foot tall and of athletic build. He accepted, having heard the BWC audio replay, that PCA told him that he had been detained for the purpose of a search, not that he had been told he had been tasered for the purpose of a search. He could not explain why he had kept the gloves that he had found at school when they weren't his. He accepted there were no gates on the Estate so it was not a gated Estate. I will deal with his evidence about his injuries and the effect on his life later. When asked why he kept running after he turned into the

North/South branch of Watermill Lane, he said initially he was scared and then he thought he would get home and run to the exit after he had looped back around.

Other witnesses

20. Ayisha Amadu is the Claimant's mother. Her first witness statement was dated 17.4.2020. Her second was dated 14.6.2020. She is unable to read or write. She gave her evidence of the Claimant being unwell in the morning and improving in the afternoon. She gave him permission to go out. She went to him at hospital and was shocked. She felt pressurised into signing a form at hospital relating to his medical notes. She gave some evidence of conversations at the hospital with unnamed police officers about what happened. She was very upset about the injuries. She has been very anxious about him since. She received some phone calls from the police after the event inquiring as to how the Claimant was recovering. She did not wish to receive them and told the police not to call her again. She wanted a full investigation of what had happened to her 14 year old son who had suffered serious injuries. She was unhappy that Enfield social services had contacted her son's school inquiring whether the Claimant was in a gang. She complained about the referral to the social services by the police. She complained that the police had told doctors at the hospital that her son had a knife and was about to stab somebody. This is what led to the referral to the social services. She found this shocking, unfair and worrying. She believes that the police discriminated against her son and stated: "*I believe that Jamal was discriminated against by police officers at the scene because he is black. I understand that the police attendance followed a report that children were being noisy or causing a disturbance."* She clearly had not been told of the full detail of the caller's complaint to the police on the 7th of February 2020. In her witness statement for the civil proceedings she explained her background and that she worked as a part time cleaner at a primary school. She explained that the Claimant was a sweet boy about whom no one had complained, including teachers and neighbours. He was easy going and level tempered. He was a talented footballer who had good relationships with neighbours and school teachers. He had successfully honed his skills at White Star football club and had been invited to trial for Chelsea youth football teams but had been offered a contract by Leyton Orient. I will deal with the rest of her evidence in relation to quantum below.

21. Dean Dennis provided two witness statements, the first dated 24th June 2020, the second dated 10th April 2024. He is the CEO of Mencap in Enfield and has worked as a young persons' mentor. He is a neighbour of the Claimant. He went with the Claimant's mother to hospital on the 7th of February 2020. He recorded what the police told him at the hospital, stressing that two officers told him that the police had received a call informing the police that kids were on the Estate and possibly had weapons. When the police arrived the kids ran away in a starburst and had been told to stop and the police had chased them and eventually caught all of them. A female officer had responded to his questions as to why the kids had run away and had not

stopped by saying she did not know and was not there but it was probably because they were 14 and were afraid. On what he heard, he was not satisfied that the tasering was justified. The officer explained that no weapons had been found but weapons might have been discarded. He gave evidence of his opinion that a Taser should not be used unless the person posed a threat to officers or others.

PCA

22. PCA wrote his first witness statement on the night of the incident. He was the driver of a marked police van together with five other officers: PCs Button; Brooks; Day; Wild and Willmott. They received a report of boys running around and fighting, armed with a knife in Watermill Lane. He drove into Watermill Lane from Bull Lane using a silent approach. He saw five to six males in dark clothing run off when they saw the police van. It was dark. They were 50 metres away. The street lights were on. They ran from the South footway of the West/East branch, across the road, into the junction with the North/South branch which passes between a block of flats and a car park. He drove in pursuit of them, took the first right turn and then turned right again into a car park (shown on the plan below) with a red road surface. He pulled up level with one male and stopped. The male turned and ran back towards the North/South branch of Watermill Lane. PCA got out and ran after the male with PC's Day and Willmott. PC Day pulled his Taser and PCA drew his. PC Day aimed (but did not shoot) and the man stopped and went to the ground. PCA put his Taser in its holster and PC Willmott and PCA restrained the male who they later found out was called Mr 'A'. He was cuffed. PCA Day ran off chasing the other men. PCA left PC Willmott and asked PC Day via his radio where he was and received the response "back to where the carrier came in". PCA had a strong reason to believe the males were in possession of knives or other weapons which he believed they were using against each other and could use them against police officers. He wrote that he considered his items of PPE and decided that Taser was the best option allowing him a safe distance from any bladed weapons. His spray would not be immediate or as effective and his baton would require close proximity to the suspect. He ran back towards the West/East branch of Watermill Lane. As he did so he could see three to four males dressed in dark clothing running along the West/East branch of Watermill Lane towards Bull lane. In that location the street lighting was "very poor" but wrote:

> "I could see one of the group was very tall and thin and at this time I could see what appeared to be something shiny in one of his hands. At this point my risk assessment was heightened further as prior to this the information provided was from a third party, however I could now see something for myself which I believed to be a weapon. I again drew my Taser X2 (serial number X300054NF) as I feared for my own safety and I also he appeared to be chasing the other males and I believed he may try to stab one of them or injure myself or other officers in order to escape. As

> initially the call that had been received stated that boys were fighting and a knife had been seen by the initial informant. I was also aware that whilst giving chase PC3777NA had given numerous loud verbal commands shouting "Stop police". These commands had clearly been ignored. I ran towards the tall thin male who appeared to be aged approximately 18-20 years old and shouted loudly and clearly "POLICE WITH TASER, STAY WHERE YOU ARE" and aimed my Taser at him with the red dots illuminated and trained on him. This command was also ignored. At this point I believed he was very likely to injure someone and had no regard for police presence or repeated police commands and no intention of stopping what he was doing or surrendering to us I also believed he would evade capture. I then fired my Taser at him striking him in what appeared to be the rear/side upper body. Taser was effective immediately and the male fell forwards as he ran. I got to him a few seconds later and he appeared to be conscious and breathing. I told him to stay where he was and stop resisting. At this time I was aware that there were other males still running towards me, who may also have been armed with weapons and may try to injure me or the male I was now detaining. I was aware that I still had one cartridge loaded in my Taser X2 which I could use if necessary. I then aimed my red dots towards them and shouted to them "Get on the floor now". This was immediately effective. They stopped running and were then detained by other officers."

PCA then dealt with the Claimant asking if he was alright to which he responded "no". PCA saw the Claimant could move and had a facial injury and reloaded the Taser. The Claimant asked what was happening and PCA said he was detained for a search and that the police had been called due to people seen running around with knives and fighting. The Claimant said he did not have knives and that PCA could search him. PCA asked why he had run off and told the Claimant he was detained for a search and the Claimant said he thought he had done "something wrong". There were other males around by this time and the Claimant asked if he was bleeding. PCA shone his torch in his face and saw blood from his nose and swelling above his eyes and told the Claimant. PCA reported that he had deployed his Taser and he handcuffed the Claimant. The Claimant was compliant and said he was feeling dizzy. I do not need to summarise in detail the rest of what he wrote had happened because it was shown on the BWC video which I will return to below. The Claimant was moved to be sat against the South footway wall in the North/South branch of Watermill Lane and he was searched. Gloves were found in his jacket. When asked why he had them the Claimant said he had "found them". PCA wrote that there was a high level of crime in N18. He found no knife on the Claimant who later said that he

had been playing hide and seek and that was why he was on the Estate. Another PC then informed PCA that she had found an imitation gun on Mr A and PCA informed the Claimant of the gun and considered that the Claimant was "not surprised" when he heard this. Later, ambulances arrived and some of the Claimant's friends called his mother. PCA spoke to the mother. PCA stated he believed his actions were proportionate. He had been a police officer for 16 years and had noticed an increasing trend in knife crime in Edmonton, especially amongst younger people and he exhibited his BWC.

23. Here is the map of the Estate provided to the Court:

The place where the police van stopped is marked by me as a black rectangle on the plan. The place where Mr A was stopped is marked: "A" on the map. The route which PCA ran is marked with an arrow from point "A" ending at point "B", which is the point where the Claimant was tasered and fell. The last part of the Claimant's running route, before he was tasered, is marked "C" with an arrow.

BWC video

24. I have carefully watched the BWC video out of Court and in Court on multiple occasions. I have also read the transcript of the words said and recorded on the BWC audio. I interlink some of my factual findings with the BWC now. I do so on the balance of probabilities. The timings are as follows. At 19.57.00 PCA left PC Willmott, she having captured Mr A. 7 seconds later he received the information from PC Day that some of the group were returning to where the police van had turned into the Estate. PCA started running from point A on the map along the pathway parallel to the North/South branch of Watermill Lane and towards the West/East branch. During this run he pulled out his Taser (visible). 10 seconds later (19.57.17) he shouted: "Police with Taser, stay where you are" whilst running and the next second the Taser was fired. PCA kept moving, but much slower, towards the Claimant and 3-4 seconds later PCA stated "stay where you are and stop resisting" and the Taser light was being aimed at the Claimant and showed the Claimant. Both PCA and the Claimant were at point B on the plan at this time. PCA was kneeling and holding the Claimant down, then at 19.57.24, there were shouts from the right hand side of PCA and he turned to his right, facing to the West away from Bull Lane, aimed his Taser and said "stay where you are, get on the floor" then "get on the floor now". I can hear men out of video saying "oh my God, get on the floor" and the silhouette of PCA shows he is clearly aiming his Taser down the road, to the West, whilst holding the Claimant down. It is apparent that at no time did PCA turn his body to the East, towards Bull Lane and shout at or talk to anyone to the East of point B. So, if the Claimant had been chasing youths who were in front of him, as PCA asserts in his defence, I would have to believe that PCA completely ignored those men after firing the Taser and focussed only on the youths to his West, coming from the Estate towards him. Later he asked the Claimant what happened and much later PCA asked the Claimant whether someone had threatened him with a knife (at 20.07). There was a discussion about why the Claimant had run when the police arrived and about being allowed to walk on the Estate. The Claimant asserted that he never heard the warning of "armed police". At 20.20 PCA stated, in answer to a question from another officer: "*Well he looked like he had something in his hand and he was chasing one of the kid when I came round here so that's why he got tasered" … "I don't know what he had in his hand. I don't know where it's gone I can't see anything on the floor."* Thus, it is clear that the first time PCA mentioned that he saw the Claimant chasing other youths with "something" in his hand was 23 minutes after the tasering. It is also clear that PCA never asked the Claimant why he was chasing other youths or where the knife he now says the Claimant was carrying was.

The police documentation and IOPC transcripts

25. PCA completed a standard form on the use of force. This was done at 05.31 am in the morning of 8.2.2020. He described the behaviour of the Claimant as "active resistance". He wrote that his information: indicated a weapon may be present and police were called for "males fighting with knives", the "subject ran off seeing police", "believed armed". He wrote that he used force to protect himself, the public, other officers; prevent an offence; effect a search; prevent harm and prevent escape. PCA also completed a Stops Record called "sanitised". In that he wrote:

> "Police called to scene where males were reportedly seen to have been fighting with knives in the street (CAD 7208/07FEB20) On police arrival group ran off. Subject male was part of group and appeared to be carrying a shiny object, possibly a weapon in his hand while running away and chasing after other males. Repeated commands to stop for police with Taser were ignored and male was Tasered and detained. he was then searched under S1 PACE for weapons. This occurred in an area with high levels of violent crime, including knife crime."

I note that by this time, the day after the incident, PCA had increased the information received from the public from one knife to "knives" and increased his report of warnings thus: he asserted that the Claimant ignored repeated commands so stop for police Taser. He had also enhanced what he asserted he saw the Claimant carrying from "something" to "a shiny object".

26. On a date which is not clear to me but asserted by the Defendant to have been 8.2.2020, PCA completed a Merlin Form because the Claimant was a child. In that he wrote:

> "On the date shown the subject male was in Watermill Lane, N18 when a call was received to police from a member of the public stating there was a group of males in the street fighting with knives. Police attended, on seeing police the subject, along with a group of about 4 - 5 others he was in company with immidiately (sic) ran off away from officers. He was chased and multiple commands were given to him stating "Police with Taser" "stay where you are", however these were all ignored. He appeared to be carrying a shiny object in one of his hands which was believed to be a weapon. He was red dotted with Taser but still ignored commands. He was then Tasered and detained and searched under S1 PACE for weapons. no weapons were found."

I note from this report that there is no mention of the Claimant chasing other youths or that PCA was worried that he would attack or stab them. I also note that by this report PCA was asserting that the Claimant had been told multiple times that the Police had Tasers and ignored those commands. This was not a matter that could have been within his personal knowledge because he had not run with the Claimant around the Estate. PCA also stated that he red dotted the Claimant and he ignored this. However. From the angle at which PCA tasered the Claimant any such dot would have been on his back or left shoulder so how could he have responded to the red dot? Also, the time between shouting and firing was one second which was wholly insufficient for the Claimant to respond.

27. PCA was interviewed 7 months later, on 17.9.2020 by the IOPC. Much of that focussed on the hand cuffing and potential discrimination in the context of the Claimant's black skin, his injuries and dizziness and the time taken to release the Claimant. However, the use of the Taser was covered. PCA reverted to mentioning that the report from the caller mentioned one knife. He stated that he arrived in the police van with the blue "lights going" (which is not what he reported in his first witness statement: a silent approach). It was clear from the interview that documents showed that the updated caller information that the knife was "assumed" was probably not communicated to PCA or the other police and PCA confirmed that. In relation to the use of the Taser he said this:

> "He came running across here and I was coming, because we had one detained here, somebody else had chased him round this block of flats shouting for him to stop and shouting police, armed police I think, erm and then I was running sort of like and he was chasing somebody."

Just after that statement he said:

> "it would be approximately four inches long, shiny, I believe it was metal, I believe it was a knife."

Thus, for the first time, 7 months after the incident, PCA was suggesting he could recall the length of the knife blade which he saw being carried by the Claimant that night.

28. In his evidence in chief PCA confirmed the truth of his previous statements and did not wish to correct anything. He stated there were five officers in the police vehicle with him and the lights and sirens were off so they could make a stealth approach (contradicting his IOPC interview). He saw the youths, who were further down Watermill Lane, near the junction with the North/South branch. There were about 6 of them. As he drove in, they started to run off. The youths ran into the North/South

branch of Watermill Lane and split up. Some went right into the car park and others ran straight onwards to the North. He drove alongside some of the youths in the pink car park and stopped. They turned and the police got out and chased them. The police caught one, but PCA did not know where the others went. They got the teenager on the floor and PC Willmott held him. PC Day was chasing the other males and PCA heard him shout "stop" two or three times within earshot, so between 50 and 100 metres away. After that PC Day said they were coming back round to us. PC Willmott said she was OK and PCA knew there was only one way out of the Estate, so he went to intercept them. He believed he ran on the path between the pink car park and the electricity substation numbered 14 on the plan above. He saw three to four males running eastwards and one appeared to be chasing the other three with something in his hand. PCA believed that the male would assault the others and went to deploy his Taser to prevent injury through assault by the male, potentially causing GBH. PCA did not have a great view but he saw something shiny and pointy. He shouted but he did not have a lot of time to take action and somebody was imminently going to be hurt. He had one to two seconds. He aimed at the Claimant's body mass. One electrode hit his hat, the other hit his jacket and he was incapacitated immediately. When the Claimant asked what had happened PCA said he had been tasered and he was being detained for a search because he believed he possessed a weapon. He cuffed the Claimant and at that stage he did not know if he had a weapon and PCA was alone. He kept the Claimant in cuffs so he could complete his search fully, which was difficult because he could not stand well. He searched him sitting. He could not fully search his waistband. He went to search the road area too but he found nothing. There were lots of people milling around. Two people came, eastbound, and they were told to stay where they were and they complied, so PCs Wild or Brooks detained them. He did not see PC Day come back, who had detained somebody else. In relation to the 2-3 males in front of the Claimant, they must have gone East towards Bull Lane.

29. In cross examination PCA said he was an experienced officer and was Taser authorised. He understood it was his responsibility, when firing the Taser, to make sure that he did so lawfully. He agreed the Taser was not a compliance tool and it was not to be used to impose the will of the officer on a subject who was failing to respond. It was only to be used in accordance with the guidance. His assessment of the risk posed was there was a risk of use of a knife and so he was acting in the defence of another. He did not deploy the Taser for a search. He did consider the taster to be personal protective equipment (PPE) but accepted it was listed as work related equipment (WRE). He used it to protect the public. He accepted that Tasers had the potential to be lethal and caused many injury risks secondary to their use. They have a range of 7.6 metres or 25 feet. When he deployed the Taser, 1 electrode hit the Claimant's head and the other his shoulder and so it discharged its electrical charge into the Claimant. PCA thought it hit the lower part of the Claimant's jacket. It caused a risk of an uncontrolled fall. This was a known risk and it was known that

head injuries could result. The risk was increased when running at full speed. PCA agreed that he had to balance the risk of injury to the Claimant to the risk of injury caused by the Claimant were he to attack those in front of him. In relation to the Use of Force form, the police were required to fill it in and he accepted it was important to be truthful and accurate. He accepted that he should have put in the form that he did not have time to give an effective warning and wait for a response but he did not put that in. In relation to the events, PCA said he heard the original information from the caller, not the later information. Calls come into a call handler, they are typed into a computer and sent to the control room who send out information over the police radios. At 19.54 he had received information about boys fighting with a knife and he and his fellow officers offered to attend. He thought the boys were involved in something nefarious and that was why they ran off. He did not accept they were acting "as children do" and pointed out that an imitation firearm was found on one of them and that he saw a knife. He had been called to deal with males who were fighting. He could not tell what their skin colour was when they turned and ran away. He strongly suspected that they had been involved in the fight. He did not recall whether all of the six police officers had Tasers. After getting out of the van PC Day drew his Taser, so PCA drew his Taser and one of the boys dropped to the ground as a result. He accepted that PC Day later said that some males were coming back towards the police vehicle but did not say the word "loop". It was put to him that he gave no time for the Claimant to respond to the warning and he accepted that. It was put to him that he saw no men running in front of the Claimant and he rejected that suggestion. PCA asserted there was a serious risk because the Claimant was holding something and chasing other men. He is certain that the Claimant would have been aware he was being chased around the Estate because he had been given repeated demands to stop. Although his BWC microphone did not pick up the shouts, he did hear other officers shouting around the Estate. He accepted that he emerged from behind the electricity substation marked 14 on the map above and stated he could see across the road before he reached the substation. He saw the Claimant. It was dark and he did not shout when he was running towards the substation at point 14 on the map. He accepted he could not have seen anything in the Claimant's hand before he passed the electricity substation marked 14 on the map but stated he could once he got past that building. It was a split second emergency. PCA stated that the Claimant failed to respond to PC Day who had chased him around the Estate. In real life he did not have time to give the full version of the warning and wait. When asked why he did not shout at the three men who he asserted were ahead of the Claimant, after he had tasered the Claimant, PCA stated the Claimant was his main priority. PCA stated PC Brooks shouted to others to get on the floor. PCA did not chase after the other two or three boys who were heading eastwards in front of the Claimant. He stated there had been an imminent threat to those boys and PCA believed the Claimant posed a greater risk. He accepted that his head was not turned towards the boys who had run to the East and he did not recall looking eastwards and he accepted that he never said to the Claimant: "why were you chasing those boys?". However, he raised

that he did mention that he saw the Claimant chasing boys about 20 minutes after he tasered the Claimant. He first carried out a search to make sure that he was safe from being stabbed by the Claimant before he called the police control room. He did not believe the Claimant lost consciousness. He accepted he did not find any sharp object near the Claimant but he did not search a wide area. He accepted the Claimant did not have time to throw anything having been tasered. PCA asserted that he shouted when he was 25 feet away from the Claimant who would have heard him and he believed the Claimant was very very close and almost within arms-reach of the youths in front of him. PCA accepted he did not call his colleagues to find the boys who were running East and did not mention the boys running East at all until after he checked whether there was CCTV in the area. It was put to PCA that he would have alerted his fellow officers if there were boys who were running to the East or if he was concerned that they were victims or potential victims but he did not. It was put to PCA that the only other youths evidenced were those running behind the Claimant, not in front of him, but PCA denied this.

The burden of proof and standard of proof

30. It is an odd facet of this claim that neither party called any of the other 10-11 eye-witnesses. So, the Claimant never named his 6 friends who were involved and called none of them. Likewise, the Defendant did not call PCs: Button; Brooks; Day; Wild or Willmott. It is my objective, when making findings of fact, to do my very best to ensure that proof (what I find is proven) is the same as the truth (what actually happened) so far as that is possible. The lack of other eye-witnesses makes this more difficult in this case. I am bound to make decisions on the evidence put before me and will do so applying the standard of proof in civil proceedings, which is to determine the facts on the balance of probabilities on the evidence put before the Court. I bear in mind that the burden is on the Defendant to prove that the force used (tasering) was reasonable. I bear in mind that the burden of proving what the Claimant asserts occurred, rests on the Claimant

Assessment of the witnesses

31. When approaching my assessment of the witness evidence I take into account that memory, being a human talent or function, is not perfect nor is it made of concrete. At the stage when memory is formed it may be affected by the circumstances: activity; darkness; noise; obstructed visual fields; fear; emotion; prior experiences; level of intelligence and understanding; misconceptions and many other factors. Furthermore, over time memory may be degraded by time itself, enhanced by emotion, refined by repetitious discussion or lost or buried in part or in whole. In addition, it may be innocently bent, enhanced or reconstructed in part or in whole by discussion, events, emotion (for instance guilt, anger, fear or sorrow) and time. In this case I assess what I have been told against the documentation, the BWC video and sound and the transcripts and I take into account how the witnesses gave evidence and how each answered questions in the witness box and the content of their answers.

32. The Claimant was quietly spoken, calm, intelligent and respectful in the way he approached the evidence and the Court, but on some key issues his evidence was hollow or blocked and lacked explanation and detail. I consider him to have been a credible witness generally but do not accept his evidence on all matters. Firstly, he seemed unable, or unwilling, to understand why suddenly turning and running away from an approaching police vehicle would be an abnormal reaction for someone who had never been in trouble with the police before or never had any interaction with the police and had done nothing wrong save being a bit noisy playing tag and then walking to the shops. Secondly, his explanations as to why he thought he had done something wrong were nonsensical. This was not a "gated Estate". There was no gate. There was no evidence of any "private property" or "keep out" signs. I find that he knew he was not trespassing. He had played on the Estate many times before with friends. He said he was worried because they had been noisy when playing tag, but that is not a crime or a civil wrong and unlikely to cause residents to call the police. So, in my judgment, he did not explain in any satisfactory way to the police or the Court why he ran away with all his mates immediately. Thirdly, he saw nothing at all odd in stating to the Court that he ran in a loop around the Estate whilst not once looking back to see if his friends were OK or to see if the police were actually chasing him. He asserted that he never saw the police exit their vehicle or give chase but could not explain why he kept on running after his right turn (into North/South Watermill Lane) and then his left turn (around the East block) and then his next left turn (into a play area or car park) and then his next left turn (back onto the West/East branch of Watermill Lane). Fourthly, he asserted that no one was running with him, yet when he was stopped there were two men who arrived from the West behind him within 7 seconds and many people around within a minute. Fifthly, he asserted in his first witness statement that he saw PCA as he reached the West/East branch of Watermill Lane and then he ran past him, he did not stop, he kept on running. That period of running was not a small distance. If the Claimant did see PCA when he wrote that he did, he would have seen the officer running towards him. At that time PCA had a bright yellow Taser in his hand because it was removed from the holster during the 10 second run from point A to point B. The Claimant's evidence about the gardening gloves was also hollow.

33. PCA gave evidence with maturity and insight. He is an experienced officer with 20 years on the force. I consider that he was doing his best to assist the Court. However, his evidence altered over time towards a firmer and firmer position on immediate danger which, as I shall explain below, I did not find satisfactory.

Findings of fact on the disputed issues

34. I make the following findings of fact on the balance of probabilities on the evidence before me.

Before

35. This area of Edmonton in London N18 had a high level of knife crime in the youth community. The police and residents were aware of that. The Claimant and 6 other young men, who were his friends, were mucking around, shouting, making a lot of noise and making physical contact with each other in a way which might be interpreted as fighting as they were running around the Estate. One had an imitation hand-gun, others had a balaclava and gloves. They were wearing dark clothing. There was no other group fighting or mucking about with them. There was no evidence of any others involved in this incident. A resident on the Estate became afraid and called the police and reported seeing the youths fighting and knocking on doors and that one had a knife. This initial information was passed on to PCA and his fellow officers. Later in that same conversation the caller watered down the information but no watering down of this information was passed on to PCA before the incident. After they were done mucking about, the Claimant and his friend decided to go to the shops. One, a white male, had already left. Six black men remained in the group. The police reacted very quickly and arrived in a vehicle entering Watermill Lane from Bull Lane in stealth mode: they did not engage the sirens or the flashing blue lights. When the Claimant and his friends saw the police vehicle about 50 meters away they turned and ran. This fleeing, in a starbust way, enhanced the perception which PCA had gained from the information passed to him over the radio, that a knife fight had taken place or was still ongoing. In my judgment, if the youths had stood still the Claimant would not have been injured.

The incident

36. PCA drove along Watermill Lane in the West/East branch and turned right into the North/South branch, then right again, following at least two running youths into the red tarmacked car park area. He pulled up beside one of the running men and the police decamped the vehicle and caught Mr A , who had turned, run back, but stopped running when faced with a shouted warning and two drawn Tasers held by police officers. PC Willmott detained Mr A the boy with PCA and then, after information from PC Day, who had chased other teenagers up the North/South branch and called that they were coming back to where the police vehicle came in, PCA ran towards the junction of the West/East and North/South branches. PCA ran on a path, he saw the Claimant running along the West/East branch, he pulled his Taser but it was dark and he could not see well. PCA ran past an electricity substation which was about the height of a man and square in shape, emerging just as the Claimant ran perpendicular to him along the West/East roadway towards Bull Lane. At 19.57.17 PCA shouted a warning and within a second of doing so fired the Taser at the Claimant, who fell to the ground, bashed his head and was injured.

After the incident

37. PCA was at the Claimant's side on the ground within 2-4 seconds. A few seconds thereafter some others of the group of friends, probably two, approached PCA from

the West along the West/East branch and he aimed his taser at them and ordered them to the ground. They complied and other officers dealt with them. By this time PC Willmott had detained one of the teenagers, Mr A , PC Day had probably detained two of the youths, two were detained just to the West of PCA and PCA had the Claimant in his control. All 6 youths were accounted for.

Findings on the key factual issues

38. I do not find that the Claimant was chasing any men when PCA tasered him. When making this finding I take into account the following:

38.1 The Claimant says he was not chasing any men. I accept that evidence.

38.2 PCA gave no detail of the men at all.

38.3 There was no evidence of any other young men involved in this incident at any time. None were reported. None made any statement. The Claimant did not assert that any others were present. The Police did not catch any youth from another group or submit evidence that they saw any other group.

38.4 PCA made no effort to communicate with any person to the East of point B on the map straight after tasering the Claimant. If, as PCA asserted later, the Claimant was chasing 2-3 other youths, catching up with them, was within arms' length of them and had a knife when he was tasered, I would have expected PCA to call to them to ask if they were alright, to demand that they stop running and/or to point the Taser at them if they approached menacingly. He did none of these things. He did not even turn his chest towards the East. Instead, the first group of men he dealt with after detaining the Claimant was those approaching from the West a few seconds after the tasering.

38.5 One telltale piece of evidence from the BWC was the silhouette of PCA on the tarmac pointing his taser at the men who approached from the West and shouting at them to get on the floor. His chest never turned to the East. I accept of course that a head can turn without shoulders turning, but there is nothing to indicate physically or verbally that PCA was aware of any men that the Claimant was chasing.

38.6 If PCA saw men being chased by the Claimant I consider that it is likely that he would have radioed to his colleagues to say that 2 or 3 youths were running away down Watermill Lane towards Bull Lane. He did not.

38.7 If the Claimant had been chasing other men, who were not his friends, I consider that there is at least a possibility that they would have made a complaint to the police at the scene. No such report was made.

38.8 PCA's first mention of the Claimant chasing anyone was made at 20.20, 23 minutes after the tasering and he only mentioned the Claimant chasing "one of the kid (sic)". This number then increased to 2-3 youths in his later evidence.

39. I do not accept that the Claimant had a knife or that PCA saw a knife being carried by the Claimant before he fired the Taser and I reject PCA's evidence that he saw a shiny object or a 4 inch blade in the Claimant's hand for the following reasons:

39.1 The Claimant gave evidence that he had no knife. He had a clean record and was a well-liked locally and at school and had prospects as a professional footballer who trained well and was keen to succeed. He had only just received his 2 year contract at Leyton Orient the month before. I see no reason to doubt his evidence on the knife issue.

39.2 No knife was found on the Claimant despite a careful search of his body and clothing.

39.3 Despite various searches by PCA of the road around the Claimant, no knife was found on the ground near the Claimant or at all. If the Claimant had been carrying a knife and chasing and threatening any youths in front of him, when he was tasered, he would have dropped it nearby.

39.4 If PCA had seen the Claimant chasing 2/3 teenagers with a knife in his hand I consider it logical and likely that he would have asked the Claimant immediately after his detention why he was doing that and where the knife was. He did neither.

39.5 On PCA's own evidence it was dark and the junction between the North/South branch and the West/East branch of Watermill Lane was not well lit. The BWC video shows how dark it was. PCA was running, as was the Claimant. When PCA was in the first 5 seconds of his run along the path, the Claimant would have been quite far away from him, running West to East perpendicular to him. PCA was then passing an electricity sub-station which was not small which obstructed his view of the Claimant for the last part of his run when the Claimant would have been closer to him. When PCA emerged from the far side of the sub-station he only had a second or two before he discharged the Taser. That was not much time for him to have seen a knife.

39.6 The first time that PCA mentioned seeing "something" in the Claimant's hand was 23 minutes after the tasering. This was after PCA had evidence that the Claimant was only 14, was unarmed, had not been in trouble with the police before, was compliant, unaggressive and was injured to his head. This may have started the process in his mind of needing to explain what had happened and why he had used his Taser. His first explanation was that he saw "something". His second, later that night, in writing, was that he saw "something shiny". 7 months later he had enhanced this recollection to a "4 inch" blade, at interview with the IOPC. This expansion of the recollection undermined the veracity of it.

39.7 I take into account the way in which PCA's justification changed from the Use of Force Form to the Defence to the trial. The justifications for the Tasering were wide in the Use of Force Form and much narrower in the Defence and at trial.

39.8 I take into account the way in which PCA's explanations about the police warnings were expansive but based on assumptions. He did not know whether PC Day had shouted warnings at the Claimant or near the Claimant and so could not fairly assert that the Claimant had ignored many warnings.

39.9 As to PCA's own warnings, on occasions PCA suggested that his red-dotting of the Claimant was a warning which went unheeded. That was a wholly unfair assertion to make. Firstly, because the dot/s would have been on the Claimant's back or left shoulder. Secondly, because the Taser was fired almost immediately after the shout or within no more than 1 second. How was the Claimant supposed to stop running and stand still in less than 1 second as a result of seeing the red dotting on his shoulder or back? As for the verbal warning PCA gave, I consider that the Claimant did hear it, so I reject the Claimant's evidence on that, but he was tasered so quickly after that and because his head hit the ground, it did not register.

39.10 PCA was asked why he did not give the Claimant time to heed his warning. His answer was that he feared imminent harm to the men the Claimant was chasing. I have found that he is wrong about men running in front of the Claimant, in which case his proportionate route was to give the Claimant time to heed his warning, slow down and stop before reconsidering deploying the Taser. He could have run behind and following the Claimant for 5-10 seconds. Even then, taking into account that there was no obvious knife and no men to attack, on my findings, deploying the Taser was unlikely to have been proportionate.

Therefore, I find that there was no imminent threat to another person justifying the response which PCA made in deploying the Taser.

Reasonable mistake

40. Having found, on the balance of probabilities, that there were no men being chased by the Claimant and that the Claimant did not have a knife, I must consider the possibility that PCA genuinely believed or suspected that the Claimant had a knife and was chasing 2-3 men, but was mistaken. I take into account that the Claimant and his colleagues were doing a difficult and dangerous job, in the dark, on a call out which contained information about youths fighting and a knife. I take into account that PCA was running and that the lighting was poor in the area when he discharged his Taser and that he had only just passed an electricity sub-station which had blocked his view. I take into account that the Claimant was well over 6 feet tall, well built, wearing dark clothing and running away from the Estate. I can well understand how, 23 minutes after the event, PCA may have convinced himself that he saw "something" in the Claimant's hand which could broadly fit in with the caller's report. I consider that PCA's immediate search of the Claimant's body for a weapon and his later searches of the ground around the Claimant, evidence that PCA was honestly concerned that the Claimant might have been carrying a weapon. However, I do not accept that PCA had sufficient evidence to believe at the time he discharged

the Taser that he had seen "something" in the Claimant's hand or that that the Claimant was chasing "one of the kid(s)". There is no evidence that anyone was running in front of the Claimant and I have rejected PCA's recollection of any such youths. So, I do not consider that objectively PCA had sufficient evidence to form a genuine belief that the Claimant was about to attack another "kid" in front of him. In any event any such believed facts were later distorted by time and emotion so that PCA asserted that the Claimant was chasing 2-3 youths with a 4 inch shiny blade, enhancements which I reject.

Applying the law to the facts

41. On my findings of fact and in my judgment PCA's use of the Taser was not lawful or justified. It was not in accordance with the Guidance because insufficient warnings were given and insufficient time to respond was allowed. I consider that it was not objectively reasonable or proportionate in the circumstances, scary and difficult though they were. Therefore, I conclude that PCA assaulted the Claimant by firing a Taser at him which knocked him over and caused injuries without lawful justification under either S.3 of the *Criminal Law Act 1967* of S.117 of the *PACE Act 1984.*

Quantum

Before the assault

42. The Claimant was born on the 19th of December 2005 and is aged 18 years and 11 months. He grew up in Cricklewood with three siblings. He went to a local primary school and then, after his mother moved to Edmonton, he went to Aylward Academy. He started playing for the White Star youth club and his talents at football were developed. He trained three times a week and played matches at weekends. The coach there supported him and he trialled twice for Chelsea Football Club. As a result he was offered a two year contract by Leyton Orient. He had just signed it in January 2020, a month or less before this event occurred. He wanted to be a professional footballer and was totally committed. He knew he had to look after his body. He had lots of friends and went out quite a lot, but being young they had little money and so were restricted to low cost socialisation. He had a backup plan to work in design engineering which, in his live evidence, he disavowed.

After the assault

43. The Claimant was taken initially to North Middlesex hospital and then transferred to the Royal London Hospital. Scans showed a fracture of his left eye socket going into the left splenoid sinus and nasal bone with bleeding. He had a 3-4 cm cut over his left eyebrow. He had burn style damage to the skin on his left shoulder. He suffered left optic neuropathy and visual defect. The medical notes provided to me did not suggest that the police told the hospital that the Claimant had a knife, only that the police suspected someone in the group did. He was released six days after the injury. He was off school for just over a month. He had various outpatient patient appointments. He went back to Leyton Orient practice sessions but eventually was let go when his

ophthalmologist's medical report was provided to them. Lockdown occurred soon after the incident and so he, like others, suffered through that. Since the incident he has carried on playing football and still dreams of being a professional footballer, but thinks that the likelihood is extremely low. He completed his GCSE's in June 2022. He passed 8 GCSE's with grades at 2 - 4 generally and a better grade in English language but a grade 1 (the lowest) in design and technology. He started at Level 7 Academy for football, studying sports science, which was a two year course, but told me that he had stopped that course halfway through being dissatisfied with it. He is concerned that his eye injury will affect his future careers. He lacks vision in the peripheral field on the left and he has not regained his 3D vision so when he goes to pick something up or take something that is handed to him he misses it. He is self-conscious because his left eye turns outwards frequently. He feels this makes him look strange or shifty. He wishes to continue playing football and will wear protective glasses to protect his right eye. His fractures have healed but he has been left with a raised scar on his left shoulder and some scarring above his left eye. I have seen the photos. He is keen to get plastic surgery on his left shoulder to reduce the large round scar as much as possible. He suffers no discomfort from it. He denies being psychiatrically affected by the injuries.

Expert reports

44. Doctor Matthew Starr reported in March 2021 and April 2024 and provided a letter in July 2024. He appended an orthoptic report from Leslie Kelly dated June 2024. He noted a severe reduction in the central vision of the Claimant's left eye and a mild to moderate reduction in the peripheral vision of the right eye. Doctor Starr noted that in February 2020 the Claimant was reviewed in ophthalmology by Mr Patel who noted his visual acuity on the right side as 6/6 and noted reduced vision in the left eye. MRI showed no compressive legion of the optic nerve or atrophy. Doctor Starr himself noted 6/5 vision in the right eye and 6/120 in the left eye. He had no double vision and full eye movements. Colour vision in the left eye was damaged and he had missing fields of vision. All the tests were carried out in 2020 and 2021. In his first report doctor Starr advised that there was no direct trauma to the eyes and cleared up the error that there was any loss of vision in the right eye stating that only the left eye was affected. He diagnosed damage to the left optic nerve, confirmed on scanning. He explained that the reduction in vision in the left eye at 6/120 meant that the normal eye could see a target from 120 metres away whereas the Claimant would have to be 6 metres away to be able to see it. This is a severe reduction in left eye vision. However, he pointed out that this measurement was subjective. The tests of the damage to the peripheral vision were all different and were summarised at paragraph 4.3.10. The Claimant lacks measurable 3 dimensional vision and his colour vision on the left side is damaged due to being unable to see green. Doctor Starr stated these symptoms affect his ability to see people standing on his left or coming towards him from his left and hence affect his ability to play football at a top level. He would be able to work at a desk in a job involving computers but it would be unsafe for him to

work at heights or near people with power tools, in the armed forces or police. He would not be able to drive an HGV. Therefore, he has a limited choice of career. Some improvement was hoped for in the first report and Doctor Starr recommended squint surgery if the left eye turned outwards, also shatterproof polycarbonate lenses to reduce the risk of further eye trauma.

45. In his second report Doctor Starr noted that the Claimant recounted that he could only see bright and obvious colours from his left eye, such as yellow, blue and red but struggled to distinguish more subtle colours. The Claimant stated he did not notice any problems with central or peripheral vision. The left eye still tended to drift out daily for a few seconds. He was playing football, studying at college and his eyesight did not affect either. He could not read with his left eye. In Doctor Starr's opinion the right eye was uninjured and healthy and the left eye had profoundly reduced vision. The Claimants peripheral vision was severely reduced on visual field testing but the extent of loss varied. Doctor Starr added nothing to his previous opinion on the effects of the injuries on his work capacity. He estimated a 50% risk that the Claimant would need surgery for squint in future if the left eye turned outwards. In his final letter dated July 2024 he noted the assessment by Leslie Kelly and diagnosed a small intermittent divergent squint. He advised surgery would not be appropriate currently however in future the squint would be likely to worsen and initially Botox injections might improve alignment. He agreed with Miss Kelly's advice that surgery in about 15 years would be likely costing £6,000 with Botox injections two to four times a year for about 5 years costing between £1,800 and £2,500.

46. Doctor Tanya Cubison, a plastic surgeon, reported in June 2024 for the Claimant. She noted a 25 millimetre scar through the left eyebrow and a second pigmented area on the left cheek. The Claimant also had a 56 millimetre x 40 millimetre pigmented scar on his left shoulder. She advised the eyebrow scar was not worth modifying but the shoulder scar could be improved using serial excision operations with a reasonable expectation of a 50% improvement. This might be achieved over 3 or 4 serial exhibitions costing £2,000 each. However, the outcome was difficult to predict because shoulder areas are subject to a lot of tension.

47. Nicholas Parkhouse, a consultant plastic surgeon, reported in August 2024 for the Defendant. The Claimant told him the shoulder scar was uncomfortable when pressed upon and he avoids carrying weights with his left arm. However, it does not limit the movement of his arm or shoulder and is not irritating. He measured the eyebrow scar at 15 millimetres, so smaller than the measurement by the Claimant's expert. In his opinion the scar was fully mature and permanent. He considered it would be difficult to improve the eye-brow scar in any predictable way by scar revision although that was technically possible there would be a risk of complications including wound infection and further scarring and on balance he advised the Claimant to accept the status quo. As for the shoulder scar he accepted that serial excision of the existing

scar removing the central part and closing the wound with stitches, with six to nine months between operations for recovery, was appropriate. There would be three separate stages under local anaesthetic involving three weeks of reduced movement each time. This would involve a small risk of surgical complications, including wound infection and delayed healing and dehiscence. He considered this would make the scarring less conspicuous and more comfortable. He advised there should be 3 operations.

Resolution of the issue on the expert evidence

48. I consider that there is no guarantee that the Claimant will go through with the scar revisions surgery on his left shoulder. It would take 27 months for 3 operations, with the periods between involving recovery and reduced movement for some weeks each time. This would restrict his football and I am unconvinced that the Claimant will go through with that whilst he still can enjoy his football. I prefer the evidence of Mr Parkhouse to that of Miss Cubison on this issue, which appears to be more likely to be the outcome, if the Claimant does decide, later in life, to have scar revision.

Assessment of Quantum

Pain, suffering and loss of amenity

49. The Claimant submits an award of £71,609 would be appropriate and the Defendant submits an award of £45,000 would be correct.

50. For the Claimant's main injury, the left eye optical nerve damage, resulting in reduced left eye field of vision, reduced 3D vision and damaged left eye colour vision, the Defendant submits an appropriate award would be £38,470, at the mid-point of JC Guideline category 5A(f). The Claimant seeks the same sum. I consider that the Claimant's visual defect which is restricted only to one eye and does not result in double vision is placed below the mid-point of the category at £33,000. I consider the injury less serious than the loss of the eye reported at *Kemp* para. E1-109 *Threlkeld,* (updated Dec 2023 award £41,090), and above but closer to that in *Johnson* reported in Kemp at para. E1-021 (updated Dec 2023 award £31,170).

51. For the scarring, for this handsome young man, I do not consider the facial scars to be in the "significant" category. They caused no psychiatric reaction, but do cause a normal embarrassment. I consider they are properly categorised in group: 10B(d) and assess them at £6,900. I refer to the *Kemp* reports at J1-036 and 037, *J (A child)* and *F (A child)* which, updated to Dec 2023, are £6,920 and £6,560.

52. For the shoulder scarring the JC Guidelines category 11 does not help much. I take into account the desire for surgery and the need for 3 revisions operations, if the Claimant is to embark on the process later in life, which will be painful and restricting. The Defendant submits that an award of £18,650 would be appropriate. I take into account the reports in *Kemp* particularly at para. J3-014, *Ellis v Mainzer*

(award updated to Dec 2023: £17,370) for severe chemical burns to both knees with the need for revision surgery and consider this award fits below that at £15,000.

53. I exclude compensation for being handcuffed and for false imprisonment because those claims were settled. I take into account that the Claimant was afraid when and after he fell, he was in pain, he bled, he was embarrassed and he was stressed. I take into account the skull fracture, which was treated conservatively, and the time in hospital in the award. There is overlap for all of the pain initially and in hospital. Then standing back and looking at the level of award I consider that the combined award should be **£55,000.** The combined award is not a simple addition of the separate injuries. Interest runs on that sum from the date of service of the claim (at 2% from January 2023 – November 2024, estimated at 3.67%, thus **£2,018.50)**.

Past

54. The following items are agreed:

damaged clothes:	£60
interest:	£7.06

55. **Future**

The following items are agreed:

Botox injections and squint surgery:	£38,250
Ophthalmic aids:	£3,706
Travel expenses:	£383.31
As for the shoulder plastic surgery	
I award 3 operations:	£6,000

Loss of earning capacity

56. Where the injured Claimant is too young to have started earning, or to have established an earning capacity, the Courts are obliged to estimate the future earning capacity, the *but for earning capacity* and then to estimate the loss of income or earning capacity caused by the injuries by estimating the *residual earning capacity*. This is more straightforward for a man in his mid-30s with a track record in work, than for an 18 year old. The staring point is for this Court to determine the Claimant's but for earning capacity. In this case I will take into account all the circumstances but in particular the way the Claimant has pleaded his claim, his educational achievements and his skills and talents. I place no weight on his mother being a part time cleaner. She was not educated in England and cannot read or write. The claim could have been put on the basis of a lost career as a professional soccer player, but it was not. In the schedule of loss the Claimant pleads that the Claimant has not decided on his career but postulates that it will be in a sports related role, not a desk job. A basket of jobs is postulated at footnote 17 in the schedule, 7 roles in the sports industry were analysed: sports teacher; physiotherapist; hospitality; nutrition; agent; media and reporter. The average salary figures were taken from a website called "Glassdoor.co.uk". The figures were not put in evidence. An average of £31,000 gpa

was pleaded without evidential backup. The Defendant denies some of the jobs put into the Claimant's basket and asserts that there is no adequate evidence to support any loss of earning capacity. In his evidence it was clear that the Claimant was quite unsure about the work he will go into as he becomes older and still harbours a keen desire to be a professional soccer player.

Multiplicand

57. In my judgment the Claimant's general approach is the correct way of assessing the Claimant's but for earning capacity, but it fails to use the best evidence available of which the Courts take judicial notice in assessing damages. I refer to: *S v Distillers Co* [1970] 1 WLR 114 (thalidomide claims); *Croke v Wiseman* [1982] 1 WLR 71, per Shaw and Griffiths LLJ at para. 83; *Whiten v St George's NHS Trust* [2011] EWHC 2066, per Swift J at 113. I will use the Government's ASHE figures for all earnings in England and Wales published annually and set out in "*Facts and Figures"* and signposted in *Kemp & Kemp on Quantum.* These are properly used to evidence many claimants' future earnings capacities. These used to be printed in full in Volume 2 of *Kemp* but are now merely signposted to the Government website at para. 53-006. The mean weekly earnings for men in ASHE in 2023 were £44,611 gpa. The median was £37,700 gpa. Loosely, using the categories proposed by the Claimant, some of which the Defendant accepted, I set out various related categories from ASHE. I discount media and being a reporter on the basis that the Claimant did not suggest to me in evidence that he was minded to do those jobs.

Job	**ASHE category**	**mean income**
Sports and leisure assistants	6211	25,397
Leasure and sports managers	1224	32,978
Physiotherapists	2221	42,999
Health associate professionals	321	27,836
Sports and fitness occupations	343	26,634
Sports players	-	-
Sports coaches, instructors, officials	3432	26,635
Fitness and wellbeing instructors	3433	23,353

I shall consider that the Claimant's lifetime earning capacity, in so far as I am able to predict it from his keen sporting interest, his talents and his low educational achievements, in a range between £27,000 and £37,000 gpa. Mid-point £32,000 gpa.

58. Since the publication of the Ogden Tables 6th Edition the usual way of calculating loss of earnings or earning capacity is by reference to the reduced multipliers set out in the Ogden Tables. These produce a lower multiplier for a claimant's *residual* earning capacity and a higher one for his *but for* earning capacity. Then a multiplier v multiplicand calculation is provided. A claimant who is disabled within the definition

in the *Equality Act 2010* and the *Disability Discrimination Act 1995* gets a lower residual earnings multiplier. The definition is as follows*:*

> "d) **Ogden Definition of Disability**
> 68. It is important to note that the definition of disability used in the Ogden Tables is not the same as that used in the Equality Act 2010. The Ogden definition of disability is based upon the definition of disability set out in the Disability Discrimination Act (DDA) 1995 (supported by the accompanying guidance notes). This is because this is the definition that applied at the time of the underlying LFS research which underpins the suggested Table A to D reduction factors. In addition to meeting the DDA 1995 definition of disability, the impairment must also be work-affecting by either limiting the kind or amount of work the claimant is able to do. The Ogden definition of disability is defined as follows.
> "Disabled person": A person is classified as being disabled if all three of the following conditions in relation to ill-health or disability are met:
> (i) The person has an illness or a disability which has or is expected to last for over a year or is a progressive illness; and
> (ii) The DDA1995 definition is satisfied in that the impact of the disability has a substantial adverse effect on the person's ability to carry out normal day-to-day activities; and
> (iii) The effects of impairment limit either the kind or the amount of paid work he/she can do.
> "Not disabled": All others
> 69. Disability is therefore defined as an impairment that has a substantial adverse effect on a respondent's ability to carry out normal day-to-day activities. Both 'normal' and 'substantial' require interpretation. Normal day-to-day activities are those which are carried out by most people on a daily basis and which include those carried out at work. The meaning of the word 'substantial' has changed over time in both law and common understanding such that the threshold whereby an activity-limitation qualifies as 'substantial' (and therefore amounts to a disability) was lower in 2019 than it was when the data were collected."

A claim for loss of future earnings on a multiplier and multiplicand (M/M) basis has not been pleaded. M/M calculations cover claims where it is reasonable for the claimant to assert, for instance, that he would have earned £100 pw but for the injury and can now only earn say £90 pw and for less years. However, that method would be very difficult for this Claimant to put forwards, he not having determined how he

would have earned his wage or what he will earn, save that in reality he wanted to be professional football player. I take into account the *Law Commission Report No 56* which summarised that *Smith* awards arise where mathematical assessment is precluded on the evidence.

59. I am bound to determine the claim on the pleadings. The claim is based on *Smith v Manchester* [1974] 17 KIR 1 (*Smith*). Since the Odgen Tables 6th edition, *Smith* claims have been used to cover the adverse financial effects caused by a claimant's disability restricting the range of jobs and work he can do, so causing (inter alia): (1) longer gaps which the Claimant may suffer when looking for work in future, and (2) the increased likelihood of being "thrown" out of work, or choosing to leave, earlier than he would have but for the injuries.

60. In this case, on the medical evidence, it is clear that the Claimant's eye disability will adversely affect the range of jobs the Claimant can do and the actual work he can do in the remaining jobs which he can do. I consider that this will lead to longer job searches and so will lead to a financial loss each time he is looking for work. This is mainly because he wishes to work in a physical field, not in a desk job.

61. My next task is to assess the size of the award. As set out in *Kemp* at paragraphs 10-030 to 10-036.1, the Courts assess:

61.1 The risk that the Claimant will be out of work;
61.2 The scope and seriousness of the effect of the disability on his earning capacity, covering the range of jobs he will be unable to do and the range of activities he will be unable to perform or be restricted in performing whilst at work;
61.3 The length of time over which his working life will endure.

In my judgment the Claimant has provided the necessary evidence for a *Smith* claim. The medical evidence supports the claim. The Claimant's and his mother's evidence support the claim and, although there is no evidence from teachers or employment consultants, I can take judicial notice of the adverse effects of his eye disability on his employability in physical work roles. I also take notice that the Claimant's educational qualifications and his love of football and sport make it unlikely that he would have sought or will seek a desk based job in the first 20 – 30 years of his working life.

62. I consider that the guidance given in paras. 10-035.1 to 10-036.1 in *Kemp* is a helpful distillation of the range of award made by Courts in the past. I discern 3 categories for *Smith* awards. The lower category justifies awards up to 1 years net earnings and is exemplified by: *Moeliker v Reyrole* [1977] 1 WLR 137; *Robson v Liverpool* [1993] PIQR Q78*; Hale v London Underground* [1992] PIQR Q30 and *Chatfield v Kohler,*

reported in *Kemp* at para. E1-013. Then there is the middle category for awards, between 1 and 2 years of net annual income, exemplified by *Smith* and *Underwood v Forman* [1996] reported in *Kemp* at I3-001. The higher category leads to awards of 2-5 years, but I am unsure as to whether the old cases, which justified that category before, survived the Ogden 6th Edition changes. I make no decision on that here because I have heard no submissions on that category. In this case the Claimant seeks an award of 1 years gross earnings and I consider that because the Claimant has 50 working years ahead of him that level is reasonable, however my award will be net of tax and NI, because that is what all claimants receive in damages when the M/M approach is used. In my judgment, he will initially be more affected by the disability than in later life, when he will have adapted to the work field and environment he has chosen, and the effects of the disability will be better managed. Thus, I award £32,000 gross which, net of tax and NI, results in an award of **£26,560** (see Facts and Figures on combined tax and NI for employed persons).

Quantum Summary

63. A. Pain, suffering and loss of amenity plus interest: £57,018.50
B. Past: £ 67.06
C. Future £74,899.31
Total: **£131,984.87**

Aggravated damages

64. The parties agreed the damages for the claims for false imprisonment and assault by handcuffing at £1,500 and settled those so they were not before me, save as to my assessment of whether aggravated damages should be awarded.

65. At paragraph 49 of the amended POC the Claimant claimed aggravated (not exemplary) damages for "the acute distress he suffered." In particular the Claimant relied upon 8 asserted factors which were: his young age; he was tasered and cuffed with members of the public around and kept cuffed for 30 minutes; there was a lack of concern for his injury and delay in calling the ambulance; he was moved and searched whilst he was in pain; PCA removed his hat causing pain; he was made to stand up despite being dizzy; there was delay calling his mother and the decision to taser him was influenced by racial stereotyping because he was black.

66. The old formulation was that aggravated damages can be awarded by a Court where the Court considers that the manner of commission of the tort was such as to injure the Claimant's feeling of pride and dignity, see *Rookes v Barnard* [1964] AC 1129 at 1221 per Lord Devlin. The more modern test is much tighter. They are distinct from exemplary damages which are punitive in nature and intended to teach the Defendant that tort does not pay financially or otherwise and to deter. I avoid any confusion between the two forms of additional damages. I note that exemplary damages are not pleaded.

67. In *Rowlands v CC of Merseyside* [2006] EWCA Civ. 1773, More-Bick LJ approved the following formulation by Lord Woolf MR from *Thompson v Commissioner of Police for the Metropolis* [1998] Q.B. 498:

> "(8) If the case is one in which aggravated damages are claimed and could be appropriately awarded, the nature of aggravated damages should be explained to the jury. Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution … Aggravating features can also include the way the litigation and trial are conducted …
> "(11) It should be strongly emphasised to the jury that the total figure for basic and aggravated damages should not exceed what they consider is fair compensation for the injury which the plaintiff has suffered. It should also be explained that if aggravated damages are awarded such damages, though compensatory are not intended as a punishment, will in fact contain a penal element as far as the defendant is concerned."

68. In *Takitota v The AG and anor* [2009] UKPC 11, 2009, Lord Carswell gave the judgment for the whole of the Privy Council and ruled that:

> "11. In their reference to aggravated damages in para 94 of their judgment the Court of Appeal appear to have equated them with exemplary damages, whereas they form a quite distinct head of damage based on altogether different principles. In awarding compensatory damages the court may take account of an element of aggravation. For example, in a case of unlawful detention it may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as indignity and humiliation arising from the circumstances of arrest or the conditions in which the claimant was held. The rationale for the inclusion of such an element is that the claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award. The latter factor, the conditions of imprisonment, is directly material in the present case,

> and it would be not merely appropriate but desirable that the award of compensatory damages should reflect it."

69. On the evidence before me I find as facts that: PCA called to his fellow officers for the first aid kit reasonably soon after detaining the Claimant and called the ambulance service in a reasonable time. The BWC video and the way that PCA behaved whilst detaining the Claimant did not strike me as uncaring or demeaning. For instance, he moved the Claimant to a wall on the pavement bedside the road in which the Claimant had been running. He kept talking calmly to the Claimant and asked him how he felt multiple times. He helped the Claimant to sit. I find the periods which elapsed before calling to other officers for first aid and calling the ambulance service arose because he was concerned about finishing a proper search for a knife both of the Claimant and of the area around the Claimant. I also find as a fact that it was not possible for PCA to know how deep the cut on the Claimant's eyebrow was in the 20 minutes after the detention. The amount of blood bears or may bear little relationship to the presence of fractures or the depth of the cut. I reject the assertion that PCA should have called the Claimant's mother earlier. The Claimant did not request this earlier. In the end the call was made by a friend of the Claimant's and PCA did not delay any of that process. I consider that PCA removed the taser wire from the Claimant's hat early on and later removed the hat to inspect the Claimant's head for injuries. He did so slowly and informed the Claimant as he did so. Furthermore, I accept PCA's evidence that he did not know the colour of the skin of the males in the group when they ran away and had little time to discern the Claimant's skin colour in the dark when PCA did the 10 second run towards the point where he fired the Taser (B on the map). I consider that there was no evidence before me to justify the allegation in the POC, or any inference, that PCA discharged the Taser for discriminatory reasons and I reject that assertion.

70. I have assessed what I consider to be appropriate compensation for pain, suffering and loss of amenity above which has encompassed the Claimant's suffering and loss of amenity in all their forms. On the factual findings I have made above I consider that there is no foundation for an award of aggravated damages.

Contributory negligence

71. Had I been asked and empowered in law to do so I would have considered contributory negligence by the Claimant but I am not. Firstly, that was not pleaded. Secondly, the parties agree that the ruling in *Co-Operative Group v Pritchard* [2011] EWCA Civ. 329, at paras. 61-63 prevents any such finding.

Conclusions

72. I allow the claim. I award damages totalling **£131,984.87**.

END