

The death of Ian Tomlinson - decision on prosecution

This case concerns the tragic death of Mr Ian Tomlinson on 1 April 2009. Shortly before his death, Mr Tomlinson was struck with a baton and pushed very strongly in the back by a police officer, who will be referred to in this explanatory note as PC 'A', causing him to fall to the ground.

The matter was investigated by the Independent Police Complaints Commission (IPCC) and then passed to the Crown Prosecution Service (CPS) to determine whether any charges should be brought against PC 'A', applying the Code for Crown Prosecutors. After a thorough and careful consideration of all the available evidence, the CPS has decided that there is no realistic prospect of a conviction against PC 'A' for any offence arising from the matter investigated and that no charges should be brought against him.

In the interests of transparency and accountability, the Director of Public Prosecutions, Keir Starmer QC, has decided that this detailed explanation of the circumstances surrounding Mr Tomlinson's death and the reasons for the decision not to bring a prosecution should be published.

It is important to appreciate and keep in mind the questions that the CPS has addressed in this case, namely whether there is enough evidence resulting from the investigation to provide a realistic prospect of conviction and, if so, whether a prosecution is required in the public interest. These are the questions set out in the Code for Crown Prosecutors promulgated by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. It is not the function of the CPS to make findings of fact and no such findings have been made. PC 'A' is entitled to be presumed innocent and that is the basis upon which the CPS has approached this case.

The incident in Royal Exchange

On 1 April 2009 a summit of financiers, bankers and leaders of industrial countries took place in central London. The event was known as 'G20' because of the number of countries represented. It was one in a series of summits across the world and earlier summits had attracted large scale demonstrations, some of which had become violent. In the weeks leading up to the event in London there was a great deal of media coverage about possible disruption.

On the day, there was a significant turnout of demonstrators. As is very often the case, many were peaceful but a sizeable minority were not, and criminal damage and some violence ensued. There were reports that over 30 police officers suffered injury during the events of the day and the CCTV and other video footage shows a degree of violence from time to time, which appears to have become more serious as the day progressed.

In various locations, the police took action to deal with the disorder, including action to move people away from the Bank of England in Threadneedle Street. Royal Exchange runs between Threadneedle Street and Cornhill and, in order to ensure that demonstrators did not get back behind police lines by using Royal Exchange, police officers were instructed to clear pedestrians from that area. The police plan was to move pedestrians down Royal Exchange from the direction of Threadneedle Street until they exited onto Cornhill.

Mr Tomlinson had no connection with the demonstration on 1 April 2009. He had been in the general area for much of the day and appears to have been trying to get back to his residence but, because of the police cordons, was finding it difficult to do so. He can be seen on CCTV pictures at various points in the area approaching police officers, and at one stage being moved by police officers because he was standing in the way of a police vehicle. At just after 7pm he was in Royal Exchange when the police started to move pedestrians out onto Cornhill.

At about 7.15pm, a senior police officer gave an order for officers to form a cordon and move people from the junction with Threadneedle Street out onto Cornhill. There were approximately 20 police officers in the cordon and they included six City of London police dog handlers. PC 'A' was part of this cordon as it made its way down Royal Exchange to Cornhill.

One witness described Mr Tomlinson as looking 'disoriented' as he was in Royal Exchange. As the police line approached him, he had his hands in his pockets and walked slowly in front of the officers. A police dog handler put his hand out to move Mr Tomlinson away and a police dog bit him on the side of his leg. Mr Tomlinson did not appear to react to this dog bite, but continued slowly moving at an angle across the police line.

PC 'A', who was behind the dog handler, moved forward and using his baton struck Mr Tomlinson on the left thigh. Almost immediately he pushed Mr Tomlinson very strongly in the back. This push caused Mr Tomlinson to fall heavily to the floor and, because he had his hands in his pockets, he was unable to break his fall.

Bystanders helped Mr Tomlinson to his feet. He then left Royal Exchange and walked a short distance onto Cornhill. He was seen by members of the public to walk up the street and then appeared to bump into a building and slowly collapsed to the floor. Members of the public came to his assistance, but Mr Tomlinson's condition deteriorated rapidly. Police and paramedics gave him first aid and sought to resuscitate him in the street and on the way to hospital but, regrettably, they were unsuccessful and Mr Tomlinson died.

The medical evidence

The Coroner for the District appointed a pathologist, Dr Patel, to carry out a post mortem. He did so on 3 April 2009. No other medical expert was present. Because Mr Tomlinson had walked some distance from the incident in Royal

Exchange before collapsing on Cornhill, the two events were not immediately linked and, when he carried out his post mortem, Dr Patel was not aware of the incident involving PC 'A'. He concluded that Mr Tomlinson's death was "*consistent with natural causes*" and he gave the cause of death as "*coronary artery disease*".

The family and the IPCC sought a second post mortem and this was undertaken by a second pathologist, Dr Cary, on 9 April 2009. He concluded that whilst Mr Tomlinson had a partial blockage of the artery, his death was the result of abdominal haemorrhage from blunt force trauma to the abdomen, in association with alcoholic cirrhosis of the liver. It was Dr Cary's view that when Mr Tomlinson fell, his elbow had impacted in the area of his liver causing an internal bleed which had led to his death a few minutes later.

On 22 April 2009 the Metropolitan Police Directorate of Professional Standards instructed another pathologist, Dr Shorrocks, to perform a third post mortem. Dr Shorrocks agreed with Dr Cary's conclusion.

Other expert evidence was obtained from Dr Wilson, Professor Williamson, Dr Alexander and Dr Sheppard. Their evidence related to accident and emergency procedures, issues relating to the liver and microscopic changes to tissue.

The disagreement between the medical experts

In the face of this fundamental disagreement between the experts about the cause of Mr Tomlinson's death, the prosecution team (the CPS and the IPCC) embarked on a detailed and careful examination of all the notes and findings recorded, and then held a series of meetings with the experts. This inevitably took some considerable time.

In his first report, Dr Patel reported that he had found "*intraabdominal fluid blood about 3l with small blood clot.*" This had been interpreted by the other medical experts to mean that he had found 3 litres of blood in the abdomen.

If Dr Patel had found 3 litres of blood, this would have been approximately 60% of Mr Tomlinson's blood volume and would have been a highly significant indicator of the cause of death.

However, when Dr Patel provided a further report on 6 April 2010, he recorded that he had found "*intraabdominal fluid **with** blood about 3l with small blood clot*". Since Dr Cary and Dr Shorrocks inevitably depended on Dr Patel's notes of this finding to inform their own opinions, the significance of this more recent description of Dr Patel's findings had to be clarified with Dr Patel and discussed with the other experts.

Dr Patel was seen twice in conference by the prosecution team. Dr Patel maintained that the total fluid was somewhat in excess of three litres but that it was mainly ascites (a substance which forms in a damaged liver), which had been stained with blood. He had not retained the fluid nor had he sampled it in

order to ascertain the proportion of blood because, he said, he had handled blood all his professional life and he knew that this was not blood but blood-stained ascites.

Dr Patel also confirmed that he had found no internal rupture which would have led to such a level of blood loss.

Dr Patel's more recent description of his findings brought into even sharper focus the difference of opinion between him and the other experts as to the cause of death. The prosecution team therefore met a number of the experts to explore where there was common ground and where, if possible, any differences could be reconciled.

As a result of that extensive exercise, the following became clear:

(a) Since Dr Patel had not retained the 3 litres of fluid he found and since he had not sampled it in order to ascertain the proportion of blood, firm conclusions about the nature of the fluid cannot now be drawn.

(b) For Mr Tomlinson's death to have occurred from blood loss so quickly, there would have to have been an internal rupture of some significance.

(c) Dr Patel found no internal rupture which would have led to such a level of blood loss.

(d) At the later post mortems there was no visible sign of a rupture.

(e) Since Dr Patel was the only person to examine Mr Tomlinson's intact body, he was in the best position to have considered the nature of the fluid he had observed and removed, and he was in the best position to have identified any rupture.

It is clear from this that even after the extensive exercise of examining all the notes and findings recorded carefully, and meeting with the experts on several occasions, there remained an irreconcilable conflict between Dr Patel on the one hand and the other experts on the other as to the cause of death.

Possible charges

The first issue that the CPS considered was whether the actions of PC 'A' were lawful. Having analysed the available evidence very carefully, the CPS concluded that there is sufficient evidence to provide a realistic prospect of proving that the actions of PC 'A' in striking Mr Tomlinson with his baton and then pushing him over constituted an assault. At the time of those acts, Mr Tomlinson did not pose a threat to PC 'A' or any other police officer. Whilst the officer was entitled to require Mr Tomlinson to move out of Royal Exchange, there is sufficient evidence to provide a realistic prospect of proving that his actions were disproportionate and unjustified.

Having concluded that the officer's actions could constitute an assault, the CPS then considered the possible criminal charges.

Unlawful act manslaughter

Unlawful act manslaughter was the most serious charge considered. This is where a killing is the result of the defendant's unlawful and dangerous act where the unlawful act is one which all sober and reasonable people would realise would subject the victim to the risk of some physical harm, even though it might not cause serious harm.

In order to proceed with this charge, the CPS would have to prove a causal link between the alleged assault on Mr Tomlinson and his death.

On that issue, the medical experts were and remain fundamentally divided. Dr Patel's opinion is that Mr Tomlinson's death was "*consistent with natural causes*" and that the cause of death was "*coronary artery disease*". The opinion of Dr Cary and Dr Shorrocks is that Mr Tomlinson's death was the result of abdominal haemorrhage (internal bleeding) caused by blunt force trauma to the abdomen.

A conflict between medical experts inevitably makes a prosecution very difficult, but the CPS proceeded on the basis that such a conflict need not automatically mean that a prosecution must fail. For that reason, we explored at some length the possibility of proceeding without relying on the evidence of Dr Patel. However, we were ultimately driven to conclude that, as the sole medical expert who conducted the first post mortem, Dr Patel would have to be called at trial as a prosecution witness as to the primary facts. His evidence would be that there was no internal rupture and that the fluid consisted of blood-stained ascites and not blood alone. Even leaving out of account the stark disagreement between him and the other experts as to the cause of death, the CPS concluded that the evidence of those primary facts undermined the basis upon which the other experts reached their conclusions about the cause of death. As a result, the CPS would simply not be able to prove beyond reasonable doubt that there was a causal link between Mr Tomlinson's death and the alleged assault upon him.

That being the case, there is no realistic prospect of a conviction for unlawful act manslaughter.

Assault

Two types of assault charge were considered: assault occasioning actual bodily harm and common assault.

Assault occasioning actual bodily harm would require the prosecution to prove that the alleged assault on Mr Tomlinson caused him actual bodily harm. So far as the push on Mr Tomlinson is concerned, the conflict in the medical evidence prevents this. If the push caused Mr Tomlinson's death, the appropriate charge would be manslaughter, not assault occasioning actual

bodily harm. If, as we have concluded, the prosecution cannot prove a causal link between the push and Mr Tomlinson's death because of the conflict in the medical evidence, it follows that actual bodily harm cannot be proved either.

The separate strike with the baton was also considered. It had left patterned bruising. But where injuries are relatively minor, as these were, the appropriate charge is common assault in accordance with the CPS Charging Standard, which is applied nationally. This Charging Standard was applied in another incident arising from the G20 where a police officer had struck the complainant twice with his baton.

Common assault does not require proof of injury, but it is subject to a strict six month time limit. That placed the CPS in a very difficult position because enquiries were continuing at the six month point and it would not have been possible to have brought any charge at that stage.

Misconduct in public office

The CPS also considered the offence of misconduct in public office. The offence is committed when a public officer acting as such wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification. The offence is, in essence, one of abuse of the power or responsibilities of the office held.

The offence of misconduct in public office cannot simply be used as a substitute for other offences and simply being a police officer who commits a criminal offence, even one of assault, does not, without some other aggravating factor, automatically amount to the offence of misconduct in public office. Mr Tomlinson's death would be an aggravating feature, but for the reasons already stated, the prosecution cannot prove a causal link between the alleged assault and the death to the criminal standard. The Court of Appeal has held that: "*The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder.*" In addition: "*It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence.*" The 'likely' consequences of pushing a person to the floor is that they may sustain some bruising. But, in this case, on the analysis of the medical evidence set out above, the CPS would not be able to prove beyond reasonable doubt that Mr Tomlinson's fall had caused him any injury.

As a result, we have concluded that the conduct of PC 'A' did not meet the high threshold required to constitute the offence of misconduct in public office.

In reaching a decision about misconduct in public office, the CPS also took into account the fact that the Court of Appeal has indicated that it would be wrong to charge misconduct in public office as an alternative to a charge of manslaughter in circumstances where the prosecution cannot prove the cause of death.

As far as the dog bite is concerned, there is no evidence that the dog handler instructed or encouraged the dog to bite Mr Tomlinson.

The decision in this case was taken by Stephen O'Doherty, a Deputy Director of the CPS Special Crime Division and a highly experienced reviewing lawyer. Advice was taken from Tim Owen QC, who is recognised as one of the leading lawyers in the country specialising in police law and criminal law. The Director of Public Prosecutions (DPP) reviewed all of the important material and also attended a number of the meetings with the medical experts. Against that background, he is satisfied that the CPS carefully considered all the evidence in this case.

The CPS is aware that comment has been made about the time taken to reach a decision. We understand the anxiety that this has caused to the family of Mr Tomlinson and the DPP discussed it with them. He is satisfied that the CPS acted as quickly as was consistent with the thorough and careful review of the evidence that was necessary. The review entailed not only the painstaking exercise of mapping the movements of all concerned, over many hours, but also the extensive exercise of seeking to resolve the complex and difficult areas of disagreement between the medical experts.

Conclusion

In this case there has always been and, despite the efforts of the prosecution team to resolve issues, there remains an irreconcilable conflict between Dr Patel on the one hand and the other experts on the other as to the cause of death. As the sole medical expert who conducted the first post mortem, Dr Patel would have to be called at trial as a prosecution witness as to the primary facts. As a result, the CPS would simply not be able to prove beyond reasonable doubt that Mr Tomlinson's death was caused by PC 'A' pushing him to the ground. That being the case, there is no realistic prospect of a conviction for unlawful act manslaughter. It also follows that there is also no realistic prospect of a conviction for assault occasioning actual bodily harm or misconduct in public office.

The Coroner will now be informed of this decision so that he may move to an inquest. At the conclusion of the inquest the matter will be reconsidered by the CPS in the light of any evidence which may be presented.

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