SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2025] SC EDIN 81

PIC-PN910-22

JUDGMENT OF SHERIFF IAIN W NICOL

in the cause

MARK ANDREW CARD

Pursuer

against

CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND

Defender

Pursuer: Middleton, KC; Brownlee, Adv; Slater & Gordon, Solicitors, Edinburgh
Defender: Hastie, Adv; Police Scotland Legal Services, Solicitors, Glasgow

Edinburgh 20 October 2025

Background

[1] This reparation claim was pursued by a former police constable of the Police Service of Scotland against the Chief Constable as his former employer. It was alleged that due to negligent actions of two employees of the defender, namely; an officer working in the area control room and the Duty Officer/Initial Tactical Firearms Commander, there was a failure to deploy Authorised Firearm's Officers (AFOs), sometimes referred to as an Armed Response Unit (ARU), to an incident in Inverness on 4 May 2019, and that failure resulted in the pursuer sustaining loss, injury and damage. As such, the defender was vicariously liable for their negligent acts and omissions. A further case was advanced on the basis that the Chief Constable failed to provide the pursuer with a safe system of work.

[2] Liability was in dispute. Quantum was agreed in a joint minute (which was signed part way through the proof) in the sum of £350,000, net of benefits, subject to liability being established and any finding of contributory negligence. A separate joint minute agreed the terms of various documents. A joint bundle consisting of 975 pages of documents was lodged and following the conclusion of evidence lengthy written submissions and lists of highlighted authorities were lodged on behalf of both parties.

[3] The case proceeded to proof over 7 days between 3 and 12 June 2025. The pursuer, along with other officers who were present at the time of the pursuer's injury, a firearm's officer who was in the vicinity, the two officers who were being criticised and two witnesses who offered skilled person opinions, gave evidence.

Findings in Fact

[4] The pursuer is Mark Andrew Card, aged 43 at the time of the incident on 4.5.19 and 49 at the time of the proof.

[5] The pursuer was a serving police constable with Police Scotland and was on duty in Inverness at the time of the incident.

[6] The defender is the Chief Constable of Police Scotland, who is vicariously liable for the acts and omissions of serving police officers in Scotland.

[7] Appendix B to the Joint Minute, number 41 of process, contains a true and accurate chronology of events on 4 and 5 May 2019 as recorded from airwave transmissions (Nos 6/2 to 6/5 of process), the transcript thereof (no. 6/13 of process) and the Police Scotland ISR report (no.6/6 of process).

[8] Police Constables Milne and Barron, whose call sign was Unit 10B, responded to an emergency call to attend an incident in Smithon Park, Inverness. On arrival at 22:17

on 4.5.19, they observed a male, known for the purposes of this judgment as C, in the street. There was no ongoing disturbance at that time.

[9] The occupier of the premises, D, who had made the emergency call, did not wish to engage with the police officers at that time. PCs Milne and Barron left the property and circled the area in their police vehicle. They then observed C in the front garden of D's property shouting at D who was telling C to go away. PCs Milne and Barron drove back round to D's property to speak to C.

[10] PC Barron noticed the handle and blade of a knife protruding from C's pocket. C was told he was going to be searched. PC Milne went to put handcuffs on C and PC Barron went to remove the knife from C's pocket.

[11] Prior to handcuffs being applied or the knife being removed from C's pocket, C broke free from PC Milne's grip and ran off into a wooded area. PC Barron started to give chase but stopped as it was considered unsafe to pursue C into woods when he was in possession of a knife.

[12] PC Milne radioed the area control room in Dundee at 22:57:19 and spoke to PC Alan Irvine, asking for any unit to come to Smithon Park and stated "we've just had C. He's managed to get a knife out of his pocket but he's ran off on us". The message was inaccurate to the extent that C never removed the knife from his pocket. PC Irvine, at no point, sought clarification of the type of knife or length of blade.

[13] A message was relayed to PC Irvine by PC Milne at 22.57 stating the direction that C was heading and what he was wearing.

[14] A message was relayed to all units by PC Barron at 22.58 to be aware that C had a knife in his pocket but had made off with it still in his possession.

[15] At 22:58:15 PC Barron advised PC Irvine of C's home address. PC Milne advised PC Irvine where C was at that time. Additional police units, 20C and 20E, confirmed they would attend.

[16] At 22;59:53, PC Irvine confirmed to Unit 10B that a Dog Unit would attend and asked for confirmation that C was in possession of a knife. PC Milne responded stating "Yeah, he started struggling when I was putting the handcuffs on, and he's managed to make off". PC Irvine acknowledged the message.

[17] At 23:02:00 PC Irvine asked for confirmation that Unit 10B saw C with the knife and checked his name. PC Milne responded confirming C's name and that they did see the knife in his front trouser pocket.

[18] At 23:05:24, PC Irvine messaged all units to advise C's name and description, that he is believed to be in possession of a knife and instructed that "If he's seen to be stopped and the control room informed".

[19] Incidents involving firearms and knives in Inverness are tagged by the controller for consideration by North Overview, based in the same building as the Area Control room in Dundee. North Overview's personnel on the night of the incident consisted of a duty officer, who was also the Initial Tactical Firearms Commander, who, that night was, Chief Inspector Laura Wilson (Call sign ZS01), and two others providing support, operating under call signs ZS02 (G Dickson) and ZS04 (S Bunce).

[20] At 23:06:11, the incident was tagged by PC Irvine for North Overview's consideration. This alerted the ITFC, to the incident, prompting her to review the information available at that time which included the STORM log, otherwise known as an ISR report, and airway transmissions with a view to deciding whether to deploy AFOs to the incident.

[21] In deciding whether to deploy AFOs, the ITFC required to apply the 2 stage test set out in sections 9 and 10 of the Armed Policing Operations Standard Operating Procedure, dated 10.8.18, which provides *inter alia*:

Stage 1:

"9.2 The deployment of Authorised Firearms Officers (AFOs) should only be authorised in the following circumstances:

(a) Where the officer authorising deployment has reason to suppose that officers may have to protect themselves or others from a person who:

- Is in possession of, or has immediate access to, a firearm or other potentially lethal weapon, **or**
- Is otherwise so dangerous that the deployment of armed officers is considered to be appropriate **or**

(b) As an operational contingency in a specific operation based on threat assessment.

9.3 The use of the words 'reason to suppose' sets the level of knowledge required (about the existence of a threat justifying deployment of AFO) at a far lower level of probability than that which would justify the use of firearms."

[22] The stage 1 test requires the ITFC to give consideration to whether, as a matter of fact, the person is in possession of a firearm (which for these purposes includes a knife or other potentially lethal weapon) and also to apply the National Decision Model to determine whether a) the person is so dangerous that the deployment of armed officers is considered appropriate or b) the threat level prevailing at that time permitted deployment as an operational contingency ie a tactical option for neutralising the threat.

The stage 1 test was met as there was reason to suppose C was in possession of a knife. Therefore deployment of Authorised Firearms Officers was permitted in terms of the Standard Operating Procedure at 23:07:06.

Stage 2:

"10.3 Spontaneous incidents – ITFC

10.3.1 In respect of spontaneous incidents, where the criteria for the deployment of AFOs as outlined in paragraph 9.2 is met, then the ITFC may authorise the deployment of AFOs."

[23] The Standard Operating Procedure also provides, amongst other things:

"1.3: While contain and negotiate may be the preferred response, there is no single applicable policy;

1.4: When determining tactics, the ITFC should be aware of all options;

1.5 There is a need to review tactical options for firearms incidents on an ongoing basis;

1.6: The tactical option identified at an early stage may require to be amended as a result of updated intelligence or as a consequence of the subject's actions;

7.3.1: The objective of deployment is to neutralise the threat."

[24] The incident involving the pursuer was a spontaneous incident. The factors which an ITFC requires to consider when making the decision on whether to deploy AFOs under paragraph 10.3.1 of the Standard Operating procedure are case specific but require consideration of the following: i. all aspects of the National Decision Model ii. the content of the STORM log, iii. any additional information ingathered and iv. whether any additional information is required before a decision is made. This allows the ITFC to assess the threat and risk and thereby make a decision on whether to deploy which is in accordance with the PLANL pneumonic: ie the decision needs to be Proportionate, Legal, Accountable, Necessary and Least Intrusive.

[25] At 23:07:06 PC Irvine erroneously recorded the information relayed to him by PC Milne in the STORM log that C "was placed in handcuffs and started struggling, made off and believed to be in possession of a knife". PC Milne had at no point informed PC Irvine that C had been placed in handcuffs before escaping. PC Irvine had no basis for recording that C was in handcuffs.

[26] A suspect's ability to cause serious harm with a knife is significantly greater if they are not hand-cuffed compared to being in hand-cuffs.

[27] At 23:07:35, CI Wilson recorded on the STORM log that "divisional officers are authorised to attend in the first instance and make enquiries. Officers are to be aware of the Stay Safe principles and updated ACR. See Tell Act."

[28] The ITFC therefore issued her initial decision at 23:07:05 to leave control of the incident in the hands of local officers, and not to deploy Authorised Firearms Officers. She did so 1 minute and 24 seconds after the incident was first tagged for Noth Overview's consideration and 29 seconds after PC Irvine recorded that C was in handcuffs. C remained at large at this point. The decision was reached primarily, on the mistaken belief that C was handcuffed. The ITFC did not consider that the PLANL criteria were met as it would not be proportionate or necessary to deploy Authorised Firearms Officers where the suspect was handcuffed and posed a low risk of using a knife. Other factors upon which she based her decision were that C had never brandished the knife or made any threats to anyone with it and he was trying to evade police.

[29] Notwithstanding the erroneous recording that C was in handcuffs, further enquiries were made to obtain information about C's previous criminal convictions and whether there were any warning markers for C.

[30] At 23:16:50, ZS04, updated the STORM log with the following warnings markers in relation to C: "violent, escaper, conceals, ailments, suicidal and drugs."

[31] At 23:18:59 ZS04 updated the STORM log that C "has 10 pending cases, 61 previous convictions, most pending for drug offences. 1 from 2018 for assault and possession of an offensive weapon, namely a knife and hammer."

[32] If PC Irvine had accurately recorded that C was not handcuffed, he, or the ITFC ought to have clarified the nature of the weapon. This was not done. Had such enquiries been made, the ITFC would, or ought to, have become aware that C's knife had a 4 inch serrated blade. This was a relevant factor in the decision whether to deploy AFOs.

[33] No Stay Safe message was broadcast by the area control room despite the ITFC's instructions to do so. The broadcasting of a Stay Safe message is important, amongst other things, to reinforce the need, at the time of an incident, to inform the control room what the situation is at the scene, and to take care for one's own safety. Notwithstanding the failure to broadcast the message, the pursuer was aware of the Stay Safe Principles.

[34] The STORM log is supposed to be updated by, amongst others, the controller in the Area Control Room when new information is received, so that the ITFC can keep the deployment decision under review.

[35] At 23:20:48 PC Irvine received a call from Sergeant Baptie enquiring whether he had seen that C had phoned to say he was going to attend the property at Smithon Park to burn the house down. PC Irvine confirmed he had linked the two incidents and would arrange for a unit to attend Smithon Park. The occupier of the property at Smithon Park had called to say C was going to attend her property once he got away from the police.

[36] At 23.25:36 PC Irvine broadcast a message that he had spoken to the occupier of Smithon Park who said that C had called her at 23:11 to say he was going to attend her house. She believed C was at the address of his partner. PC Irvine said he was going to telephone that house. The pursuer replied by asking PC Irvine to hold off whilst he, and the other officers at the scene, surrounded the house in case C tried to escape. PC Irvine acknowledged that request and asked the pursuer to let him know when they wanted into the property. The pursuer did not do so.

[37] PC Irvine did not update the STORM log to reflect this conversation. All the STORM log records is that Unit 20E (the pursuer and PC Baptie) were en route and in proximity. PC Irvine ought to have done so. Had he done so, it is likely that the ITFC would have reviewed the information available at that time which would, or ought to, have included: the fact that C was not in handcuffs, that he may be in possession of a knife with a 4 inch serrated blade, C's previous convictions including one for knife crime, his pending cases, and the fact that C was making further threats of serious violence, albeit not in relation to the use of a knife. She would have done so in the knowledge that the pursuer and other officers were heading to the house occupied by C's partner with a view to surrounding it to prevent C escaping and, that if they had to confront C with a view to arresting him, there was a significant risk to their safety.

[38] The review mentioned in the foregoing paragraph would have required CI Wilson to apply the NDM again to all new information and reconsider the decision to deploy. Had she done so, she would, or ought to have, concluded that the second stage test under paragraph 10.3.1 of the Standard Operating procedure outlined in para [22] above had been fulfilled.

[39] This would, or ought to, have led to the ITFC i. declaring a firearms incident, ii. taking control of the incident back from the divisional supervising officers, iii. instructing the divisional officers, including the pursuer, to remain outside the property where C was located, and iv. deploying Authorised Firearms Officers to attend at that location.

[40] The review would have been completed, and instructions given to the pursuer and the other officers not to enter and await the arrival of armed officers, prior to the pursuer entering the property. Had such instructions been given, the pursuer would not have been injured. The failure to direct the pursuer to remain outside the property along with the

failure to deploy AFOs in the particular circumstances is a breach of the duty of care owed to the pursuer to take reasonable care to provide him with a safe system of work. The breach stems directly from the failures on the part of PC Irvine to record or accurately record information on the STORM log.

[41] On their arrival at the premises where C was located, PCs Milne, Barron, Baptie and the pursuer waited outside the property to await the arrival of the dog unit.

[42] The dog unit was deployed by PC Irvine at 23:30:22 at the same time as PC Pearson, the dog handler, advised PC Irvine that he was at the back of the property.

[43] Whilst still outside the property, PCs Milne, Barron and Pearson separately advised PC Irvine that C was inside the property at 23:29:57, 23:30:04 and 23:30:22 respectively.

[44] Prior to entry, the pursuer along with PCs Baptie and Milne took up position outside the front door of the property. PCs Pearson and Barron, along with the police dog, were positioned at the back door.

[45] Whilst outside the property, the pursuer ought to have acted in accordance with his knowledge derived from experience and/or training by i. applying the National Decision Model ii. modules 2 and 19 of the Manual for Operational Safety Training and iii. the Stay Safe Principles when deciding what to do next. Whether formally trained on these policies and procedures, or not, he was familiar with the requirements which they impose as to how an officer requires to act to minimise the risk of harm to themselves and others.

[46] Module 2 relates to conflict management and states, amongst other things, that

i. there is a need by officers to assess the threat posed by a given situation to inform themselves which tactical option should be chosen to deal with that threat

ii. there is no such thing as low risk due to the unpredictable nature of subject interaction, only high risk or unknown risk. In considering the risk the officer requires to consider whether the subject has the means, ability, opportunity and intent to do harm to an officer or someone else.

[47] C had the means, ability and opportunity. His intent was unknown.

[48] Module 19 contains the C.U.T.T. principles. It provides operational officers, such as the pursuer, with the knowledge and skills to safely manage incidents involving edged weapons, including knives. The pneumonic stands for Create Distance, Use Cover, Transmit and Tactical Options.

[49] In relation to Create Distance the module highlights the need to tactically withdraw to a position outside the range of the subject's delivery system to observe and contain the subject. It is implicit that if the subject is contained within a house, the containment is achieved by remaining outside, to cover any means of escape, by positioning officers at the doors of the property. If there had been a need to go inside the house, the containment ought to have been achieved by closing the bedroom door and positioning the dog at the door.

[50] "Use Cover" would have been achieved by remaining outside the property.

[51] "Transmit" in the circumstances of this case required the pursuer, or one of his colleagues, to inform control of their position outside the house and that C had been seen inside. This was done on 3 occasions when PC Irvine in control was informed by PCs Milne, Barron and Pearson.

[52] Tactical Options required the pursuer to consider i. Contain and negotiate ii. tactical communications iii. maintain a reaction gap iv. Irritant spray v. baton vi. Empty hand techniques and vii. Shields. Officers should only consider physical intervention if there is an

immediate threat to life/ safety after precluding all other tactical options available. A physical intervention must be risk assessed by the officer and only considered as a last resort. The pursuer failed to adhere to this aspect of the C.U.T.T. principles. He failed to maintain the containment option and made no attempt at negotiation or dialogue with C. He proceeded with physical intervention when that was not the last resort.

[53] The pursuer used his baton to knock loudly on the front door which was opened by a female who advised that C was upstairs and that there were children also upstairs.

[54] The pursuer opened the back door and let PCs Pearson and Barron inside.

[55] At 23:30:58, PC Irvine broadcast an airwaves transmission enquiring whether further assistance was required. Unit Bravo, consisting of PCs Milne and Barron, informed PC Irvine that there were 5 officers inside the property and C was upstairs. PC Irvine's response was "that's plenty then". This conversation took place after a review ought to have taken place by the ITFC which ought to have resulted in the pursuer and his colleagues being told to remain outside the property.

[56] PC Pearson advised the officers present in the property that the dog could not go upstairs first because of the presence of children. The pursuer therefore went upstairs first, followed by PC Pearson and the dog, PC Baptie, PC Milne and PC Barron.

[57] The pursuer passed a closed bedroom door on the upstairs landing. The children were probably located in that bedroom. The bedroom where C was located had its door open. The pursuer entered and noticed C sitting on the bed with his back to him and an unidentified object in his hands.

[58] The pursuer took up a position on the opposite side of the room to maintain a reaction gap. He shouted "Show hands". C got up from his seated position on the bed,

threw the object which he had been holding towards the pursuer and launched himself across the bed towards the pursuer.

[59] The pursuer ducked. C landed on him and repeatedly punched him to the head and body in a ferocious attack.

[60] The other officers attempted to use PAVA spray and batons on C to no effect. The police dog bit C on the leg, at which point the other officers were able to handcuff and restrain C, who was then arrested and removed from the property to a police vehicle.

[61] At 23:32:03 PC Pearson confirmed, in an airway's transmission, that C had been apprehended after being bitten by the police dog on the leg and that gas had been deployed.

[62] The pursuer at all material times was under the impression that C was not hand cuffed.

[63] At no point were Authorised Firearms Officers deployed to the incident. They ought to have been deployed prior to the pursuer entering the premises along with instructions to the pursuer to remain outside. Had the AFOs been deployed, the pursuer would not have entered the property and would not have been injured.

Findings in Fact and Law:

[64] The defender having breached the duty of care owed to the pursuer by failing to take reasonable care for the health and safety of the pursuer at work, is liable to make reparation to the pursuer therefor.

[65] The defender, being vicariously liable for the negligent acts and omissions of PC Allan Irvine in relation to i. his erroneous recording that C was in handcuffs when he ran off from the police and ii. his failures to a. clarify the type of knife which C was in

possession of and b. update the STORM log with new information received, is liable to make reparation to the pursuer therefor.

[66] The pursuer, having failed to take reasonable precautions for his own safety by i. failing to apply his knowledge and experience or follow his training in not remaining outside the premises and updating control, and ii. physically intervening when other tactical options were available and ought to have been used, materially contributed to the loss injury and damage which he sustained.

Findings in Law:

[67] The appropriate deduction from damages in terms of the Law Reform (Contributory Negligence) Act 1945 is 40%.

[68] Quantum having been agreed on a full liability basis in the sum of £350,000, the defender is liable to make reparation to the pursuer in the sum of £210,000, inclusive of interest to 12 June 2025, net of any liability the defender may have in terms of Section 6 of the Social Security (Recovery of Benefits) Act 1997, with interest at the rate of 8% per annum thereafter, until payment.

Objections:

[69] A number of objections were made which led to evidence being heard under reservation on all issues of relevancy and competency. I deal with these as follows:

[70] **Objections by the pursuer:**

1. Questioning relating to whether CI Wilson's decision not to deploy was checked after the incident – objected to by the pursuer on the basis that there

was no record. I repel the objection on the basis that the tenor of the defence was that her decision was justified and reasonable and it could be expected that evidence would be led to satisfy the court about that. However, other than former Superintendent Irvine's opinion evidence there was nothing said or produced in terms of the nature and extent of any review or who it was conducted by. The evidence on this issue, such as it was, had no material bearing on the outcome of this case.

2. Objection to the admissibility of former Superintendent Irvine's evidence – this objection was, quite rightly in my opinion, not insisted upon in written submissions.

[71] **Objection by the defender:**

Questioning as to deployment as an operational contingency under paragraph 9.2(b) of the Standard Operating Procedure: the objection was on the basis that reference to "operational contingency" as a criterion for deployment under the standard operating procedure had been specifically pled by the pursuer in an earlier iteration of the pleadings but removed by amendment in September 2024, leading the defender to believe it was no longer part of the pursuer's case. In response, the pursuer argues that the current averments in STAT 4 are that the circumstances of what was known, or ought to have been known, mandated the deployment of firearms officers and reference is made to the entirety of paragraph 9 of the Standard Operating Procedure, which includes deployment as an operational contingency. I uphold this objection. The removal of specific reference to "operational contingency" by amendment gives the clear impression that was no longer going to be a basis for arguing that AFOs ought to have been deployed. The defender was entitled to take that view. In

any event, as the defender points out in submissions, it was not put to CI Wilson when she gave evidence that she ought to have deployed in terms of paragraph 9.2(b) of the SOP. The "operational contingency" argument plays no part in the decision reached in this case.

Submissions and Comment on Pleadings:

[72] Both parties lodged extensive written submissions with proposed findings in fact, summaries of the evidence, the applicable law, their comments on objections, the different aspects of liability and contributory negligence. The defender argues that duties of care had not been adequately pled, even for a Chapter 36 abbreviated pleadings case, and the court should hold that the pursuer has failed to prove his case having regard to those averments and the evidence led. The issue is worthy of some comment. The following is pled in the pursuer's statement of claim 4:

> "PC Irvine did not however confirm with Unit 10B as to whether or not the accused had actually been handcuffed prior to his escape or if so whether that was to the front or rear he ought to have done so".
>
> "At 23:06 hours Inspector Nick Macrae using call sign India 1 sent a radio message to all units advising that the accused had numerous criminal convictions".
>
> "At 23:07 PC Irvine **erroneously recorded** in the STORM log that the accused was placed in handcuffs and started struggling, made off and believed to be in possession of a knife".
>
> "**On the erroneous hypothesis that the accused had been handcuffed** CI Wilson deemed that the situation be dealt with by the divisional officers and issued stay safe warning without deploying armed response officers."
>
> "She also failed to confirm whether the accused had been handcuffed to the front or rear".
>
> "Despite being available to assist and the imminent and obvious danger that the accused posed to members of the public and to the attending police officers including the pursuer who were not armed with tasers no authority was granted to the armed response officers to intervene by the ITFC".

> "In exercising her duty of reasonable care to the pursuer the defender was under duty to provide the pursuer with a safe place and safe system of work. The defender failed in that duty".
>
> "PC Irvine had a duty to take reasonable care to confirm with the said officers whether or not he had actually been handcuffed and if so whether that was to the front or rear. He failed to do so. Had he so checked PC Irvine would have been advised and recorded in the ISR Report Incident Log that the accused had not been handcuffed before he escaped".
>
> "In that event CI Wilson would or ought reasonably to have deployed firearms officers who were also armed with tasers and who would have arrested the accused without the pursuer sustaining the injuries…"
>
> "Further and in any event notwithstanding the erroneous ISR Report that the accused had been handcuffed it remains CI Wilson's duty to take reasonable care to confirm whether that was to the front or rear. She failed to do so".
>
> "CI Wilson would or ought reasonably have deployed said firearms officers. Further and in any event she was or ought reasonably to have been aware prior to the assault of the accused's warning markers and substantial violent criminal history that he was in possession of a knife which he had already attempted to draw when initially detained by Unit 10B and which could have been used on police officers and/or members of the public and that he was intent on burning a house down with the occupants inside. In the exercise of reasonable care awareness of those known factors by themselves mandated the deployment of firearms officers. CI Wilson failed to do so".

[73] Whilst the pleadings are, in some respects, imprecise and could have specifically referred to a failure to accurately record information in the STORM log, I consider that it would be obvious to the defender that the issues arise due to CI Wilson being given inaccurate information about handcuffing of the suspect. Indeed, defence counsel did not seem to in any way be unprepared for that scenario being developed in the evidence. The pleadings provide sufficient notice that the problems arose due to PC Irvine's recording that C was handcuffed when he was not. Mr Hastie accepted that he was bound by the terms of the joint minute which effectively bound the defender to accepting that PC Irvine had incorrectly recorded the message from PC Milne about handcuffs. It seems quite obvious to me that the case was going to cover duties of failure to accurately record as well as failure to

check information, as it is implicit there would only be a need to check if there was any doubt about what had been said. I therefore cannot accept the interpretation placed on the pleadings. They give adequate notice of the essentials of the pursuer's case.

Summary of Evidence

The pursuer:

[74] He spoke to the relevant training he had received in dealing with incidents involving knives including the various policies and procedures such as the National Decision Model. He spoke about policies and procedures which he had not been trained on, or had not seen the documentation for, prior to the incident such as dealing with incidents involving edged weapons or the Standing Operating Procedure for Firearms incidents but over his 22 years as a police officer prior to retirement on ill-health grounds in 2023 he had gained experience and was aware of the decision making processes and the need to stay safe. Officer safety training was done by "telling and showing". He had never been referred to any documents for that. If he had gone looking for it on the police systems, he would have probably found it. He had never been trained in negotiation, but I take that to mean he was not a formally trained negotiator but would have been trained in communication skills, which all officers are trained in, to try to diffuse incidents. He explained what actions he took on the night of the incident and the extent of the radio contact with the control room, along with how he came to be injured by the suspect, C.

[75] The pursuer was a credible witness in the sense he was trying his best to tell the truth but there were significant aspects of his evidence which were unreliable such as his recollections that he had deployed PAVA spray and used his baton shortly before being attacked and had requested that an armed response unit be deployed, none of which was

accurate. He confirmed that he had approached the firearms officer PC Morrison by going to his house to ask him to give a statement and stated that a comment made to the effect that he would make it worth his while was said in jest and was not trying to bribe the officer.

PC Michelle Milne:

[76] She is the domestic partner of the pursuer and was also on duty and present at the incident when the pursuer was injured. She had been involved in the initial engagement with C when a knife was seen on his person. She spoke to the radio contact with the control room, including the message which had been erroneously recorded by control in relation to whether C was in handcuffs when he made off. She spoke to her subsequent actions at the house when C was traced and the events which led to the pursuer being injured. She went over her training and her knowledge of policies and procedures. Whilst she could not clearly recall every detail, she was a credible, and mainly reliable, witness.

PC Craig Barron:

[77] He was on patrol with PC Milne on the evening of the incident and spoke to his actions. He spotted the knife in C's pocket. He explained that as he tried to remove the knife, and whilst PC Milne was attempting to apply handcuffs, C made off. He spoke to the general nature of radio messages to control, what action he took outside and inside the house where C was traced to and his actions when the pursuer was injured. He spoke to his knowledge of certain policies and procedures in dealing with knife incidents. He was a credible and reliable witness.

PS Aimee Baptie:

[78] She was a constable at the time of the incident and was working with the pursuer on the night of the incident. She described her involvement inside and outside the house where the incident took place including what she witnessed at the time of the pursuer's injury. She spoke to some aspects of her training. There were significant gaps in her recollection of events and at times she gave the clear impression of being reticent. For example, when sections of her notebook were read to her the response was "That's what I've written". She added little of assistance.

PC Chris Morrison:

[79] He is a trained firearms officer and firearms instructor. He spoke to the fact he had never been deployed to the incident but was aware of it from radio transmissions and was in the vicinity. He explained his role if deployed and how the primary aim is one of containment instead of engagement. Firearms are hardly ever used. He could not recall making a comment outside the property that "this was their job all day long" but did not deny that he may have said that. He accepted that firearms officers would often think they should have been deployed to an incident when on many an occasion the ITFC takes a different view. He spoke to the pursuer coming to his home in advance of the proof and the discussion which took place, which he considered to be inappropriate and how he reported that to Police Standards believing the pursuer was still a serving officer at the time. He gave the impression of not wanting to be involved in the case, but I consider him to be a credible witness and, in relation to the matters he could recall, reliable.

PC Allan Irvine:

[80] At the time of the incident he worked in the Area Control Room in Dundee and was engaged in radio communication with officers relating to the incident. He spoke to what he recorded and what he failed to record in the STORM log. In particular he recorded that C had been placed in handcuffs when he struggled and made off. That is what he believes he heard PC Milne say. He accepted there was a need to clarify if he had been in any doubt. He also spoke to the discussions over the radio between him and the pursuer whilst they were inside and outside the house where C was located. He denied having been trained on the National Decision Model, which is simply an incredible position for him to adopt as it is a fundamental part of all police officer training. He spoke to tagging the incident on the STORM log so that it would be considered by the Initial Tactical Firearms Commander in North Overview, based in the same building. He considered his actions that night to be reasonable notwithstanding the erroneous recording of the message about handcuffs and the failures to update the STORM log with additional information received. PC Irvine often simply agreed with propositions put to him. He had difficulty recalling some of the detail of the events. I found his evidence in relation to the accuracy of recording information and failure to update the STORM log in relation to other information to be untenable, having regard to all other evidence led. Whilst he did not present as being obstructive, I consider his evidence in parts to be incredible and unreliable. In relation to the important message about whether C was in handcuffs, I simply observe that the recording of that Airwaves transmission was not played as part of the evidence. The terms of PC Milne's message had been agreed in a joint minute which makes it clear that PC Irvine incorrectly recorded what PC Milne had said to him. There is no evidential basis for me to hold that there was room

for him to have misinterpreted the message due to the transmission not being clear or ambiguous.

Inspector Laura Wilson (Chief Inspector at the time of the incident):

[81] She was the Duty Officer and Initial Tactical Firearms Commander (ITFC) for North Overview, based in Dundee, on the night of the incident. She required to make decisions as to whether to deploy Armed Firearms Officers to incidents. She spoke to her training and knowledge of various policies and procedures. She explained her training to become an ITFC, the performance of the role as ITFC, how information is ingathered and considered, particularly in relation to firearms incidents which include the use of edged weapons such as knives.

[82] She explained the command structure and when she would take command of an incident. She spoke to her decision-making process based on the information given to her relating to the incident. She confirmed a major factor in her decision not to deploy AFOs was her belief that C was in handcuffs, although she did not place any importance in knowing how he was handcuffed ie to front or rear. Until she was told during the proof that the knife in question had a 4 inch serrated blade, she had not been aware of that yet said that is something she would have expected to be aware of. She spoke to the factors relevant to her assessment not to deploy throughout the incident. She considered that there was no indication that C posed an immediate threat due to having run away from the police, never having brandished the knife and there being an alternative means of mitigating risk to the householder who had been threatened in a different location. Notwithstanding that the main reason not to deploy was the belief that C was in handcuffs, she did not think she would have deployed AFOs even if she had known that he was not in handcuffs. I find her

evidence on this point to be unreliable and reject it for the reasons set out in the "Discussion" section below. It was clear from her other evidence that she placed significant importance on the report that C was in handcuffs. If she had been aware of the true position, she said she would have made further enquires. That would no doubt have included seeking clarification of the type of knife. The fact that enquiry was not made is indicative of how important the issue of handcuffs was to her decision making. That, together with the fact that she ought to have been updated by PC Irvine on important developments by way of the STORM log leads me to conclude that had she been in a position to (as she ought to have been were it not for the failings of PC Irvine), she would, or ought to have, considered all the new information and intelligence, applied the NDM, had consideration of C.U.T.T. principles and the Standard Operating Procedure in relation to Firearms Incidents, which would have led her to review her decision and deploy AROs prior to the pursuer entering the property.

Mr Liam Fitzpatrick:

[83] He was led as a skilled person by the pursuer, but a challenge was made to whether he had the requisite expertise to offer any skilled opinion. I heard his evidence under reservation of all issues of competency and relevancy. He had been a bronze operational firearms commander. He had never performed the roles of a controller in the Area Control Room or an ITFC. He had, however, trained ITFCs in the use of the NDM in deciding when it was appropriate to deploy firearms officers. He had been awarded the Queen's Police Medal in 2019 in recognition of his specialist firearms work. He had prepared 2 reports in this case. The first did not make any criticism of an ITFC and did not mention the handcuffing issue. He had not been given a copy of the court pleadings, but instead a letter

of instruction saying "we are of the view that ARVs ought to have been deployed" and asked for his comment. He spoke to the different issues to be considered in applying the NDM and the 2-stage process in relation to whether armed officers should be deployed. He spoke to the risk levels as he saw them at different stages. His evidence included opinion on what a controller in the area control room should do to seek clarification and confirmation of information provided to them including the method of handcuffing. He offered opinion on what Inspector Wilson ought to have done when provided with further information. He offered opinion that duties of care were breached by her and PC Irvine in 1) failing to check if C was handcuffed, 2) failing to clarify if that was to the front or rear, 3) failing to broadcast the stay safe message and 4) failing to update the ITFC about the various additional pieces of information that had been received. Further objection was taken to there being no record for 3) and 4). I repelled that objection on the basis that a reasonable interpretation of the pleadings broadly covered these duties and, in any event, evidence had already been led during the proof on these matters which had not been timeously objected to.

[84] He gave evidence that there was a failure on the part of the ITFC to "spin the wheel" and reassess matters in terms of the NDM. He was of the view that the threat level following the initial engagement with C was high and was escalating even more when warning markers and information about previous convictions became known.

[85] On the crucial issue of whether the officers ought to have waited outside the property where C was located, he agreed that, with hindsight, it was a justifiable criticism that they had entered the premises without updating control. This overlapped to some extent with the criticism of the pursuer that he failed to contain the locus. Mr Fitzpatrick queried why that would be the pursuer's sole responsibility when following directions from supervisors, although it is not clear what instructions he was referring to. The ACR had

asked the pursuer to let them know when they wanted in to the premises. No further communication was made to the ACR until the pursuer and the other officers were inside and there was no suggestion that divisional supervisors, or anyone else, had instructed the pursuer to enter.

[86] He also accepted as fair criticism, that the pursuer had entered the confined space of the bedroom without first trying to verbally engage with C from the doorway, but if that failed it was reasonable for the pursuer to go into the bedroom, maintaining a reaction gap.

[87] On the general proposition that the pursuer had failed to follow his training, he said this was subjective, accepting there were other tactical options available when the officers were in the premises, but officers take calculated risks every day in their line of duty. He made no acknowledgement of the C.U.T.T. principles requiring engagement to be a last resort.

[88] He spoke to the terms of an opinion offered by former Superintendent Irvine and disagreed with much of what was said in relation to risk assessment of information available.

[89] At 23.30 when the officers were outside the premises and saw C inside, there was time for a decision to be taken to instruct ARVs to attend and had they done so the pursuer would not have been injured.

[90] During cross examination, he accepted that the ITFC has a discretion whether to deploy, once the criteria for deployment is met. Taking a different view to Inspector Wilson does not mean she was wrong not to deploy armed officers. The difference of opinion here stems from the assessment of risk. He suggested the controller should have checked the information about handcuffs unless he was clear about what he had been told. He accepted that it was not the best tactic to go into the bedroom and other tactical options could have

been to shut the bedroom door and it was potentially not necessary to go all the way in. He did not go on to say that would have been an appropriate time to update control, but taking the evidence as a whole, that would be a reasonable inference to make.

[91] My overall impression of Mr Fitzpatrick's evidence was not particularly favourable. There was a lack of proper analysis on matters at the time of preparation of his reports and when giving evidence. Both his initial report and supplementary report omit reference to several of the issues which arose, there was no literature in support of opinions despite making some reference to same, and he had no direct experience of performing the roles of controller or ITFC, yet he felt able to criticise both on the basis he had provided general training to ITFC from the perspective of a firearms commander. He does not meet the test in *Kennedy* v *Cordia* to be considered a skilled witness and at best would be seen as a professional witness to explain general policing considerations which arose from the perspective of an operational officer involved in a firearms incident.

Former Superintendent Stephen Irvine

[92] At the time of the incident, he was the head of armed policing for Police Scotland and, effectively, Chief Inspector Wilson's boss. He has since left Police Scotland. His evidence was initially objected to on the basis he was not independent. I heard his evidence under reservation. In written submissions the objection was withdrawn. He adopted his report as his evidence in chief. He had performed the role of both ITFC and TFC. He had not seen the updated pleadings but had seen Mr Fitzpatrick's original report, though not the supplementary. He spoke to the decision-making process on whether to deploy AFOs. Considerable weight is placed on the intent of the individual, although when I asked whether that is reflected anywhere in police polices or procedures, or formed part of the

training for an ITFC, he confirmed it was not. He spoke about specific circumstances of the incident and supported Inspector Wilson's decision not to deploy. He did not place the same emphasis on the handcuffs issue but accepted that was a discretionary decision for the ITFC and again there is nothing contained in policies, procedures or training as to the weight that an ITFC should place on whether someone is handcuffed. He was critical of the pursuer entering the premises as that went against his training. If there had been a need to go in, the bedroom door could have been closed, and the officers could have contained the situation from outside the room.

[93] He would have expected checks to be made as to whether C was handcuffed and if so whether to the front or rear, but it can be assumed that handcuffs would be removed quickly so it was not entirely clear to me why he would feel a need to make those checks. I note that CI Wilson did not make any reference in her evidence to believing that handcuffs could be removed and it is her thought process / decision making that needs to be considered in terms of causation.

[94] Throughout the incident, he did not think it was necessary or proportionate to have deployed armed officers as C had ran off and there was no reason to suspect officers would have to protect themselves from a knife attack (although qualified to some extent by what is said in the following paragraph). Somewhat bizarrely, former Supt. Irvine was not prepared to accept that the initial threshold criteria under paragraph 9.2(a) of the Standard Operating procedure had been met. The additional information that was received did not alter his view on that. What Inspector Wilson made of it, is a subjective assessment by her. I find his position on this to be untenable. The paragraph 9.2(a) criteria was in my view clearly met. There was clear reason to suppose that officers may have to protect themselves from a person in possession of a knife. The threshold for holding that criteria is met is low.

[95] He confirmed that if he had been made aware of the full circumstances, he would have tactically relocated the AROs, and the pursuer, with the other officers, would have been told to wait outside the house thereby avoiding entry at all. Tactical relocation is different to deployment and simply means the AROs would take up a position nearby and await further instructions. The unarmed officers, including the pursuer would have contained and negotiated in an attempt to achieve a resolution to the incident from a position outside the property. It would however mean the ITFC would have taken charge of the incident. A reasonable inference is that the ITFC would monitor how successful the unarmed officers were in achieving a peaceful resolution without engagement and if it became clear that was not going to be achieved, a review of the situation would be undertaken, leading to deployment of the AROs. However, there was a failure to contain and negotiate. Control was under the impression that there was containment and there was no communication until after the officers had gone in. The ITFC was not given all the information.

[96] The witness gave his evidence, in large part, from the perspective of what he would have done if presented with the same situation. There were no issues in relation to credibility, but he was, at times, dogmatic. He did, however, recognise that when the officers arrived at the property where C was located, he would have tactically relocated the AFOs to take up a position close by, but leave the containment and negotiation with the unarmed officers. He would also have relayed a message to those officers to stay outside. A reasonable inference is that instruction would have been given in recognition of the increased risk that entering the property would give rise to, with the possibility that the officers would be confronted by a suspect carrying a knife.

The Law:

[97] The direct liability of the defender as Chief Constable was considered in *Ormsby* v *The Chief Constable of Strathclyde Police* [2008] CSOH 143 and in the case of *White* v *The Chief Constable of Yorkshire Police* [1999] 2 AC 455.

[98] In *Ormsby*, officers were subjected to extreme violence and hostility for which they were unequipped and unprepared, and despite a worsening of the situation the senior officer in charge (G) made the decision to continue with the operation.
The pursuer submitted that (1) G had failed to respond to the increased level of opposition and violence exposing her to an unnecessary and unreasonable risk of injury for which the Chief Constable was ultimately responsible; (2) due to G's negligence, she was subjected to a physical assault where she was struck on the sternum with a pineapple which caused injury and required her to take time off work, and more significantly, she had suffered a severe psychological injury, forcing her to take early retirement. The court held that (1) The injuries to the officers were foreseeable due to the deterioration of the situation and, based on the particular facts of this case, there was a duty of reasonable care owed to O which had been breached by the decision taken by G as officers continued to be deployed even once the risk of serious injury had become apparent. (2) due to a failure to prove that the psychological injuries were causally linked to the negligence only a modest award for physical injuries was made.

[99] The following comments were made by Lord Malcolm in his judgment:

> "Para 26: Police officers are subject to police discipline and are expected to obey orders. Where those orders involve officers running the kind of risks involved in this operation, I do not accept that the various entirely understandable considerations weighing with Chief Superintendent Gray mean that none the less reasonable care was taken for their safety. In other words, even if on one view the decision to continue the deployment and complete the task can be justified in a general sense, and might even be described by many as 'the right decision' notwithstanding the

> obvious risks, if those risks come to pass, in my opinion the injured officers should and do have a remedy under the civil law. That reflects the major change in the legal framework concerning the responsibility of police authorities for the health and safety of their officers which proved so controversial at the time of the 1997 Act. In the more general common law context of whether a duty is owed, and if so whether it was breached, that shift in the legal relationship between the police and their 'employees' cannot be ignored. Whatever the earlier position, police officers are not an expendable resource which, regardless of the specific circumstances, can always be expected to thole assaults and the risk of serious injury in the wider interests of successful policing.
>
> Para 27: Strictly, members of the police hold an office, but it is now well established that such claims are to be considered in an employment context, and that in deciding what is fair, just and reasonable in the circumstances, regard should be had to an employer's duty to operate a safe system of work.
>
> …..I can identify no compelling reasons of public policy or of fairness and justice which would require the denial of a duty of care towards the pursuer.
> ……. It might be different if the risks had emerged suddenly and wholly unexpectedly shortly before the injury, or if they arose in a situation of emergency when decisions had to be taken in the heat of the moment. That may well be the kind of risk which all police officers accept in taking up this form of employment, but I do not categorise the present as such a case. ”

[100] In *White,* a House of Lords Decision arising out of the Hillsborough disaster, the court held that a chief constable owed police officers under his command a duty analogous to an employer's duty to care for the safety of his employees and to take reasonable steps to protect them from physical harm, but that duty did not extend to protecting them from psychiatric injury when there was no breach of the duty to protect them from physical injury.

[101] In the present case, the defender is critical of the lack of clarity in the pursuer’s pleadings in relation to the basis upon which the “direct liability” case is made. She argues that no fair notice has been given to her. It seems clear however based on consideration of the above case law that the same factual basis for a vicarious liability claim can form the basis for the direct liability claim. Reading the pleadings as a whole, I do not believe the scant averments on failure to provide a safe system of work, when read in the overall

context of what is averred, and the terms of the case law, results in the defender having lack of proper notice.

Vicarious Liability:

[102] **Section 24 of the Police and Fire Reform (Scotland) Act 2012:**

> "A Chief Constable is vicariously liable for any unlawful conduct of police officers in the course of their employment."

[103] **Health & Safety at Work etc Act 1974 Section 51A:**

> "(1) For the purposes of this Part, a person who, otherwise than under a contract of employment, holds the office of constable or an appointment as police cadet shall be treated as an employee of the relevant officer."

The definition of relevant officer for these purposes is the Chief Constable.

[104] ***Caparo Industries Plc* v *Dickman* [1990] 2 AC 605** – a House of Lords decision which, amongst other things, sets out the test to be met if a novel duty of care is argued to exist. The duty will only exist if there is sufficient proximity between the parties, the loss was foreseeable and that it was fair just and reasonable for the duty to exist in the circumstances of the case.

It was argued by the defender that no duty of care existed in relation to PC Irvine or the ITFC having to confirm whether a suspect is handcuffed or whether the handcuffing is to the front or rear. I agree with the proposition that there is no duty on the part of the controller or ITFC to clarify whether handcuffing was to the front or rear. To hold otherwise would create a novel duty and I am not satisfied that it would be fair, just and reasonable to do so where there is no suggestion that it was routinely done in practice. However, the issue of handcuffs generally stems from the duty to accurately record information provided to the controller. In the circumstances of this case the message relayed to the controller was clear,

the suspect was not in handcuffs. It was the duty of PC Irvine to record that accurately. All witnesses were agreed that if, for some reason, the controller was unclear on what had been said, he was required to clarify that. That is common sense as the information is going to be relied on by others such as the ITFC to make important decisions. I do not consider that holding that a duty exists to record information accurately, creates a novel duty to which Caparo applies, but even if it does, it is clear that the proximity, foreseeability and fair, just and reasonable elements of the test are all met.

Discussion

[105] An initial engagement between Constables Milne and Barron took place with the suspect, C, in Smithon Park, Inverness in the evening of 4.5.99. C was seen to be in possession of a knife with a 4 inch serrated blade protruding from his pocket. C was in the process of being searched and handcuffed when he made off and evaded arrest.

[106] A message was relayed by PC Milne to PC Allan Irvine in the Area Control Room in Dundee to the effect that [C] started struggling when she was putting the cuffs on and he made off. PC Irvine erroneously recorded in a log, known as a STORM log, that C "was **placed in handcuffs** and started struggling, made off and believed to be in possession of a knife". This failure influenced everything that followed that night. It was a failure to accurately record information passed to control by an officer on the ground.

[107] After making the entry on STORM, PC Irvine tagged the incident for consideration by the duty officer in North Overview. The duty officer also performs the role of the Initial Tactical Firearms Commander and is responsible for making decisions as to whether to deploy Authorised Firearms Officers (AFOs), otherwise known as an Armed Response Unit

(ARU). North Overview are tagged into any incident whenever a firearm is involved. The definition of firearm includes any other potentially lethal weapon, including a knife.

[108] A Standard Operating Procedure exists which sets out a 2-stage test to be applied when an ITFC requires to consider deployment of AROs. The first stage is met:

(a) Where the officer authorising deployment has reason to suppose that officers may have to protect themselves or others from a person who:

- Is in possession of, or has immediate access to, a firearm or other potentially lethal weapon, **or**
- Is otherwise so dangerous that the deployment of armed officers is considered to be appropriate **or**

(b) As an operational contingency in a specific operation based on threat assessment.

[109] There can be no doubt that when the STORM log was reviewed by CI Wilson, the stage 1 test was met, given that C had been spotted with a knife and officers were searching for him. There was clear "reason to suppose" that officers may have to protect themselves from the person in possession of a knife. Given that these criteria were fulfilled, there was no requirement at this stage of the test to consider the threat level posed. It was permissible to deploy.

[110] This then required the ITFC to consider whether a decision to deploy AFOs would be proportionate, legal, accountable, necessary and the least intrusive option (PLANL) in compliance with the European Convention on Human Rights.

In making that decision, the ITFC required to apply the National Decision Model (NDM).

[111] The NDM is a chart with various sections which require to be considered when any police officer requires to make a policing decision. Whilst CI Wilson confirmed she always has a copy on her desk to act as an aide memoire when required, the terms of the NDM would be very familiar to her given her level of experience and she would not have to methodically work through every section of the document. It does however require i. the ingathering of information or intelligence ii. an assessment of threat and risk to allow a working strategy to be developed iii. consideration of any applicable powers and policies iv. Identification of options and contingencies and v. the need to take action and review what happened.

[112] Various points are listed in the NDM for consideration including:

i. in relation to threat assessment, including who is making the threat, what is the threat, who is at risk from the threat, what is the person's intent and capability and whether the threat should be categorised as low, medium or high.

ii. in relation to powers and policy, including ECHR / PLANL considerations and whether the criterion for deployment of AFOs is likely to be met;

iii. in relation to actions, including resource considerations, timing of action and issues relevant to containment and arrest; and

iv. in relation to Tactical options including strategic aims and whether the proposed action has been appropriately risk assessed.

[113] At the time of her first consideration of the incident, CI Wilson was proceeding on the erroneously recorded information that C was in handcuffs. In her evidence she confirmed this was a huge factor in her decision not to deploy AFOs. It was not the only factor. She was also of the view that i. C had not brandished the knife or threatened anyone

with it ii. C had actively run away from officers to evade arrest and iii. there was no immediate threat to anyone including officers were important considerations.

[114] CI Wilson confirmed that had she been aware of the fact that C was not handcuffed, further enquiries would have been made. She would have sought clarification of the type of knife. She did not do so because she believed C was handcuffed. There was no dispute that possession of a bladed weapon will not invariably require the deployment of firearms officers. One can easily imagine different decisions being made in relation to deployment of AFOs if the knife was a small kitchen knife compared to a machete or sword. She would have been told the knife in question was one with a 4 inch serrated blade, and therefore something that clearly posed a potentially lethal risk to any officer trying to capture C. At that time C was at large and had not been traced to his partner's home. There was no immediate threat. It was open to the ITFC to deploy the AROs to assist in the search of C but I accept that based on what she believed to be the situation at the time, namely C was in handcuffs, his capabilities to use the knife were therefore limited, he had shown no intent and was evading police, the decision made by her at 23:07 not to deploy was justified and did not amount to negligence on her part.

[115] The evidence led did not satisfy me that either PC Irvine or CI Wilson ought to have checked whether the handcuffs were applied to the front or rear. It was suggested by the pursuer that was something that one or both of them should have checked and former Superintendent Irvine confirmed he would have checked that. However, whilst it may have been best practice, I am not of the view it was normal practice or that a failure to check amounted of any breach of duty not to have checked. The pursuer suggested that if the question had been asked as to whether C was hand-cuffed to the front or rear that would have resulted in PC Irvine and CI Wilson becoming aware that C was not hand-cuffed at all.

That does seem likely but is of no relevance unless a duty to check that existed. Based on the evidence as a whole I do not consider that it did.

[116] As matters progressed between 23:07 and 23:25, additional information was either recorded in the STORM log (C's previous convictions and warning markers) or was ingathered by PC Irvine without being recorded (e.g. the fact that the officers had arrived at the property, had viewed C inside and were planning to go in once they had positioned themselves at the back and front doors). The failure to record this information meant that CI Wilson was not in possession of all the information she should have been had everything been recorded timeously and accurately. She remained under the impression C was in handcuffs as a result of PC Irvine's failure to properly record PC Milne's radio transmission. The question to be answered is what would CI Wilson probably have done if she was in possession of all the information that she ought to have been? Would she have reviewed her earlier decision and decided to deploy ARO's, and would there have been sufficient time to send instructions to the divisional officers to remain outside the property to await the arrival of the AROs, or would she, as she suggested in her evidence, have decided to maintain the status quo and leave the matter for the divisional officers to deal with under the supervision of local sergeants or inspectors.

[117] As to whether there would have been a decision to deploy AFOs, the court has to answer this based on what CI Wilson is likely to have done as opposed to what a "reasonable" ITFC would have done. The question requires o be answered based on what she ought to have known. It is clear to me that CI Wilson placed great emphasis on the fact she believed C to be handcuffed. She argued that other factors played a part in her decision not to deploy and whilst the overall picture, based on the information available at 23:07, justified a decision not to deploy, I cannot accept her position that would have remained the

case. By 23:25 or within a minute or two thereafter, she would, or ought to have, known: the nature of the weapon, the information about previous convictions and warning markers including previous violence and knife crime, the fact that officers would have to go into a property where an unpredictable suspect would effectively be cornered with a view to being arrested. CI Wilson stated she did not perceive the threat level to be any greater at 23:25 compared to what it was at 23:07. I find that position to be untenable. The threat level at 23:25 was clearly different (and higher) given that officers had traced C to a property where he was inside and the officers were about to go in to arrest him. The risk to the unarmed officers in having to confront C, a man believed to be in possession of a knife in a confined space, with all the other risk factors which were known or ought to have been known, was significant. There was a much safer option and that was to deploy the AFOs to contain the locus, engage with C from outside and as a last resort to enter the building with firearms to effect an arrest. The resource to do so was available. As PC Morrison said, it was highly unlikely that firearms would have been used, the vast majority of incidents resolve peacefully and safely through the mere presence of the AFOs.

[118] CI Wilson was not provided with the information which she required because of the failures on the part of PC Irvine as previously outlined. Throughout, she was under the impression, through no fault of her own, that C remained handcuffed. She therefore cannot be criticised. However, the failures on the part of PC Irvine have had a direct effect on the ITFC's decision making and have led to the wrong decision being made with regard to deployment of AFOs. It was suggested by the pursuer that the ITFC was negligent because she did not deploy AFOs for a "contain call out" but that is predicated on the suggestion that she ought to have known that the pursuer was heading to the address of C's partner or that he was already there. There is no evidence to say that she should have known that

other than if PC Irvine had not acted negligently. I do not consider that it has been proved that she ought to have heard this on an air-ways transmission. CI Wilson is not negligent due to the acts and omissions of another officer, it is the defender who bears that responsibility.

[119] In relation to the timing of deployment, I am satisfied that all enquiries and updating of information on STORM should have been completed by between 23:25 and 23:26 and would have been reviewed by the ITFC within 1 or 2 minutes thereafter. This is consistent with the timescale which applied when the original decision was made. This would have led to the ITFC issuing instructions to the pursuer to remain outside the property, to await the arrival of AFOs, prior to him having gained entry at some point between 23:29:57 (when PC Milne advised control whilst she was outside that she could see C inside heading towards the back door) and 23:30:58 (when Unit Bravo confirm that the 5 officers are inside). The AFOs would have been deployed at that point and would have been in attendance in approximately 5 minutes given their location close by. That in turn would have avoided the pursuer having to enter the property and be exposed to the assault which occurred.

Contributory Negligence:

[120] The pursuer was criticised on a number of fronts. The only aspects which I consider to be relevant are:

1. He failed to revert to PC Irvine in the control room to advise that he, and the other officers, were going to go into the property.
2. He failed to pass information to PC Irvine in the control room that he had decided to enter an enclosed space with C.

3. The pursuer did not act in accordance with his training, did not act in accordance with the "stay safe" guidance previously issued to officers and did not "see, tell, act".

The pursuer did not contain the locus and await the arrival of other officers to assist.

[121] The relevant provisions of Section 1 of the Law Reform (Contributory Negligence) 1945 Act are:

> **"1. — Apportionment of liability in case of contributory negligence.**
>
> (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage…
>
> (2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault."

[122] *Stapley* v *Gypsum Mines Limited* [1953] A.C. 663, a House of Lords decision, is authority for the proposition that the court must deal broadly with the problem of apportionment and, in considering what is just and equitable, must have regard to the blameworthiness of each party.

[123] It is not disputed that those acting in the course of their employment (or, in the case of police officers, those performing their duties as a police officer) owe a duty to take reasonable care for their own safety. A police officer is afforded a discretion, to some extent, to deal with events as they present themselves in the line of duty. They do not have to wait to be attacked before taking action to defend themselves. It is a job with inherent risks and

urgent situations invariably arise where an officer's safety is jeopardised regardless of the precautions taken. Each case has to be looked at on its own facts and circumstances.

[124] The simple facts of this case are that the pursuer knew the relevant safety principles which applied to the situation which he was confronted with. He knew or ought to have known that decisions in how to deal with the situation should be in accordance with i. the National Decision Model ii. C.U.T.T principles (he accepted that he knew what these principles were even though he contended that he had not been formally trained in them) and iii. the Stay Safe principle even though no Stay Safe message had been broadcast. In fulfilment of the duty to take care for his own safety, it was incumbent on the pursuer to act in accordance with his training and a. communicate with control to advise that he and his colleagues were outside the house and effectively containing it and b. refrain from entering until further instructions were received. In doing so, in terms of the NDM, he ought to have assessed the threat and risk. Throughout the proof, it was argued that the threat level was high. He knew or ought to have known that. The pursuer did not give adequate consideration to options other than getting into the property to arrest C then and there. He could and should have contained the property by remaining outside. He could and should have attempted dialogue with C to establish if he was going to "come quietly". He could and should have updated control and asked for further instructions on how to proceed. There was no pressing need to depart from the foregoing aspects of his training. He did so in breach of the duty of care which he owed in relation to his own safety and exposed himself to unnecessary risk. I do not accept there was justification for entering the property simply because no-one had told him to stay outside. If the training had been followed, it is likely that such an instruction would, or at least ought to have been, received. The fact that

other officers followed suit and entered does not detract from the fact that the pursuer must bear a share of the blame for what then ensued.

[125] Even when inside, training was not followed. There was no need to enter the bedroom. If C ignored instructions to "come quietly" and in the knowledge that C may still be in possession of a knife, the pursuer ought to have refrained from entering the bedroom. The door could have been closed, the dog positioned at the door and a message relayed to control as to what was happening. Had that been done, the STORM log would, or should, have been updated and the ITFC would have reviewed the decision not to deploy AFOs. I would have expected that she would have proceeded with their deployment given the threat levels which the officers faced at that time. In short, I consider the criticism of the pursuer's own conduct is justified on all four fronts and amounts to contributory negligence on his part.

[126] No useful precedent was cited on what would amounts to a just and equitable deduction. There appear to be no directly analogous cases where a police officer has failed to follow his training. I will mention two cases which help inform the appropriate deduction. In the recent decision from this court in the case of *Thomas Ward* v *WM Morrison Supermarkets Plc & Ors* 2025 SC EDIN 17 the pursuer decided to enter the rear of a trailer without being asked to do so, because he wanted to assist in righting the load that had moved in transit. The pursuer was not prohibited from being in the rear of the trailer in these circumstances, but he was not trained in the use of a pallet truck. While using the pallet truck, the load overbalanced and the pallet struck the pursuer's left foot causing him to fall off the trailer. The pursuer's own actions contributed to the accident. A reasonable assessment of contributory negligence was 30%.

[127] In the case of *Ashbridge* v *Christian Salvesen* 2006 S.L.T 697, a decision which has received subsequent judicial approval, Lord Glennie stated at paragraphs 25 and 26:

> "[25] The question of contributory negligence involves not only a consideration of the conduct of the pursuer but also an analysis of what it is that the statutory regulations and the common law duty of care are designed to guard against. I propose to consider this question by reference to the regulations. The regulations with which I am here concerned are designed to protect the employee against the dangers inherent in working with machinery and equipment of various kinds. It is a feature of every working environment that there will be moments of carelessness or lack of concentration. It is in part to guard against danger arising in such an environment from such carelessness or lack of concentration that the regulations assume a role of great importance. It follows that the purpose of the regulations would be defeated if a finding of contributory negligence were made whenever an employee was careless and by his carelessness contributed to the accident. This applies a fortiori to careless or sloppy practices which have become rife and of which the employers are, or ought to be, aware. It is, therefore, the exceptional case rather than the norm where a finding of contributory negligence will be made.
>
> [26] In the present case I consider that the pursuer's actions went beyond the sort of carelessness or inadvertence which I have described……. It seems to me that the pursuer was guilty of the most wanton disregard of his own safety. That does not absolve the defenders from responsibility for the inadequacies in the system which I have described, but it does entitle me to find the pursuer contributorily negligent. I assess his responsibility for the accident as 50 per cent and I shall reflect this in the award of damages."

[128] Whilst the defender in my opinion must be seen to be more blameworthy than the pursuer, in this case the pursuer's culpability is significant. This is not a case of carelessness or momentary inadvertence. The pursuer had an aim and that was to "remove C from society so he would no longer pose a threat." However, he went about it by ignoring well established practice and procedure. I stop short from holding that he was guilty of the most wanton disregard for his own safety, but if he had simply stopped and thought about his training and drew on his vast experience he would have known he should be communicating with control and remaining outside the property. In my opinion a just and equitable deduction for contributory negligence is 40%.

Decision:

[129] Based on the foregoing, I shall pronounce an interlocutor granting decree against the defender for payment to the pursuer in the sum of TWO HUNDRED AND TEN THOUSAND POUNDS (£210,000), net of any benefits payable by the defender in terms of Section 6 of the Social Security (Recovery of Benefits) Act 1997, but inclusive of interest to 12 June 2025 and interest thereon at the rate of 8% per annum from 13 June 2025 until payment. This reflects a 40% deduction for contributory negligence from the agreed full liability valuation of £350,000.

[130] I shall find the defender liable to the pursuer in the taxed expenses of process. I shall sanction the proceedings as suitable for the employment of senior and junior counsel and shall certify Dr Deepa Tilak, Consultant Psychiatrist, Dr Alan Mulvihill, Consultant Ophthalmic Surgeon, Keith Carter, Vocational Consultant and John Pollock, Consulting Actuary as skilled persons. I refuse certification in respect of Mr Liam Fitzpatrick as I am not satisfied that he was sufficiently qualified to offer opinion evidence on the acts or omissions of a controller in an Area Control Room or an ITFC. His evidence was only useful, in a general sense, in his capacity as a former bronze firearms commander and as such he can be considered a professional witness.