



Neutral Citation Number: [2021] EWHC 122 (Admin)

Case No: CO/808/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/01/2021

Before:

**MRS JUSTICE MAY DBE**

Between :

**The Queen on the application of Terry Ladkin**  
**- and -**  
**Independent Office for Police Conduct**

**Claimant**

**Defendant**

- (1) Police Constable Neal Dyton
- (2) Police Constable Chris Dougherty
- (3) Chief Constable of Bedfordshire Police
- (4) Chief Constable of Hertfordshire Constabulary
- (5) Chief Constable of Essex Police

**Interested Parties**

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**Adam Wagner** (instructed by **Irwin Mitchell Solicitors**) for the **Claimant**  
**Stephen Morley** (instructed by **Legal Services Department of the IOPC**) for the **Defendant**  
**Afzal Chowdhury, Solicitor-Advocate, Head of Legal Services, Hertfordshire Constabulary** (instructed by **Legal Services Department, Hertfordshire Constabulary**) for the **1, 2, 3 & 4 Interested Parties**

Hearing dates: 28 October 2020

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**Approved Judgment**

## **Mrs Justice May DBE:**

### **Introduction**

1. On 28 March 2019, shortly before 10pm on Parklands, Essex, Jessica Ladkin (“JL”) lost control of her Vauxhall Corsa and collided with another car. JL died at the scene; the driver and four passengers in the other car were all injured, the driver very severely. At the time of the crash, JL was driving at speed being pursued by two officers in a police vehicle with blue lights illuminated. Her sudden death will have shocked and grieved her family and friends; it is entirely understandable that they should wish to ask questions and pursue answers as to how and why this happened to someone they loved.
2. As with any police action involving a fatality there was an investigation by the Independent Office for Police Conduct (“IOPC”). By these proceedings JL’s father seeks to challenge the conclusion of the Director General of the IOPC to the effect that there was no evidence that the officers behaved in a manner to warrant disciplinary proceedings.
3. Permission was given by Foster J on 5 June 2020, together with an extension of time. I should like to record my gratitude to all counsel for their clear and helpful written and oral submissions.

### **The Facts**

4. The circumstances giving rise to the collision are not in dispute. The IOPC investigation gathered all relevant material, including dashcam footage from the police car which I have seen. Mr Morley, for the IOPC, provided a detailed chronology of events shown on that footage, which I attach, with grateful acknowledgement, as an appendix to this judgment.
5. At around 21.49 on the evening of 28 March 2019, JL was driving a silver Vauxhall Corsa on the A10, Great North Cambridge Road, near Enfield. PC Neal Dyton (Hertfordshire Constabulary) and PC Chris Dougherty (Bedfordshire Police) were travelling on the same road together in a marked police car as part of the Bedfordshire Police, Cambridge Constabulary and Hertfordshire Constabulary joint Roads Policing Unit responsible for conducting roads policing patrols over their combined county force areas. PC Dougherty was driving with PC Dyton in the front passenger seat as radio operator. The officers were conducting patrols of Hertfordshire roads near to the M25, close to the border with Essex and Essex Police’s area of operations.
6. Whilst stationary at a set of traffic lights on a roundabout on the A10, the officers’ in-car Automatic Number Plate Recognition system (ANPR) produced an alert identifying that the silver Vauxhall Corsa behind the patrol car had a Motor Insurance Database (MIDAS) query associated with it. PC Dougherty conducted a search of the Corsa’s registration plate on the Police National Computer (PNC) which confirmed that the Corsa was not covered by insurance.
7. When the lights changed the Corsa pulled out at normal speed past the police car and continued around the roundabout towards the M25, before stopping at another set of traffic lights. At 21.50 the police car drew up alongside the stationary Corsa, whereupon officers switched on the blue lights and sounded the siren briefly. In their

statements given to the IOPC both officers stated that PC Dyton opened the passenger window to speak to the driver of the Corsa. They describe the driver lowering her window, and then PC Dyton asking her to drive round the roundabout and pull over, to which she assented, saying “OK”.

8. At 21.50.43 the lights turned green and the Corsa continued forward onto the roundabout and thence onto the slip road to the M25 before continuing through the Waltham Tunnel, a four-lane carriageway in an underground tunnel. At this stage the Corsa was going at a steady speed; officers believed that the driver would stop after emerging from the tunnel. Again, they drove up alongside, with blue lights and siren on. PC Dyton rolled down the window, indicating with his arm that she should stop, and shouting at her to pull over. This time the driver of the Corsa failed to acknowledge or look in their direction, instead looking down at her lap.
9. On emerging from the Waltham Tunnel at 21.51.53 the Corsa suddenly changed lanes, pulled out in front of the police car and accelerated away. PC Dougherty was not trained in Initial Phase Pursuit (IPP); he allowed the Corsa to drive off, turning off his blue lights and siren. Nevertheless the dashcam footage shows that the police car also accelerated over the next 2 minutes, moving into the fast lane and reaching a speed of over 100mph. Although initially in view out in front, the Corsa soon pulled out of sight, even at these speeds. PC Dyton made contact with the Essex Police control room (the force responsible for that location), informing the police staff employee on duty of their location and the license plate details of the Corsa, stating that it had failed to stop and asking for assistance. PC Dyton told the control room that they were not in pursuit at that point.
10. PC Dougherty saw the Corsa leave the M25 at junction 26, the first available exit, and he also took that turn. At 21.53.58 he stopped the police car at the roundabout, turning on the blue lights once more, before getting out and swapping places with PC Dyton, who was IPP trained.
11. At 21.54.07 PC Dyton drove off, with blue lights illuminated, looking for the Corsa which had by then disappeared. He took the first exit and at the next roundabout drove into Broomstick Hall Road. PC Dougherty, now in the front passenger seat, updated the Essex Control Room with their location. He was asked for, and gave, a description of the driver of the Corsa. Inspector Shah, in the control room, noted that the police vehicle had lost sight of the Corsa and concluded that there was no pursuit for him to oversee at that time.
12. At 21.56 the footage shows the Corsa driving past the police car in the opposite direction on Broomstick Hall Road and at 21.56.15 PC Dyton turned the police car round. At 21.56.32 the Corsa was seen emerging from a side road, once again PC Dyton turned the police car round and at 21.56.41 it had started to follow the Corsa down the road in the same direction. PC Dougherty immediately informed the control room that they had re-sighted the Corsa. Thereafter the control room repeatedly asked for their location and PC Dougherty responded that he was having issues getting their communications through to the control room. The control room acknowledged and asked for the last sighting of the vehicle.
13. The backlights of the Corsa are barely visible in the dashcam footage, as it was some 8 seconds ahead, once again pulling away from the police car along Parklands. Both cars

were travelling well above the speed limit but the roads appeared clear and there were few people about. In his statement PC Dyton said that he drove within the limits of his training and his vehicle's capability and at a speed which allowed him to keep his car under control. He said it was his intention to keep the Corsa in sight but not to put the driver under any undue pressure; his evidence was that he was unwilling to compromise the safety of himself, PC Dougherty or the driver of the Corsa (it was not until after the collision that the officers knew the identity of the driver).

14. At 21.57.24 the police car was travelling around a bend on Parklands when there was a large flash of light some distance ahead. 6 seconds later the officers stopped their car just short of the scene of a collision, the Corsa having collided with a Vauxhall Mokka travelling in the opposite direction.
15. The force of the collision caused the Mokka to collide with a Range Rover travelling behind. Inside the Mokka were a couple and three children, all sustained injuries for which they were treated in hospital. The adult female driver's injuries were severe and life-changing. The couple in the Range Rover were able to walk away. Despite efforts made by the police and paramedics to revive her, JL was pronounced dead at the scene. Blood tests showed that she was 1½ times above the limit for alcohol and that she had recently taken cocaine. Three wraps of cocaine were found in her pockets.

#### **IOPC investigations into matters concerning death or serious injury**

16. Investigations into matters concerning death or serious injury ("DSI matters") are governed by Part 2A of Schedule 3 to the Police Reform Act 2002 ("the 2002 Act").
17. If, during the investigation of a DSI matter, the designated investigator finds an indication that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings the Director General of the IOPC (DG) is required to notify the Appropriate Authority ("AA") and the AA is required to record the matter as a conduct matter. If such an indication is found then the IOPC investigation will continue as a conduct matter: see paragraphs 21A (2C), (5) and (6) of Schedule 3 to the 2002 Act.
18. If the investigation finds no such indication, then the IOPC investigation will not continue as a conduct matter. In that case, once the investigation has been completed, the final report is sent to the DG or the person to whom his decision-making power has been delegated ("the decision-maker") in accordance with the provisions of paragraph 24A of Schedule 3 to the 2002 Act. Paragraph 24A(4) provides that:

*"(4) On receipt of the report..the [decision-maker] shall determine whether the report indicates that a person serving with the police may have – "*

*(a) committed a criminal offence, or*

*(b) behaved in a manner which would justify the bringing of disciplinary proceedings."*

19. If the decision maker determines that the report does not indicate either (a) or (b) above, then paragraph 24C applies, the relevant parts of which provide as follows:

*“(1) This paragraph applies where the [decision-maker] determines under paragraph 24A(4) that there is no indication in the report that a person serving with the police may have*

*(a) committed a criminal offence, or*

*(b) behaved in a manner which would justify the bringing of disciplinary proceedings*

.....

*(3) The [decision-maker] may notify the appropriate authority that it must, in accordance with regulations under section 50 or 51 of the 1996 Act determine*

*(a) whether or not the performance of a person serving with the police is unsatisfactory,*

*and*

*(b) what action (if any) the authority will take in respect of any such person’s performance.”*

20. The meaning of “unsatisfactory performance” in this context is to be found in regulation 4 of the Police Performance Regulations 2012; SI2012/2631, where it is defined as:

*“an inability or failure of a police officer to perform the duties of the role or rank he is currently undertaking to a satisfactory standard or level”*

21. The IOPC Statutory Guidance (May 2015) which was in force at the material time (“the IOPC Guidance”) describes the purpose of a DSI Investigation and deals with the outcomes. Guidance as to the outcomes of DSI investigations is to be found at paragraphs 11.49 to 11.51:

*“11.49 The outcomes of a DSI investigation will reflect the fact that it is not an inquiry into any criminal, conduct or complaint allegation against any person serving with the police.*

*11.50 The purpose of a DSI investigation is to establish facts, the sequence of events and their consequences. Its role is to investigate how and to what extent, if any, the person who has died or been seriously injured had contact with the police, and the degree to which this caused or contributed to the death or injury.”*

In a highlighted box following paragraph 11.50 is this instruction:

*“At the end of a DSI investigation, the investigator must submit a report to the [IOPC] and send a copy to the appropriate authority. The [IOPC] must determine whether the report indicates that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings. If the [IOPC] decides*

*that it does, it will notify the appropriate authority. The appropriate authority must then record the matter as a conduct matter and consider whether it should be referred to the [IOPC]. Subject to any decision by the [IOPC] to re-determine the form of the investigation, the investigator of the DSI matter must investigate the conduct matter.*

*Where there is no such indication, the [IOPC] may make recommendations or give advice [relating to satisfactory/unsatisfactory performance] as it considers necessary or desirable.”*

22. Assistance as to unsatisfactory performance is given at paragraphs 11.15 and 11.16 of the IOPC Guidance:

*“11.15. In an investigation, which has not been subject to special requirements or if it has and no case to answer for misconduct is found, the investigation report can, if applicable, draw attention to evidence which suggests that the performance of the person to whose conduct the investigation relates may have been satisfactory or unsatisfactory. This should always be included where the weight of the evidence suggests that the performance may have been unsatisfactory.*

*11.16. It is for the appropriate authority or the [IOPC], not the investigator, to reach the final decision as to whether there may have been unsatisfactory performance.”*

### **Non-statutory guidance on Police Pursuits**

23. The College of Policing has issued Authorised Professional Practice on Road Policing, including detailed guidance on Police Pursuits, material passages of which are set out below (“the APP Guidance”).

#### ***“Police Pursuits***

*A police driver is deemed to be in pursuit when a driver/motorcyclist indicates by their actions or continuance of the manner of driving/riding that:*

- *They have no intention of stopping for the police, and*
- *The police driver believes that the driver of the subject vehicle is aware of the requirement to stop and decides to continue behind the subject vehicle with a view to either reporting its progress or stopping it.*
- *When a situation falls within the definition of a pursuit, officers need to decide whether a pursuit is justified, proportionate and conforms to the principle of least*

*intrusion. Pursuits may be spontaneous or part of pre-planned operations.*

...

### ***Pursuit prevention***

*Pursuit activity and use of pursuit tactics are likely to place members of the public and police officers under a significant degree of risk. Wherever possible, trying to prevent a pursuit from taking place must be a primary consideration.*

*Officers authorised in pursuit and incident managers must give due regard to the purpose and justification of actions and decisions of a pursuit. The key consideration is to ask is this pursuit necessary, balanced against threat risk and harm for which the subject driver is being (or about to be) pursued?*

*If the decision is made to engage in a pursuit because it is in the public interest to protect life, prevent or detect crime, or to apprehend an offender, then it must be conducted with proportionality and due regard for the circumstances. It is important that the risks, topography and continuing surroundings are calculated to justify legitimacy of actions. Officers should not place undue pressure on themselves or risk public safety beyond their capabilities or those of the vehicle they are driving.*

*To mitigate risk of engaging in, or continuing, a pursuit, officers and pursuit managers must continually ask themselves:*

- *What is the nature of incident or circumstances to which I am now responding or authorising a pursuit response?*
- *Is a pursuit a proportionate action?*
- *Do my actions, purpose and objective to stop or prevent further or continuing criminal actions justify the potential risks to life or property?*
- *Do I have reasonable information or intelligence to indicate that using alternative tactics is preferable to a pursuit?*
- *Can I plan a different strategy to apprehend the subject driver in the future which is unlikely to compromise evidence requirements?*
- *Can resources and tactics be used in alternative, preventive ways, to avoid a pursuit taking place?*

*Before engaging in, or authorising, a pursuit, officers and managers must be familiar with pursuit considerations*

### ***Spontaneous pursuits***

*These occur when the actions of the suspect driver in deciding to flee are triggered by the presence of a police vehicle, and there is no prior warning or sufficient time to develop a specific strategy and plans, regardless of whether or not the officer made an initial requirement for the vehicle to stop.*

### ***Initial phase***

*This is the period of a spontaneous pursuit before tactical resolution can be considered and actioned. Pursuit trained standard/response drivers/motorcyclists with suitable vehicles may be authorised to continue by an appropriate member of staff from the control/communications room but they have no authority to take an active part in tactical resolution. Tyre deflation systems may be used in the initial phase.*

### ***Tactical phase***

*This is the phase of an authorised pursuit, for which appropriate resolution tactics are available. It is commenced by, or taken over by, a tactical phase trained advanced driver in a suitable vehicle, with a pursuit commander identified. Once the pursuit moves into the tactical phase, tactical options for bringing the pursuit to a conclusion will be directed by the pursuit commander.*

### ***Pursuit management***

#### ***Authorisation***

*Officers should seek authorisation for their decision to engage in a pursuit from designated control/communications room staff. The time available between recognising the need for action and the deadline for taking action may be too short to acquire the control/communications room authorisation. In such cases officers may self-authorise and justify the decision at a later time in line with the NDM. No additional authority is required to move from the initial phase to the tactical phase.*

#### ***Initial authorisation to conduct a pursuit***

*Before requesting or granting authorisation for a pursuit, alternative action must be considered. There are a number of pursuit considerations which drivers and control/communications room staff must take into account when making this decision in line with the NDM.*



*Granting authorisation to pursue gives agreement in principle to use tactics set out in the tactics directory, with the exception of those which require authorisation from a senior officer.*

*Officers should inform control/communications room staff of their driving authority level, which police vehicle they are using, and give a description of the subject vehicle and occupants as well as the direction of travel.*

*Where non-pursuit trained drivers and motorcyclists are permitted by their force to stop vehicles, they must inform control/communications room staff when it becomes evident that a vehicle is refusing to stop. At this point the situation falls within the definition of a pursuit, and non-pursuit trained drivers must discontinue immediately.*

### ***Pursuit considerations***

*The following should be taken into account, in accordance with the national decision model:*

- *the current level of risk posed by the pursued driver*
- *whether or not the suspect's identity is known*
- *the seriousness of any known offence committed or suspected*
- *the weight of intelligence as to whether the suspects are, or are likely to be, armed (see situational engagement of suspects)*
- *whether the driver is, or appears to be, a juvenile or whether it appears that other vulnerable persons are in the vehicle*
- *the type of vehicle being pursued, eg, car or motorcycle*
- *the current/anticipated route in respect of the time of day, road, weather, traffic, specific considerations such as schools, licensed premises or off-road terrain*
- *the availability of tactical options.*

*Drivers must possess a sound knowledge of the considerations, as many short-duration pursuits may not allow time for specific guidance to be received from control/communications room staff.*

*Sometimes information regarding one or more of the pursuit considerations will be unavailable, or one or more of the*

*considerations for continuance will not be met. Such situations should not automatically preclude the authorisation or continuance of a pursuit. Each pursuit must be considered on the information and intelligence at hand and measured against the considerations collectively. Decisions should be documented along with the rationale for them.”*

### **The IOPC Investigation and the Decision under challenge**

24. The IOPC Investigation into the circumstances leading to JL’s death was undertaken by Lead Investigator Kate Evans, assisted by Richard Cruise. Her report is dated 24 September 2019 (“the IOPC Report”). At no point during the investigation did Ms Evans find an indication that any person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings. There is no challenge to the adequacy of the investigation or to the content of the report itself.
25. The decision under challenge is that of the decision-maker, Operations Manager Catherine Hall (“OM Hall”). The IOPC report was referred to OM Hall who reviewed the evidence and investigative findings. A summary of her conclusions was provided to the Claimant under cover of a letter from the IOPC dated 26 November 2019, but the decision itself is to be found in a two-page memorandum dated 25 September 2019 (“the Decision”). In the Decision OM Hall set out her reasons for concluding that there was *“no evidence which provides an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings”*. She took the view that officers had followed their training and the relevant guidance and that, in those circumstances, *“unsatisfactory performance does not arise in this case”*.

### **Grounds of challenge**

26. The Claimant seeks to challenge the Decision on the following grounds:
  - (1) Irrationality on the basis of
    - (i) A failure to consider that PC Dougherty was not IPP trained, and therefore not authorised, to carry out a pursuit.
    - (ii) A failure to consider that the officers had difficulties maintaining contact with the control room at Essex Police such that the pursuit should have been discontinued in accordance with Essex Police Policy.
    - (iii) A failure to consider the proportionality of the pursuit and/or failing to give sufficient reasons for considering the pursuit to have been proportionate.
    - (iv) A failure to consider the lack of a risk assessment conducted by officers during the pursuit.
  - (2) A wrongful failure to consider whether the actions of the officers were a contributory factor in the fatal collision which resulted in Ms Ladkin’s death.

27. I shall address each of these grounds in turn.

**Ground 1(i) – failure to consider PC Dougherty’s lack of IPP training**

*Parties’ submissions*

28. Mr Wagner, for the Claimant, submitted that PC Dougherty’s actions in driving after JL at speed after exiting the Waltham Tunnel amounted to a pursuit, which he, PC Dougherty, was not authorised to conduct. He argues that OM Hall failed to address the fact that he was not IPP trained, rendering her conclusions irrational.

29. I have set out above the chronology of events. For this part of his argument Mr Wagner focussed on the period of 2 minutes between exiting the tunnel and turning off the M25 at Junction 26, when PC Dougherty was at the wheel. PC Dougherty’s evidence was as follows:

*“Although I am an advanced driver I am not pursuit trained so I switched off the blue lights and sirens and I held back to allow her to accelerate away. The tunnel had just come to an end and there was now no hard shoulder. I knew I needed PC DYTON to take over but I couldn’t see a safe place to stop. The motorway was unlit and I could not see a hard shoulder or an ERA in my view. Stopping the car would have meant stopping in a live lane likely to result in a serious collision. I would have also needed to reactivate the blue lights to stop safely and again I was concerned the Corsa driver may perceive this to mean we were actively pursuing her. I increased my speed at a distance and reached 70mph and the Corsa was now about 80 or so meters ahead of me and was still pulling away. She undertook a number of cars and continued in LANE 2. I moved out to LANE 4 to get a clearer view of the road ahead still looking to see where I could come off. I could see the Corsa increasing the gap between us and she was now about 150meters ahead. PC DYTON was on the radio to ESSEX POLICE and was advising them as to what had happened and that we were not pursuing the vehicle and our lights were off as I was not IPP trained. I began to increase my speed as I could see a sign for JUNCTION 26 and I wanted to come off as soon as possible, my intention was to swap drivers so PC DYTON could take over and then a pursuit could commence....I said to PC DYTON “NEAL SHE’S GOING OVER A TONNE, I NEED YOU TO TAKE OVER MATE”.”*

30. OM Hall’s findings about the early part of the incident, when PC Dougherty was driving, were these:

*“...PC Dougherty made two attempts to request the driver of the Vauxhall Corsa [JL] to stop her vehicle, however [JL] accelerated away from the officers at speeds in excess of the speed limit. PC Dyton updated the Essex control room of this information.*

*On realising [JL] was not going to stop PC Dougherty acted within the limitations of his training as an advanced trained driver in that he disengaged his lights and sirens and allowed [JL] to gain distance on the police vehicle. PC Dougherty then located a safe space to switch places with PC Dyton who was an IPP trained driver.”*

31. Mr Wagner submitted that, whatever PC Dougherty may have believed he was doing, the police car clearly sped up in order to follow the Corsa and keep it in sight. The fact

that they turned off the blue lights is nothing to the point, he says, and the reliance by OM Hall on that feature as a reason to be satisfied that there was no pursuit was an error. He submitted that at the point when JL accelerated away the actions of PC Dougherty were directed at “*maintain[ing] sight of the [Corsa] and report[ing] on its whereabouts, manner of driving...*”, that is to say this was the initial phase of a pursuit, as defined in the APP Guidance. PC Dyton called up Essex control room as they were accelerating along the M25 behind the Corsa. Moreover the footage shows, Mr Wagner said, not a slowing down of the police car but an acceleration to speeds well over the 70mph limit. Why else would the police do that if not for the purpose of following the Corsa in order to report its progress, Mr Wagner asked, and what else could PC Dougherty have meant when he asked PC Dyton to “take over”, if not to take over the pursuit?

32. Mr Wagner submitted that, in the light of this evidence, it was irrational of the decision-maker not to take account of the fact that PC Dougherty was untrained or, if she did have that in mind, not to find that he had started a pursuit in breach of the APP Guidance. At the very least, Mr Wagner says, this breach of professional standards on the part of PC Dougherty should have been raised as a performance issue in the Decision, or reasons given for deciding that such a breach did not amount to a performance issue in this case. The invitation to the decision maker at paragraph 95 of the IOPC Report to “consider if the actions of PC Dougherty were consistent with the spirit of both APP and local force policies” glossed over the issue, Mr Wagner said: either there was a breach of national policy on PC Dougherty’s part by engaging in a pursuit, or there was not.
33. Mr Morley submitted that PC Dougherty was not engaged in a pursuit. PC Dougherty’s evidence shows that he understood he was not trained and that he needed to swap places with PC Dyton so that a pursuit could be initiated. The reference to “taking over” was to taking over the driving so that they could start to pursue the Corsa, not to take over a pursuit that had already started. He accepted that the Decision does not explicitly consider whether or not PC Dougherty had engaged in the initial stage of a pursuit but pointed out that there was reference in the Decision to PC Dyton being IPP trained and to PC Dougherty needing to swap places, indicating that the decision-maker had the distinction, and thus the question of pursuit, well in mind. In any event, he argued, the purpose of the Decision was not to determine whether PC Dougherty was driving in pursuit for 2 minutes, but whether there was any indication that an officer (at this point PC Dougherty) had committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.
34. Mr Morley also suggested that the question of whether there were performance issues falls under paragraph 24A(5), as a determination to be made “if [the decision maker] thinks it appropriate to do so”. Here, he argued, it was open to the decision-maker to decide that, even if there was a technical breach in PC Dougherty’s 2 minutes of driving on the M25 before coming off, it was not appropriate to find any indication. Nor was this 2-minute period at all material to what happened later when PC Dyton was driving, since the Corsa was lost to sight for several minutes before they chanced to see JL coming out of a side-road ahead, which was when the pursuit had started.

## **Conclusion**

35. In my view Ground 1(i) is not made out. The IOPC report refers to the APP Guidance and addresses PC Dougherty's actions in the light of that guidance. Whilst the Decision does not explicitly reach a view as to whether PC Dougherty's driving amounted to a pursuit this was an issue to which attention was drawn in the IOPC report (at paragraph 94), moreover in her Decision OM Hall refers to PC Dougherty as an advanced driver and to PC Dyton as an IPP trained driver, indicating that she had the issue of pursuit well in mind. I accept Mr Morley's point that, whilst switching off blue lights and sirens cannot itself amount to an indication that there was no pursuit, the fact that the officers did turn off the lights supports their evidence that they were not in pursuit. Taken together with evidence of dropping back (albeit at high speeds) and allowing the Corsa to pull ahead I am satisfied that it was not irrational to reach the conclusion that the evidence in relation to PC Dougherty's driving raised no indication that he had committed a criminal offence or had behaved in a manner justifying the bringing of disciplinary proceedings, nor that his behaviour was such as to require notification to the appropriate authority regarding unsatisfactory performance.

## **Ground 1(ii) - communication difficulties**

### *Parties' submissions*

36. Mr Wagner accepted that the IOPC report and OM Hall had considered all relevant material but submitted that her conclusion was irrational given the issues with radio communications. He pointed out that, on the evidence, the officers in the car had had serious difficulties remaining in radio contact with the Essex control room. He referred me to Essex Police Policy which states that:

*"..where constant radio communications can no longer be maintained a pursuit can no longer be managed by FCR [a reference to the Control Room] and therefore will be discontinued."*

37. Mr Wagner submitted that, in the light of this policy and the interrupted communications between police in the vehicle and the control room, the pursuit of the Corsa should have been discontinued immediately. He contends that OM Hall failed properly to consider these communication difficulties together with the Essex Police policy in arriving at her decision; instead (wrongly) relying on "*intermittent radio communications*" as justification for the officers not having performed a risk assessment (at paragraph (iii) of the decision).
38. Mr Morley argued that the Essex policy was not applicable since the Essex control room had not taken control of the pursuit by the time the collision happened. When the police were driving around searching for the Corsa there had been no pursuit, as the Inspector in the control room had recognised. The only actual pursuit was that which ensued after PC Dyton turned the police car round to follow the Corsa on Broomstick Road/Parklands at 21.57.41. This pursuit was very short; it ended when the Corsa lost control and collided with the other car less than 50 seconds later at 21.58.24. The Essex control room had not had time to take over or authorise this pursuit, which was self-authorised by PC Dyton in a fast-paced and dynamic set of circumstances, as contemplated by the APP Guidance.

## ***Conclusion***

39. This ground must also be dismissed. The complaint is that OM Hall did not adequately consider national and Essex police force policies regarding communications with the control room during a pursuit. However the IOPC report set out the requirements of all such policies and explicitly addressed radio communications during the pursuit whilst PC Dyton was driving and it was upon this report that OM Hall relied in arriving at her Decision.
40. The very short time over which the pursuit happened is key here. The pursuit only started when the officers chanced to see the Corsa once more, after which they turned the car round and followed. The operative section of footage shows that the pursuit lasted for, at most, 50 seconds before JL lost control of her car at speed. Having lost time in turning to follow, the police car was more than 8 seconds behind the Corsa. In these circumstances the reference to “intermittent” communications in the Decision is in my view of little import, since the pursuit had hardly started before it was brought to an end by the collision. The point would have had more force had the pursuit been longer, minutes for instance, rather than seconds, but in the instant case the officers and control room would hardly have had time to engage in radio communication about the pursuit, never mind to register the (in)adequacy of such communication in order to decide to discontinue it, before the Corsa crashed. In these circumstances it was open to OM Hall to find that PC Dyton had self-authorized the pursuit and to conclude that no disciplinary or performance issues arose from his actions, or indeed those of officers in the Essex control room.

## **Ground 1(iii) – proportionality of pursuit**

### *Parties’ submissions*

41. Mr Wagner submitted that OM Hall in her Decision failed properly to consider the proportionality of the pursuit and/or failed to give sufficient reasons as to why she considered that the decision to engage in a pursuit was proportionate. He referred me to the APP Guidance requiring pursuits to be in the public interest and conducted with proportionality. The guidance sets out the considerations affecting the proportionality of any pursuit, bearing in mind that police pursuits are inherently dangerous. Mr Wagner’s principal objection focussed on the absence of any apparent thought given to whether a pursuit was necessary, when officers had a registration number for the car and thus the name and address of the registered owner. The only potential offence at the start of the incident was that of no insurance; he suggested that this was insufficiently serious so as to require an immediate pursuit and stop, it could have been taken up and addressed later by a visit to JL’s home address. Mr Wagner suggested that no rational decision maker could have concluded that the pursuit of the Corsa was in the public interest or conducted with proportionality given this relatively minor offence, taken together with the speeds travelled by the vehicles at night, on residential roads and bearing in mind the irregularity in radio contact already mentioned. Mr Wagner pointed further to the absence of any reference in the Decision to the minor insurance offence or any explanation as to how, in those circumstances, a chase at speeds in excess of 90mph (in a 40mph limit) could be justified.
42. Mr Morley argued that, although succinctly expressed, OM Hall in her Decision had considered and dealt with the proportionality of the pursuit. He referred in particular

to the observations and reasoning contained in paragraphs (i) and (ii) of the Decision as follows:

*“This... gave the officers reasonable grounds to utilise their speed and traffic exemptions in order to locate a suspect who had failed to stop for police, committed driving offences and was travelling in an uninsured vehicle....*

*In my opinion the pursuit ...by PC Dyton was necessary and justified in that the officers were in pursuit of an individual who was a suspect in relation to the offences outlined above. ...the evidence suggests PC Dyton conducted the pursuit in a proportionate manner in that he drove within the limitations of his training and qualifications and did not drive in a manner which put undue pressure on [JL] to drive in a dangerous manner”*

*...the evidence suggests that PC Dyton self-authorized the pursuit in a fast-paced incident where the circumstances deemed it necessary and proportionate to do so...This was in line with APP guidance...”*

43. In his evidence to the investigation PC Dyton set out the risk assessment considerations to which he had had regard, referring to the road conditions, his speed and his concern to stay far enough behind so as not to put the driver of the Corsa under undue pressure.

### **Conclusion**

44. As Mr Morley rightly pointed out, the reasoning in the Decision regarding proportionality and necessity is brief. Whilst the APP Guidance is referred to, OM Hall does not explicitly go through and consider each one of the questions in relation to risk which the APP Guidance suggests ought to be addressed. In my view, however, the failure explicitly to deal with each matter raised in the APP Guidance in the Decision is not to be taken as an indication that such matters were not properly considered. The IOPC report goes into the prevailing circumstances in detail: the offences by then apparently committed (no insurance, failure to stop, driving dangerously and well in excess of the speed limit), timing, speed, proximity to the Corsa, presence of other pedestrians and road users, referring also to PC Dyton’s assessment made at the time (see para 54 of the IOPC Report). There are a number of photographs included in the IOPC report which show that it was dark, albeit with some street lighting. The dashcam footage also shows the conditions. The reference to PC Dyton’s assessment (set out in his witness statement) indicates that he was weighing up risk factors as he drove. His witness statement set out his thinking as follows:

*“I have not driven on this road before, it was dark, there were junctions on this road to my nearside. I was not willing to compromise Mine nor PC Dougherty’s safety, not (sic) that of other road users nor the Vauxhall driver’s by driving recklessly....*

*On at least 1 section of PARKLANDS I saw that the road is divided by a crossing / hatched area. I considered that these areas of the road surface are frequently contaminated with debris and this could effect (sic) My vehicle’s stability and reduce its grip on the road surface. I drove at a speed that would allow to keep proper control of My vehicle.”*

45. By the time the pursuit started, the officers had grounds to suspect that a number of more serious driving offences had been committed; moreover they did not know, at that stage, who was driving the Corsa.
46. As was pointed out in Mr Skelt's skeleton argument for the First to Fourth Interested Parties, the assessment of the public interest and proportionality are value judgments for the decision-maker and the margins of appreciation within which to make that assessment are wide. Whilst I understand and appreciate the emphasis repeatedly laid by Mr Wagner upon the statutory wording which requires only an "indication" of disciplinary issues or unsatisfactory performance I cannot conclude that the Decision was irrational by reason of a failure to find any such indication in connection with proportionality or risk assessment.
47. To the extent that this ground also encompasses a challenge to the adequacy of the reasons, I dismiss that criticism also. Lay decision-makers are not expected to set out a detailed exegesis of each and every consideration that has led them to the final decision. Reasons must be adequate and intelligible, showing why the main decision has been reached: see e.g. *South Bucks District Council v. Porter* [2004] UKHL 33 per Lord Brown at [36]. Whilst OM Hall's reasoning is scant, it is sufficient to indicate that she considered the issue of risk and the proportionality of PC Dyton's pursuit.

### **Ground 1(iii) – lack of risk assessment conducted during the pursuit**

#### *Parties' submissions*

48. Mr Wagner's case on this ground is connected to the previous one: he submitted that OM Hall irrationally failed to consider the lack of any risk assessment formulated or articulated to, or within, the Essex control room, as noted in the IOPC report at paragraph 111, which refers to "*...no evidence a risk assessment was formulated or articulated by any of the officers or police staff involved...*". He argued that the Decision failed properly to consider why a failure to conduct a risk assessment was reasonable, nor why the pursuit was justified in accordance with the National Decision Model.
49. Mr Morley pointed out that the Decision had addressed risk assessment: it explained that whilst officers were able to provide information to the control room they were unable to articulate a full risk assessment because the situation was "fast-paced and dynamic", radio communications were "intermittent", the control room was experiencing a "handover" of staff and the pursuit was very short. Both he and Mr Skelt's skeleton drew attention to the risk assessment inherent in the self-authorisation process, pointing to the passages in PC Dyton's evidence (referred to above) indicating that he had thought through matters of risk and proportionality as he was driving after the Corsa having turned around to do so.

#### *Conclusions*

50. This ground is linked to the previous one and I dismiss it for the same reasons. OM Hall found that no risk assessment had been articulated to the control room in the 50 seconds before JL's car crashed, but this is not the same as the lack of any assessment of risk at all.



51. Mr Wagner relies on paragraph 110 of the IOPC report for his contention that officers had not conducted any risk assessment but a careful reading of the IOPC report indicates that the decision maker was referring to a formal assessment articulated to the control room, not to an absence of any consideration of risk by PC Dyton in initiating and maintaining the pursuit. As the IOPC report records (at para 101) PC Dyton's witness statement dealt with matters relevant to risk: the conditions, his speed, proximity to the Corsa. The fact that no formal, step by step risk assessment had been conducted in discussion with the control room does not mean that no thought at all had been given to evaluating the risks during the pursuit. In my view this is what OM Hall meant when she found that "no risk assessment was articulated to the control room". Nor was it unreasonable or irrational to find that the absence of such an articulated risk assessment could be explained by the very short time over which the pursuit lasted before the crash, combined with difficulties in radio communication.
52. In my view it was not inconsistent to have regard to the difficulties in radio contact when considering the lack of an articulated risk assessment, but to disregard that as a factor when considering whether the pursuit was reasonably undertaken. The key to understanding the difference lies in the very short duration of the pursuit, which explains both why there could have been too little time for the Essex control room to decide to discontinue, and equally why there was no time to formulate or articulate a risk assessment in conjunction with the control room. It was open to OM Hall to find that PC Dyton's pursuit was properly self-authorized; I accept that risk assessment is inherent in the self-authorization process and that this is evidenced by PC Dyton's statement dealing with what was in his mind as he pursued the Corsa. In those circumstances OM Hall's conclusions were not irrational.

## **Ground 2 – failure to consider whether the officers' actions were a contributory factor in JL's death**

### *Parties' submissions*

53. Mr Wagner referred to paragraph 11.50 of the IOPC Guidance (set out at paragraph 21 above), describing the purpose of a DSI investigation as, inter alia, to consider "*the degree to which [contact with police] caused or contributed to the death...*". He criticised the Decision for a failure to reach any conclusion on the question of causation. He submitted that this failure amounted to a breach of the requirement under Article 2 to carry out a full and effective investigation into possible state responsibility for JL's death.
54. Mr Morley argued that paragraph 24A of Schedule 3 to the Police Reform Act 2002 sets out the matters to be decided by the IOPC; he submitted that this provision defines the lawful powers of the decision maker and pointed out that it does not contain any requirement for the decision-maker to consider whether the actions of any officer were a contributory factor. He noted that there is no Article 2 challenge to the lawfulness of the legislative machinery set out in Schedule 3 to the Police Reform Act 2002 itself and he drew my attention to the most recent Guidance, which came into force after the events with which this case is concerned, and to the amended instruction contained in the new paragraph 14.12:

*"Additionally, in a DSI investigation the report should include an analysis of the evidence as to how, and to what extent, if any,*

*the person who died...had contact with the police, and the degree to which this may have caused or contributed to the death..It should seek to include questions or concerns raised by interested persons, such as the...next of kin, or otherwise identified by the investigator. It should also highlight any areas of learning identified.”*

55. As to Article 2, Mr Morley argued that the investigative obligation does not rest upon the IOPC alone; he pointed out that the coronial process, which continues, will examine the circumstances of JL’s death and whether any actions on the part of the police may have caused or contributed to her death.

### **Conclusion**

56. In accordance with the IOPC Guidance then in force, the IOPC investigation did consider causation – see paragraphs 119 and 120 of the IOPC report. However the statutory scheme does not require a decision on causation; it mandates only those matters dealt with under s.24A(4) and then, if satisfied that there is nothing to be notified under that section, to go on and decide whether there is any performance matter to be referred (as a matter of discretion “*may notify..*”) under section 24C. The IOPC Guidance at para 11.50 sets out what the investigation is expected to address but the text in the box on the next page of the guidance highlights what decision(s) the IOPC is expected to make following that investigation and it contains nothing suggesting that the decision-maker should go on to draw conclusions about causation.
57. Mr Wagner took me to no authority on the Article 2 duty to investigate state responsibility for a death, merely asserting that it was engaged by the decision to be made by OM Hall in this case. He did not go so far as to suggest that the statutory scheme under the 2003 Act breached the Article 2 duty. In my view, having determined that there were no criminal or disciplinary issues to be addressed, nor any performance review, it was not for OM Hall to draw any conclusions about whether the conduct of police caused or contributed to JL’s death. That will be a matter for the inquest.

### **Overall Conclusion**

58. For the reasons given above, the Claimant’s challenge to the IOPC Decision in this case must be dismissed.

### Chronology from Police Vehicle Footage

Time on Screen	Description of Events
21.45.23	Footage starts – forward facing camera in police vehicle (RP22) driven by PC Dougherty. Time and date at left lower side of screen and speed on right lower side of screen.
21.46.51	RP22 is travelling south on A10. RP22 briefly pulls over a car because it does not have its lights on.
21.49.23	RP22 stops at red traffic light, at the large roundabout junction of the A10 and M25 (junction 25 on the M25) .
21.49.48	Lights change.
21.49.54	Corsa (the third of three vehicles) passes RP22, the traffic lights having turned green, and drives ahead onto the roundabout junction.
21.50.06	Corsa and RP22 pass through green light on roundabout, passing exit onto M25 eastbound.
21.50.15	RP22 blue lights activated.
21.50.25	RP22 pulls alongside Corsa at red traffic light on roundabout.
21.50.41	Lights change.
21.50.49	Corsa moves off and RP22 follows behind.
21.50.54	Corsa takes exit onto M25, westbound, followed by RP22.
21.51.19	RP22 pulls alongside Corsa in Waltham Tunnel.
21.51.52	Corsa moves in front of RP22 at end of tunnel and accelerates away.
21.51.59	RP22 blue lights turned off.
21.53.11	Corsa disappears from view as vehicle pulls in front of RP22, slowing RP22's progress.
21.53.35	RP22 accelerates to 104 mph and then takes the first exit from the motorway (junction 26).
21.53.58	RP22 stops just short of exit roundabout.
21.54.07	RP22 pulls away and blue lights are illuminated.

21.54.11	RP22 takes first exit, into Honey Lane westbound.
21.54.42	RP22 travels straight across mini-roundabout at junction with Shernbroke Road.
21.55.12	RP22 turns right into Broomstick Hall Road.
21.55.59	RP22 turns right into Ninefields and is almost immediately passed by the Corsa travelling in the opposite direction.
21.56.06	RP22 pulls into Amwell Court to turn around.
21.56.15	RP22 drives back into Ninefields travelling in same direction as Corsa.
21.56.21	RP22 turns left into Broomstick Hall Road.
21.56.31	Corsa appears from right, emerging from Galley Hill Road and turning left towards RP22.
21.56.34	RP22 turns into Galley Hill Road to turn around.
21.56.41	RP22 drives back into Broomstick Hall Road travelling in the same direction as the Corsa.
21.56.51	RP22 turns left into Ninefields.
21.56.56	RP22 turns left into Parklands. Corsa lights just visible in distance.
21.57.05	Corsa lights disappear as road bears right.
21.57.08	Corsa lights appear momentarily in the distance then disappear as road bears left.
21.57.14	Corsa lights appear in the distance and pass an oncoming vehicle.
21.57.22	Corsa out of view round left hand bend in road.
21.57.24	Red flash around bend.
21.57.30	RP22 stops at collision – Corsa on grass verge to left of screen and two other vehicles on the right of the screen.