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IN THE CORONERS COURT FOR NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF

STEVEN CRAIG COLWELL

BEFORE HHJ RAFFERTY KC, SITTING AS A CORONER

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Introduction

[1] This inquest investigated the death of Steven Craig Colwell, date of birth 29th May 1982, who was shot by Officer O, a Constable in the Police Service of Northern Ireland (“PSNI”), on 16th April 2006. Mr. Colwell had been driving a stolen BMW car (registration number GEZ 7393) at Church Road, Ballynahinch when he was shot. He died at the scene from a single bullet wound to the chest. Five other persons were in the vehicle at the time of the shooting, none of whom sustained any physical injuries. The vehicle had been stopped at a vehicle checkpoint (“VCP”) outside Ballynahinch police station at around 11.18am on Easter Sunday morning when the shooting took place. Along with Officer O, two other police officers, Constable Allen and Officer Q, were conducting the VCP where the shooting occurred.

[2] Mr Colwell’s death was investigated by the Police Ombudsman for Northern Ireland (“PONI”) and a file was forwarded to the Public Prosecution Service (“PPS”). No PSNI Officers were prosecuted in relation to the death of Mr Colwell.

[3] I was represented by Coroner’s Counsel, Mr Peter Coll KC, Mr Ian Skelt KC and Mr Michael McCartan BL. Ms Karen Quinlivan KC and Ms Brenda Campbell KC appeared for the next of kin (“NOK”) of Mr Colwell, instructed by Padraig Ó Muirigh, Solicitors. Mr Kevin Rooney QC (as he then was) and Mr Mark Robinson KC appeared for the PSNI, instructed by PSNI Legal Services. Mr Mark Mulholland KC and Mr Michael Egan BL appeared for Officer O, instructed by Edwards & Co Solicitors. Mr. Steven McQuitty BL appeared for PONI. I am grateful to all the Properly Interested Persons (“PIP”) for their comprehensive submissions and for the assistance provided by all the various legal representatives over the entire duration of the elongated inquest hearing.

Preliminary Issues and Case Management

[4] This inquest required considerable case management to address the many issues arising prior to the first hearing commencing on 4th September 2017, which included the disclosure of over 13,000 pages of potentially relevant material (including sensitive disclosure), hearing PII applications and managing the disclosure of evidence pertaining to witness credibility and bad character. Issues also arose regarding compliance with anonymity rulings which, along with the usual challenges attendant the timetabling of 36 witnesses, were addressed in a series of preliminary hearings during 2016 and 2017.

[5] Further, I allowed anonymity for Officer O and screening from the public, but not from the various legal representatives. I also allowed anonymity for Officer Q but not screening. I refused an application for anonymity and screening for Constable Allen.

[6] I decided not to grant an application for PIP status for Mr. Mark Paul, who was the front seat passenger in the stolen BMW car at the time Mr Colwell was shot.

[7] Section 18(1) of the Coroners Act (Northern Ireland 1959 (“the 1959 Act”) provides categories of cases in which a jury must be sworn. It is accepted that this case does not fall within those categories. Section 18(2) confers a discretion on the Coroner to have a jury summoned in cases falling outside the mandatory categories. I decided, following written and oral submissions from the PIPs, to proceed to hear the inquest without a jury.

[8] Most of the evidence was heard at hearings between September 2017 and April 2018. There then followed a considerable period of delay from April 2018 to June 2021, during which updates were provided on the fitness of Officer O to resume giving evidence; his evidence having commenced and adjourned for medical reasons in April 2018. At a hearing on 11th June 2021, I heard evidence from three Consultant Psychiatrists regarding the fitness of Officer O to resume giving evidence and the suitability of special measures to manage the giving of further oral evidence. Following careful consideration of this medical evidence and the submissions of the interested persons, I decided to require the attendance of Officer O to resume his

evidence, subject to particular special measures, which included giving his evidence remotely by video link. This took place on 1st and 2nd July 2021, following which the inquest concluded with closing oral submissions from the PIPs on 20th December 2021.

[9] When identifying the 36 witnesses who would be required to provide oral evidence, the inquest relied substantially on the statements and materials gathered by PONI in the course of the Ombudsman's investigation. This approach avoided a protracted statement taking exercise and allowed for those statements of a further 47 witnesses, for whom it was considered unnecessary to require oral evidence, to be read in to evidence under Rule 17.

[10] In respect of those civilian eye-witnesses who gave evidence, I relied primarily on their evidence to the inquest. In support of their oral evidence, I considered verbatim transcripts of PONI interviews, before turning my attention to PONI investigator's notes and statements, however, on occasions, I found that notes and statements had been merged to such an extent that the statements were of very little utility, hence my primary reliance was placed on the oral evidence of these witnesses. In respect of Officer O, Constable Allen and Officer Q, in addition to their evidence to the inquest, I also considered the verbatim transcripts of their PONI interviews. In regard to the expert evidence, I relied upon both the reports provided and the oral evidence of these witnesses. I was assisted in interpreting the scene of the shooting by the use of maps and photographs. I also benefitted from the opportunity to visit the scene, an exercise which I encouraged the interested persons to do along with my legal counsel. I have explained how I have assessed each category of evidence in my findings.

Legal Considerations

Conduct of the Inquest

[11] Rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (“1963 Rules”) governs the matters to which inquests shall be directed. This rule provides that:

“The proceedings and evidence of an inquest shall be directed solely to ascertaining the following matters, namely:

(a) Who the deceased was;

(b) How, when and where the deceased came by his death;

I ... The particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.”

[12] Rule 16 goes on to provide that:

“Neither the Coroner nor the jury shall express any opinion on questions of civil or criminal liability ...”

[13] The findings of this inquest should comply with Article 2 of the European Convention on Human Rights (“Article 2 ECHR”) which means that the inquest must examine the how, why, where and by what means a death came about and also “in what broad circumstances” it occurred: see *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182.

[14] The purpose of an Article 2 inquest was expressed by Lord Bingham in *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51 as follows:

“... to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”

[15] An Article 2 inquest must also be effective. In the context of agents of the State killing a civilian, I am guided by what Stephens LJ said when summarising the relevant principles in *Jordan* [2014] NIQB 11 (at paragraph [78](e)):

“The investigation is also to be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye-witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard. (emphasis added)”

[16] In accordance with Article 2, once it is clear that a death has been caused by an agent of the state, the onus is on the State (in this case the PSNI) to show that the death has **not** occurred in breach of Article 2. In *Bektas & Ozlap v Turkey* (Application No 10036/03, Judgment of ECtHR of 20 April 2010), the Court said (at para. 57)

*“In the present case the Court notes firstly that it is undisputed between the parties that the second applicant's brother Erdiñ Arslan was shot and killed by police officers. It follows therefore that the Government bear the burden of proving that the force used by the police officers was no more than absolutely necessary, within the meaning of Article 2 § 2 of the Convention. In examining whether the Government have discharged their burden the Court will not only examine whether the use of lethal force used by the police officers was no more than absolutely necessary, but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to life (see *Makaratzis v. Greece* [GC], no. 50385/99, § 60, ECHR 2004 XI)”*.

[17] In *Makaratzis v. Greece* [2005] 41 EHRR 49 the Grand Chamber of the European Court of Human Rights in discussing whether the operation was regulated and

organised in such a way as to minimise to the greatest extent possible any risk to life, said:

“..in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see McCann and Others, cited above, p. 46, § 150). In the latter connection, police officers should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see, for example, the “United Nations Force and Firearms Principles” – paragraphs 30-32 above).”

[18] Having given detailed consideration to the legal basis upon which an inquest of this nature should be conducted, and to the written submissions of the PIPs in this regard, I am satisfied this inquest has been conducted in accordance with the Article 2 ECHR requirements. In particular, the inquest has been effective in establishing the facts to the standard which allows me to make a determination as to whether the force used by Officer O was or was not justified in the circumstances.

Standard of Proof

[19] The correct standard of proof to be applied in finding facts in the context of an inquest is the civil standard on the balance of probabilities.

[20] The standard of proof to be applied in inquests has been the subject of litigation recently in England & Wales in a case heard by the Supreme Court, that of *R(On the application of Maughan) v Her Majesty’s Senior Coroner for Oxfordshire* [2020] UKSC 46 and in Northern Ireland *In the Matter of an Application by Hura Steponaviciene for Judicial Review* [2020] NICA 61. There is no sliding scale to this standard of proof, nor flexibility in the degree to which it is to be applied.

[21] In *Steponaviciene*, McCloskey J (as he then was) quoted with approval Leggatt LJ in *R (Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2018] EWHC 1955 (Admin)(at §35):

"It is therefore now clearly established, first, that there is no flexible or variable standard of proof in civil proceedings, only that of the balance of probabilities; and, second, that the significance of the seriousness of the allegation is contingent on the facts of the particular case."

[22] In *Maughan*, the Supreme Court considered this issue and concluded;

'..it remains the general position that there now are no intermediate positions for the civil standard of proof where the civil standard of proof falls to be applied.'

[23] Accordingly, it is the civil standard without variation which I have applied in weighing up all the relevant evidence and reaching my findings in this inquest.

Onus of Proof

[24] The case advanced on behalf of Officer O is that he resorted to the use of lethal force as the only means open to him to protect himself and others from a vehicle, which Officer O states, he believed was being driven at him.

[25] The onus is on the PSNI and Officer O to provide a "satisfactory and convincing explanation", to the civil standard, that the use of lethal force in the circumstances was no more than absolutely necessary. It is for the PSNI to also provide a satisfactory and convincing explanation that the planning and control of the operation to intercept the stolen BMW was planned in such a way as to minimise to the greatest extent possible any risk to life.

[26] In deciding whether the explanations provided for the use of lethal force are satisfactory and convincing, I have applied the legal test for the use of force in self-defence in considering all the relevant facts.

Self-Defence

[27] The use of force in self-defence provides a defence at common law in prescribed circumstances. In 2006 the law governing the use of force in the prevention of crime and lawful arrest was based on statute and is found in Section 3 of the Criminal Law Act (Northern Ireland) 1967. This states:

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

[28] In *Beckford v The Queen* [1988] AC 130, Lord Griffiths said (at page 145):

“... The test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another.”

[29] The common law definition of self-defence has been subsumed into Section 76 of the Criminal Justice and Immigration Act 2008 (“CJIA 2008”). Although this statute was not in force in 2006, it codifies the common law position which was in place in 2006. The provision is considered to be identical “to the common-law rules governing the use of self-defence and the rules applicable to prevention of crime”, a view which, “..underpins the clarificatory provisions of the CJIA 2008, s. 76.. ”: see A3.57 of Blackstone’s Criminal Practice (2022). The relevant sub-sections of Section 76 are:

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be and sub-sections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances –

(a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but

(b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purpose of sub-section (3) whether or not –

(i) it was mistaken, or

(ii) (if it was mistaken) the mistake was a reasonable one to have made.

(5) But sub-section (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in sub-section (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) –

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) Sub-section (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in sub-section (3).”

[30] In considering other matters which might be taken into account, s. 73 includes a further provision which extends only to England and Wales. Section 73(6A) states:

(6A) In deciding the question mentioned in sub-section (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

Section 73(6A) is not law in this jurisdiction, as indeed the CJIA 2008 was not law in the UK in 2006, however, I consider the import of s.73(6A) is a relevant matter to be taken into account in deciding whether the degree of force used was reasonable.

[31] Accordingly, if Officer O had an honest belief that the threat was real, it is immaterial that his belief was unreasonable, albeit the reasonableness or otherwise of that belief will be relevant to the question of whether it was honestly held.

Article 2 ECHR & Absolute Necessity

[32] In *Armani Da Silva v UK* (2016) 363 EHRR 12 the Court stated that;

“..it cannot be said that the definition of self-defence in England and Wales falls short of the standard required by Article 2 of the Convention.”

[33] Article 2 of the ECHR states:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in the defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

[34] In determining whether the use of lethal force is reasonable, consideration must be given to its necessity. The ECtHR in *Jordan v UK* [2003] 37 EHRR 2 said:

*“The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor however to be taken into account in assessing its necessity. **Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c).** This term indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (the McCann judgment, cited above, §§ 148-149).” (para 104, emphasis added)*

[35] In *McCann & Others v UK* [1996] 21 EHRR 97 at paragraph 200, the Court articulated the test which is consistently applied in cases involving the use by agents of the State of lethal force in self-defence and in doing so acknowledged that an honest but mistaken belief that the use of lethal force was absolutely necessary can be made that does not necessarily lead to a finding of unjustified use of force:

“..the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.”

[36] In *Da Silva v UK* the question of the standard to which the reasonableness of a belief in the necessity of lethal force should be determined was examined by the Court. The Court said at paragraph [245] that:

*“... it cannot substitute its own assessment of the situation for that of an officer who is required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of these events (see, for example *Bubbins*, cited above, 139 and *Giuliani and**

Gaggio cited above, 179 and 188). Consequently, in those Article 2 cases in which the Court specifically addressed the question of whether a belief is perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead it attempted to put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used..."

[37] The Court in *Da Silva*, at paragraph [248], summarised the position thus:

"It can therefore be elicited from the Court's case law that in applying the McCann and Others test the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary. In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having regard to the circumstances that pertained at the relevant time. If the belief is not subjectively reasonable (that is, was not based on subjective good reasons), it is likely that the court would have difficulty accepting it was honestly and genuinely held."

[38] It follows, as the Court in *Da Silva* pointed out, that in cases of alleged self-defence, it is a violation of Article 2 if a belief was not honestly and genuinely held.

The court concluded at paragraph 251:

"The subjective reasonableness of that belief (or in the existence of subjective good reasons for it) is principally relevant to the question of whether it was in fact honestly and genuinely held. Once that question has been addressed, the domestic authorities have to ask whether the force used was "absolutely necessary". This question is essentially one of proportionality, which requires the authority to again address the question of reasonableness: that is, whether the degree of force used was reasonable, having regard to what the person honestly and genuinely believed (see paragraphs 148-155 above)."

[39] Accordingly, the question is whether Officer O had an honest and genuine belief that it was absolutely necessary to resort to the use of lethal force. That belief must be subjectively reasonable, having regard to the circumstances pertaining at the time, which is relevant to the question of whether the belief was honestly held. The belief should not be examined from the position of a detached observer but from

a subjective position, consistent with the circumstances in which Officer O found himself. I should also take into account Officer O's training, experience and his knowledge and awareness of the PSNI Code of Ethics. I then have to consider whether Officer O's decision to open fire was "absolutely necessary" and a proportionate response to the situation as he honestly and genuinely believed it to be.

Planning and Control

[40] In *Bektas & Ozlap v Turkey* [2010] ECHR 617 beyond establishing that the use of lethal force was no more than absolutely necessary the onus also rests on the state to demonstrate that the operation was regulated and organised so as to minimise to the greatest extent possible any risk to life:

"In the present case the Court notes firstly that it is undisputed between the parties that the second applicant's brother Erdinç Arslan was shot and killed by police officers. It follows therefore that the Government bear the burden of proving that the force used by the police officers was no more than absolutely necessary, within the meaning of Article 2 § 2 of the Convention. In examining whether the Government have discharged their burden the Court will not only examine whether the use of lethal force used by the police officers was no more than absolutely necessary, but also whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to life." [2010] ECHR 617, §57 (emphasis added)

[41] Article 2 requires the inquest to examine the planning of the operation and the controls put in place to minimise the need to resort to lethal force (see *Makaratzis v. Greece* at [17 above]). In *Bubbins v UK* [2005] 41 EHRR 24 the ECtHR said at paragraph 141:

"In carrying out its assessment of the planning and control phase of the operation from the standpoint of Art. 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as

the way in which the situation developed. Its sole concern must be to evaluate whether in the circumstances the planning and control of the operation outside (the deceased's) flat showed that the authorities had taken appropriate care to ensure that any risk to his life had been minimised ..."

At paragraph 147 the Court said that, in assessing the planning and control phase, it must be;

"...cautious about revisiting the events with the wisdom of hindsight."

Permissible Findings

[42] In *R v HM Coroner v Humberside & Scunthorpe ex p Jamieson* [1995] QB1 Bingham LJ said, at paragraph [3]:

"It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame."

[43] In *Re Jordan* [2014] NIQB 11 Stephens J said, at para. 121:

"An inquest which does not have the capacity to reach a verdict "leading to a determination of whether the force used ... was or was not justified" would not comply with the requirement of Article 2. Accordingly whilst it is not permissible in Northern Ireland to put to the jury the direct question of lawful or unlawful killing it is a requirement to put all the constituent elements to the jury from which such a conclusion can be drawn. In this case it is a requirement to put the issue of self-defence to the jury and/or to deconstruct all the component parts of the issue of self-defence and to put all those parts as questions to the jury. By that method there is the capacity for verdicts or findings which are capable of leading to a determination of whether the force used was justified. In short it is necessary that the questions are designed to provide the capacity to elicit whether the force used was justified."

[44] It is within this legal framework that I have examined the evidence and made my findings.

Scope of Inquest

[45] The scope of this inquest states at paragraph 4 that, in determining in what circumstances the deceased died, the inquest will examine:

- i. The planning, control and supervision of the operation by the Police to intercept the stolen car which the deceased was driving.
- ii. Whether the operation was planned and controlled in such a way as to minimise to the greatest extent possible the need for recourse to lethal force.
- iii. The information available to the police in the immediate build-up to the shooting.
- iv. The actions of those involved in the operation to intercept the car, and particularly the circumstances in which Officer O opened fire, shooting Mr Colwell.
- v. Officer O's medical fitness for duty on the day of the shooting.
- vi. The training of those involved in the operation.
- vii. The guidance and policies applicable to the Police operation to intercept the car.
- viii. The guidance and policies applicable to the use of force in such circumstances as at the time of the death.
- ix. Whether the use of lethal force was justified.

[46] At paragraph 5 of the scope document, it is said that the inquest will also examine Mr Colwell's actions prior to and at the time of the incident in which he met his death, and the circumstances in which he came to be in Ballynahinch, insofar as they are relevant to how he came by his death.

Background Events

Steven Colwell

[47] At the outset of the inquest I heard evidence from Steven Colwell's older brother, Gary Colwell, who spoke about his brother and the effect his death has had

on the Colwell family. Gary Colwell had served in the army and was clearly an honest, thoughtful and, in his own way, an eloquent witness. He told me that when he, Gary, was 16 his younger brother Steven had been born. His parents had tragically lost a daughter in a road traffic accident and Steven was regarded as a blessing and was treasured and loved.

[48] Gary Colwell gave evidence that Steven, when he was still at primary school suffered a head injury, which caused some brain damage and affected his speech and behaviour. He was enrolled in a special care school. Unfortunately, Steven developed some problems which included anger issues. His parents, who had become ill, were not able to modify or address these problems.

[49] Gary gave evidence that Steven was living in Cullybackey, Co. Antrim at the time of his death. The family helped him move and were hoping a fresh start would keep him out of Belfast and out of trouble, as he was mixing in the “wrong circles”. Gary Colwell left me with a clear picture that he, nor the family, were blind to some of Steven’s behaviours but that they as a family had tried to help him as best they could and that whatever Steven’s flaws he was a much loved sibling. He was also a loving father to two sons. I am acknowledging this at this stage because, whatever my findings, the tragic reality is that Steven’s death was untimely and his family mourn his loss.

Events prior to the VCP

[50] A number of statements were read into evidence describing a series of events, which are not in dispute. This evidence helps explain how Steven Colwell came to be driving a stolen silver BMW car, registration number GEZ 7393 on the A24 from Newcastle towards Belfast on the morning of 16th April 2006. The following is a summary of those facts.

[51] In the early hours, around 1.45am, on Sunday 16th April 2006, a silver BMW GEZ 7393 ("the BMW") was stolen from an address in the Killough area of Co. Down. The owners and their neighbours disturbed two young men (and possibly a third) as they were taking the car, however, they were unable to prevent the theft. The owner of the car was struck on the left knee by the car as it sped off. He was not seriously injured.

[52] Steven Colwell was driving the stolen BMW later that morning in the Shankill area of Belfast where he picked up James Holmes and Gareth Strutt. Both men were intoxicated. The BMW was sighted in Carryduff at 7.45am and then in Ballynahinch at 9.28am.

[53] Steven Colwell, James Holmes and Gareth Strutt arrived at a party in a caravan at Coney Island Caravan Park, Ardglass, Co. Down sometime shortly after the car was sighted in Ballynahinch. The party was hosted by Ciaran Fitzsimmons who described Mr Strutt and Mr Holmes as being "on gas". Also at the party were Mark Paul, who was consuming drink and ecstasy tablets, and two young women, Ciara Murray and Coleen Mullen, who were both drinking heavily.

[54] Steven Colwell did not remain for long at the party, leaving with Mark Paul, James Holmes, Gareth Strutt, Ciara Murray and Coleen Mullen all packed into the BMW car.

[55] At approximately 10.45am two of the occupants of the BMW car (one wearing a Celtic top and likely to be Steven Colwell) attempted to burgle a house in the Killough Road area by trying to smash their way through patio doors with an iron bar. A witness disturbed the attempted burglary and the vehicle drove off in the direction of Clough.

[56] At approximately 10.45am a witness was asked for directions to Belfast by the front seat passenger of a silver coloured BMW car while on Point Road, Killough.

The young man appeared to be very drunk or under the influence of drugs. The driver and the front seat passenger were both holding beer bottles. From his observations and the manner in which the car drove off at speed, the witness thought they were *“a disaster waiting to happen.”*

[57] Another witness, Richard Edmont, was driving at approximately 11.00am on the A24 from Clough to Newcastle when he was forced to avoid a silver BMW as it emerged from a nearside road and turned right towards Clough, without giving way or stopping, forcing the witness to take evasive action in order to avoid a collision. The manoeuvre was described as *“dangerous in the way he pulled out.”* A second dark coloured BMW car emerged from the same junction (which Mr Edmont’s passenger, Christopher Stephens, said was driven by a male with a blonde haired female in the passenger seat) in a manner which led both witnesses to conclude that it was either following or racing the silver BMW, though at the same time the vehicle was described as turning out of the side road normally.

[58] These uncontentious matters point to a chaotic group of young people, heavily under the influence of drink and drugs, running amok in a car driven by Steven Colwell who had also consumed, according to toxicology reports, a quantity of MDMA (often referred to as *“Ecstasy”*), described by Allan Young, a Senior Scientific Officer, as *“much higher than that usually associated with so-called “recreational” use of the drug and it falls within the range of levels found in fatalities attributed to MDMA poisoning.”* Mr Young went on to opine that it would not be possible to predict the actual effects of this level of the drug, however, the general expectation is that Steven Colwell would have been *“severely impaired and at risk of poisoning.”*

[59] It is against this non-controversial factual backdrop that I now consider the evidence in respect of events as they unfolded on the journey into Ballynahinch and upon the arrival of the BMW at a VCP set up by police in Ballynahinch.

Eye-Witness and Police Evidence

The Approach to Ballynahinch

[60] Andrew Kearney and his wife Allison Kearney were in their black BMW car on the morning of 16th April 2006. Mr Kearney was driving and their 1 year old son was in the rear seat of the car. They became aware that Mr Kearney's sister's car (the stolen silver BMW) had been spotted in the Coney Island area and began to drive to that area to look out for it.

[61] By 11.08am when Alison Kearney made a 999 call to police, the Kearney's had spotted the stolen BMW and were following it as it travelled towards Ballynahinch. She had a close look at the occupants of the silver BMW and saw four people in the back seat, including two girls she described as approximately 16-17 years old. It is likely that it was Andrew Kearney's vehicle that was seen by Richard Edmont and Christopher Stephens following the silver BMW as it emerged onto the A24 heading in the direction of Clough.

[62] The conversation between Alison Kearney and the police controller, Sergeant Leighfield (then Constable Leighfield), and his reaction to the details he was provided were addressed in detail during the course of their evidence to the inquest.

[63] Alison Kearney said that it was their intention, when following the silver BMW, to continue to follow, at speed if necessary, in order to "*get them stopped and arrested*", irrespective of any advice to stop. They continued to follow the car from the Ballykinlar Road to Ballynahinch and at times the silver BMW was travelling at 100 mph. At other times the speed was not excessive - a witness, John Campbell, was driving in front of the BMW into Ballynahinch for approximately 5-6 miles at around a speed of 45 mph.

[64] Andrew Kearney said that if he had been advised by police to stop pursuing the stolen BMW he would have done so. He has been described as a careful driver. I found his evidence to be thoughtful and measured and in contrast to some aspects of his wife's evidence, exemplified in her reluctance to accept police advice and the suggestion she made that joyriders should be shot. I accept Mr. Kearney's evidence that the most likely outcome that would have unfolded, had Alison Kearney been provided with appropriate advice from Sgt. Leighfield (and told to convey that advice to her husband), was that the pursuit would have stopped.

[65] Sergeant Leighfield established sufficient details from Alison Kearney to allow for police in Ballynahinch to be informed of the direction of travel of the stolen vehicle. He did not give any instructions to Ballynahinch officers as to how they should respond to that information, except to be "*on the look-out for the vehicle*". He says he did not hear Alison Kearney refer to being "*in pursuit*" of the silver BMW (which is recorded on the transcript of the 999 call) and that, if he had, he "*might have said don't be pursuing it.*" He did not keep the line of communication to Alison Kearney open after he had established what he felt was sufficient detail as "*he didn't really see any relevance to staying on the line.*" Sgt. Leighfield did not require the occupants of the black BMW to avoid any action which could lead the occupants of the silver BMW to conclude they were being followed, nor did he require them to avoid any interaction with the occupants of the stolen car and to leave the matter to the police.

[66] I heard no evidence of any consideration having been given to the involvement of a senior officer in what was unfolding. Chief Inspector Loughins is recorded as present in the control room at the time Sgt. Leighfield was speaking with Alison Kearney. The incident was not recorded as an emergency call on the Command and Control system.

[67] Sgt. Leighfield did not ask Alison Kearney about the occupants of the stolen vehicle, the speed of the vehicles, the details of the Kearney's vehicle and did not try

to establish whether it would have been apparent to the occupants of the stolen BMW that they were being followed or pursued. He said that maybe in hindsight he should have asked about the speed of both vehicles. He assessed the situation on the basis that *“they didn’t seem to be in any panic, she didn’t seem to be in any distress, so therefore I assumed that they weren’t in any pursuit.”* He said he assumed they knew not to break the speed limits and thought it was obvious to the Kearneys that they should be careful not to alert the occupants of the stolen vehicle that they were following. Asked how he might have done things differently, he said, *“..if I thought she was in any danger or they were in a pursuit or travelling at high speed, I would have told them to desist.”*

[68] On the basis that Sgt. Leighfield considered the Kearneys not to be in pursuit of the stolen BMW, he concluded that further escalation measures, such as conducting a risk assessment were unnecessary in this case.

The Decision to Set-up a VCP

[69] Officer O, Constable Allen and Officer Q were the only officers on duty in Ballynahinch police station on the morning of 16th April 2006. They were aware of the stolen BMW and while in the police station had been listening to radio transmissions which were describing sightings of the vehicle outside of their area of responsibility. It then became apparent the vehicle was in Seaforde and heading in their direction. No further details were available to the officers in Ballynahinch. Officer O was the senior person on duty. An initial decision was made by Constable Allen that only he and Officer Q would go out on mobile patrol, however, Officer O decided he would accompany the two junior officers.

[70] Whilst at the gate of the police station there was a further change of plan and the officers collectively decided to set up a VCP outside the station. The Control Room was informed accordingly. Officer O took up a position in the middle of the road, Officer Q stood further down the road in the direction of Newcastle in order to inform Officer O if she spotted the stolen vehicle. It transpired their radio

communications were poor and Officer O was unable to hear Officer Q. Constable Allen locked the police station and remained with the police vehicle which he had parked close to the station gate perpendicular to road in readiness to be driven off in either direction. A stinger device was also available to Const. Allen who had it ready beside the police vehicle. He informed the Control Room the stinger was ready.

[71] Constable Allen had also drawn an MP5 long armed weapon as it was considered appropriate in response to the level of threat from Dissident Republican terrorists.

[72] Officer O gave evidence that he had a plan in his mind to approach the stolen vehicle in the manner of a normal routine check and when the driver's window was open he would reach in and remove the keys from the ignition. He had not shared this plan with his colleagues. He conceded that his plan was formulated in the absence of a particularly useful piece of information - that there were four people in the back seat of the car.

[73] Officer O confirmed in his live evidence that one of his main considerations was not to get involved in a high-speed pursuit with a stolen vehicle. His plan was to bring the vehicle into the constricted area - the choke point - and to "bluff" the driver of the stolen vehicle into believing police were unaware he was driving a stolen vehicle (and therefore into thinking he was unlikely to be detained) before reaching in through the open driver's window, removing the car keys and arresting the driver.

[74] Officer O acknowledged in his live evidence that he had been unaware of the number of persons in the vehicle prior to it arriving at the VCP. The plan to "bluff" the driver was therefore unlikely to be successful as it is clear the driver of a stolen vehicle would not be inclined to think he would be allowed to proceed when travelling with four adults in the back seat. I am satisfied that important and available information about the number of occupants, two of whom were teenage girls, the fact that the silver BMW was being driven at high speed while being

followed by another vehicle which was relaying the direction of travel to the police control room (and therefore the driver of the stolen vehicle potentially being aware he was being pursued), was not relayed to the police officers in Ballynahinch.

Events at the VCP before shots were discharged

[75] I heard evidence from the occupants of the stolen BMW car; Mark Paul, Gareth Strutt, James Holmes, Ciara Murray and Colleen Mullan. All five, on the evidence of those who encountered them that day, and on their own admission, were heavily under the influence of drink, and in most cases, drugs and other impairing substances. In my view their evidence, to varying degrees, contained untrue statements, principally fabricated to protect themselves from getting into further trouble.

[76] Notwithstanding the credibility issues, I found the evidence of the occupants of the stolen BMW to be largely superficial and not capable of assisting me in determining the central question in this inquest. I will therefore not be relying upon these accounts. There is, however, one aspect of the evidence of Mark Paul which I wish to specifically deal with. Mr. Paul, for reasons best known to himself, offered an unsubstantiated opinion that he felt Steven Colwell "*had been out on a suicide mission.*" I specifically reject Mr. Paul's evidence upon this. A further piece of evidence in this vein was, on one construction, given by, or attributed to, Gareth Strutt. I am also not satisfied to the requisite standard, that Gareth Strutt, when being taken into custody by police, described Steven Colwell's actions as; "*that fucker was not for stopping.*" For what it is worth, Mr. Strutt denies he said it, but also, the police officers concerned, Constable Young and Constable Montgomery, both have a differing recollection of what was said by Gareth Strutt after his arrest. It is my view that these assertions may have the capacity to be hurtful or upsetting to the Colwell family and wish to make it clear that I have specifically rejected them.

[77] Before turning to consider the evidence of the eye-witnesses at the scene of the shooting, it is prudent to set out the need for caution in assessing their evidence. Two witnesses in particular illustrate why I have exercised a degree of caution in

placing over-reliance upon any one particular aspect of an eye-witnesses evidence. As a judge with a significant background in the criminal law I am well versed in the frailties of human observation and recall. The rationale underlying *R v Turnbull* [1977] QB 224, with the reminder that even honest and earnest witnesses can be wrong on identification, coupled with the modern “myths, assumptions and stereotypes” direction to juries regarding inconsistencies and recall are sharply illustrated by the evidence of Joy Hall and David McKibben. These witnesses made statements shortly after the shooting. They gave evidence at the inquest in accordance with their statements and went into considerable detail about the actions of the two male officers who were wearing fluorescent police jackets and armed with revolvers. The witnesses were decent, law abiding and sober individuals who were earnest in their evidence. Yet, beyond any peradventure or doubt, both male officers at the scene of the shooting were dressed in standard PSNI uniform (green trousers and green pullover top) and were armed with a Glock 9mm pistol and a Heckler and Koch MP5 9mm semi-machine gun. I am also conscious that the effect of a lapse in time of over 11 years between the incident and the inquest further risks mistaken recollection. Whilst such a risk is mitigated to some extent by the availability of contemporaneous statements and interview notes to assist with recollection, it is important that, for the reasons outlined, I proceed cautiously in giving weight to the eye-witness evidence. I therefore have not relied upon uncorroborated eye-witness evidence alone as a basis for making any finding of fact.

[78] This cautious approach has not prevented me from taking account of the overall import of the evidence of those who witnessed events unfold at the VCP in addressing the question of the extent to which the driving manoeuvres of the stolen BMW were dangerous and in assessing the extent to which there was a determination on the part of the driver to evade Police attempts to stop the vehicle.

[79] The VCP plan adopted by Officer O, which was based on an assessment that an unsuspecting driver would try to “bluff” his way through the VCP, quickly unravelled when the silver BMW began to perform a U turn in a choke point

described as providing limited “avenues of escape.” Constable Allen said that police had not expected the car to perform a U-turn and admitted the decision of the driver to do so had taken him by surprise. Officer Q also said she did not expect the car to make a U turn.

[80] The civilian witness evidence is that Officer O and Constable Allen ran towards the car and were loudly and forcefully demanding it stop and for the occupants to get out of the car. Attempts were made to stop the vehicle by Officer O and Constable Allen.

[81] There is some dispute about when Officer O drew his weapon. Officer O states that he drew his weapon upon his arrival at the rear of the silver BMW. It is submitted on behalf of the next of kin that he drew his weapon as he was running towards the silver BMW from his initial position checking vehicles at the VCP. Reliance for this submission is largely placed upon the evidence of David and Frances McKibben and the statement/interview transcript of Wayne Sullivan which was read into evidence. I have indicated the caution with which I am treating the evidence of eye-witnesses and cannot, on the basis of this evidence alone, conclude that Officer O had already drawn his weapon as he approached the silver BMW. Whatever about exactly when he drew his pistol from its holster, it clearly had occurred by the time he was at the driver’s side of the vehicle and in advance of the moment when he was in front of the vehicle and opened fire. In other words, at the time he decided to open fire he already had the weapon drawn and did not have to take that step at that point in time.

[82] Constable Allen describes Officer O approaching the vehicle from the general direction of the driver’s side. Constable Allen approached from the passenger side direction just after the vehicle had exited the line of traffic and turned into the front driveway area of numbers 8 and 10 Church Road.

[83] There is some dispute about whether the officers referred in their verbal warnings to “armed police” or that they might shoot. Alison Kearney is the only witness who stated in live evidence to the inquest that police were warning the

driver of the silver BMW to “stop or I’ll shoot”. Officer O, Constable Allen and Officer Q do not say such a warning was given, though Officer O states that he used the words “armed police”. I have expressed some reservation about aspects of the evidence I received from Alison Kearney which, along with the absence of any supporting evidence, leads me to conclude that a warning given by police to the effect that police were armed and that they might shoot was not given.

[84] PSNI Code of Ethics at Article 4.5 states:

“4.5 Before police officers resort to the use of firearms, they shall identify themselves and give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so:

- a. would unduly place any person at a risk of death or serious injury; or*
- b. would be clearly inappropriate or pointless in the circumstances of the incident.”*

[85] On the evidence which I have heard, I can identify no reasonable impediment to the car occupants being aware of the presence of two armed police officers. One officer armed with a handgun drawn and the other armed with a long arm weapon pointing at the vehicle and demanding it stop. I am therefore satisfied, on the basis of the evidence I heard about the conduct of Officer O and Constable Allen. that it is likely the car occupants, and in particular Mr. Colwell, would have been completely aware of the demands of armed police to stop the vehicle. Accordingly, I am satisfied that the omission of a stipulated warning in accordance with Article 4.5 of the PSNI Code of Ethics was not materially significant in the circumstances. I am satisfied that to any unimpaired driver, the obvious presence of an armed police officer, standing at the bonnet, pointing a gun at the driver, demonstrated a clear demand that the vehicle should stop. What I am less satisfied about is the extent to which this would have been appreciated by, or resonated with, Mr Colwell who, as a matter of evidence, was impaired through drink and drugs.

[86] I received evidence from those who were in vehicles stopped at the VCP in and around the silver BMW. I also heard from the occupants of the two vehicles immediately behind the silver BMW in addition to Andrew and Allison Kearney who were the third vehicle positioned behind the silver BMW and had pulled their black BMW across the Newcastle bound lane. All of these particular witnesses were looking forwards at the scene. Of the other witnesses in vehicles, I heard from John and Francis McKibben who were in a Ford Mondeo immediately in front of the silver BMW and from the occupants of the four vehicles in front of the Mondeo. These witnesses were restricted to observing the scene through mirrors. I also received evidence from the occupants of four further vehicles which were in the opposite lane (Newcastle bound) and facing in the direction of the scene.

[87] The consistent theme running through the evidence from all of the scene witnesses who were in vehicles is that, within a confined area, a frantic attempt was being made to turn the silver BMW car in the opposite direction of travel. High engine revving and wheel spins were heard. The BMW from initially facing in the direction of Belfast, made some sharp back and forward manoeuvres before turned sharply to the right at 90 degrees into the front driveway area of numbers 8 and 10 Church Road. Unable to complete a U turn, the car reversed back at a right angle in the direction of Belfast. This part of the manoeuvre finished with the rear of the silver BMW colliding with the rear of the Ford Mondeo which had up to this point remained stationary.

[88] Officer O and Const. Allen, who had both moved towards the vehicle when it was engaged in the manoeuvre into and out of the driveway, were trying to engage the driver and stop the vehicle. Constable Allen variously describes having to jump or step out of the way of the reversing BMW to avoid being trapped or crushed between it and the Mondeo which had remained stationary in the queue of traffic in the Ballynahinch bound lane. Denis Dunn who was sitting in his vehicle facing in the direction of Newcastle was unsure if the officer on the passenger side of the vehicle had to get out of the way of the BMW when it was reversing. Another witness with a direct view, Andrew Matthewson, was sure the officer had to jump

out of the way in order to avoid being hit by the reversing BMW. Officer Q did not recall seeing Const. Allen being forced to move out of the way of the car, however, her view was intermittent as she looked over her shoulder while moving quickly in the opposite direction. Looking holistically at the civilian evidence addressing the movement of the vehicle and the evidence more generally of Const. Allen's movement, it is not possible to be satisfied of the precise nature of his movement as he engaged with the vehicle, however, I am satisfied that it included having to take evasive action in order to avoid being hit by the BMW.

[89] Const. Allen said the vehicle in his opinion was driving too fast and recklessly. After the BMW collided with the Mondeo, Constable Allen states that he pointed his weapon at the vehicle because he had anticipated danger but had not made the weapon ready to fire. He was trying to bring matters under control and had not identified a target. He was shouting for the vehicle to stop and the passengers to get out. He described this course of action as a "firm stop". He saw Officer O at the front right hand side of the vehicle with his handgun in the aim position. Constable Allen then held onto the passenger side rear door in an attempt to open it.

[90] Andrew Kearney witnessed the silver BMW dart to the right into the driveway. He immediately pulled his black BMW from the Belfast bound lane across onto the Newcastle bound lane. He did not mount the kerb, however, he had blocked a route of escape for the silver BMW on the road back towards Newcastle. The only remaining option back towards Newcastle would have been to mount the footpath.

[91] Some civilian witnesses have expressed a view that the silver BMW was unable to escape as the road towards Newcastle was blocked (by Andrew Kearney in his black BMW) and the gap between the front of the black BMW across the footpath to the wall was insufficient to allow the silver BMW to escape. Mr. McKibben, who was in the Mondeo with which the silver BMW collided, felt that the driver was determined to try to drive through the gap. John Campbell, who was in

the car in front of Mr. McKibben, and facing towards Belfast, said that if the black BMW was to fully block the route back to Newcastle he would have to have mounted the kerb. In his opinion, if the silver BMW was determined to get through the remaining gap on the footpath, it could have squeezed past. The photographs of the scene and the scale maps support such a proposition. I therefore find that the silver BMW was not completely trapped to the extent there was no route of escape at all back towards Newcastle. I am satisfied that the roadway towards Newcastle was blocked by the Kearney's black BMW, however, there remained a route of escape by mounting the footpath.

[92] By the time of turning the car to face in the general direction of Newcastle, it is not clear that Steven Colwell was aware of the option to escape via the footpath, nor therefore whether he was intending to take it. What is clear, however, is the nature of the vehicle movements and the demonstrative intent of the driver up to this point. The overwhelming impression of the scene witnesses is that there was a determination to evade police with little or no regard for the safety of other road users and the police officers who were attempting to stop the vehicle.

[93] Some witnesses feared for their own lives and the lives of the police officers. All of the witnesses said they felt the manner of driving was presenting a danger to anyone close to the vehicle. In considering all the eye-witness evidence about the vehicle movements, I am satisfied that the vehicle, when manoeuvring to turn around in the direction of Newcastle, was presenting a real danger to anyone in the immediate vicinity.

[94] The consistent import of the witness evidence is that there was a determination on the part of the driver not to stop for police and to forcibly drive away in the general direction of Newcastle.

[95] Having considered the nature of the vehicle movements up until the point it turned to face in the direction of Newcastle, I have considered whether there is any credible evidence to suggest that Steven Colwell was, at this point, finished with his attempts to evade police. Not one eye-witness has said they felt the driver of the

BMW, up until the point shots were discharged, had given any signal of acceptance that he was trapped and finished with his attempt to escape from police. I cannot therefore be in any way satisfied that the clearly demonstrated intention to evade police (and the danger being presented by the vehicle) had desisted prior to the discharge of shots.

The discharge of shots

[96] Constable Allen reported at 11.18am via the police radio that the silver BMW had arrived at the VCP; 43 seconds later, and 55 seconds after Officer Q first saw the vehicle arrive at the VCP, Officer O reports "Contact, Contact. November, Contact."

[97] Constable Allen has stated that he did not see Officer O discharge shots at the vehicle. He saw Officer O at the front right-hand side of the vehicle with his handgun in the aim position. He was unable to assess the options Officer O had to avoid the vehicle if it moved forward. Constable Allen had attempted to open the rear passenger door. As he was doing so the car engine was revving, he heard tyres squealing and the car sped forwards in the direction he had seen Officer O standing with his weapon in the aim position. Constable Allen was pulled off balance and let go of the door handle. It was at this point he heard two shots discharged. He did not know from where the shots had been discharged. The car lost power and moved to the left in the direction of the driveway from which it had reversed moments earlier.

[98] Officer Q was closest of the three police officers to the BMW when it began to manoeuvre out of the traffic which was queued at the VCP. She alerted Officer O and Const. Allen whom she had seen arrive at the vehicle. She said she saw the vehicle reverse dangerously and collide into the Mondeo. She did not see Const. Allen moving out of the way of the vehicle but did see him attempt to open the car door followed by him being dragged as the car moved forward. This aspect of Officer Q's observations were limited in so far as she was looking back over her left

shoulder as she made her way from the scene to the police vehicle in order to prepare to give chase. While doing so, she heard shots but did not see the shots being fired.

[99] The next of kin have submitted that Officer Q's evidence suggests that Officer O had deliberately positioned himself in front of the BMW.

[100] Officer Q described the position of Officer O in the following terms:

"With regards to Officer O's position at the front of the car, the only definite thing that I can say is that he positioned himself in such a way where he was able to look in the windscreen, that is as specific as I can be and he had his gun out. Just out in front of him. Possibly two handed but I don't know because I was looking at him side on, so I could only see one arm. I thought to myself he's doing a firm stop; it's a technique, if you like, where you know your firearm is drawn and you're shouting instructions. It's a firm stop, this went through my head. He's doing a firm stop, as I looked at him side on, so two arms could be up but I could only see one. However, only because of the way I'm positioned. This was in a split second. I glanced at him for a split second. Officer O has pointed his gun at the people in the front of the car, I would imagine but I don't know what he's pointing at but from where the car is positioned and where he's standing, his general direction is at the front of the car.

(Transcript of Officer Q's Evidence, 26 September 2017, Page 26)

[101] It was suggested to Officer Q on behalf of the next of kin that in saying "*..he positioned himself in such a way where he was able to look in the windscreen..*" meant he had deliberately positioned himself in front of the vehicle while the car was reversing. Officer Q agreed. I then asked the witness what a deliberate act means to her and she responded; "*It's very hard to answer that question...it was my belief that yes, maybe – yes, he put himself in front of the vehicle, yes.*"

[102] On behalf of Officer O, Mr. Egan BL asked Officer Q the following series of questions:

Q. I think you describe as having taken two steps away? And your view is over your left shoulder and you describe it as a glance?

A. Yes.

Q. Really, you're saying, Officer Q, you had very little view of the moments immediately prior to the shots?

A. It was a glance.

Q. You were asked about the expression in your statement of Officer O positioning himself?

A. Yes.

Q. At the point where you see him?

A. Yes.

Q. Did you see him in that glance move to that position?

A. No, my glance just he's there.

Q. So when you say you saw him there and he was positioned there?

A. Yes.

Q. Or he positioned himself there?

A. Yes.

Q. It's correct to say you can only say I saw him there?

A. Yes.

Q. And you're not in a position therefore to say as to when he was in that position whether that was as a consequence of a deliberate move on his behalf?

A. I simply couldn't say.

(Transcript of Officer Q's Evidence, 26 September 2017, Page 90-91)

[103] I cannot be satisfied that Officer Q was in a position to adequately interpret the movements of Officer O in regard to his intention in respect of his positioning in front of the BMW with his weapon aimed at the vehicle.

[104] Civilian witnesses generally place Officer O in front of the BMW after it collided with the Mondeo and was facing in the direction of Newcastle. Some witnesses describe Officer O with his weapon in the aim position. Eye-witness evidence does not assist in providing a precise position of Officer O, nor does it provide an assessment of his options to escape before he first discharged his weapon.

[105] In regard to the second shot, the eye-witness evidence does not assist me in locating where Officer O was positioned when he discharged the second shot.

Aftermath of shots being discharged

[106] After the shots were discharged, according to the witness evidence, and based on forensic evidence, the BMW travelled across the road and into the driveway at a slow speed before coming to rest against the driveway pillar.

[107] Steven Colwell then alighted from the vehicle. Alison Kearney approached Steven Colwell; she says he stated, "I've been shot, am I going to die?" Blood was seen on the left side of his upper chest soaking through his shirt.

[108] At this stage I wish to pause to address the actions of Alison Kearney on the day in question. Prior to the shooting, she was clearly motivated to ensure that the occupants of the BMW were apprehended, and she was cross-examined about this at length. However, after the shots were fired and Mr Colwell was fatally wounded, it is of note that Alison Kearney, who is a trained nurse, immediately, without hesitation, and without thought for herself, performed unprotected mouth to mouth and CPR over a prolonged period in a valiant attempt to preserve the life of Steven Colwell. In my view this was a courageous, humane and professional course of conduct and it is appropriate that I commend her for her actions.

[109] Sergeant Andrews, a supervisor from Newcastle station and other officers arrived within two minutes of the "Contact" report. Sgt. Andrews spoke to Officer O and describes the first report from Officer O as follows;

"Officer O informed me that he had fired 2 or maybe 3 bullets, he wasn't sure how many bullets he had fired, he had a glock pistol. He said he had called on the driver to stop, he then said he had found himself in the position of being in front of the car as it came towards him, he said he was trapped by something behind him, he then said the driver did not turn the wheel until after he had fired."

[110] Mrs Kearney, other witnesses and police administered first-aid prior to the arrival of paramedics. Upon arrival at 11.33am, paramedics found there was no pulse and no respiration. Paramedics continued with CPR, they also used a defibrillator and Mr Colwell was given drugs in accordance with the Asystole Resuscitation Protocol. Mrs. Kearney assisted paramedics with this work. Doctor Smyth, a police doctor, attended and pronounced life extinct at 12.07pm.

Evidence of Officer O

[111] For the reasons that follow, I do not place any weight on the first account provided by Officer O to Sgt. Andrews. Officer O was noted to have been physically sick very soon after giving this account. When Dr Smyth examined him at the scene, he recorded that he was visibly shaken and retching. Dr Smyth prescribed Diazepam and declared Officer O unfit for interview. Furthermore, Sgt. Andrews did not record a contemporaneous note of what he was told by Officer O. Whilst I accept Sgt Andrew's recollection is likely to be the import/gist of what was said by Officer O, for the reasons outlined above, it is preferable to consider the subsequent accounts as Officer O's substantive account. I do not, however, interpret the first account and subsequent accounts to be inherently contradictory. I also observe that

the account from April 2006 provided by Officer O, through to his evidence to the inquest in 2018 and in 2021, has remained largely consistent.

[112] Officer O was formally interviewed by officers from the Police Ombudsman's office on 28th April 2006. He outlined in considerable detail his duties in the run up to the events of 16th April 2006, his involvement in the decision to set up a VCP and his role in the events that led to him using lethal force.

[113] Having commenced duty at 7.45am along with Constable Allen and Officer Q at Ballynahinch police station, the officers were aware of the silver BMW having been stolen during the night and having been seen in the general area. The initial plan was for Constable Allen and Officer Q, when they went on mobile patrol, to keep a look out for the vehicle, however, when a further report was received indicating the vehicle was travelling towards Ballynahinch, Officer O decided they would set up a VCP. Officer O was to stop vehicles. He was carrying a 'Maglite' torch with a red cone.

[114] Officer O was unable to hear any radio transmissions in respect of the arrival of the silver BMW at the VCP, however, he was aware of its arrival from the hand signals of Officer Q. From his position in the middle of the road close to the entrance of the police station, he saw the car attempt to make manoeuvres to leave the line of traffic. He described the manoeuvres as "wild" and "crazy" and indicative of a three-point turn. With Constable Allen, Officer O approached the vehicle when it was in the middle of its turning manoeuvre. He was aware the Newcastle bound lane had been blocked. It was when the vehicle made a swinging reverse manoeuvre and almost hit Constable Allen that Officer O states he realised there was "a serious threat being posed by the driver."

[115] By this time Officer O had positioned himself at the driver's side of the car and had drawn his Glock pistol shouting "*armed police, stop your vehicle, stop it now, show me your hands, armed police, stop the vehicle*". He states that he shouted so loudly he injured his vocal cords. He had also by this stage dropped his Maglite torch.

Officer O then found himself in front of the BMW standing in the Belfast bound lane. He describes what happens in the following terms:

“He is now pointing this vehicle at me. I bring up my gun, again still in, the raised position, I point it at the driver and yell and now I have his full, he’s looking straight at me. I yell at the driver “stop armed police”. The driver has whacked into the Mondeo. He glanced over to his left and then he looks at me. He stares at me. I hear the engine race. I hear the sound of the wheels spinning and the driver drives straight at me. At this point he is straight. He doesn’t look to the left or right. He’s aiming and for the minute he’s found himself targeted right on me. I’ve assessed, in a split second. I had to assess my options around me. I can’t go to my left because of the parked vehicles, I’ll never get over them in time and he’s going to, I’m thinking and it went through my head and excuse my language by the way holy shit, he’s going to go straight at me. If I went to my left, he’s got me pinned against the parked cars. If I turn and run, I don’t think I’m going to outrun the BMW anyway but I’ve got the vehicle that I know is behind me and the members of the public. I was just blocking any hard cover to get to behind, to run to my right there is an expansive road which I’ll never cover and he had already been doing wild manoeuvres around that and I’ve seen Constable [blank] had to dive out of the way of the vehicle during one of the manoeuvres earlier on. I’ll not make that across there and directly in front of me I had this mad man driving straight at me. My only option I believe the minimum amount of force that I could use that was necessary to save my life and to protect members of the public who were behind me was to open fire. I fired one round, aiming at the centre mass of the driver and the vehicle continued to come towards me. The distance when I first fire my round is somewhere between 10 – 15 feet. The vehicle is still coming towards me. It’s still not going to stop. I prepare to fire the second round and just as I fired the vehicle has begun to swerve. I see the driver side window shatter and when I fired my first round I saw sort of a spider web patten develop on the windscreen. I see the muzzled smoke and I feel the recoil in my hand but I don’t hear the round going off, either of the two rounds. I didn’t hear them go off. The second round as I said the

vehicle's just began to move just as I'm firing cos I believe the vehicle was still coming straight towards me."

(PONI Interview with Officer O, 28th April 2006, CR4, page 9-10)

[116] Officer O was asked by my counsel if he noticed or paid any attention to the position of the front wheels of the car just before the car moved forward. He responded, *"I recall that the vehicle was coming straight towards me and I seemed to recall the wheels were straight ahead at that point, at that instance."* (Transcript of Officer O's evidence - 10th April 2018, page 6)

[117] Officer O was asked about the discharge of a second shot and his position when both shots were discharged. He stated that he believes he was positioned 10 to 15 feet from the front of the BMW and a short distance to the right of a silver Renault Megane (about half way along the side of the Megane) when he fired both shots. He stated that he fired the second shot *"in very rapid time"* after firing the first shot. He states that: *"There was a very short period of time between the shots but there was enough time to release the trigger, see the vehicle still coming and pull again."* He does not recall moving his position between the first and second shots. He says the second shot was an aimed shot at the front windscreen. He did not aim at the side window and was surprised when *"the driver's side window crazed up and shattered."* It was during the firing of the second shot that the car deviated.

[118] Officer O was asked by my counsel why he had not attempted to force entry to the vehicle before resorting to drawing his firearm. Officer O explained his decision in the following exchange:

Q. Now at the point that you are beside the B pillar of the vehicle you told us earlier your intention, albeit back originally at the start of this VCP, had been to try and get the drivers keys out of the ignition?

A. Yes, sir.

Q. Can I ask you whenever you get to this stage of the process and you are beside the car, why not try to take a step of getting through the window so that you can get at the keys and disable the car?

A. Well because on one hand the car is making erratic manoeuvres back and forward, I am not sure I could have got into the car. The plan earlier was that the car would have been stationary. But also I have observed Officer P grab the front passenger door handle and the door did not open and then him get pulled a little bit with the car so I had formed the opinion that the doors were probably locked. I think maybe what you are say -- sorry if I could clarify what you are asking is did I consider smashing the window.

Q. Yes. Coming to that in that sense, initially your plan, albeit in a different context had been to get in and get the keys. Now you are at a point where you have drawn your weapon and you are aiming it in the direction of the driver of the vehicle. Can I ask you why you didn't at any stage of that process take what might be described as a more intermediate step of drawing your baton and smashing the car window?

A. To attempt to smash the window while the car is moving wouldn't have got the end result I felt of me being able to, I would have had to have reached inside a moving vehicle to grab the keys and there have been many incidents where an officer has been dragged down a road by a vehicle once he has got trapped in it. Secondly the batons that we had that time were called a PPX baton, they were a plastic acrylic type baton, there was no steel on the baton at all. So to use the baton against the side window, I didn't feel that would have resulted in the window breaking with enough stationary time for the vehicle for me to carry out that manoeuvre.

Q. I appreciate your answer in that regard. I just want to be clear, is this a rationalisation of it subsequently or is this something you were actively

thinking about at the time, albeit it is all compressed into a very short space of time?

A. A very short space of time, your Honour, and really I, that course of action was set aside in my head, I didn't feel it would be effective. And really at the point where I am screaming commands and to all intents and purposes have a drawn weapon at the suspect and I am expecting him to stop so then smashing the window could have been an overstep of appropriate force.

Q. It was your hope maybe is too strong a word for it, but that by adopting this stance, this approach that it would very strongly encourage the driver of the vehicle to comply and to stop the vehicle and effectively surrender?

A. I had an expectation that that would be the result, your Honour, yes.

Q. Would it be fair therefore to say that drawing your weapon and presenting in that posed way that you have indicated to us, that that was something akin to a show of strength or something of that nature to bring the message home very very clearly to the driver of the vehicle?

A. Yes, your Honour, I believe it has been called a hard stop in the past.

(Transcript of Officer O's evidence - 9th April 2018, page 59)

[119] Officer O described a "hard stop" as a technique he decided to adopt at the point he concluded the driver of the car was posing a danger. He did not accept the suggestion that the technique should only be used when it is suspected the car occupants are armed. At no time in his police career was Officer O trained in a "firm stop". He states that, based on his training at the TP3 (Tactical Patrol) course between 1996 and 1998, his understanding is that a hard stop can also be used when the vehicle is posing a danger.

Pathology and Forensic Evidence

[120] Pathology evidence was received in the form of Professor Crane's autopsy report which was read into evidence under Rule 17. There is no dispute about the facts contained in the autopsy report. Death was caused by a bullet wound of the chest. Fairly extensive discharge abrasion on the front of the left forearm suggested that the arm had been close to the chest when the wound was sustained. Professor Crane stated this injury would also be indicative of a fairly close range discharge, though I do not consider the range could have been any less than the length of the front bonnet of the BMW. An oval area of abrasion lower down on the left side of the chest might have been caused by a second bullet grazing the skin but not penetrating the body.

[121] To assist me in interpreting the scene I heard evidence from Mr. Purdy, a Crime Scene Surveyor from PSNI Mapping Section. He produced a number of maps which had been prepared to assist the PONI investigation. These maps have identified tyre marks at the rear of the Ford Mondeo which have allowed for the stolen BMW to be repositioned for the purpose of reconstructing the scene before the first shot was discharged. I have also been able to discern the position of the other vehicles at this same moment, including the position of the black BMW, which had been driven by Andrew Kearney across the Newcastle bound lane. From this map it is possible to identify that the footpath adjacent to the Newcastle bound lane was wide enough to accommodate a vehicle, a finding I have reached by also considering the scene photographs.

[122] Mr. Purdy accepted that the plotting of glass on the map was not an accurate depiction of the entirety of the glass field, however, I am satisfied the preponderance of glass, which was deposited from the shattered driver's window, caused by the discharged second shot, has been mapped. This particular mapping exercise has assumed a high degree of importance in allowing the next body of

expert evidence to be considered in the context of the position of Officer O when the second shot was discharged.

[123] The inquest heard from Mr. George Johnston, a forensic scientist, whose primary area of expertise lies in the investigation of road traffic collisions. He gave evidence as to the route the car had travelled from its starting point behind the Mondeo to the driveway in which it came to rest. In his view the car started from a position where it was orientated towards the footpath at the Belfast bound lane, travelling initially in an arc, passing to the left of the field of glass. At some point around the central region before it came to rest, the wheels turned to the right. The entire manoeuvre created something of an S shape across the road.

[124] Mr. Johnston opined, as a matter of deduction, based on the path the vehicle took and the hard acceleration evidenced in the skid marks, that the manoeuvre forward commenced with the wheels still turned to the left. This deduction is made from the arc of the reversing manoeuvre which had led to the collision with the Mondeo. During the course of its route forward, the BMW changed direction to a sharp right steer.

[125] Whilst Mr. Johnston was sure the wheels were turned to the left before the car moved forward, the degree to which they were turned to the left before it moved forward could not be determined with any certainty. He opined that the wheels would have spun for a short period of time under the applied acceleration, accompanied by a brief screeching sound, before accelerating hard from its stationary position, then decelerated before it reached the pillar where it came to a halt, causing minimal damage to the vehicle. Mr. Johnston was unable to say at which point along the route of travel acceleration ceased and deceleration began.

[126] In a subsequent report, Mr. Johnston provided a table of the distance travelled by the BMW in a tight turning circle at various speeds and the consequential time taken to cover various distances. These figures are essentially not in dispute, except for a submission on behalf of the next of kin that the acceleration range is more likely to be between 3.0m/s^2 and 3.2m/s^2 as opposed to

between 3.0m/s^2 and 4.47m/s^2 . In regard to the time taken for the vehicle to move forward, this table is instructive. Across a variable acceleration of between 3.0m/s^2 and 3.2m/s^2 the car would travel 1 metre in a time of between 0.79 and 0.82 seconds. Across the same variable acceleration, a distance of "10 – 15 feet" (approximately 3 to 4.5 metres), which Officer O said he was from the front of the BMW when he opened fire, would be covered in a time between 2.37 and 2.49 seconds for 3.0m/s^2 and between 3.55 and 3.69 seconds for 3.2m/s^2 . It is within these timescale parameters that the time for Officer O to assess the situation and react to it mentally and physically must be assessed.

[127] In regard to the discharge by Officer O of his firearm, I have been assisted by the evidence of Mr. Leo Rossi, a forensic scientist. Mr. Rossi indicated an elevation angle of penetration of the first bullet of 10 degrees which he was able to say was fired at an almost orthogonal angle through the windscreen. The shot struck the front windscreen and perforated the top of the dash above the driver's instrument cluster and was recovered from the deceased. This has allowed me to conclude that it is likely Officer O was directly facing the driver's side of the front windscreen of the BMW when he discharged the fatal shot.

[128] In respect of the second shot, Mr Rossi accepted the proposition that the shooter could not have been facing the front windscreen of the car when he fired the second shot, as the speed of the vehicle could not have been such that a bullet fired at the front windscreen would have penetrated the driver's side window. The driver's side window must therefore have been presented to the shooter when the second shot was discharged. Mr. Rossi's calculations show a change in angle of penetration between the first and second bullet, however, in my view his evidence does not conclusively determine whether movement of the vehicle and/or movement of Officer O is the explanation for this change of angle.

[129] How it came to be that Officer O was facing the driver's side window when the second shot was discharged is not within the area of expertise of Mr. Rossi. However, Mr. Rossi did favour a scenario where Officer O moved position between

the two shots thereby changing the angle of discharge of the second shot whilst accepting that it was not possible to be precise about the extent to which this movement occurred, given the unknown variables, including the gap in time between the first and second shot. Much of the discussion with Mr. Rossi about the likely scenario when the second shot was discharged was premised on the presumption that Officer O fired a 'double tap' which is two shots with a time difference of 0.3 seconds between the shots.

[130] For assistance in determining the extent to which Officer O may have altered his stance and aim before firing the second shot, I was provided with further calculations by Mr Johnston, and with evidence from an expert in glass processing and manufacture from Germany – Dr. Kreigel-Gemmecke.

[131] Dr. Kreigel-Gemmecke was interviewed by the Police Ombudsman as part of his investigation into this shooting. From a transcript of the interview a statement was prepared by PONI investigators for the expert to check and sign. This is an unorthodox process to adopt when obtaining expert evidence. When I suggested such a procedure to Mr. Rossi, he responded, "*Absolutely not. I write it up.*" The unorthodox process can become perilous when English is not the witness's first language and the report has been prepared in English, albeit his command of English was good. I have been assured by PONI investigator, Mr. Paul Holmes on behalf of the ombudsman, that PONI does not intend to replicate this process and that all expert witnesses now prepare their own reports. Given the approach adopted by PONI to recording Dr. Kreigel-Gemmecke's evidence, it was not surprising that aspects of his statement were at odds with his oral evidence to the inquest.

[132] Dr. Kreigel-Gemmecke clarified that the evidence in his statement was not his considered opinion in regard to the dispersal of glass on the roadway from the driver's side window. In his evidence he stated that the point at which glass was first dispersed on the road (around 20-30% of the penetrated window), relative to the

position of the vehicle at the point of penetration of the driver's side window, was influenced by the distance the vehicle travelled over time. This important qualification was not included in Dr. Kreigel-Gemmecke's report. It has now been established, and is not a matter of dispute, that as the car was likely to have been in motion when the second shot penetrated the driver's side window, the glass fell forward of the point of penetration.

[133] The question which then arose was whether, based on the measurements of the BMW car and the time and speed table prepared by Mr. Johnston, the position of the car could be determined at the time the second shot was fired. Further reports were received from both Dr. Kreigel-Gemmecke and Mr. Johnston in which it was clear that the science which might lead to such a determination was indisputable. However, the variations in the speed at which glass dispersal could have occurred, and the uncertainty around the point at which glass first hit the ground, meant that a reliable determination could not be reached.

[134] This same matter was also considered by forensic scientist, Mr. Walter McCorkell who concluded that;

"it would be scientifically incorrect and unreliable to be categoric in using the location and distribution of the shattered glass to accurately place the firer into a specific location on the roadway when the second shot was fired." His view was that there were: *"Several explanations for the glass distribution which are not mutually exclusive from each other or in themselves specifically account for the glass distribution."*

Planning and Control

[135] In order to assist with assessing the medical fitness of Officer O to have been on duty as a senior officer at Ballynahinch police station on 16th April 2006, the inquest received a report on 20th January 2015 from Dr. Curran, a Consultant Psychiatrist. Dr. Curran considered Officer O's GP notes, PSNI occupational health notes and records and a public statement by the NI Police Ombudsman on the circumstances of the fatal shooting. Officer O was interviewed by Dr. Curran on three occasions.

[136] In his report, Dr Curran stated:

"There is nothing that I can find in any of the assembled clinical notes and records to indicate that Officer O was not in sound mental health during the months leading up to April 2006."

"Whether Officer O was capable and competent of taking the senior officer on duty role at Ballynahinch police station on 16th April 2006 is really an operational matter. Certainly, from the view point of his mental health, there is no apparent reason that I could establish, why Officer O should not take on this responsibility as the most senior of the police officers present".

"In summary it is my conclusion and professional opinion that there is no evidence to support the suggestion that discharge of Officer O's firearm in April 2006 was directly influenced by any past or existing psychiatric or psychological condition that might have been present at that specific time."

[137] Having considered Dr. Curran's report, I have concluded that there was no medical basis for Officer O not to have been on duty as a senior officer at Ballynahinch police station on 16th April 2006.

[138] At paragraphs 60 to 68, I have examined the facts surrounding the management by the Controller, Sgt. Leighfield, of the 999 call made by Alison Kearney at 11.08am. This call represents the commencement of the operation to stop

the stolen BMW and detain the occupants of the vehicle. The incident was a crime in progress and therefore an emergency call, however it was not recorded as an emergency call on the Command and Control system. A senior officer was not involved in planning or taking control of the crime in action, notwithstanding the fact that Chief Inspector Loughins was present in the control room at the time Sgt. Leighfield was speaking with Alison Kearney.

[139] The inquest was referred to the PSNI 'Regional Policy on Vehicle Pursuits', a policy document issued in 2001. The policy is ostensibly aimed at providing guidance in the management of pursuits involving police vehicles, however, as Sgt. Leighfield agreed, the policy could translate to a member of the public following or pursuing a vehicle. The policy draws a distinction between following and pursuing a vehicle, the former being in circumstances whereby the occupants are unaware of the police presence and should therefore not be treated as a pursuit.

[140] On the 999 transcript Alison Kearney states they were in pursuit of the stolen vehicle. I find that this description is likely to have been accurate, given the observation of Mr Edmont and Mr Stephens (para.57) that both BMWs appeared to be racing and the inclusion of the term pursuit in the transcript of the 999 call. An assessment of the risks associated with a member of the public pursuing a stolen vehicle should have been made. The actions of the Kearneys were deemed by Sgt. Leighfield to be "following" the stolen BMW, hence no assessment of risk appears to have been conducted. This decision, by an officer who had, at that time, been a Controller for over 19 years, contributed to valuable information about the movements and occupants of the vehicle not being obtained and to the pursuit continuing.

[141] It has been submitted on behalf of PSNI that a pursuit only materialises in circumstances where a vehicle refuses to stop when required by police to do so. I do not accept this is the only circumstance in which a risk assessment becomes appropriate. In support for the decision not to conduct a risk assessment, PSNI

relies on the evidence of Sgt. Leighfield that Mrs. Kearney did not say anything which might have suggested they were trying to stop the vehicle or engage with the vehicle. For this suggestion to be credible, one must disregard the fact that Mrs. Kearney used the term “in pursuit” and the evidence of Sgt. Leighfield that the policy can also apply to a pursuit by a member of the public. An experienced Controller should have recognised from the outline he had been given that there was potential for a dangerous situation to develop which called for the account being provided by Mrs Kearney to be scrutinised and for control measures to be implemented. Closer adherence to PSNI policy could have introduced greater control. The handling of the call from Mrs. Kearney leads me to conclude that an opportunity to exert control over the actions of those pursuing the stolen vehicle was missed, by failing, in the first instance, to ask elementary questions which would have elicited valuable information, and then by failing to provide clear instructions to those in pursuit of the stolen vehicle not to engage with the vehicle.

[142] Further control measures were lacking in the setting up of the VCP in Ballynahinch. The officers considering the VCP were provided with insufficient information to allow for an appropriate plan to be formulated. This was partly an outcome of the inadequate handling of the 999 call from Alison Kearney and partly as a consequence of the fact that the stolen vehicle was being pursued by a member of the public. When the Ballynahinch officers indicated a VCP would be set up, no advice was given to the Ballynahinch officers as to whether the VCP should be conducted, or how it should be conducted. The officers were expected to rely on their own initiative and experience of conducting VCPs outside Ballynahinch police station, without being provided with relevant information.

[143] Inspector Walsh, who in 2017 was the PSNI Chief Firearms Instructor, gave evidence, inter alia, about the PSNI training in respect of VCPs. He said that due to the wide variation and circumstances under which VCPs were operated, rigid instructions were not issued for operation throughout the jurisdiction. He did categorise VCPs into three broad areas - a planned VCP involving a large number of

officers, a semi-permanent VCP and a snap, quick, dynamic VCP. The last category would be frequently deployed to carry out short duration checks on vehicles during the course of normal patrolling, or in response to a quickly developing situation.

[144] PSNI VCP training includes the safe operation of the check point, consideration of the dangers associated with VCPs and the safety of police personnel, with a focus on general principles. It is expected that officers with experience could spontaneously and without instructions plan a VCP operation, assume the necessary roles, carry out the risk assessments and adopt the appropriate safeguards. PSNI officers receive VCP training as part of their initial training.

[145] Inspector Walsh was asked about the decision to set up a VCP outside Ballynahinch Police Station as opposed to setting up a VCP further out towards Seaforde on the road to Newcastle, or further in towards Ballynahinch town centre. He was not attracted to the idea of setting up a VCP on a road subject to the national speed limit, particularly with limited resources, due to the inherent dangers with faster moving vehicles and the possibility of run off roads in advance of a VCP. He also pointed out the difficulties of deploying a stinger on a wide road. He was also not attracted to the idea of conducting a VCP closer to the town centre due to traffic congestion. His preferred option was outside the police station which he said; *“seemed to be, given the time and given the number of personnel that were available probably the most appropriate position to do that in.”* (Transcript of Insp. Walsh’s Evidence, 13 April 2018, p. 52)

[146] Inspector Walsh saw the traffic flow and the additional parked cars on an Easter Sunday morning as a way for the traffic to slow and therefore increase safety. In regard to drawing up a plan and what qualifications might be applied in the context of any particular situation, he said the extent of a plan depends on the time available and can range from extensive preplanning, including the use of aerial photographs and identifying turn offs, to what he termed *“unconscious competence”*, meaning that *“when you are experienced in doing a job the plan comes together.”* He said

the decision to deploy a stinger in the area of the police car was the most appropriate option as the car offered the best cover.

[147] Evidence was received from Sgt. Wright-Turner, who in 2018 had been attached to Ballynahinch PSNI for a period of five years. He said there was no local policy in regard to where and when VCPs should be positioned. He had conducted over 20 VCPs outside the police station, many spontaneously set up in response to information there may be a stolen vehicle travelling in the direction of Ballynahinch. The location is a natural choke point, an area that can be used to take two cars off the road, thus providing *“a relatively good element of control on road users in respect of limiting avenues of escape..”* (page 4 statement B6 p284). He expects that if there is a senior Constable on duty, a risk assessment will be conducted immediately before and throughout the duration of the VCP. He felt an eight-minute notification period for conducting a VCP was adequate time to conduct an initial risk assessment.

[148] Sgt Wright-Turner expressed a view that the purpose of the VCP is to prevent crime and that if a police officer is in a position to apprehend an offender, it would be a neglect of duty if they failed to do something. Constable Allen, in response to the suggestion that allowing the vehicle to proceed through Ballynahinch would have given time to set up a planned operation, expressed the view that to do so carried risks to the public and preferred the option of stopping the vehicle when it was forced, due to the traffic flow, to slow outside Ballynahinch police station.

[149] When commenting on Officer O’s plan to “bluff” the driver into providing an opportunity for Officer O to remove the keys from the ignition, Inspector Walsh said it is not something that is taught and described it as learned behaviour or craft, which he himself had used in the past. It is acceptable in situations where the driver believes *“they might not be here for me so the same level of subterfuge would be used by the police officer.”* He said that people who want to avoid police have three choices *“fight or flight or actually bluff.”* (Transcript of Insp. Walsh’s Evidence, 13 April 2018, p. 55)

[150] The plan to “bluff” the driver, based on an assessment the driver may try to “actually bluff” police, whatever its merits as a general tactic, was conceptually flawed due to inadequate planning and control. The driver of a stolen vehicle with four adults in the back seat is most unlikely not to attract the attention of police at a VCP, therefore “fight or flight” was the more likely reaction of the driver. The VCP should have been planned accordingly. Had the call with Mrs. Kearney been managed and controlled in an appropriate manner, officers at the VCP could have been provided with a more detailed picture of what was known before the stolen BMW arrived at the VCP. Had the Ballynahinch officers been provided with the number of occupants in the vehicle and the fact it was being pursued by a member of the public, consideration could have been given to alternative approaches to intercepting the vehicle. For instance, it might have been thought that a hard stop was inappropriate if the vehicle attempted to turn away from the VCP, given the presence of what appeared to be teenage girls in the car. Rather than being in a position to consider this pertinent information, the officers, when taken by surprise, reacted instinctively by resorting to a “hard stop”.

[151] Inspector Walsh gave evidence that a “hard stop” was an historical term used to describe actions taken by a police officer when intercepting a person on foot or in a vehicle. The tactic has variously been referred to as “hard stop” or “firm stop”. The aim is to allow police officers to deal with suspects who are in possession of a firearm, have immediate access to a firearm or are otherwise so dangerous that a police officer may need to use their firearm to defend themselves or others. Training would have been delivered during the tactical phase of initial training and refreshed when officers attended tactical patrolling courses. The training consisted of theoretical inputs covering legal issues and use of force in a number of scenarios governing various options ranging from compliance to active resistance or escape of the subjects. The tactic is designed for circumstances where vehicles have either stopped compliantly or have been brought to a halt either in traffic or forcibly stopped. Insp. Walsh sourced and provided an historic lesson plan dated 2001 which described the following learning outcomes:

“To ensure the safety of members of the public. To ensure the safety of members of the police. To ensure the safety of the suspects. To conduct a defensive search of the suspects and the vehicle. To arrest the suspects with due consideration to his or her safety whilst deploying the minimum amount of force necessary.”

(Transcript of Insp. Walsh’s Evidence, 13 April 2018, p. 8)

[152] There was no basis on which to plan for a hard stop. Whilst there was some information in the briefing book about the persons in the stolen vehicle being involved in an altercation, there was no information to indicate the exact nature of the altercation and nothing to indicate that weapons were involved. The decision to conduct a hard stop evolved as a reaction to the events which unfolded over a period of 43 seconds. Officer O and Const. Allen stated they resorted to a hard stop in response to the dangerous manner in which the BMW was being driven. As I have outlined in paragraphs 86 to 95, I consider the BMW was presenting a real danger to those within the confines of the VCP. Therefore, the decision to resort to the use of a hard stop, at the moment the vehicle was considered to be presenting a danger, was reasonable in the circumstances the officers found themselves, which included a paucity of information about the vehicle occupants, its manner of driving and the “pursuit”.

Conclusions and Findings

[153] Having fully considered all the written and oral submissions made by the PIPs to this inquest and the evidence from eye-witnesses, from police and from expert witnesses I make the following conclusions and findings. I have reached some findings throughout the narrative set out above which I will, where appropriate, briefly reference in these conclusions. I will then summarise the key findings I have been able to reach based on the evidence received by the inquest.

[154] In examining the agreed facts up to the point Steven Colwell was seen driving a stolen BMW towards Ballynahinch around 11.08am on 16 April 2006, I am satisfied there were five passengers in the vehicle, four young people in the back seat and one in the front, all under the influence of drink and drugs. Steven Colwell had consumed, a quantity of MDMA (often referred to as “Ecstasy”), described by Allan Young, a Senior Scientific Officer, as *“much higher than that usually associated with so-called “recreational” use of the drug and it falls within the range of levels found in fatalities attributed to MDMA poisoning.”* As a result, Steven Colwell would have been *“severely impaired and at risk of poisoning.”* This degree of impairment was not a matter of prior knowledge for police, however the inadequate control measures implemented from 11.08am onwards resulted in important facts not being received and considered by the Controller and the officers in Ballynahinch as part of the planning required to bring a stolen vehicle safely to a stop and arrest the occupants.

[155] When Alison Kearney made a 999 call to police providing information about the stolen BMW and the fact they were “in pursuit”, she also had a close look at the occupants of the silver BMW and saw four people in the back seat, including two girls she described as approximately 16-17 years old. This information was not received by police due to the absence of elementary questioning of a witness to a crime in action.

[156] The manner of driving and whether the occupants of the stolen car might be aware they were being pursued were also questions which were not asked. The vehicle was at times being driven at 100mph.

[157] Officer O, Officer Q and Constable Allen were on duty at Ballynahinch police station and were aware of the stolen vehicle heading in their direction. They were aware from an earlier briefing that the vehicle was suspected of being involved in a burglary where there was an altercation and a chase. The officers were provided with no further information. They indicated an intention to set up a VCP but were provided with no instructions or information to allow for an effective plan

to be formulated. The officers' plan, undeveloped as it was in not fully addressing roles and potential scenarios, seems to have been based on an erroneous impression the driver of the stolen vehicle would not be likely to attempt to avoid the VCP.

[158] Andrew Kearney, the driver of the pursuing black BMW would have desisted from his pursuit of the stolen vehicle had he been advised to do so. He was not so advised. Consequently, the Kearneys continued to pursue the stolen silver BMW into Ballynahinch and were just two vehicles behind in the queue of traffic held at the VCP. They observed the silver BMW trying to turn around and avoid the VCP. Andrew Kearney drove across from the Belfast bound lane to the Newcastle bound lane blocking an obvious path of escape for the silver BMW. I am satisfied this would likely not have happened had there been proper control measures exercised in which Andrew Kearney was given clear instructions not to engage with the stolen vehicle.

[159] Up to the point the silver BMW began its manoeuvres to avoid the VCP, Officer O had a plan to bluff the driver that he was conducting a routine VCP. When the opportunity presented itself, he would reach into the vehicle and remove the keys from the ignition. Tactically this plan was not inappropriate but conceptually (albeit beyond Officer O's awareness) it was flawed. As a result of the inadequate planning and control of the operation up to the point the silver BMW arrived at the VCP, important information which could have militated against Officer O's plan was not available to the Ballynahinch officers. Inadequate control by police of the Kearney's pursuit of the silver BMW also resulted in the route back towards Newcastle being blocked by his vehicle.

[160] Officer O and Constable Allen were taken by surprise when the vehicle began its attempts to avoid the VCP and resorted to trying to stop the vehicle from doing so. In a quickly developing situation the vehicle was conducting dangerous manoeuvres leading to the officers resorting to the use of a "hard stop". Weapons were drawn and pointed and clear and loud instructions were being given to the

driver to stop the vehicle. The officers are required when conducting a hard stop to indicate they are armed and that they intend to use their firearms. The officers did not do so, however, I am satisfied the manner in which they did approach the vehicle with weapons drawn and clear instructions being given would not have materially affected the impression that a driver would have of the demand to stop (and that the use of firearms was an option open to police). Steven Colwell's decision to continue to avoid the VCP, and the manner in which he chose to do so, may therefore, to some extent, have been influenced by the fact that he was severely impaired by the effects of having consumed a large quantity of ecstasy.

[161] When making erratic, inappropriate and potentially dangerous manoeuvres within a confined area in an attempt to turn the vehicle away from the VCP, Steven Colwell did not give any indication he would desist from continuing to do so. Constable Allen was forced to take evasive action to avoid being hit by the car which also collided with another vehicle. Some witnesses feared for their lives and in my assessment the preponderance of the evidence is that the witnesses perceived a danger to people in the immediate vicinity of the vehicle. Mr John Campbell's evidence was to the effect that he did not perceive such a danger. However, he was in the car in front of the Mondeo which shunted into him. He had his back to what was going on behind him until he got out of his car after the shunt and I consider that his perception must be considered in light of that limitation and in the overall context of the remaining evidence. The evidential picture was of a clear determination on the part of Steven Colwell to continue to drive away irrespective of what dangers he created in doing so. I find the danger was real and continuing.

[162] The use by Officer O and Constable Allen of a hard stop tactic was at a time when the BMW was presenting a real danger to those within the confines of the VCP. The hard stop decision was reasonable in the circumstances which the officers found themselves. The decision was also impacted by a paucity of information they had about the vehicle occupants, its manner of driving, the "pursuit" and by the fact there was no escape route back to Newcastle.

[163] Prior to the firing of the fatal shot, I am satisfied that Officer O was positioned at the front of the silver BMW. I am not satisfied that he deliberately placed himself in front of the vehicle. At this stage in the incident, several things were happening at the same time, and at the moment Officer O was in front of the vehicle its rear had just collided with the rear of a Ford Mondeo. The silver BMW was angled towards the nearside footpath of the Belfast bound lane and generally in the direction of Newcastle. Based upon the evidence (including a site visit), I am satisfied that Officer O had no viable route of escape to his left or to his rear. Moving forward, or to his right, were not options he could sensibly take to realistically avoid the vehicle once it moved forward. I therefore find that Officer O did not, in the position and circumstances he found himself, have a viable or realistic avenue or option to retreat.

[164] The vehicle's wheels had been turned to the left and the vehicle moved to Officer O's right and away from the direction in which it had been pointing. Accordingly, Officer O's belief that the vehicle posed a danger to his life was, as matters transpired, in fact, a mistaken belief.

[165] There is no evidence that Officer O or any other witness was aware it was likely the vehicle would move in the direction it did. The expert forensic evidence, whilst indicating it was likely the wheels were pre-set for a left-hand steer, does not assist in establishing the extent of the pre-set. I am satisfied on the evidence I have heard that, in the circumstances Officer O found himself, it would be unreasonable to expect Officer O to have taken the time to check the direction in which the wheels were pointing in the time available before the vehicle moved forward. I therefore find that for Officer O to conclude the vehicle was going to travel in the direction it was pointing, and straight at him, was not an unreasonable belief to have formed in the circumstances.

[166] The expert evidence was unable to determine the precise length of time Officer O had in which to decide on his options from the point when the vehicle revs increased, the wheels spun and the vehicle began to move forward. That said, there

is an evidential basis on which to make an informed assessment of the likely decision-making time frame which is discussed at para.126 .

[167] The question which then arises is whether, in the split second that followed the vehicle's revs increasing, the wheels spinning and the vehicle beginning to move forward, the conclusions Officer O reached about the driver's intentions and consequent threat posed to his life and the lives of others were reasonable in the circumstances. The question is posed in this way to address the subjective decision of Officer O in the circumstances as he honestly and genuinely believed them to be. The reasonableness or otherwise of that belief is relevant to the question of whether the belief was honestly held.

[168] In assessing and weighing the evidence which I have received from civilian eye-witnesses, from police officers and from expert witnesses, I have concluded that Officer O's belief that his life and the lives of others were, at that precise moment, in danger was reasonable and therefore honestly and genuinely held. I have also had regard to the danger presented by the vehicle and the clearly demonstrated intention to continue to try to escape up to the point the silver BMW collided with the Ford Mondeo as factors relevant in determining that it was reasonable for Officer O to conclude, at the moment the wheels spun and the vehicle began to move forward, that it was intending to continue driving in his direction, and was therefore posing a risk to his life and lives of others.

[169] I make this finding notwithstanding that Officer O's belief was mistaken. There is no evidence upon which to be satisfied on the balance of probabilities that Officer O could reasonably have been expected to have been aware the vehicle would turn sharply to the left and avoid hitting him. Therefore, it was a reasonable mistake to make at that moment when he made the decision his life and the lives of others was in danger. To find otherwise would be to place an unrealistic burden on Officer O to the detriment of his life or the lives of others.

[170] The next matter to consider is whether the response of Officer O to the risk he honestly believed to be in place at that moment was no more than absolutely

necessary to defend himself and others from the threat of unlawful violence, in accordance with the requirement of Article 2 (2) ECHR.

[171] I have considered the alternative options Officer O had to try to stop the vehicle. The use of a hard stop was ongoing at the moment the vehicle began to move forward and was proving to be unsuccessful. The car doors appeared to have been locked. The use of a baton to smash the driver's window and to attempt to take the keys from the ignition, I am satisfied, was not feasible and would, in any event, not have been practicable from Officer O's position 8 to 10 feet from the front of the car. I have found that there were no realistic options of retreat open to Officer O. In such circumstances, opening fire was the last available option open to Officer O in order to defend himself and others from the rapidly advancing vehicle driven by Mr Colwell.

[172] The onus is on Officer O to provide a "satisfactory and convincing explanation", to the civil standard, that resorting to the use of lethal force in the circumstances was justified. For the reasons set out I find that he has discharged this burden.

[173] I find that Steven Colwell died from a single gunshot to the chest discharged by Officer O through the front windscreen of the silver BMW in which Steven Colwell was located in the driver's seat. Officer O discharged a second shot which penetrated the driver's side window and struck the front console. I have closely examined the circumstances surrounding the discharge of this second bullet and have been invited to conclude it is evidence of an intention on the part of Officer O to unjustifiably resort to the use of lethal force. I make two observations in this regard. Firstly, the bullet did not contribute to the death. Secondly, after a thorough and detailed examination of the eye witness accounts and the forensic evidence, it has, in my view, not been possible to safely determine, to the required standard, where Officer O was standing when the second bullet was discharged.

[174] It is uncontroversial that the second shot was fired by Officer O, that it penetrated the driver's side window, grazed Mr Colwell's chest, struck the central console and was recovered from the driver's side footwell. The forensic evidence I received from Mr Rossi, Mr Johnston, Mr McCorkell and Dr. Kriegel- Gemmecke was unable to definitively position Officer O when the second shot was fired. I find it more likely than not that there was some movement on the part of Officer O after the first shot was discharged, however, the degree to which there was movement prior to him discharging the second shot is unclear. In a further attempt to explore whether this uncertainty could be resolved, I asked for a review of the evidence from Mr Johnston and Dr Kreigel-Gemmecke . This again failed to position Officer O when the second shot was discharged. The most that can be safely said on the balance of probabilities is that, at the exact moment of firing the second shot, Officer O's weapon was pointing at the side window. I consider, on the balance of probabilities, that as part of the circumstances of the firing of the second shot, given the movement of the vehicle happened so quickly, and that in the circumstances where one shot had already been fired, his initial aim at the front windscreen quickly developed, in the immediacy of the situation, into his weapon pointing at the side window at the precise moment he discharged the second shot. The extent to which the striking of the driver's side window by the second shot was contributed to by movement on the part of Officer O cannot therefore be safely determined.

[175] In accordance with these limitations, I am unable to make further findings about the mechanism, timing or positioning relating to the firing of the second shot. Overall therefore, I do not consider it is possible for me to reach any finding as to whether the firing of the second shot can point towards a more general preparedness on the part of Officer O to use unjustified force in this incident. Further, I do not consider my finding about movement between the firing of the first and second shots, particularly considering the immediacy and speed of the incident, undermines the reliability of Officer O's evidence in respect of his justification for the firing of the first, fatal bullet. I am satisfied that it is not necessary for me to reach any further findings as to the mechanism, timing or positioning of the firing of

the second bullet in order to reach my findings as to justification for the firing of the first and fatal bullet. Nor does the inability to safely reach any such findings prevent me from reaching findings in respect of the firing of the first bullet.

[176] I further take the view that the *bad character* information put before the Inquest relating to Officer O does not assist me in determining the issue of justification for the use of lethal force in this instance. I have considered all aspects of this evidence and, even taking it at its height, I have concluded that, given the temporal remove between the *bad character* and the incident, that it did not assist me in forming a view, or gaining an insight, into Officer O's actions on the day in question. I formed the view that Officer O's actions on the day, and the circumstances surrounding those actions, were central to my inquiry and concluded that the *bad character* evidence simply did not assist me one way or another in that task.

[177] I have been careful not to draw too heavily on the wisdom of hindsight in judging the planning and controlling of this operation. It might be argued that police were not to know there was a real risk that it might become necessary to resort to the use of lethal force. This undoubted axiom cannot however be used as a reason to conduct an operation to stop a stolen vehicle in a manner which included neglecting to ask rudimentary questions and allowing members of the public to continue to pursue a stolen vehicle. Such failings, as this case demonstrates, create risks to life which should always be avoided where possible. I consider that it is not possible to say on the balance of probabilities that a properly planned and controlled operation leading up to the stolen vehicle arriving at the VCP would have resulted in the tragic events which unfolded being avoided. Nor is it possible to say that it would have obviated the circumstances in which recourse to lethal force was taken by Officer O. What can be said is that the obvious planning and control improvements, which are not exacting, unfeasible or inconceivable, could have improved the prospects of those tragic events being avoided. For instance, a properly planned and controlled operation would have included the Kearneys being

instructed to drop back from their pursuit, thereby not being in a position to engage in the potentially provocative, ill-conceived and dangerous unilateral action of blocking the road back to Newcastle. The number of occupants and the age of some of them, the fact of the pursuit and the potential for the occupants of the silver BMW to have been aware they were being pursued could have been established as facts to be communicated to the officers setting up the VCP. From there a different, better-informed and more appropriate plan might have been formulated by officers on the ground at Ballynahinch.

[178] It is not possible to determine whether Steven Colwell considered himself trapped by the actions of the black BMW or whether he was intending to mount the footpath in order to make good his escape, nor is it possible to determine whether the action of blocking the road provoked Mr. Colwell into continuing to drive in a reckless and dangerous manner in a confined area. I am however, satisfied that Officer O considered the effect of blocking the road as amounting to the route of escape being blocked. Consequently, an option to allow the vehicle to proceed back towards Newcastle as an alternative to engaging a hard stop was unavailable for consideration. It is in this context that the planning and controlling of this operation was devoid of many of the essential features which could amount to the required Article 2 ECHR standard for planning and controlling a police operation. I therefore find that PSNI has failed to provide a satisfactory and convincing explanation that the operation to stop the stolen vehicle driven by Steven Colwell was planned and controlled with the degree of care expected to ensure the risk to life had been minimised.

Findings

[179] All of my findings and conclusions are made on the balance of probabilities and set out in the preceding narrative. In summary the key findings are:

- a) The deceased was Steven Craig Colwell, a 23 year old male. He died on 16th April 2006 at Ballynahinch, Co. Down having as a result of a gunshot wound to the chest.
- b) Steven Colwell was driving a stolen silver BMW car from the direction of Newcastle towards Ballynahinch at around 11.08am on the morning of Sunday 16th April 2006. There were five other persons in the car, four in the back seat and one in the front passenger seat.
- c) Steven Colwell was severely impaired and at risk of poisoning from the effects of consuming a large quantity of what is commonly known as ecstasy.
- d) At 11.18am the silver BMW was detained in traffic at a PSNI vehicle checkpoint outside Ballynahinch PSNI station. The driver, Steven Colwell, began to turn the silver BMW to face in the opposite direction.
- e) The occupants of a black BMW had been in mobile phone contact with police and were travelling behind the silver BMW. The black BMW drove across and blocked the roadway back to Newcastle.
- f) When the silver BMW was facing back in the direction of Newcastle, Officer O who, along with Constable Allen, had been attempting to stop the vehicle, had his Glock pistol drawn and was standing in front of the silver BMW.
- g) The silver BMW moved forward at high acceleration initially in the direction of Officer O who discharged a single bullet through the front windscreen. The bullet struck Mr. Colwell in the chest. This shot was discharged approximately 43 seconds after the silver BMW was noted as arriving at the checkpoint. The BMW turned to the left and avoided colliding with Officer O.

- h) A second bullet was discharged by Officer O which penetrated the driver's side window, grazed Mr. Colwell's chest and struck the centre console. It was recovered from the driver's footwell.
- i) The silver BMW rapidly slowed from its initial acceleration, coming to rest at the entrance to numbers 8 and 10 Church Street, Ballynahinch. Steven Colwell alighted from the vehicle and collapsed on the ground. Despite the efforts of police, witnesses and paramedics to save his life, Steven Colwell was pronounced dead at the scene. The cause of death was a single gunshot wound of the chest.
- j) The operation to stop the stolen BMW driven by Steven Colwell was not planned and controlled in such a manner as to minimise to the greatest extent possible the risk to life.
- k) The 999 call from the front seat passenger of the pursuing black BMW was inappropriately handled resulting in opportunities to gather vital information being missed. No control was exercised over the actions of the black BMW resulting in the pursuit of the silver BMW continuing into Ballynahinch which led to the black BMW unilaterally deciding to block the escape path for the silver BMW on the Newcastle bound lane.
- l) Police officers were unable to give informed and timely consideration to the option of allowing the silver BMW to drive off in the direction of Newcastle, largely due to inadequate planning and control of the police operation.
- m) On the information available to the officers in Ballynahinch, they were justified in attempting to stop the stolen vehicle by slowing the traffic at a vehicle checkpoint outside Ballynahinch police station.

- n) The silver BMW was being driven dangerously within a confined area. Officer O and Constable Allen justifiably attempted to stop the vehicle by drawing their weapons and engaging in a “hard stop”.

- o) Officer O was not medically unfit to be on duty as the senior officer in Ballynahinch police station on 16th April 2006. He was appropriately trained to be on duty whilst carrying a Glock pistol.

- p) Officer O’s belief that the threat he faced to his life or the lives of others was reasonable, notwithstanding that he was mistaken in this belief. The mistake was reasonable and valid as Officer O perceived the vehicle would travel in the direction it was pointing. This conclusion is reached, not from the position of a detached observer but from a subjective position, consistent with the circumstances in which Officer O found himself.

- q) In finding that Officer O honestly and genuinely believed his life or the lives of others was in danger, and having considered the reasonableness of what he perceived to be his options in the circumstances, I find that his use of lethal force was proportionate to the threat he honestly and genuinely believed he faced. I therefore find that the force used by Officer O was no more than was absolutely necessary in the circumstances in which he found himself.