

Civil Litigation Statement

Draft Statement prepared solely for the purposes of instructing the Chief Constable's solicitors. Not disclosable in legal proceedings or data protection and subject to legal and professional privilege.

Statement of:

Temporary Chief Superintendent Michael Desmond Cloherty

"I make this statement pursuant to the letter of claim solely for the purpose of the defence of civil proceedings. I do not consent to it being used for any other purpose."

I have made a number of statements in relation to the incident which took place at 17.10 hours on Thursday 27th May 2010 in Woodchurch Road where I was assaulted by Jack BEECHAM whilst arresting him for an offence of failing to provide his name and address following a road traffic collision. I have made numerous statements in relation to this matter which are available for viewing in addition to this written document.

In relation to specific points made in the letter of claim on 22nd august 2012 I would respond as follows;

- 1. 'Accused of damaging his vehicle'- this matter is not in dispute and the vehicle was left in situ with CSI examination. Paint samples were taken but due to admissions in interview they were not progressed.
- 2. 'Out of uniform and wearing wrap around sunglasses.'- much was made of this point at the court of appeal. I was wearing my police issue black trousers, white shirt with epaulettes and my own Berghaus Black fleece blouson jacket. Due to the warm weather conditions and following my deployment outside immediately prior to my journey from Thurstaston to Birkenhead I was not wearing my police issue tie which was on the front passenger seat. The force policy does not cover senior police officers mode of dress whilst travelling between police stations. I was not expecting to get out of my vehicle. The defence tried to make a claim that I was breaching policy by being dressed in this manner and therefore not 'in the execution of my duty'. I do not own a pair of 'wrap around sunglasses. I do have my driving glasses secured and available and indeed I exhibited them at the court of appeal. I would describe them as reflective (not mirrored) with just lenses attached to a thin frame. I have my Berghaus jacket available (this was also exhibited in court).
- 3. 'Physically placed myself in front of him'- I was following BEECHAM right up to the point where he turned right into the alleyway and I then walked in front and arrested him. At no stage did I block his path and I was acting in a passive manner whilst speaking politely to him.
- 4. In relation to force used against BEECHAM and injuries sustained, a number of civilian witnesses have provided statements which will show I acted in an appropriate manner and I did not use personal safety tactics of strikes or holds. This approach resulted in members of the public commenting on my restraint in not responding violently and in my opinion this was how I have maintained my legitimacy in regard to my tactics used. I was aware of the public perception had I

Signed	***************************************	
Dated	***************************************	

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used more aggressive, but justified, in terms with PACE and CLA 1967, and as a result I was injured by BEECHAM. I cannot explain how any injuries, which may have been inflicted on BEECHAM other than I took hold of the chest area of his red top and did not let go.

- 5. With regard to handcuffing, I am unaware which officer took hold of BEECHAM nor whether they applied handcuffs. However in my opinion they would have been aware of his status as being under arrest and that force had been used on me in an effort to escape. He was then transported to Birkenhead Custody Suite in accordance with PACE.
- 6. In relation to claims of me using undue influence in securing the services of CSI and CID I would state that from the outset I wanted the most appropriate response in terms of the investigation. As outlined in my additional statement at the outset this had the potential to be a 'complex' investigation with vehicles being considered for forensic examination, a large scale CCTV trawl, witness tracing and interviewing and any number of additional enquires. In my judgement the most appropriate group of officers were those from the area CID. It should be noted that this was in compliance with the Crime Allocation Policy in existence at this time and the newer version actually states that section 39 assaults upwards should be allocated to CID units.
- 7. Regarding my active supervision of the investigation this is wholly untrue. The following day I became aware that BEECHAM had been charged with assault constable and in my opinion this should have been a more serious charge of section 47. I chose not to try to escalate this matter not did I ask for anyone to do so on my behalf. I received an email from Constable Mike Fox Operation TANGO shortly after the incident when he dealt with BEECHAM when he was making enquiries into releasing his vehicle. I did not respond but passed this to DC Walton without comment. This case was dismissed apparently due to deficiencies in the CCTV evidence and provision of all 999 tape recordings in relation to this matter. Had I been involved this would not have happened. The officers involved in this case will be able to present evidence as to my lack of involvement in the management and direction of this investigation.
- 8. Sgt Pottle has apparently given evidence of some form of interaction where I was supposed to have informed him that I was on duty when this incident took place. I cannot think of any interaction where I have made such comments to Sqt Pottle. The defence assertion that I was not on duty when this incident happened stems from comments made by the radio operator when the call for assistance was communicated to officers. I can only presume that they have made that assumption as I was calling the control room on my mobile telephone and due to the time of the day i.e. after 17.00 hours. The defence made claim that I must have been off duty following the briefing to colleagues at the music festival. I do not live on Wirral nor do I do any form of shopping in that area. Had I been travelling directly home from the festival site I would have taken the M53 from junction 3 to utilise the Wallasey Tunnel. This was the route I took over the next two days when travelling home directly from the event. I passed the M53 junction as I was travelling to speak to CID colleagues at the office in Birkenhead following my lengthy appointment at Thurstaston as I still had my residual police business to attend to. The alternative route back to Liverpool would be by using the Birkenhead Tunnel which would put extra mileage on the journey, would result in delays meandering through numerous traffic signals and would have

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placed me in the centre of Liverpool and my route home from there would result in my travelling past the Wallasey Tunnel exit onto the A59 Scotland Road.

- 9. With regard to breaches of disclosure this is a matter for Detective Constables Walton and Harper to respond to.
- 10. Regarding the assertion that evidence went missing this refers to my pocket note book for the period ending 19th May 2010. This matter has been covered extensively in my additional MG11. I would like to add that this period was prior to the incident and no details of any incident would be recorded as only basic duty details are recorded. This matter has been subject of numerous CPS memos and Freedom of Information Requests and every such request has been complied with and I believe that this is a spurious point in an attempt to discredit me.
- 11. As mentioned previously Constable Mike Fox dealt with BEECHAM when he made attempts to have his vehicle released and he will be able to provide information regarding the interaction and queries regarding the insurance status of the vehicle.
- 12. POWER of arrest. The circumstances of the initial incident show that BEECHAM has responsibilities under the RTA as follows (bold)

Section 170 Road Traffic Act 1988
DUTY OF DRIVER TO STOP, REPORT ACCIDENT AND GIVE INFORMATION
OR DOCUMENTS

1) This section applies in a case where, owing to the presence of a mechanically propelled vehicle on a road, an accident occurs by which -

(a) personal injury is caused to a person other than the driver of that mechanically propelled vehicle, or

(b) damage is caused -

(i) to a vehicle other than that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or

(ii) to an animal other than an animal in or on that mechanically propelled vehicle or a trailer drawn by that mechanically propelled vehicle, or

(iii) to any other property constructed on, fixed to, growing in or otherwise forming part of the land on which the road in question is situated or land adjacent to such land

(2) The driver of the mechanically propelled vehicle must stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

(3) If for any reason the driver of the mechanically propelled vehicle does not give his name and address under subsection (2) above, he must report the accident.

(4) A person who fails to comply with subsection (2) or (3) above is guilty of an offence.

The power of arrest is provided by Section 24 5 (a) as below

Arrest without warrant: constables E+W

(1)A constable may arrest without a warrant—

(a) anyone who is about to commit an offence;

(b) anyone who is in the act of committing an offence:

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(c)anyone whom he has reasonable grounds for suspecting to be about to commit an offence;

(d)anyone whom he has reasonable grounds for suspecting to be committing an offence.

(2)If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3)If an offence has been committed, a constable may arrest without a warrant—

(a) anyone who is guilty of the offence;

(b)anyone whom he has reasonable grounds for suspecting to be guilty of it. (4)But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5)The reasons are—

(a)to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

- 13. My service history will show a clear record of any findings of guilt for disciplinary offences and my position in terms of rank and role would indicate a level of faith by Chief Officers as to my integrity.
- 14. From a cursory examination of the records held within the NICHE information system BEECHAM has a history of violent offending with three incidents taking place in Woodchurch Road since 2006 involving law enforcement agencies. On 6th may 2006 he was arrested whilst disrupting a road traffic speed check. On 11th January 2008 he was arrested after being named as responsible for an offence of criminal damage to a property. On 13th October 2010 he deliberately run over a Council Traffic enforcement Officer who was in the process of issuing him with a parking ticket. There are also a number of other incidents involving BEECHAM recorded within NICHE. A consistent element of all is his apparent violent responses to what I would call normal behaviour of public servants or people he comes into contact with in the course of his business. I find it more than coincidence that he seems to be a common factor in a number of differing disputes. There appears to be an element of violent behaviour on his part throughout.
- 15. Based on my experience in this case and an examination of his offending past I have an assertion regarding the incident subject of the arrest in May 2010. BEECHAM provides an address in the Isle of Man. He has a number of vehicles registered and displaying IOM plates and the vehicle he was using at the time of this incident was insured through a company in the IOM. I would guess that the cost of such insurance would be cheaper than the cost on the mainland. When I mentioned his responsibility to provide me with his name and address he was fearful that the insurance company would become involved in a claim that I may make and they would take away any no claims bonus or increase the cost of insuring his vehicle as it was being used in an area with an increased risk of claim. I am of the opinion that he did not want to have any witnesses and that is why he changed the direction he was walking in and he was intending to go to

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the rear of the takeaway premises he runs and where I believe his son was. Had he reached the rear of his premises he would have tried to attack me with his son present and they would have claimed self defence and I would have been outnumbered. I took the decision to arrest him and he did not want to be put in this position and he used violence and a weapon to attack me. Independent witnesses provided their own accounts as to who was being violent and who was trying to de-escalate the incident. BEECHAM has attempted to avoid being held to account when he claimed illness on the day of a hearing when he went to Arrowe Park Hospital and his defence team asked for a bind over. I declined this as is my right as the victim and he then tried to influence the course of this matter by making a false claim to his Member of Parliament. Prior to one appearance one of the civilian witnesses received a false call from someone claiming to be from the court who told her that she was not required at the court hearing and that she did not have to attend the next day. No one from the police or CPS made this call.

16. BEECHAM has benefited from deficiencies in the investigation and he is now falsely claiming damages.

M. D Cloherty T/Chief Superintendent