IPCC investigation into the death of Frank Ogboru

Independent Investigation Commissioner's Report
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Introduction

This report sets out the Commissioner’s findings following the independent investigation into the death of Mr Frank Ogboru, who died on 26 September 2006, having been arrested to prevent a breach of the peace in Woolwich. A post mortem examination found that he had died as a result of asphyxia during restraint.

The purpose of the IPCC investigation was to examine the circumstances leading to Mr Ogboru’s arrest, the techniques used by the officers as they restrained him and the care he received when he became unwell.

In doing so, the IPCC considered whether there was evidence of any criminal offences or breaches of police conduct regulations. It also considered any training, supervisory, management or policy issues that arose.

Referral

Mr Ogboru was pronounced dead at 11.44pm at the Queen Elizabeth Hospital in Woolwich. The MPS Directorate of Professional Standards informed the IPCC and a team of IPCC investigators went to the scene to begin an independent investigation.

Chronological summary of events

In September 2006, 43-year-old Frank Ogboru from Lagos in Nigeria, was on holiday in London and staying at a friend’s flat in Vista Buildings, Woolwich. A woman, who was a friend of the owner, was also staying at the flat at the time and they shared the facilities.

On 26 September, Mr Ogboru went out for the day. That evening, he met up with a friend for two or three hours before going back to the flat.

The woman who was sharing the flat told the IPCC investigation that when Mr Ogboru returned he went into the kitchen to prepare a meal, and then verbally attacked her. An argument developed
and a heated exchange took place.

The sound of the argument prompted a neighbour to report a disturbance to police at 10.34pm.

At around the same time as the neighbour called police, Mr Ogboru left the flat and went down to the reception area. The woman followed him downstairs and they began to argue once again.

At 10.36pm, the woman herself called police, stating that Mr Ogboru had been very rude.

At 10.41pm, two officers arrived at Vista Buildings.

The two officers arrived at the front of the flats just as Mr Ogboru was walking out of the main door. The woman went outside to speak to them. The officers told the woman to go back into the flat. They then spoke to Mr Ogboru, refusing to let him back into the flat and instead, ushering him towards the road.

It was around this time that Mr Ogboru was arrested to prevent a further breach of the peace. A struggle between Mr Ogboru and the officers ensued during which CS spray was used on Mr Ogboru, but did not appear to have any effect.

The struggle continued and officers tried to handcuff Mr Ogboru and took him to the ground. Mr Ogboru was lying on his front, on the floor and officers applied handcuffs to one of his wrists, behind his back.

Officers called for assistance.

Two more officers arrived and assisted their colleagues in handcuffing Mr Ogboru - applying handcuffs to both hands behind his back. At this time, he was lying face down on the ground with one officer at his feet, one in the area of his hips and two officers in the area of his upper torso and head.

Mr Ogboru was still struggling at this stage but he then became unresponsive.

The officers took off the handcuffs and tried to resuscitate Mr Ogboru. They called an ambulance and Mr Ogboru was taken to Queen Elizabeth Hospital in Woolwich where he was pronounced dead at 11.44pm.
**IPCC investigation**

IPCC investigators seized CCTV footage from the Vista Buildings, the local council, London Transport and a mobile phone. They took statements from 28 independent witnesses who saw or heard various parts of the incident, as well as other police officers and London Ambulance Service staff who arrived at the scene after Mr Ogboru had become unwell, and hospital staff who treated him.

A post mortem examination took place and the IPCC received an interim report on 20 October 2006 explaining that it would be necessary to wait for toxicology, neuropathology and histology before the pathologist could reach any conclusions. On 19 March 2007, the pathologist concluded that the cause of death was asphyxia during restraint, the implication being that there was a direct link between the restraint and Mr Ogboru’s death. He did however make it clear that he was not attaching any blame to the officers.

The IPCC also submitted exhibits for forensic examination. Tests were unable to conclude whether or not the use of CS played any part in the cause of Mr Ogboru’s death. Toxicology tests concluded that Mr Ogboru was not under the influence of alcohol or any common drugs when he died.

The IPCC commissioned an MPS Inspector, who is responsible for police and equipment within the MPS Officer Safety Unit, to review the officers’ actions. The Inspector was Deputy Secretary to the Association of Chief Police Officers Self Defence, Arrest and Restraint Working Group which is responsible for national policy and guidance. He stressed that the techniques and tactics used are ultimately a personal choice for officers dealing with an incident, as they will have their own perception of what is happening and the level of threat that they or others face. He said that he would expect the vast majority of officers to deal with such incident by using the same techniques and tactics he saw the officers in this case use on the CCTV footage he reviewed.

The IPCC also asked an expert from the National Policing Improvement Agency (NPIA) for his view. He identified areas for training and development but did not see anything malicious in the officers’ actions and concluded that they were working within their training guidelines.

The IPCC also commissioned an A&E Consultant to examine the first aid provided by officers who arrived at the scene. She concluded that "the officers promptly identified that there was a problem and took timely and appropriate action to remedy that, even though in the final analysis the patient
or victim could not be resuscitated."

The four principal officers were interviewed by IPCC investigators. All denied any wrong-doing in relation to the restraint of Mr Ogboru and maintained that it was Mr Ogboru's behaviour that necessitated his arrest and his resistance that led to the subsequent restraint.

**Referral to CPS**

On 6 December 2007, the IPCC referred the case to the Crown Prosecution Service (CPS) and provided all the evidence gathered during the investigation for consideration. The CPS responded on 30 April 2008, concluding that there was insufficient evidence to justify prosecution of any of the police officers involved in the restraint which led to Mr Ogboru's death.

**Misconduct considerations**

Following receipt of the CPS decision, the IPCC considered whether there was any evidence that any of the officers had breached the Police Code of Conduct. The standard of proof in relation to misconduct is "balance of probabilities" rather than "beyond reasonable doubt" as in the case of criminal prosecution.

However, despite the difference in standard of proof, the issues are the same: lawfulness of the arrest and the force used, whether that force was reasonable, and whether officers provided the required duty of care to Mr Ogboru.

There had been a disturbance, witnesses had called police, and the disturbance was ongoing in the street when police arrived. The officers asked Mr Ogboru to leave and he refused. It was reasonable for them to conclude that the breach of peace would continue if he remained there.

Following a lawful arrest, officers are justified in using reasonable force to effect that arrest. Where a struggle is taking place there is a distinction between the "control" and "restraint" phases. The control phase is where officers act in order to achieve control of the individual. Once control is achieved, the restraint phase begins. Because of the risk of positional asphyxia officers are trained to move the person out of the ‘prone’ position (off their front) as soon as possible after control has been achieved.

In this incident it is clear that two officers, and then four officers, did not manage to achieve
control of Mr Ogboru, and continued to use force in an attempt to do so. The question is therefore whether this continued force was necessary and reasonable.

It was the IPCC’s view that the continued force was both necessary and reasonable based on the evidence gathered during its investigation. However, IPCC Commissioner Rebecca Marsh decided to wait for the conclusion of the inquest before taking the final decision. This was because the officers involved had given very limited statements to the IPCC investigation. This is within their rights – they were interviewed under criminal caution and they were entitled not to comment, to give limited detail or to provide prepared written statements, as any member of the public would be in the same circumstances.

The inquest took place between 8 April and 29 April 2010 at Southwark Coroners Court. The officers were under oath and gave more detailed accounts of the incident. The inquest jury concluded that the cause of death was “sudden death as a consequence of restraint.” During the inquest an independent pathologist was asked to report to the Coroner. As part of this report he identified a number of factors which, combined, contributed to the cause of his death. These factors included; that he was clinically obese, had a large and protuberant abdomen, and had eaten a large meal. Additionally there had been a struggle and he was placed and held face down with at least some added pressure placed on his back.

The IPCC Commissioner re-referred the case to the CPS to ensure they had sight of all possible evidence. On 2 November 2010, the CPS informed the IPCC that they remained of the view that no criminal action should be taken against the officers.

Therefore on 30 November 2010, the IPCC wrote to the MPS asking the Directorate of Professional Standards to consider again what action they would take in respect of this case. The MPS responded to the IPCC on 16 May 2011 setting out their rationale for proposing no disciplinary action against any of the officers involved.

After careful and close examination of the evidence, analysis of the opinion of experts in police restraint and officer safety, and consideration of the inquest findings, the IPCC Commissioner agreed with the MPS’s proposals that the officers’ conduct did not amount to a breach of the Police Code of Conduct.
Conclusion

The IPCC believes there were key points at which the outcome of this case was potentially avoidable. However, this is with the benefit of hindsight and has been addressed by way of learning outcomes rather than misconduct.

CCTV shows that it was approximately 10 minutes between the police arriving at Vista Buildings at 10.41pm and Mr Ogboru being physically arrested. The first two officers at the scene stated in their evidence that they established what was happening from the woman present and then tried to persuade Mr Ogboru to leave, telling him that he would be arrested if he did not do so. It seems that Mr Ogboru did not understand that they had the power to arrest him to prevent him from returning to the property. The decision to arrest appears to have been made because Mr Ogboru refused to leave, although he was not at this point attempting to return to the flat. Although it is clear that the decision to arrest Mr Ogboru was lawful, it may have been premature and further efforts could have been made to explain to Mr Ogboru the consequences of not leaving, with the aim of persuading him to do so.

Once the decision to arrest Mr Ogboru had been taken and he, in turn, resisted arrest, the use of force to effect the arrest was not just lawful, but inevitable. However, the officers were so focused on restraining Mr Ogboru that the risk of positional asphyxia was not identified and acted upon despite several risk factors being present. It is clear that Mr Ogboru said that he could not breathe, but this was ignored and assumed to be a ruse to assist an escape. Indeed the officers were so focused that they not only ignored the warning from Mr Ogboru, but those of the observers around them.

In addition, in their determination to subdue Mr Ogboru, the IPCC does not feel that there was sufficient consideration given to the minimal threat that he posed to the officers and to others. He offered resistance and passive aggression which can be seen to be directly related to the threat he perceived to himself, rather than an active threat to those around him. The risk of flight was also low, as the whole purpose of the intervention was to get him to leave.

It is true that officers restrain individuals, on their front, on a daily basis without consequence. However, this does not absolve the responsibility that officers have to continually assess the level of risk in relation to the intervention or force required in any particular situation.

Based on these issues, the IPCC raised concern with the MPS about training in communication, command and the importance of teamwork during arrests and restraint involving several officers. At the conclusion of the inquest, the Coroner asked the MPS to consider how training could be
delivered to ensure that it is embedded in such a way that even when officers are focused on the arrest, they consider the danger of positional asphyxia.

The MPS has made a number of changes since this case, including the introduction of a mandatory questionnaire on positional asphyxia and prone restraint-related issues in addition to its core positional asphyxia training. They have also produced DVD about restraint, featuring a leading health care professional, which is now part of mandatory training for all officers below the rank of Superintendent.

The IPCC welcomes this addition to police officer training but the issue of restraint-related deaths remains a concern and the IPCC will continue to work in this area to help police forces improve standards, develop policy and prevent future tragedies.

Commissioner Rebecca Marsh
November 2011

A Commissioner's report is not an IPCC Investigation report. The purpose of a Commissioner's report is to share with the public the key findings and summary of the IPCC investigation, including the Commissioner's own decision making, the outcome of any legal processes that followed from the investigation, and the learning recommendations. The report belongs to the IPCC Commissioner who retains oversight of the investigation. The Investigation report is provided to the family or complainant, the police force, individual officers, and with a Coroner ahead of any Inquest. The Investigation report and related evidence is also provided to the Crown Prosecution Service when the IPCC considers that serious consideration should be given to whether or not a person should be prosecuted for a criminal offence. Investigation reports are published only in exceptional circumstances because of data protection or other legal restrictions.