

# UK: Three police officers acquitted of misconduct in restraint death

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A police misconduct hearing has cleared three officers of gross misconduct over the death of an epileptic man, Duncan Tomlin.

Although warned that he might be having a seizure, they sprayed Tomlin with an incapacitant, bound his hands and legs, and held him face down. Tomlin was restrained for more than seven minutes before officers became concerned at his condition and began administering CPR. He never regained consciousness and died two days later.

The misconduct hearing results mean the officers will not be prosecuted or lose their jobs. The results come barely a fortnight after figures for 2017/18 show deaths in police custody reaching a ten-year high, having more than doubled in the last year.

In July 2014, 32-year-old Tomlin fell into a complex partial seizure. Hearing his shouting, a neighbour called the police to report fighting. When officers arrived at the house in Haywards Heath, Tomlin had gone out into the garden. His aunt said that this was routine behaviour for Tomlin during seizures, when he would become unaware of his surroundings.

Tomlin's partner, Ann-Marie Botting, shouted warnings to the police that he was epileptic and either having or about to have a seizure. The officers assumed Tomlin was violent and began chasing him.

Tomlin, disoriented and experiencing a seizure, punched the officer who caught up with him and they fell to the ground struggling. Five other officers then arrived. Tomlin was sprayed in the face with an incapacitant and arrested for assaulting a police officer. The officer responsible for supervising the situation, Sergeant Christopher Glasspool—one of those facing misconduct charges—said Tomlin was already “screaming and shouting incoherently” when he arrived on the scene.

Tomlin's aunt described her nephew being pushed to the ground with three officers sitting on him to restrain him. He was restrained face down, handcuffed and placed in leg and thigh restraints. The Sussex Police barrister said Tomlin was “groaning and shouting.”

Officers carried Tomlin into a police van with his legs curled up behind him. Inside the van he lay on his front, with officers kneeling on his back. One minute and 33 seconds after entering the van Tomlin made his last visible voluntary body movement, moving his hand.

The restraints were not removed for another four minutes.

Only after seven minutes and 31 seconds was he carried out of the van, placed on the ground and given CPR.

Glasspool and constables Jamie Jackson and Daniel Jewell were accused of gross misconduct for the “inexplicable” delays in removing the restraints after it became clear there was a medical emergency.

Glasspool told the hearing he began to “panic” when Tomlin “suddenly” stopped shouting. When asked why it took so long to move Tomlin onto his side from face down, Glasspool said this standard First Aid response was a “dangerous manoeuvre.”

Seven officers were present to assist.

Another officer, not accused of misconduct, said he had informed Glasspool of what he had been told about Tomlin's epilepsy, but told the hearing he did not think Tomlin was showing signs of a seizure. The hearing does not appear to have inquired as to this officer's capacity to make medical judgements.

Glasspool has said he did “everything he could” to save Tomlin's life. He also claims he knew nothing about the possibility of epilepsy until after the arrival of the paramedics. The doctor who attended the scene was

advised Tomlin might have taken drugs, but not of any possible seizure or epilepsy.

Glasspool's written statement on the incident did not mention epilepsy or the possibility of seizure. He refused to answer questions before the hearing.

Tomlin went into a coma, dying two days later. Pathologists found methadone and cocaine in his system, but concluded that "positional asphyxia" also played a part in his death.

The findings mean Glasspool, Jackson and Jewell will keep their jobs and face no prosecution. This follows the decision by the Crown Prosecution Service earlier this year not to charge them with manslaughter because there was no "realistic prospect of conviction."

Deborah Coles, of the Inquest charity, which monitors UK police killings, said it was hard to reconcile the findings with the "harrowing evidence" presented.

The suggestion the officers had a case to answer for gross misconduct was made by the Independent Office for Police Conduct (IOPC), which came into existence in January this year, having previously been the Independent Police Complaints Commission (IPCC). The IPCC was widely mistrusted. Supposedly an "independent" watchdog, it was the loyal voice of the official police version of events, and connived at every police murder of a civilian and exoneration of officers since its inception.

The move to the IOPC was intended to promote the impression of a more forceful regulatory body.

The misconduct hearing into Duncan Tomlin's death suggests this is simply a more sophisticated version of whitewashing. Sussex Police Assistant Chief Constable Steve Barry expressed regret at the "tragic and unexpected" death, but insisted that the circumstances have now been "fully and independently investigated."

The conclusion of this "independently-chaired" investigation, said Barry, was that "the officers acted appropriately ... and that they did meet the standards of behaviour that the public should expect from the police." He used the hearing to justify "the difficult judgements that officers have to make."

The IOPC said they will pass their report onto the coroner at the upcoming inquest into Tomlin's death.

Duncan Tomlin's family say they are "very disappointed" by the findings, as it was "clearly Sussex Police's view that the officers did not follow their

training, the policies and guidance in relation to their actions towards Duncan." The family say they "just wanted an honest account of what happened to Duncan that night." Like Inquest, they are left hoping that the forthcoming inquest will "explore the actions of all of the officers ... and a wider range of issues than those before this panel."

However, publication of the IOPC's report into annual deaths in custody only points to Duncan Tomlin's death as being part of a more general trend. Twenty-three people died in or after police custody in 2017, the highest number for a decade. Of these, the majority (17) were subject to the use of force or restraint "by the police or others" before they died, although the IOPC was careful to argue that this did not mean the use of force was a factor in their deaths.

Eleven of those 17 were restrained in custody.

The number of deaths after the use of force or restraint has been rising steadily, up from 15 in 2016/17 and 11 in 2015/16.

Last year, three people died in a police cell. Five died in hospital "after becoming unwell" while in a cell. Nine more died in hospital after being "taken ill" during arrest.

Such medical euphemisms have become standard procedure for not attributing responsibility. At the time of Tomlin's death in custody, IPCC commissioner Jennifer Izekor promised they would "carry out a robust and thorough investigation into the circumstances and nature of his contact with the police, the events leading up to his becoming unwell and his hospitalisation."

The IOPC report points to a failure of social provision. The most vulnerable are left to an increasingly brutal police system.

Along with rising fatality rates associated with restraint, the IOPC figures suggest that the victims are increasingly the most vulnerable in society, with mental health problems or histories of addiction. Twelve of the 23 had "mental health concerns," while 18 "had links to drugs and/or alcohol."



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