

Law essays - public emergency liability



**ASSIGN
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Title: The privileged treatment accorded by the courts to the emergency services on the question of duty goes too far. It does not merely recognise the importance of their public services, it offers them a degree of protection which allows them to be unaccountable in circumstances where liability should clearly exist.

1. Do you agree? Critically consider by reference to authorities, whether the current law strikes the right balance.

Introduction

This paper discusses the legal perception of the duty of care owed by the public emergency services, including in particular the police, fire and ambulance services in the context of the burgeoning and ever-evolving law of tort. The statement under review claims that the “ privileged treatment” (some would say *limited immunity*) offered to the public emergency services “ goes too far”.

It is further claimed that the latitude allowed by the courts in relation to the emergency services effectively renders those services unaccountable in circumstances where the imposition of liability is manifestly appropriate. In the following analysis these assertions are critically evaluated against the backdrop of relevant case law. The current balance of the law is identified in what is a constantly changing field. Conclusions are drawn on the basis of the authorities considered.

Emergency Services and the Duty of Care

It is common knowledge that there is no general, proactive duty of care to undertake ‘ rescues’ or interventions in emergency situations, no matter how

straightforward such rescues might appear. This is graphically illustrated by the case *Barrett v Ministry of Defence* (1995), where the failure of the MOD to intervene to prevent the death of an alcoholic soldier was not deemed to merit the imposition of tortious liability. Moreover, the position of English common law is mirrored in the United States on this point as *Osterlind v Hill* (1928) confirms.

This stance was endorsed, by inference, in *X v Bedfordshire County Council* (1995) (by the House of Lords), and more explicitly in *Stovin v Wise* (1996). Indeed, Lord Hoffman opined in *Stovin* that the omission of a public authority to undertake the rescue of a emergency victim should be deemed incapable of deriving liability, except in circumstances where Parliament has expressly and specifically set down a right to redress in the form of financial compensation where the duty to intervene and rescue is not met.

Given the above authorities it can come as no surprise that the law has traditionally not imposed a duty of care on emergency services when they are summoned to give assistance. In the case *Ancell v McDermott* (1993), for example, the court ruled that the police service was not subject to a duty of care to warn road users of dangers on the roads that were known to the service.

Moreover, in *Alexandrou v Oxford* (1993) police were dispatched to retail premises to investigate the triggering of a burglar alarm. However, they omitted to detect the presence of a burglar before departing the shop. In this case the court ruled that the police did not owe a duty of care to the owner of the premises, who suffered loss as a consequence of the service's failure.

The court reasoned that to impose a duty of care in such circumstances would be contrary to the interests of public policy. The court also drew on the concept of proximity to justify its decision, although it is submitted that this seems tenuous given that it is hard to imagine a much more proximate situation.

These decisions are in conformity with the earlier case of *Hill v Chief Constable of West Yorkshire* (1989), in which the issue for the consideration of the court was whether the allegedly incompetent police service should be held to a tortious duty of care over its acquiescence before arresting the infamous Peter Sutcliffe, better known as the “Yorkshire Ripper”, although the police were in possession of cogent evidence indicating his culpability.

The court rejected the action on grounds of public policy and also, this time on a much better-founded assertion of a lack of proximity. It was conceded that the police service owes a fundamental duty to the general public to catch the protagonists of crime efficiently and promptly but the court reasoned that it was impossible to define a specific class of individuals to whom the duty of care should be owed.

It can be argued that there is manifest and abundant justification for the decision in *Hill*. Surely it is not feasible to impose a legally enforceable duty of care on the police force, and thereafter by inevitable implication award pecuniary compensation in the form of damages for every failed (or slow) investigation.

The great majority of crimes go unsolved. The potential workload that the courts would be unimaginably huge and the compensation bill, which would

ultimately have to be met by the public purse would be colossal. The case of *Rondel v Worsley* [1969] confirms the approach in *Hill* and the later cases discussed. In *Rondel*, unavoidable public policy factors were deemed to take precedence over issues of proximity in the court's deliberations.

That said however, there are limits to the fear of opening the floodgates to claims. If during the course of their operations the police are responsible for directly causing immediate harm to another they may be held liable for those actions. In *Rigby v Chief Constable of Northamptonshire* (1985), liability was imposed after the negligent use of a CS gas cannister and previously in *Knightley v Johns* (1982) negligent conduct in the aftermath of a traffic accident was found to justify a claim in tort. These cases, and other of their ilk, show that the police service can be subject to an enforceable duty of care, but only in tightly restricted circumstances and only where close causal proximity is clearly established.

A case concerning the fire service shows that the police are not alone in their difficult relationship with tort law. In *Capital and Counties plc v Hampshire County Council* (1996) the court held *at first instance* that the fire service was liable for the negligence of one of its officers in ordering that the sprinkler system in a burning building should be turned off.

The first instance judge dismissed arguments for immunity based on public policy. It was held (somewhat dubiously it is argued) that potential liability was unlikely to result in fire-fighting being carried out with a defensive frame of mind and the fire brigade's exclusive control of its operations was a consideration against a public policy immunity.

This decision appears to be in accord with the contemporaneous Scottish case of *Duff v Highland and Islands Fire Board* (1995), where it was held that the fire brigade did not enjoy immunity in tort regarding operational matters. In *Duff* the fire brigade attended the scene of a fire and then left believing it was extinguished. It was not extinguished and when the brigade was called back they were unable to control the fire and it destroyed the pursuer's house.

Lord MacFadyen opined that, while there was a risk of defensive behaviour among fire-fighters, precisely the same argument could be employed with equal force in the context of medical negligence and other forms of professional negligence and there was no question of extending public policy immunity into these vast spheres. Another contemporary supporting case is *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* (1996), where the fire brigade was found liable in respect of a negligent failure to extinguish properly an initial fire at a premises.

However, it must be noted that *Capital and Counties plc v Hampshire County Council* (1997) went to appeal at the Court of Appeal joined with two other cases. The facts of *Capital and Counties* are already known. In the joined case *Church of Jesus Christ of the Latter Day Saints v West Yorkshire and Civil Defence Authority* the fire service negligently omitted to source a sufficient supply of water for the purposes of extinguishing a fire and in the third joined case *Monroe v London Fire Brigade* officers of the fire service failed to check the perimeter of an explosion for secondary fires.

The Court of Appeal ruled that the fire service does not owe a general tortious duty of care merely because they had been summoned to give assistance. The Court also held that the fire service's assumption of responsibility once at the scene of an emergency, coupled with the reliance placed on the service by the parties involved, did not of itself establish a duty of care on the part of the fire service.

The consequence of these rulings on principle was that the *Church of Jesus Christ* and *Monroe* cases failed on the facts. Liability was only established in the *Capital and Counties* case on the narrow grounds that the fire service had actually, physically and directly caused the damage suffered in the case, by personally and deliberately switching off the sprinkler system.

All that said, a potentially groundbreaking decision was reached in the more recent case of *Kent v Griffiths* (2001). Here, a pregnant woman suffered an asthma attack at home. Her doctor attended her, realised she was in extreme difficulty and called 999 to summon an ambulance. The ambulance did not arrive for a period of 40 minutes (as opposed to the service's own guidelines which indicated it should have arrived within a maximum of 14 minutes). It transpired that the ambulance crew entered false records in their logbook in an attempt to cover up their own negligence.

The woman ultimately suffered a respiratory arrest, lost her baby and was left with brain damage as a direct result of the delay of the ambulance. Unsurprisingly the ambulance service was sued for negligence. At first instance, Turner J held that it would be "offensive to, and inconsistent with,

concepts of common humanity” to refuse to impose a duty of care in all the circumstances of the case.

Equipped with clear evidence of negligence and causation (and even *mala fides*) Turner J ruled that where the ambulance service accepted the task of providing a timely response and was in a position to do so, it was right to impose a duty of care to carry out the rescue in regards to the rescuee. The decision in *Kent v Griffiths* was welcomed by some, but feared by others concerned about opening the floodgates to a multitude of claims. The case was appealed.

At the Court of Appeal it is submitted that an appropriate balance was struck. The first instance decision was upheld, however, their Lordships were at pains to stress that the precedent should be limited in its future application to the ambulance service. Master of the Rolls Lord Woolf made it clear that *Kent v Griffiths* could not be utilised in justifying actions against other arms of the emergency services.

In confining the case strictly to its facts, Lord Woolf MR made it crystal clear that no general point of principle had been established. Their Lordships focused on the specific relationship between the ambulance service and each individual patient as differentiating the judgment from cases involving services, such as the fire brigade, the coastguard and the police, who owe a more general duty of societal protection.

Concluding Comments

With specific reference to the title to this work, it is clear that there is a very delicate balance to be struck in the imposition of a legally enforceable

tortious duty of care on the public emergency services. It is submitted that both extremes are undesirable: at least that much is relatively uncontroversial. It would clearly be inappropriate to afford the emergency services complete immunity, because to do so would be to allow outrageous examples of highly proximate and gross negligence to go unpunished.

Such would give the emergency services *carte blanche* to act in society under a licence not enjoyed by any other of its members. However, it would be equally unsatisfactory to settle a duty of care on the services that could potentially punish each and every technical incidence of negligence, because to do so would so drastically impair their actions and divert their scarce resources into defending the veritable multitude of civil suits that would quickly ensue.

While it is far from ideal to build a framework of law on a case by case basis, it is hard to identify a better approach. The tentative step forward that was taken in *Kent v Griffiths* was quickly confined to the facts of the case and limited in terms of the scope of its future application. The reasons for this are obvious, and as long as the courts are prepared to extend liability in those cases that demand it, while curtailing the effects of their judgments with a view to the wider and general picture of public policy, then the law should be able to maintain efficiency and integrity in this sphere.

In conclusion it is submitted that it is appropriate to open the floodgates just a crack, to allow the courts to deal with the most deserving cases within a rigid framework of liability, but not so far as to impede the emergency services in the work on which we all rely.

Bibliography

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