

Public Authorities: Accountability of the Police

Police have been under the blanket application of immunity by the courts when it comes to police conviction. Be it; in events of crimes or mere unexercised power on their behalf. “Public authorities cannot be held liable for individuals of the community”. Well then what about the safety and security of the public? They cannot be held responsible for each individual and when it comes to large scale events, it is usually stated that they cannot be held responsible for the safety of all. Then when exactly is police in charge of? What are the responsibilities that they are to be accountable for? Will it be right to say that police are merely a public body but one, which people should not look up to? Past case law as well as recent cases such as *Hill v Chief Constable of West Yorkshire [1989]* and *Michael and others v Chief Constable of South Wales Police [2015]* have really forced people to question the accountability of the police.

I respect the argument presented about the imposition of negligence liability on the police which might lead them to exercise their primary function of investigating and suppressing crime defensively, inhibiting them from taking difficult operational decisions and restricting their freedom to act in the interests of the community.¹ Such statements and claims have in law been weakened by the fact that, although accepted in some cases involving public authorities,² they have been rejected in others.³ However, this argument has led to numerous issues and counter arguments, and it can be contended that in reality liability would actually enhance the overall standard of public authority employees. On this basis, it can be said that such uneven applications on many instances of the defensive arguments are not justified on logical grounds, especially for the families of the victims.

On several instances’ public authorities particularly the department of police, has argued especially when things went wrong for public events that they would have required scarce

¹ *Smith v Chief Constable of Sussex Police [2008] UKHL 50* at [78], [81] (per Lord Hope), at [97] (per Lord Phillips), at [108] (per Lord Carswell), a [132] (per Lord Brown); *Brooks v Metropolitan Police Commissioner [2005] UKHL 34* at [30] (per Lord Steyn); *Desmond v The Chief Constable of Nottinghamshire Police [2011] EWCA Civ 3* at [31].

² *Mitchell v Glasgow City Council [2009] 1 AC 874* at [28] (per Lord Hope) (social landlords); *Gorringe v Calderdale Metropolitan Borough Council [2004] 1 WLR 1057* at [103] (per Lord Brown) (road authorities); *Stovin v Wise [1996] AC 923, 958* (per Lord Hoffmann) (road authorities); *X v Bedfordshire County Council [1995] 2 AC 633, 750* (per Lord Browne-Wilkinson) (social services).

³ *Dorset Yacht Co v Home Office [1970] AC 1004, 1033* (per Lord Reid) (prison services); *Barrett v Enfield London Borough Council [2001] 2 AC 550, 568* (per Lord Slynn) (social services); *Phelps v Hillingdon London Borough Council [2001] 2 AC 619, 672* (per Lord Clyde) (educational services); *Capital & Counties v Hampshire County Council [1997] QB 1004, 1043* (fire fighters).

number of resources in order to have acted effectively and provided the security that would have been sufficient at the time. The answer to this is that if the imposition of a duty of care encourages the police to act more carefully, as some commentators have argued,⁴ then it may end up essentially saving public resources instead of increasing costs. You might wonder, how? Well, certainly because the victims of serious crime often rely on medical help from the National Health Service and welfare support from the state. If, by acting more carefully, the police could have prevented the crime, then those costs would have been averted. Therefore, even if police resources are detrimentally affected, public resources may benefit overall because no matter which public authority uses those costs, it is still heavy on public funds and so I certainly believe it would be better to invest on preventing a problem rather than spending on the aftermath of a particular situation.

In addition to this, section 6(1) of the HRA⁵ provides that “it is unlawful for a public authority to act in a way which is incompatible with a Convention right,” whilst section 7(1) provides that victims of the unlawful act can bring proceedings against the relevant authority, it seems that courts have been reluctant in taking these into account. In *Osman v United Kingdom*,⁶ the European Court of Human Rights established that under the right to life in Article 2 of the European Convention on Human Rights⁷, the police have a positive obligation to take preventive measures to protect individuals whose lives are at risk from the criminal acts of third parties. This means that in principle a victim of crime who has suffered personal injury can bring an action under the HRA against the police for failure to prevent the crime. For this to succeed, the claimant needs to prove: (i) that the police knew or ought to have known at the time, (ii) that there was a real and immediate risk to the life of the victim of violence,⁷⁴ (iii) that the police failed to take reasonable measures to avoid the risk. Besides all these elements being present and conditions being satisfied, in the case of *Hill v Chief Constable of West Yorkshire*,⁸ it was decided otherwise. Many may argue that this decision was decided decades ago and remember it

⁴ This is widely accepted in “law and economics” literature. See, e.g., G. Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (New Haven: Yale University Press, 1970); R. Posner, “A theory of negligence” (1972) 1 *Journal of Legal Studies* 29. 30 This was true in the fire service case *Capital & Counties v Hampshire County Council* [1997] QB 1004, 1043

⁵ Human Rights Act 1998 UK
Public General Acts 1998 c. 42 Public authorities Section 6

⁶ (2000) 29 EHRR 245.

⁷ Guide on Article 2 of the European Convention on Human Rights
https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf

⁸ [1987] UKHL 12

as ‘old Hill case’, but the irony still persists; the same decision was taken in a very recent case *Michael and others v Chief Constable of South Wales Police [2015]*.⁹ This decision was undoubtedly after *Osman v United Kingdom* and before Brexit and to simply invalidate it was not appropriate.

Police may not and should not be held liable when the situation occurred has come about as a consequence of their responsibilities i.e., whilst performing their duties. However, police should be held accountable on ‘justiciable’ matters. Now defining justiciable may be too broad for courts, but I believe the case of *Rigby v CC of Northamptonshire (1985)*¹⁰ clarifies it by providing a good illustration. It says, firing the canister without a fire service in attendance was an operational negligence for which there could be liability, but the failure to obtain equipment delivering CS gas less dangerously was non-justiciable because the decision of what equipment to purchase was a policy one and alongside this, it concerned the allocation of resources. Likewise, if on similar facts to Michael, the failure to respond to an emergency call was due to a police officer’s individual act of carelessness, e.g., the call taker’s missing of the call as a result of watching sport on TV, the issue is justiciable. However, if it was due to an insufficient number of patrol cars arising from the allocation of resources then the issue would be non-justiciable.

For all the arguments mentioned above, it will be safe to conclude that police should be held liable where they fail to prevent a crime whereby; the claimant suffers personal harm by an act of a third party, or if the failure relates to an issue which is justiciable, and the police breached their duty in the sense that their action or inaction fell below the standard of care expected of a professional police officer. More-so, if the breach of their duty causes the claimant personal harm in law or even in fact. Besides this, decisions taken by the courts thus far, have left the public with a big question mark as to whether police will ever be answerable and held accountable for all the innocent lives lost. Will justice ever be served?

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⁹ [2015] A.C. 1732

¹⁰ 1 WLR 1242.