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Do the emergency services have a duty of care towards individual members of the public? A critique under the English tort law

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Abstract
The duty of care refers to the circumstances and relationships which the law recognises as giving rise to a legal duty to take care. The emergency services exist to assist members of the public who are in serious and immediate danger but in certain circumstances, some of them also bear legal responsibility if they fail to fulfil their obligations. A failure to fulfil the obligations can result in the emergency services being liable to pay damages to a party who is injured or suffers loss as a result of their breach of the duty of care. In this article, we have reviewed the duty of care of the police, the fire brigade, the coastguard and the ambulance service towards individual members of the public as a part of emergency services in the light of English tort law. We have also discussed the extent of the duty of care of these emergency services and their legal responsibilities. In this article, doctrinal research method has been applied.

Keywords: ambulance service, coastguard, duty of care, emergency services, fire brigade, negligence, omissions, police

1. Introduction
According to the Oxford Law Dictionary 'duty of care' means *"the legal obligation to take reasonable care to avoid causing damage"*. [1] Therefore, the duty of care exists as a control device in order to determine who can bring an action for negligence and what circumstances, because it is accepted that negligence does not exist in a vacuum and that there is no all-embracing duty owed to the whole world in all circumstances. The purpose of the emergency services is to assist members of the public who are in peril but some also bear liability in certain circumstances for their omissions. The police, the fire brigade, the coastguard and the ambulance services are indispensable emergency services. Whether the emergency services have a duty of care towards individual members of the public, it depends on the nature, circumstances and the conduct of the emergency services. It is important to mention here that these emergency services are one of the public authorities. [2] So there is a chance that the Human Rights Act 1998 (HRA) will play a role in the action against the emergency services for the negligence. However, these emergency services have a blanket of immunity against an action in negligence on policy grounds.

2. The Concept and Application of Duty of Care
2.1 The test for determining the existence of duty of care
The doctrine of duty of care provides that a person will only be liable to another for negligence if he has a duty of care towards the other and he has breached that duty and caused damage to the other. The case of *Donoghue v Stevenson* [1932] AC 562, established a test for determining whether a duty of care existed in each specific case and whether negligence has actually occurred. In this case, Lord Atkins said: *"In English law there must be some general conception of relations giving rise to a duty of care. The liability for negligence ... is no doubt based upon a general public sentiment of moral wrong-doing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way, rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour ... You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts and omissions which are called in question". (Donoghue v Stevenson* [1932] AC 562 at 580)
In addition, the case of *Caparo Industries PLC v Dickman* [1990] 2 AC 605, introduced a three-stage test for imposing liability for duty of care in the context of negligence. These are first, 'was the damage reasonably foreseeable?' Secondly, "was there a relationship of proximity between defendant and claimant?' Finally, 'is it fair, just and reasonable in all circumstances to impose a duty of care?' This case is a key to establishing whether a duty of care exists. Beside this three-stage test, in *Murphy v Brentwood District Council* [1991] 1 AC 398, the court raised the policy grounds as a fourth-stage test. But the courts usually consider the policy matter with the third stage-test.

2.2 Reasonable foreseeability of harm
Foreseeability means that the defendant must have foreseen some damage to the claimant at the time of their alleged negligence. Therefore, a duty of care will only be imposed where a reasonable person in the position of the defendant would have realised that his carelessness may cause the claimant to suffer the type of harm that he has suffered. The

facts of the each case determine whether the requirement is satisfied. In *Bourhill v Young* [1943] AC 92 at 107-108 Lord Wright said*: "This general concept of reasonable foresight as the criterion of negligence or breach of duty... may be criticized as too vague, but negligence is a fluid principle, which has to be applied to the most diverse conditions and problems of human life. It is a concrete, not an abstract, idea. It has to be fitted to the facts of the particular case... It is also always relative to the individual affected. This raises a serious additional difficulty in the cases where it has to be determined, not merely whether the act itself is negligent against someone, but whether it is negligent vis-à-vis the plaintiff".*

2.3 Proximity

'Proximity' indicates the closeness of some sort between the parties at the time of the alleged negligence, but its precise meaning remains complex. What will constitute proximity will vary from case to case. In many negligence cases, the issue of proximity is really an issue of whether the defendant was the effective and legal cause of the claimant's damage. Therefore, proximity is clearly a complex idea and means different things in different types of case. It may be used in the sense of a prior relationship between the parties and whether that relationship is sufficient to found a legal relationship giving rise to a duty of care. So there must be a sufficient relationship of proximity between the parties for the duty to be imposed.

2.4 Just, fair and reasonable and policy

The condition just, fair and reasonable appears to add little to the requirement of proximity, especially because the policy is also considered under the proximity test. This condition seems to indicate that there must be a limit to liability and that no duty will be imposed unless it is just, fair and reasonable in all the circumstances. In *Caparo Industries PLC v Dickman* [1990] 2 AC 605 at 633 Lord Oliver said: *"...limits have been found by the requirement of what has been called a 'relationship of proximity' between plaintiff and defendant and by the imposition of a further requirement that the attachment of liability for harm which has occurred be 'just and reasonable.' But although the cases in which the courts have imposed or withheld liability are capable of an approximate categorisation, one looks in vain for some common denominator by which the existence of the essential relationship can be tested. Indeed it is difficult to resist a conclusion that what have been treated as three separate requirements are, at least in most cases, in fact merely facets of the same thing, for in some cases the degree of foreseeability is such that it is from that alone that the requisite proximity can be deduced, whilst in others the absence of that essential relationship can most rationally be attributed simply to the court's view that it would not be fair and reasonable to hold the defendant responsible. 'Proximity' is, no doubt, a convenient expression so long as it is realised that it is no more than a label which embraces not a definable concept but merely a description of circumstances from which, pragmatically, the courts conclude that a duty of care exists".*

The policy has always played a major role in determining liability for negligence. The expression 'policy' has been developed through the cases and what will constitute policy will vary from case to case. Under the *Anns v Merton London Borough Council* [1978] AC 728, the policy had a broad meaning which encompassed proximity, fair and reasonable and public policy in the narrow sense in which it is now used. The courts showed willingness to invoke public policy principles of immunity where the emergency services and local authority services were sued in negligence.

The word 'floodgates problem' was also used by the court to indicate the matter of public policy. The accepted definition of 'floodgates' was given by Cardozo CJ in the US case of *Ultramares Corp v Touche* (1931) 174 NE 441 at 444 as the undesirability of exposing defendants to a potential liability *"in an indeterminate amount for an indeterminate time to an indeterminate class"*. A case may still fail on policy grounds even though it has passed through the proximity barrier. In *Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310 at 410, Lord Oliver said: *"...no doubt 'policy', if that is the right word, or perhaps more properly, the impracticability or unreasonableness of entertaining claims to the ultimate limits of the consequences of human activity, necessarily plays a part in the court's perception of what is sufficiently proximate ... in the end, it has to be accepted that the concept of proximity is an artificial one which depends more upon the court's perception of what is the reasonable area for the imposition of liability than upon any logical process of analogical deduction".*

3. Duty of Care of the Emergency Services and its Extent

3.1 The police

The police are one of the most significant emergency services. The courts have delivered many legal opinions how far the police owe a duty of care to the individual members of the public. The first case in relation to the duty of care of the police was the case of *Hill v Chief Constable of West Yorkshire* [1988] 2 All ER 238, before the House of Lords (the Supreme Court of the United Kingdom). The facts of this case are well known. The claimant's daughter was attacked and murdered by Peter Sutcliffe. The claimant claimed damages for her daughter's estate on the basis that the police investigations into Sutcliffe's crimes had been incompetent and had failed to apprehend Sutcliffe before her daughter's murder. In response to the victim's mother claim against the police, the court held that there was no proximity between the police and the claimant's daughter. The police could be held liable if the police themselves negligently cause damage. [3] Lack of proximity restricts the liability of duty of care. [4] So, there is no liability in the absence of proximity. [5] However, in *Swinney v Chief Constable of Northumbria (NO 2)* [1997] QB 464, the court said Hill case did not apply to the crime fighting activities of police.

In *Alexandrou v Oxford* [1993] 4 All ER 328, Slade LJ said: *"...it is unthinkable that the police should be exposed to potential actions for negligence at the suit of every disappointed or dissatisfied maker of a 999 call. I can see no sufficient grounds for holding that the police owed a duty of care to this plaintiff on or after receipt of the 999 call ... if they would not have owed a duty of care to ordinary members of the public who made a similar call"*. Thus, the police are not liable due to failure in response to the emergency call. [6] However, the police have a duty of care when not to act in a manner which makes things worse when they arrived at the scene. In *Rigby v Chief Constable of Northamptonshire*

[1985] 1 WLR 1242, the claimant's gun shop was at risk from a madman. The police came to deal with the situation. They fired a canister of CS gas into the shop creating a high risk of fire without first ensuring that a fire engine was on hand. The shop and its contents were seriously damaged by fire and the claimant succeeded in his claim against the police. Similarly, in *Knightly v Johns* [1982] 1 WLR 349, in the course of traffic control following an accident in one of the tunnels in Birmingham city centre two police officers were instructed to take a course which involved them riding against the traffic flow around a blind bend. The claimant was injured in the ensuing collision and succeeded in his action for damages against the police.

In *Brooks v Metropolitan Police Commissioner* [2005] 2 All ER 489, the court held that the police generally owed no duty of care to the victims or witnesses in respect of their activities when investigating suspected crime due to public policy matter. In *Smith v Chief Constable of Sussex Police* [2008] UKHL 50, the court held as per core principle of public policy, the police owed no duty of care to protect individuals from harm caused by criminals in the absence of special circumstances. But the court said that there might have a remedy under the law of Human Rights. [7] In *Robinson v Chief Constable of West Yorkshire Police* [2014] EWCA Civ 15, the Court of Appeal considered the case of a woman knocked to the ground and injured during the arrest of an alleged drug-dealer. The Court of Appeal unanimously found that the police had not acted negligently. The court said that in order for a "duty of care" to arise three criteria had to be satisfied: a) foreseeability of damage; b) a relationship of proximity; and c) whether it is fair, just and reasonable to impose a duty. In *Michael and others v Chief Constable of South Wales Police and another* [2015] 2 WLR 343, the claimant, Joanna Michael, called 999 and told them that her ex-boyfriend was going to come home and had threatened to kill her. Police errors handling the call led to officers arriving after she had been stabbed to death. In this case, too, the court did not find against the police.

The well-established cases have made it clear that receipt of a 999 emergency call will not generally establish a relationship of sufficient proximity between the caller and the police to create a duty of care to respond or to respond competently. However, once the police have arrived at the scene they do have a duty of care not to act in a manner which makes things worse. In these cases, if they breach their duty of care and that causes injury or loss to the claimants, the claimant will be able to recover damages for injury or loss.

3.2 The fire brigade

The fire brigades are also one of the emergency services but with limited liability. In *Capital and Countries Plc v Hampshire County Council,* [8] the brigade arrived after the sprinklers had begun to operate. Before the brigade had identified the seat of the fire, or had effectively begun to fight the fire, they turned off the sprinklers throughout the building. This action caused the fire to spread out of control, and it destroyed the whole building. The owners' claim succeeded at trial. In *John Munroe (Acrylics) Ltd v London Fire and Civil Defence Authority*, [9] a special effects technician caused an explosion on wasteland which adjoined the claimant's land which contained Industrial premises. Burning debris from the explosion caused small fires to break out. The fire brigades were called and extinguished the fires on the wasteland but failed to check the claimant's premises. It was adjudged on a preliminary issue that there was no duty of care. In the *Church of Jesus Christ of Latter-Day Saints v West Yorkshire Fire and Civil Defence Authority*, The Times, May 9, 1996, a fire broke out during the night in a classroom attached to the plaintiff's chapel. The fire brigades were called and arrived promptly. However, the firemen were unable to fight the fire due to lack of water supply. Four of the hydrants surrounding the church were faulty and a further three were not located in time to fight the fire. Consequently, both the classroom and the chapel were destroyed. The claimant brought an action for breach of statutory duty based on the fire services failure to inspect the hydrants. The claim was struck out on the ground that the brigade owed no duty of care.

All of these cases went to the Court of Appeal through appeal application. The Court of Appeal dismissed the appeals in all three cases. [10] In the Hampshire case it was concluded that the brigade had made matters worse by turning off the automatic sprinkler system, and was, therefore, liable. They have immunity on the ground of proximity, not policy reason. [11] By contrast, in the London and West Yorkshire cases, the brigades did not cause any fresh danger or make the fires worse. Accordingly, the brigades were not liable.

Fire brigades operate pursuant to the Fire Services Act 1947, section 1 of which imposes a duty on every fire authority to make efficient provision for fire-fighting purposes. On its true construction, the requirement in s13 of the Fire Services Act 1947 that a fire brigade should take all reasonable measures to ensure the provision of an adequate supply of water available for use in case of fire was not intended to confer a right of private action on a member of the public. The s13 duty was more in the nature of a general administrative function of procurement placed on the fire authority in relation to the supply of water for fire-fighting generally. Accordingly, no action lay for breach of statutory duty under s13. [12] In *Alexandrou v Oxford* [1993] 4 All ER 328, Stuart-Smith L.J. said: *"In our judgment the fire brigade are not under a common law duty to answer the call for help and are not under a duty to take care to do so. If therefore they fail to turn up or fail to turn up in time because they have carelessly misunderstood the message, got lost on the way or run into a tree they are not liable".* (p.878)

In simple summary, the position of the fire brigades is that they do not owe a duty to individual members of the public and are not under any common law duty to answer a call for help. However, where the fire brigades actually have done something which created a danger then they have positive duty to take a reasonable step to deal with the danger.

3.3 The coastguard

The coastguards are also an important emergency service. The position of the coastguard who receives an emergency call appears to be indistinguishable from that of the fire service. In *OLL Limited v Secretary of State for Transport* [1997] 3 All E.R. 897, the organising centre who had settled the claims brought contribution proceedings against the Secretary of State for Transport as the person responsible for HM Coastguard. It was contended that the coastguard owed the canoeists a duty of care, but had conducted the search and rescue operation negligently. The principal allegations were that the search and rescue operation had been launched too

late, that a lifeboat had been misdirected to search inshore rather than offshore, and that a Royal Naval helicopter was diverted from an appropriate search to an inappropriate sweep up and down the coastline. The court held that there was no obvious distinction between the fire brigade responding to a fire where lives were at risk and the coastguard responding to an emergency at sea. On that basis, the coastguard had not been under any enforceable private law duty to respond to an emergency call. Therefore, the coastguard does not owe a duty of care to the people at sea except where the coastguard's behaviour actually causes harm. They should be liable if their conduct actually causes any damage. [13]

3.4 The ambulance service

The ambulance services are also one of the emergency services but have an exception than other emergency services in respect of liability. In *Kent v Griffiths* [2000] 2 WLR 1158, the claimant Mrs Tracey Kent was having an asthma attack. Her doctor attended her home and called for an ambulance at 16.25. The ambulance, which was only 6 miles away, did not arrive until 17.05. The claimant suffered respiratory arrest. Two phone calls had been made to enquire why the ambulance had not arrived and the operator confirmed that it was on its way. The doctor gave evidence that had she known of the delay she would have advised the claimant's husband to drive her to the hospital. The court held that although the ambulance services owed no duty of care to respond the call for help by a large number of people, however, once they receive the call from 999 for help then there was an obligation to provide the service for a named individual at a specified address. [14] In this case the Master of the Rolls Lord Woolf said: *"The fact that it was the person who foreseeably would suffer further injuries by a delay in providing an ambulance when there was no reason why it should not be provided is important in establishing the necessary proximity and thus duty of care in this case. In other words as there were no circumstances which made it unfair or unreasonable or unjust that liability should exist there is no reason why there should not be liability if the arrival of the ambulance was delayed for no good reason. The acceptance of the call in this case established the duty of care. On the findings of the Judge it was delay which caused the further injuries. If wrong information had not been given about the arrival of the ambulance other means of transport could have been used"*. (*Kent v Griffiths* [2000] 2 WLR 1158 at 1152)

Thus, it appears that generally, ambulance service does not owe a duty of care to respond the call for help by a large number of people likewise the police, the fire brigade and the coastguard. However, if the call is received for help then the ambulance service owes a duty of care to respond within a reasonable time because accepting of the call establishes proximity between the parties.

4. Impact of Human Rights

Besides the policy and the proximity reasons, the human rights issues play an important role on the duty of care of the emergency services. The human rights issues have been introduced to tort law by the passing of the Human Rights Act 1998 (HRA), which came into force in October 2000. The United Kingdom was an original signatory to the European Convention on Human Rights 1950 (ECHR), but until the Act the rights contained in the Convention did not form a part of national law. Under the HRA 1998, the ECHR applies either directly or indirectly. Most of the rights in the ECHR are now directly enforceable against public bodies in English law. A public authority is defined by s 6 (3) of the HRA 1998 as a court or tribunal or any person certain of whose functions are of a public nature. The emergency services are the public authority by virtue of s 6 (3) of the HRA 1998.

The decision of *Osman v United Kingdom* [1999] 1 FLR 193 (ECHR), caused great difficulties to the English judiciary. The European Court of Human Rights reviewed the Court of Appeal decision in *Osman*. In this case, the European Court of Human Rights (ECtHR) held that special immunity given to the police has breached the Article 6 of the ECHR. The ECtHR also held that the Court of Appeal had failed to demonstrate that it had properly considered the scope and application of such immunity to the facts of the case by balancing out any competing public interest arguments. This means that a victim of crime who has suffered personal injury can bring an action under the HRA 1998, by virtue of ss. 6 and 7, against the police for failure to prevent the crime. But in *Z v United Kingdom* [2001] 2 FLR 612, the ECtHR said that the *Osman* case was based on a misunderstanding of English tort law but they did not say that *Osman* case was, in fact, wrong. In *Van Colle v Chief Constable of Hertfordshire Police* [2008] UKHL 50, the court said with following the direction of Article 2 of ECHR and *Osman v United Kingdom* that, there was a positive obligation on the authority to take preventive measures to protect and individual whose life was at 'real or immediate risk' from the criminal act of another as the authority had known or should have known. [15] Therefore, it appears that it is impossible to ignore the effect that the Human Rights Act has had, and continues to have, on the fabric of substantive English tort law.

5. Conclusion

In the light of the above discussion, it is submitted that the negligence action involving emergency services are particularly complex as they are one of the public authorities. Therefore, the courts always look at the policy grounds to recognise a duty of care. In addition, the courts also apply the test whether it is just, fair and reasonable in all circumstances to impose liability for a duty of care. It has been established through a series of cases that generally, the police, the fire brigade and the coastguard do not have a duty of care towards individual members of the public except under special circumstances as discussed above. On the other hand, the ambulance service has duty of care towards individual members of the public if the help call is accepted from 999, which is different from other emergency services, because, it has been established through the cases that accepting of the help call from 999 establishes proximity between the ambulance service and the call maker. However, the impact of Human Rights Act 1998 (HRA) shows that the victims might have a chance to overcome on the claim against the immunity of the emergency services through using human rights litigation.

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