

## Operational danger and the duty of care

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**Personal Injury analysis: What legal issues have been identified in the case of Rathband v Chief Constable of Northumbria? Aaron Rathmell, barrister at Serjeants' Inn Chambers, discusses the difficulties of the case and looks at further developments around police forces and negligence.**

### Original news

*Rathband v Chief Constable of Northumbria* [2016] EWHC 181, [2016] All ER (D) 88 (Feb)

*The Queen's Bench Division held that the claimant's claim in negligence in respect of the deceased police officer shot in the course of duty by an armed assailant had to fail. This is due to the decision of the superintendent in charge of the manhunt operation not to issue a warning was a decision which fell within the scope of the rule of public policy that the police did not owe a private law duty of care.*

### What issues did this case raise? Why is it significant?

In 2010 the gunman Raoul Moat made a 999 call in which he admitted to shooting his former girlfriend and her new partner. He also made threats against the police, including that he was 'hunting for officers now'. Less than nine minutes later, Moat snuck up on PC Rathband, who was parked in a motor patrols car. Before PC Rathband had time to react, Moat shot him twice at close range. PC Rathband survived, demonstrating extraordinary strength and courage. He later brought a claim in negligence against his chief constable, alleging that the police were negligent in failing to issue an immediate warning to officers in response to Moat's 999 call. PC Rathband later died and the claim was continued by his brother and sister.

### What did the court decide? How did it approach the legal issues in this case?

The court noted this was an 'immensely sad case', but dismissed the negligence claim. No duty of care was owed in the circumstances of the case. This followed consideration of the third stage of the *Caparo* test—whether it is fair, just and reasonable that the law should impose a duty (*Caparo Industries Plc v Dickman* [1990] 2 AC 605, [1990] 1 All ER 568). Even if a duty was owed, Mr Justice Males held that the police commander on duty had not breached it. As to causation, the time between the issue of any warning and the shooting would have been very short—probably insufficient for PC Rathband to consider his options and somehow avert Moat's covert attack.

### To what extent is the judgment helpful in clarifying the law in this area? Are there any remaining grey areas?

The defendant relied on 'the *Hill* principle of public policy' (*Hill v Chief Constable of West Yorkshire* [1989] AC 53, [1988] 2 All ER 238) to the effect that, in the interests of the community as a whole, a duty of care should generally not be imposed in relation to police operational decisions. Here, the context was 'heat of the moment' decision-making, during an urgent search to capture a dangerous criminal. The claimants acknowledged the *Hill* principle in relation to claims by members of the public, but argued that it did not apply to claims by police officers against their chief constable, given the quasi-employment relationship between them. Mr Justice Males reviewed the authorities and observed that the chief constable did owe a non-delegable duty of care to junior officers, to take reasonable care for their safety. But as a matter of public policy the 'duty will be excluded, or at least is more likely to be excluded, in cases involving operational decisions concerning the investigation or prevention of crime which are taken under pressure'.

### What does all this mean for lawyers and their clients? What should they do next?

Persons aggrieved by failures or wrongdoings by the police have a number of legal options:

- o statutory complaints

- o human rights claims
- o common law claims such as negligence, and
- o in particularly serious cases, misconduct in public office

Negligence claims have to be carefully considered in the police field because they must contend with the public policy referred to above, which generally (but not always) operates to exclude a duty of care. This also applies to workplace injury type claims by junior police officers and may, by analogy, apply to claims police staff and contractors in operational circumstances. Mr Justice Males held that:

'Many policing decisions involving the performance of the "core functions" of the police will affect the safety of members of the public as well as of police officers. It would be anomalous if, in such cases, a private law duty of care was owed to police officers as a result of their quasi employment relationship with the chief constable when it is clear from the *Hill* line of cases that no such duty is owed to members of the public'.

### How does this case fit in with other developments in this area?

For good reasons, police forces are subject to scrutiny:

- o in courts
- o in Parliament
- o by police and crime commissioners
- o in relation to budgets
- o in the media, and
- o in the complaints system

Some of this scrutiny is very topical, for instance contact with complainants and suspects when investigating crime. The *Hill* principle of public policy was developed at a time when scrutiny was arguably less intense, and the arguments justifying it have narrowed over the past decade. But a number of recent decisions have upheld, firmly, the core of that principle as a matter of law. Police routinely face difficult decisions, requiring the exercise of judgment by officers of all ranks. Imposing a duty of care may lead them to act defensively—to manage litigation risk, rather than concentrate on preventing crime and protecting the general public.

*Interviewed by Anne Bruce.*

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