

This paper was first published in article form in Blueprint Magazine but the authors have kindly allowed IAEM to publish the full paper. With G20 in London and the news full of the very issues discussed in this paper the timing couldn't have been better. I am grateful to Fisher Scoggins for their continued support of the Emergency Management profession. – Arthur Rabjohn CEM, President IAEM Europa.

Safe behind the Cordon?

By Alan Fisher¹ and Charlotte Waters²

Use of the Cordon:

Establishing a cordon is usually the first physical step in an emergency response. Section 5 of LESLP gives 5 reasons for establishing a cordon:-

1. To guard the scene
2. To protect the public
3. To control sightseers
4. To prevent unauthorised interference with the investigation, and
5. To facilitate the operation of the emergency services and other agencies.

Context - the importance of transparent and recorded decision making

It is important to take a few words to explain to the reader the context in which we explore the legal basis of the cordon. This is not a guide to when or what type of cordon is appropriate and lawful in any particular set of circumstances. No one could write such an article partly because the law lacks precision but mostly because it will be an exercise in judgement and balance in every case. As we explore the competing and sometimes conflicting issues involved we would like our readers to appreciate that the only real practical advice we can offer is that the reasoning for imposing or not imposing a cordon of any type must be legitimate, transparent and most importantly documented so that all can see that a bona fide attempt has been made to protect life, obey the law and serve the interests of those involved and the wider community.

Legal Basis - kept out and kept in

When you start looking at the legal authority for establishing a cordon it is not as obvious as one might expect. For the purposes of discussion we can categorise the cordon into two types: (a) restricting public access to a particular place (b) containing the public in a particular place.

The use of the cordon to deny access to an area is a restriction on citizens individual liberty albeit usually a transient one. The use of the cordon to contain a citizen in a particular place is tantamount to an arrest even though recent case law arising out of the 2001 May Day demonstrations has rather unpersuasively invented some sort of half way house which is not

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arrest but is not liberty as we would recognise it. We have discussed the practicalities of imposing a cordon with several serving and ex police officers and we believe that all would welcome an informed debate culminating in a clear set of widely agreed guidelines perhaps incorporated in any future amendments to PACE.³

Can a Cordon infringe the right to liberty?

The short answer is of course "yes". Article 5 of the European Convention on Human Rights proclaims the right to liberty and security. We gratefully borrow our paraphrase of Article 5 from the DCA "Human Rights Human Lives - a handbook for local authorities" publication⁴ :-

"Everyone has the right to liberty and security of person. This amounts to a right not to be "arrested " or "detained" even for a short period. This right is subject to exceptions where detention has a proper legal basis in UK law and falls within one of the following categories of detention permitted by Article 5

- *following a conviction by a criminal court*
- *for a failure to obey a court order or legal obligation...*
- *to ensure that a person attends a court if there is reasonable suspicion that they have committed a crime ...*
- *to ensure that a minor receives educational supervision or attends court*
- *in relation to a person who is shown to be of unsound mind... or who may spread an infectious disease if not detained*
- *to prevent unauthorised entry into the country..."*

We do not want to embark on a long discussion of the HRA⁵ in this article which is intended to have a narrow focus on the use of the cordon in emergency response. Accordingly as there is much more to Article 5 than we have set out above. We do recommend that anyone involved in emergency response should at the very least obtain and become familiar with this guide. Perhaps for no better reason than one day learned Counsel might ask you questions about it in Court or before a public inquiry. We need to make one further legal proposition before we continue - the UK has signed up to an obligation to give effect to the Convention so any rule of UK law must be read as being subject to the overriding principles of the Convention. The HRA is a law which is intended to govern and limit the powers of governments and civil servants. It is surrounded by myths and has been subject to political mud slinging from all sides⁶. For present purposes it should be noted that Article 5 permits the infringement of the right to personal liberty in proper circumstances and accordingly the debate is really about what restrictions are justified and why.

³ Police and Criminal Evidence Act 1984 (currently being reviewed)

⁴ <http://www.justice.gov.uk/docs/hr-handbook-public-authorities.pdf>

⁵ Human Rights Act 1998

⁶ The respected human rights organisation "Liberty" has started a campaign "Common Values" to combat some of these myths. www.liberty-human-rights.org.uk

Later we broaden the debate to explore what duty of care the emanations of the state should owe to those who are injured as a result of the cordon and the interesting philosophical question of when the state should interfere with a persons right to self help.

Can NOT imposing Cordon infringe Human Rights?

In the light of what we have just said this may seem a strange question and the short answer - "yes" may well cause confusion. We are grateful to a colleague⁷ for pointing out that that the power to impose an exclusionary cordon around a crime scene is considered essential if the right to a fair trial guaranteed by Article 6 is to be protected and meaningful⁸. The efficient protection and collection of evidence not only assists the prosecution of the guilty but also protects the innocent. Similarly in for example a CBRN incident, the right to life (guaranteed by Article 1) might well impose an *obligation* on the State to separate innocent but "infected" persons so as to promote and protect the right to life⁹ of others.

Is the CCA your trump card?

May we also caution against the mistaken view taken by many involved in emergency management that we can forget all this HRA and common law stuff because we now have the Civil Contingencies Act 2004. Part 2 of the CCA does of course provide for the possibility of wide ranging powers being taken. But it is all too easily forgotten that the CCA is itself to be construed as being subject to the European Convention on Human Rights. The CCA specifically states that no power under Part 2 can suspend or waive the Convention rights.¹⁰ So while we know that countless Sir Humphrey's throughout Whitehall have written reams of emergency powers just waiting for the appropriate circumstances to arise, emergency responders taking action under such orders could be accountable in the Courts if it subsequently turns out that such powers are being taken or used in contravention of the Convention. We also have some concern that powers lawfully granted for one purpose might tend to be used for a different purpose.¹¹ Accordingly it is our view that the making of an order under the CCA does not lessen the need to exercise considerable judgement when imposing (or not imposing) a cordon and the process of decision making still needs to be properly recorded in the "decision log" in terms more expansive than simply citing a CCA Part 2 order.

The right to Cordon in Common law - the exclusion cordon

Few "mainstream" legal writers have found the subject of cordons sufficiently interesting to be worthy of note in the classic textbooks.

At common law - that is the system of judge made law, the power to establish a cordon was challenged as recently as 2003 in the case of **DPP v Morrison. [2003] EWHC 683**. The case involved a cordon that had been imposed following an incident in a private shopping centre over which there was a public right of access. While the exact source of a common law power over

⁷ Our thanks to Martyn Ripley of BTP who provided much constructive input to this article.

⁸ Article 6 - the right to a fair trial - Human Rights Act 1998 Schedule 1. We can see that it might be said that the right to a fair trial is served by the presumption of innocence, rather than exonerating the innocent by investigation

⁹ Article 1 - the right to life - Human Rights Act 1998 Schedule 1

¹⁰ S23(5) Civil Contingencies Act 2004

¹¹ For an example of good laws being misused by public authorities for a disturbing purpose see *R(on the application of Raissi) v Sec. of State for the Home Office* [2008] 2 All ER 1023

public land may be difficult to find it can readily be appreciated that a police officer is more likely to have such a right over public land than over private property.

The matter came to be tested in a rather roundabout manner. Mr Morrison was charged with obstructing a police officer by repeatedly attempting to enter the cordoned off area. At the first trial the Court dismissed the charge on the basis that the officer had not been obstructed in the course of his duty as he had no power to enforce a cordon on private land. The case came before the Divisional Court where it was held that there was such a power but in a rather contrived way.

It was held that there had been an implied consent given by the landowner to the police closing the land off for the purposes of preserving a scene of crime and further that the owner of the land could not lawfully withhold his consent to officers reasonably establishing a cordon. Accordingly, the common law recognises a power to impose a cordon on private and public land if and to the extent that it is reasonably necessary to do so. However, **DPP v Morrison** does not seem to be a particularly convincing source for such an important principle. The court clearly thought that it would be absurd if there was no such a power at common law but the historical basis on which they found it seems rather tentative. In short they seem to have been driven by *necessity* to find such a power but the judgement should not be seen as a satisfactory or definitive statement of exactly where it came from or what its limitations might be. Given that over the last decade we have seen a torrent of criminal law revision, we would have thought that time might have been found to set out properly balanced statutory rules and appropriate safe guards for the imposition of cordons¹² particularly (as we will shortly see) there is a statutory source in the context of anti terror laws.

Statutory Sources

These are comparatively recent and result from the fight against terrorism. In **Morrison** one of the features of the case was that the lower court could only find a statutory power to establish a cordon under S 33 of the Terrorism Act 2000 which had not come into force until after the incident in question.

Under S.33 a police officer of at least the rank of Superintendent has the power to cordon a designated area if he or she considers it expedient for the purposes of a terrorist investigation. Once such an order has been made it would be an offence for a member of the public to disobey the order.

The pedantic might be tempted to ask why passing such a measure was necessary if the common law already provided a satisfactory power as was decided by the Divisional Court in **Morrison**.

How important is the purpose of the cordon?

It will be noticed that both the common law power and the statutory power are to keep people out for the purpose of the investigation of crime. The same logic that leads to the conclusion that there must be a common law power to keep people out for this purpose should also lead to the conclusion that there is a similar power for the other purposes that we identified in our introduction. However, simply saying that there must be such a power at common law because it would be absurd if there was not is not intellectually a very satisfactory position. It might permit Governments to cloak the erosion of traditional freedoms under the fig leaf of a vague doctrine

¹² However see later S 33 of The Terrorism Act 2000

of *necessity* at common law which might soon become a doctrine of *convenience* and eventually liberty becomes a licence and not a right. While it can be argued that there is an advantage in leaving such matters to evolve by case law and control by the Judges this overlooks the interests of society in having clearly expressed and accessible legal rules and the not inconsiderable burden that would then be cast on the unfortunate individual who has to go to court and take on the weight of the state to establish what the legal position is.

In the absence of any more specific legal reasoning it may be that the essence of the **Morrison** decision is some broad principle that the common law deems the public have consented to the police having such powers as would be deemed *necessary* by right thinking members of society as expressed by the court. We have no difficulty in bringing to mind many distinguished lawyers that would completely reject the existence of any such general principle.

The containment cordon

So far we have looked at using the cordon to exclude the public from the scene of an emergency response. A much more controversial question is whether the cordon can be used to keep the public within an area when they wish to leave it. We think this is a particularly difficult and important question which requires informed debate as a matter of some urgency.

We do not believe that it follows from **Morrison** or any generalised principle derived from the case that there is such a "general" power. We have a certain reluctance to accept that simple "necessity" is a correct way of formulating a law. We fear that "necessity" might soon become what in truth is only *convenient*. The reader should not however understand us to be saying that a containment cordon is necessarily illegal or can never be justified. We suggest that it is and can be justified in law, but the circumstances where it will be legal involve a very difficult balance of competing rights and interests and in order to be lawful you must be able to demonstrate that the making of that balance has been correctly understood and a legitimate exercise of judgement has been made.

There are a number of reasons why it may be truly necessary to confine members of the public inside a cordon including:-

1. To facilitate investigation and intelligence gathering
2. To prevent anticipated violent disorder or damage
3. To facilitate rescue operations or orderly decontamination
4. To prevent spreading of real or anticipated disease
5. To facilitate medical treatment
6. To facilitate evacuation of other higher priority victims

Previously we have looked at the cordon as a means of denying the public access to a limited area for limited time. Now we are looking at directly restraining the public from exercising their normal right to liberty by coercive means. Not surprisingly this is something that the law should approach with considerable concern perhaps verging on scepticism.

So far as we know there have only been court cases involving items 1 and 2 of our list. Arguably the best known is the famous case of **Austin v Metropolitan Police Commissioner [2005]**. This involved the containment of about 7000 persons on 1st May 2001, many of those persons were actively engaged in a political demonstration, of these some were clearly intent on causing mayhem and violence. But many were just bystanders or shoppers who got caught up in the area or were non violent demonstrators.

It is to be hoped that the circumstances of **Austin** were truly exceptional as this would appear to be the essence of the legal reasoning behind the subsequent judgement. In particular there had been no prior warning or collaboration with the police by the organisers. This factor should not be overlooked as it may explain the (to many) surprising actions taken by the police. A cordon was established around Oxford Circus containing demonstrators and non involved members of the public alike. For the purposes of analysis we therefore divide the detained into two categories "*demonstrators*" (whether violent or not) and "*non involved*". The cordon was maintained for 7 hours, there were no provisions made for sanitation or refreshment. International media coverage was far from flattering. A judge later remarked that the TV images made the United Kingdom look like an Eastern European dictatorship. Watching on TV, our thoughts were of fear that the nightmare of Hillsborough might be repeated.

By benign good fortune, no one was trampled to death, nor died of a heart attack or otherwise came to much harm. Two members of the public took the police to Court. Using our classification set out above, one was a non violent "*demonstrator*" the other simply a "*non involved*" member of the public. The Court of Appeal held that the actions of the police *prima facie* infringed Article 5 of the Human Rights Convention but were justified and lawful because the police had reasonably taken the action *to prevent acts of violence*.

We have read the views of others who stress that there were comparatively few arrests for violence that day and that much of the police tactics seemed to be about putting on a show of force and using the opportunity for aggressive intelligence gathering such as insisting on photographing anyone trying to leave. Amidst charge and counter charge it is difficult to know just where the truth is to be found¹³ but for present purposes it is not necessary to reach any conclusion concerning the real facts of the case but only to ask where it has left the law as far as the use of cordons for the containment of the public are concerned?

The Court of Appeal held that because the situation was "*wholly exceptional*" and the police had "*no alternative*" means of preventing a breach of the peace by those within the cordon intent on violence (a smaller group than what we have termed "*demonstrators*") they were therefore entitled to infringe the rights of the "*non involved*" within the cordon.

The decision and the police tactics remain controversial to this day but it does provide a modern authority for the proposition that entirely innocent persons can be detained within a cordon in *exceptional circumstances* if there is no alternative way of dealing with others intent on violence.

¹³ Unfortunately, the official version of events is not always to be treated as the most reliable. The £5.9m cost of policing a demonstration at Kingsnorth power station and allegedly "aggressive" police tactics was justified by ministers as "proportionate" citing 70 officers being injured. It later emerged that this was a gross exaggeration and none of the claimed injuries were due to violence by the protesters. Source : www.homeofficewatch.com and Guardian 15th December 2008.

There is some uncertainty as to exactly how the proposition to be derived from the **Austin** judgement should be expressed. The distinguished criminal lawyer Professor A.T.H Smith writing in the Cambridge Law Journal has written of the decision in generally approving terms but has noted that the role of the police in public safety (as opposed to order) in such circumstances needs to be more explicitly addressed than it is under the current law. We are not sufficiently well qualified to express a counter opinion and we say only that we can understand the point of view of those who are deeply troubled by the implications of this decision. If the rule to be derived from the case is that a containment cordon can only be used in *exceptional circumstances* what advice can we give as to what is or is not such a circumstance. We have to say that we can see a legitimate need for a power of containment - far short of arrest - in many everyday public order management scenarios such as holding back a crowd of football fans until the other teams fans have departed. We don't think these are properly described as *exceptional circumstances* so we suggest the legal test requires at least some clarification. We think the key factor in **Austin** was the length of the detention and the factual disputes as to its real purpose. Perhaps the answer might be a rule which was formulated to allow a power for short term containment for "crowd management" purposes and a different rule perhaps requiring a Magistrates order for any longer period or for any other (appropriate) purpose.

Similarly there must be a legitimate need for a containment cordon if it is the only way of facilitating a rescue operation and we think this would be consistent with the courts impliedly expressed "public safety" approach in **Austin** the limitation of course being that such power would be lawful only for that purpose.¹⁴

Interestingly LESLP makes no distinction between exclusionary and containment cordons. The first purpose that it identifies is investigation and intelligence gathering - this raises the interesting question of whether **Austin** would be good authority for a containment cordon if its *real purpose* had been to gather intelligence by perhaps only releasing people who agreed to be photographed and provide a DNA sample¹⁵. We think not, so it is reasonable to suggest that the **Austin** decision is limited to truly exceptional circumstances where there is a major risk of widespread violence or some associated "public health" purpose.

Is a duty of care owed to persons inside the cordon?

Austin has left open many other very important questions such as what would the legal position have been if innocent members of the crowd had been assaulted by the demonstrators, taken

¹⁴ After the draft of this article was submitted the House of Lords handed down judgement [2009] UKHL 5 on an appeal against the ruling in **Austin**. The decision in favour of the police was upheld and the appeal dismissed. It is of practical importance to note the observation made by Lord Hope at para. 35 : "*So any steps must be proportionate to the situation which has made the measures necessary. This is essential to preserve the fundamental principle that anything that is done which affects a persons right to liberty must not be arbitrary. If these requirements are met however it will be proper to conclude that measures of crowd control that are undertaken in the interests of the community will not infringe the article 5 rights of individual members of the crowd whose freedom of movement is restricted by them.*" Whether the case will eventually reach the European Court remains to be seen but the authors suggest that the decision further underlines the need to clearly identify and log the reasons for any form of containment cordon and to justify its use on clear and obvious public safety grounds.

¹⁵In December 2008 in "S" and Marper v The United Kingdom, the European Court of Human Rights at Strasbourg handed down a judgement concluding that the holding of DNA samples of those not charged or acquitted, on the Police DNA database was illegal and contravened the European Human Rights Convention. The immediate reaction to the decision appeared to show a determination to "get round" it. Perhaps there is a case for a strong Regulator along the lines of the HSE charged with directly enforcing compliance by public officials with the Convention and having powerful enforcement powers, without leaving it to the citizen to take the Government to Strasbourg.

hostage, failed to gain access to necessary medicines etc. The point is simply that a containment cordon can both assist in protecting the public and itself present an additional hazard to the public. It will always be a matter of finely balanced judgement and we need to have a public discussion and a consensus as to how that judgement is made, otherwise if it goes wrong next time and a demonstration turns into a Hillsborough type incident we will end up with a witch hunt. All in all the law has been left in a very unsatisfactory state whether looked at from the perspective of the police or the citizen.

We have some experience of working with the Police National CBRN training school and one question that frequently causes us considerable difficulty is what is the legal position concerning a containment cordon which is intended to forcibly hold victims on scene until decontamination facilities can be deployed?

Containment cordons and public health

If as we anticipate it will be asserted that the **Austin** judgement is not just limited to the prevention of violent disorder then it could be used to enforce a cordon for the purposes of quarantining victims of an incident for the purposes of decontamination or indeed other purposes. Article 5 of the European Human Rights Convention¹⁶ expressly authorises detention if it is necessary to prevent the spreading of an infectious disease, although it may be objected that such law makes no mention of the use of the kind of cordon that we are discussing here.

We should apologise for spending so much time in relation to the CBRN type of incident - We do so partly out of academic interest in this field and also because we know that this is a very real and troublesome issue for public authorities.

For our part we would also find it absurd if the law did not provide a limited power to contain victims within a cordon in truly exceptional circumstances so that they could be decontaminated. We think by (loose) analogy with the existing statutory law on the control of infectious diseases such a power, if it does exist at common law, would need to be subject to some clear constraints - such as being limited in time and used only for the bona fide purpose of decontamination¹⁷. However, we know of no authority where those limits can be found other than the case of **Austin** itself.

We have seen an opinion by a Government lawyer (written prior to **Austin**) saying that there is a power to use a cordon in this way at common law but unfortunately it does not give any authority for the proposition other than a reference to the oath taken by police officers to preserve the peace and also recognises that such powers as are believed to exist are limited in use to the protection of life and safety.

So having concluded that there must or at least ought to be a power to detain by cordon persons who may *reasonably be thought*¹⁸ to need to be decontaminated, two further questions arise: (1) Can they be forced to undergo decontamination and (2) what duty of care is owed to them during the period in which they are being detained.

¹⁶ Enacted in the UK by the Human Rights Act 1988

¹⁷ Indeed in the case of biological terrorist attack it may be that whole sections of the community may have to be forcibly quarantined with no prospect of cure or medical treatment and simply to protect others from infection.

¹⁸ Often the presence or absence of a contaminant cannot be determined without laboratory testing.

In most cases consent to undergo decontamination would be readily given. To facilitate this great efforts have been made by the authorities to accommodate religious and other sensitivities. But it may be the case that a person takes the view that if to be contaminated (and even to die as a result) is his fate, then he does not want the authorities to intervene. There have been a string of cases where the Courts have upheld the rights of religious groups such as Jehovah witnesses to refuse blood transfusions and it is well settled that English law affords to a legally competent adult the absolute right to refuse medical treatment¹⁹.

Is decontamination to be classed as "medical treatment"? It seems to us that even if it is not, to decontaminate someone against their will may well be an assault. Accordingly if that analysis is right the only option would seem to be to detain the uncooperative person within the cordon indefinitely. The present law on infectious diseases is too complicated to deal with in this article save to say that (i) a magistrates order is required, (ii) will only be given if an appropriate isolation facility is available and (iii) is confined to specific diseases. It is widely recognised that the present state of the law is not fit for purpose in a CBRN incident and sometime ago the HPA or it may have been the Department of Health embarked on a review of the law. We have not been able to discover what has become of it!

The whole "public health" issue is remarkably complex and legally very challenging²⁰. If for instance a biological incident were suspected such as a smallpox - common sense suggests that there should be a way of overriding a victims right to refuse consent to inoculation if that were the only way of protecting the wider public²¹. For our part we think it is time to have an informed discussion on these issues rather than relying on the Courts to sort out the mess after the event.

Does a containment cordon take away the right to self rescue?

Another situation that could arise is where a victim detained inside a cordon against his will has superior scientific knowledge to those in control.²² Even with the best of efforts, mobilising sufficient IRU²³ facilities, deciding where to establish the decontamination area, ensuring its security all takes time. In exercises we have been amazed at some of the assumptions made about the compliance of members of the public who need to be decontaminated. We have been told by those who ought to know, that potential chemical or radiological contamination can be reduced by 80% by simply changing your clothes and having a shower. We postulate a scientifically qualified person having such knowledge detained behind a cordon while the IRU is stuck in a traffic jam. Is he going to stay put or exercise his right to help himself? Does he have a right to self help? If he decides to do a streak to the nearest car wash would he be shot by the officers on the armed cordon? If so can you imagine the public outcry. Putting any humorous allusions aside – there are really difficult issues involved which need to be discussed as they could one day be a matter of life or death.

¹⁹ For an example of the common law upholding such right see *Malette v Shulman* Court of Appeal (Ontario) 1991 2 Med LR152

²⁰ For the right of an adult in sound mind to refuse medical treatment see *St George's NHS Trust v S*. 3 All ER 673

²¹ For instance s 10 of the Public Health (Infectious Diseases) Regulations 1988 provides a power to provide vaccination but no power to compel individuals to accept vaccination.

²² By no means an impossible scenario.

²³ Incident Response Unit – portable decontamination facilities

Liability in Civil and Criminal law to those harmed by a containment cordon

If a member of the public could show that their health has been damaged by being forcibly detained behind the cordon for example by being kept within the vicinity of a radiological source when running away as far and as fast as possible would have significantly reduced the harm - would and should such citizen be entitled to compensation?

Subject to establishing negligence²⁴ on the part of the authorities we see no reason why such an action should not eventually succeed. The threshold for establishing a duty of care against the police is high and the courts have consistently refused to impose an onerous burden on the police. The usual argument is that it would make their job impossible to perform and who can judge what is the right thing to do in such situations. We would respond that those taking "reasonable" actions have nothing to fear from being reviewed against the law of negligence. Weighing difficult decisions is exactly what judges do best and policing is no more difficult than other professional decisions in say medicine which are already fully accountable before the law. The issue of what duty of care should be imposed on police officers recently divided the highest court in the land.²⁵ In our view if a decision to forcibly detain persons behind a cordon is *unreasonable*, taking all the available evidence into account, and causes harm an effective right of redress should be available. Then of course one should look at the criminal liabilities that imposing the cordon might bring. If we assume that **Austin** would be a sufficient authority for imposing the cordon we can forget about false imprisonment but if there was negligence in the imposing and continuing the cordon resulting injury on top of a liability to pay damages there may well be a breach of S 3 of the Health and Safety at Work Act 1974 ("HSWA").

The conviction of the Metropolitan Police under S 3 HSWA, over the fatal shooting of a wrongly identified terrorist suspect would support the submission that imposing a containment cordon itself engages an obligation (with potential criminal sanctions) to do so without exposing the public or those cordoned to any unnecessary risk. It should also be remembered that by the time you read this article the Health and Safety (Offences) Act 2008 will have come into force making custodial penalties available under the HSWA.²⁶ Whether it was ever really appropriate for police actions to be reviewed under the HSWA is a political issue and outside the scope of this article but as a matter of logic that once S3 has become a test of police actions it could also be breached by failing to impose a cordon.²⁷

Corporate Manslaughter also needs to be considered although its very complex provisions appear to exempt emergency services from liability in respect of a emergency response.

Finally, what would be the situation if the public were contained within a cordon, not so that they could be decontaminated or receive medical treatment but so that perhaps others could receive priority attention. It may be that there are plans which deal with the priority evacuation and decontamination of Royalty and other VIP's. In certain circumstances this may well be justified

²⁴ Negligence involves a duty of care, its breach and resulting damage. We would expect there to be a dispute as to whether the law recognises a duty in such circumstances. It is our view that it should. For a controversial analysis of the accountability of public authorities see "Administrative Redress: Public Bodies and the Citizen" Law Commission 2008

²⁵ For a characteristically lucid explanation of the law see Lord Bingham in *Chief Constable of Hertfordshire v Van Cole* [2008] UKHL 50.

²⁶ Criminal penalties were authorised in October 2008 – effective from January 2009

²⁷ Perhaps another reason why the "decision log" must be used to record the basis of all decisions.

on security or clinical reasons but would it be legal to impose a cordon on others to facilitate this?

Not something to entered upon lightly

We hope this article demonstrates that cordons even if absolutely necessary can throw up difficult legal issues. In particular cordons that contain the public such as used in **Austin** are a potential mine field and if unfortunately they go wrong and expose those cordoned to additional risk there could well be unexpected consequences both at civil and criminal law. So a cordon like marriage is not something to entered on lightly or hastily. Above all we suggest that the "decision log" must record a proper explanation of the reasons for the cordon, what benefits and risks were envisaged and that a bona fide attempt to respect and balance the competing interests, including the Convention rights was made.

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