HOUSE OF LORDS

Library Note

Social Action, Responsibility and Heroism Bill (HL Bill 47 of 2014–15)

It was announced in the Queen's Speech on 4 June 2014 that a bill would be brought forward "to provide that where a person acts heroically, responsibly or for the benefit of others, this will be taken into account by the courts". The Social Responsibility, Action and Heroism Bill (the SARAH Bill) sets out various factors that the court "must have regard to" in determining the steps a defendant was required to take to meet a standard of care in claims for negligence or breach of statutory duty. The Bill completed its passage through the House of Commons without amendment and is scheduled to have its second reading in the House of Lords on 4 November 2014.

This Library Note examines the background to the Bill, including the current legal framework; provides an overview of the Bill's provisions; and summarises proceedings on the Bill in the House of Commons.

Nicola Newson
30 October 2014
LLN 2014/032

Table of Contents

1. Introduction

It was announced in the Queen's Speech on 4 June 2014 that a bill would be brought forward "to provide that where a person acts heroically, responsibly or for the benefit of others, this will be taken into account by the courts".[1] The Social Responsibility, Action and Heroism Bill (sometimes shortened to the SARAH Bill) was introduced in the House of Commons on 12 June 2014. The Bill sets out various factors that the court "must have regard to" in determining the steps a defendant was required to take to meet a standard of care in claims for negligence or breach of statutory duty.

The Bill received its second reading in the House of Commons on 21 July 2014. A Public Bill Committee took evidence on the Bill at two sittings on 4 September 2014, and conducted line-by-line scrutiny on 9 September 2014. The Bill completed its remaining stages in the Commons on 20 October 2014. It was not amended during its passage through the House of Commons. The Bill was introduced in the House of Lords as HL Bill 47 on 21 October 2014, and is scheduled to have its second reading on 4 November 2014.

This Library Note examines the background to the Bill, including the current legal framework; provides an overview of the Bill's provisions; and summarises proceedings on the Bill in the House of Commons.

The Ministry of Justice has published explanatory notes, an impact assessment, a European Convention on Human Rights memorandum, a delegated powers memorandum and a factsheet to accompany the Bill. The Joint Committee on Human Rights has published its correspondence with ministers about the Bill.

2. Background

Policy

The Government has outlined two main drivers behind the Bill—to increase volunteering and other forms of social action, and to provide reassurance to people, including employers, that the courts will take certain factors into account when considering claims for negligence and certain breaches of statutory duty. The Ministry of Justice factsheet accompanying the Bill explains that:

> There is evidence to suggest that people are deterred from volunteering, helping others or intervening in an emergency due to the fear of risk and/or liability. *Helping Out: A National Survey of Volunteering and Charitable Giving* in 2006/2007 found that this was one of the significant reasons cited by 47 percent of respondents to the survey who did not currently volunteer. This Bill is designed to address those concerns. It will provide reassurance that if something goes wrong when people are acting for the benefit of society or intervening to help someone in an emergency, the courts will take into account the context of their actions in the event they are sued.
>
> This will help to support the Government's broader aims of encouraging and enabling people to volunteer and to play a more active role in civil society. The Coalition Agreement contained a specific commitment to "take a range of measures to encourage volunteering and involvement in social action".

[1] HL *Hansard*, 4 June 2014, col 3.

> The Bill is also intended to reassure people, including employers, that if they demonstrate a generally responsible attitude towards the safety of others during a particular activity, the courts will take this into account in the event they are sued for negligence or for certain breaches of statutory duty.[2]

The Bill follows reviews of volunteering and of health and safety legislation carried out for the Government by members of the House of Lords. Lord Young of Graffham published his report *Common Sense, Common Safety* in October 2010. It looked at the operation of health and safety laws and the growth of the 'compensation culture'. He concluded that "the problem of the compensation culture prevalent in society today is […] one of perception rather than reality".[3] He observed that there was "a growing fear among business owners of having to pay out for even the most unreasonable claims".[4] He also identified a public misconception "that we can be liable for the consequences of any voluntary acts on our part".[5] He described this belief as "particularly pernicious" because it might "deter people from engaging in organised voluntary activities in the mistaken belief that they can be sued should anything go wrong". Lord Young recommended that:

> People who seek to do good in our society should not fear litigation as a result of their actions.
>
> […] It is important to have clarity around this issue and at some point in the future we should legislate to achieve this if we cannot ensure by other means that people are aware of their legal position when undertaking such acts.
>
> There is no liability in such cases unless negligence can be proved.[6]

Lord Hodgson of Astley Abbotts led a task force established by Nick Hurd, then Minister for Civil Society, and Mark Prisk, then Minister for Business and Enterprise, to identify what stopped people from giving time and money to civil society organisations (small charities, social enterprises, and voluntary and community organisations). In its May 2011 report *Unshackling Good Neighbours*, the task force identified "the fear of becoming involved in litigation" as a "major preoccupation" that deterred people from volunteering.[7] The task force acknowledged the work of various government departments in producing guidance on health and safety and civil law, but argued that this was "unlikely to provide volunteers […] with the general reassurance they seek". The task force took the view that Government efforts "seem[ed] to fall short" of Lord Young's recommendation to clarify through legislation if necessary that people would not be held liable for any consequences due to well-intentioned voluntary acts on their part.[8]

---

[2] Ministry of Justice, *Social Action, Responsibility and Heroism Bill: Fact Sheet*, 13 June 2014, paras 1–3.
[3] Lord Young of Graffham, *Common Sense, Common Safety*, October 2010, p 19.
[4] ibid, p 11.
[5] ibid, p 23.
[6] ibid.
[7] Report of the Task Force Established to Consider How to Cut Red Tape for Small Charities, Voluntary Organisations and Social Enterprises, *Unshackling Good Neighbours*, May 2011, p 10.
[8] ibid.

The Government has implemented a number of measures intended to, in the words of Chris Grayling, Lord Chancellor and Secretary of State for Justice, "tackle unjustified personal injury claims and reduce insurance premiums".[9] Mr Grayling elaborated that:

> This has included action to ban referral fees, transform 'no win, no fee' deals, and stop claims management companies from offering incentives to bring a claim. These measures have already led to a reduction in road traffic accident claims and have helped secure record falls in car insurance premiums. In addition we are currently taking action to extend the ban on offering inducements to solicitors and other legal service providers and to require the courts to dismiss fundamentally dishonest claims, in order to root out the bad practice and unacceptable behaviour which has tainted personal injury claims in recent years. The provisions in the Bill will complement these measures to ensure that claims are dealt with fairly and that speculative litigation is discouraged.[10]

The Enterprise and Regulatory Reform Act 2013 reversed the position on strict liability under the Health and Safety at Work Act 1974, meaning that it is possible to claim compensation in relation to breaches of relevant health and safety legislation only if it can be proved that the employer (or other duty holder) has been negligent. Further background details on these issues, as well as on actions taken by the Government intended to encourage volunteering, are given in the House of Commons Library Research Paper, *Social Action, Responsibility and Heroism Bill*.[11]

Current Legal Framework

The Bill would apply in the determination of claims for civil liability for negligence and for certain breaches of a statutory duty. The law of negligence is part of the common law, deriving largely from a series of court judgments. The legal textbook *Atiyah's Accidents, Compensation and the Law* explains that it has wide application:

> […] damage caused by negligent conduct is generally actionable irrespective of the kind of activity out of which the damage arose. The tort of negligence thus extends over the whole sphere of human activity and is not confined, as are most other torts, to particular types of conduct or activity. It concerns the way in which activities are carried out, and not any particular activity; and it protects a variety of interests. However, in practice the law of negligence is largely concerned with certain consequences of two particular activities, that is, with personal, physical and mental injury and, to a lesser extent, damage to property, suffered on the roads and in the workplace.[12]

For a negligence claim to succeed, three elements must be demonstrated: "first, a duty to take care; secondly, a breach of that duty; and thirdly, damage caused by that breach of duty".[13] In determining whether the defendant owed a duty of care to the claimant, the courts will consider:

> (1) Whether the damage is foreseeable
> (2) Whether there is a relationship of proximity between the parties

---

[9] Joint Committee on Human Rights, Letter from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, 5 August 2014.
[10] ibid.
[11] House of Commons Library, *Social Action, Responsibility and Heroism Bill*, 8 July 2014, RP 14/38.
[12] *Atiyah's Accidents, Compensation and the Law*, 2013, p 30.
[13] ibid, pp 30–1.

> (3) Whether the imposition of a duty would be fair, just and reasonable.[14]

In terms of the standard of care that the defendant should be required to have taken, *Halsbury's Laws of England* notes that:

> It is a question of fact whether the defendant has failed to show reasonable care in the particular circumstances. The law lays down the general rules which determine the standard of care which has to be attained, and it is for the court to apply that legal standard of care to its findings of fact so as to decide whether the defendant has attained that standard. The legal standard is objective; it is not that of the defendant himself, but that which might be expected from a person of ordinary prudence, or person of ordinary care and skill, engaged in the type of activity in which the defendant was engaged.[15]

Atiyah's Accidents, Compensation and the Law explains that: "four factors are taken into account in deciding whether a person has taken reasonable care: the probability that the claimant would suffer harm; the likely magnitude of that harm; the cost of taking precautions to prevent it; and the value of the activity which caused the harm".[16]

Civil claims for damages may also be brought in respect of some breaches of statutory duty. In summary:

> The person or body in breach of the statutory duty is liable to any criminal penalty imposed by the statute, but may also be liable to pay damages to the person injured by the breach if he belongs to the class for whose protection the statute was passed. Not all statutory duties give rise to civil actions for breach. If the statute does not deal with the matter expressly, the courts must decide whether or not Parliament intended to confer civil remedies.[17]

Atiyah's Accidents, Compensation and the Law notes that "in practice, the action for breach of statutory duty is almost entirely confined to industrial accidents" and that "attempts to extend the action for breach of statutory duty to other situations have almost invariably been rebuffed".[18] The applicable standard of care depends on what is specified in the original statute:

> Whether liability for breach of statutory duty is strict or based on fault depends, in theory at least, on the wording of the statutory provision or regulation imposing the duty. A provision may prescribe a result to be attained, the most famous and important being the provision that 'every dangerous part of any machinery… shall be securely fenced'. In such a case, it is no defence to plead that all reasonable care was taken to fence the machinery, or that the machine would be unusable if securely fenced. By contrast, statutory duties may be couched in terms that do not differ greatly from the usual definitions of the standard of care found in the law of negligence, though the actual requirements of due care are often specified in more detail than at common law.[19]

---

[14] *Halsbury's Laws of England*: *Negligence*, vol 78, 'General Principles of the Laws of Negligence', para 4.
[15] ibid, para 21.
[16] *Atiyah's Accidents, Compensation and the Law*, 2013, p 39.
[17] *Oxford Dictionary of Law*, 2013, 'Breach of Statutory Duty'.
[18] *Atiyah's Accidents, Compensation and the Law*, 2013, pp 94 and 95.
[19] ibid, p 95.

The Labour Government legislated with regard to compensation claims in 2006 to "address […] a common misperception, that can lead to a disproportionate fear of litigation and consequent risk-averse behaviours".[20] Section 1 of the Compensation Act 2006 provides that:

> A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—
>
> a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
>
> b) discourage persons from undertaking functions in connection with a desirable activity.

The Government explained at the time that:

> What amounts to reasonable care in any particular case will vary according to the circumstances. In some cases, what would be required to prevent injury of the kind suffered may be such that to demand it of the defendant would be to demand more than is reasonable.
>
> This provision is intended to contribute to improving awareness of this aspect of the law; providing reassurance to the people and organisations who are concerned about possible litigation; and to ensuring that normal activities are not prevented because of the fear of litigation and excessively risk-averse behaviour.
>
> This provision is not concerned with and does not alter the standard of care, nor the circumstances in which a duty to take that care will be owed.[21]

This provision was intended when it was passed to "[reflect] the existing law and approach of the courts as expressed in recent judgments of the higher courts".[22]

3. Overview of the Bill

The Social Action, Responsibility and Heroism Bill contains five clauses. Clause 1 specifies that the Act would apply "when a court, in considering a claim that a person was negligent or in breach of statutory duty, is determining the steps that a person was required to take to meet a standard of care". The operative clauses of the Bill, clauses 2 to 4, provide that in making such a determination, the court "must have regard to" the following matters:

- "whether the alleged negligence or breach of statutory duty occurred when the person was acting for the benefit of society or any of its members"
  (Clause 2, the social action clause)

[20] Explanatory Notes to the Compensation Act 2006, para 7.
[21] Explanatory Notes to the Compensation Act 2006, paras 9–11.
[22] ibid, para 17.

- "whether the person, in carrying out the activity in the course of which the alleged negligence or breach of statutory duty occurred, demonstrated a generally responsible approach towards protecting the safety or other interests of others"
  (Clause 3, the responsibility clause)

- "whether the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger and without regard to the person's own safety or other interests"
  (Clause 4, the heroism clause)

Clause 5 provides that the Act would extend to England and Wales only and would enable the Secretary of State, by regulations, to bring clauses 1 to 4 into force on an appointed day.

The Bill makes provision about civil liability for negligence and for certain breaches of statutory duty, but it would not have any bearing on criminal liability.[23] Its provisions could apply to claims brought against individuals or organisations, including employers.[24] The Government "anticipates that the Bill will be relevant in a wide range of situations".[25]

The Government has stated that the Bill "would not change the overarching legal framework".[26] However, the Government has drawn a distinction between the way that clauses 2 and 4 and clause 3 would operate in practice in the courts:

> Clauses 2 and 4 of the Bill draw the particular attention of the court to certain features of the activity in question and it will need to take those matters into account within the existing legal framework, which involves consideration of all the circumstances. The court will not be required to reach any particular conclusion in a particular case as a result of the effect of the Bill.
>
> Clause 3 requires the court to consider wider aspects of the defendant's conduct than are typically considered by the courts in such cases at present. Whilst it is not intended that this will change the court's overall approach, it may be the case that the requirement to consider this wider context will change the court's analysis. However, the court will retain its discretion to make such determination as is just in the particular circumstances.[27]

Chris Grayling, Lord Chancellor and Secretary of State for Justice, explained in a letter to the Joint Committee on Human Rights that the Government "would not be legislating if we thought the Bill would make no material difference" to the way courts determine claims. He said that it was "not possible to provide hypothetical examples of cases which would be decided differently", but "if, in a finely balanced case, the court's consideration of these provisions tipped the balance in favour of a defendant who had acted for the benefit of society, demonstrated a generally responsible approach to the safety of others during an activity or

---

[23] Explanatory Notes to the Bill, para 4 and Ministry of Justice, *Social Action, Responsibility and Heroism Bill: Fact Sheet*, 13 June 2014, para 10.
[24] Explanatory Notes to the Bill, para 4.
[25] Ministry of Justice, *Social Action, Responsibility and Heroism Bill: Fact Sheet*, 13 June 2014, para 9.
[26] ibid, para 8.
[27] Ministry of Justice, *Social Action, Responsibility and Heroism Bill: European Convention on Human Rights Memorandum*, 13 June 2014, paras 6–7.

intervened to help somebody in an emergency, we would welcome that outcome".[28] He also explained that the Bill did not "stem from any perception on the part of the Government that the courts are misapplying the current law".[29]

The Government has assessed that the Bill may lead to "fewer people being found negligent when things go wrong"; to "a potential wider benefit to society if the measures encourage participation in volunteering and other socially valuable activities"; and to the possibility that "insurers and other defendants may gain from slightly reduced aggregate compensation paid and this may feed through to lower insurance premiums".[30] The Government's assumption is that "while there may be a slight drop in the number of negligence cases brought to court as people may be deterred from bringing a claim, we do not expect this to be substantial".[31]

Reaction

The National Council for Voluntary Organisations welcomed efforts to address perceptions of risk, stating: "we continue to get a lot of calls from charities and individual volunteers about risk and liability [...] We look forward to seeing the legislation in place and making the spirit of its message clear to all".[32] However, the Association of Personal Injury Lawyers considered that current legislation already covered the issues addressed in the Bill, calling it a "waste of parliamentary time".[33] The TUC meanwhile expressed concerns that the Bill might lead employers to be less careful about workers' safety, stating: "safety laws are not needless 'red tape', nor are they part of the 'jobsworth culture'. They provide valuable protection for the UK's 30 million workers".[34] In contrast, the British Safety Council welcomed the Bill, stating: "planned changes to the law should help society have a more sensible relationship with both everyday and extraordinary risks".[35]

4. Second Reading and Committee Stage

Introducing the Bill at second reading, Chris Grayling, Lord Chancellor and Secretary of State for Justice, said that:

> The Bill is about bringing back common sense to a part of our society that week in, week out frustrates many of us; about restoring balance to the health and safety culture that all too often goes beyond what is necessary to protect individuals; about tackling a culture of ambulance chasing that all too often is about generating opportunities to earn fees, rather than doing the right thing; about ensuring that people who do the right thing are confident that the law is on their side when they do so; about trying to protect those who act in the interests of our society; about protecting those who go out of their way to take the responsible approach; and about protecting those who take risks to try to help those who are in trouble. It does not rewrite the law in detail or take away discretion from the courts, but it sends a signal to our judges and a signal to those

[28] Joint Committee on Human Rights, Letter from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, 5 August 2014.
[29] ibid.
[30] Ministry of Justice, *Social Action, Responsibility and Heroism Bill: Impact Assessment*, 25 April 2014, p 2.
[31] ibid.
[32] NCVO press release, 'NCVO Comment on New Social Action, Responsibility and Heroism Bill', 2 June 2014.
[33] APIL, *Statement from the Association of Personal Injury Lawyers*, June 2014.
[34] TUC, 'TUC Fears Government May Use Heroism Bill to Water Down UK Safety Law', 4 June 2014.
[35] British Safety Council, *British Safety Council Supports New Law Designed to Protect Those Who Step in to Help Others*, 4 June 2014.

> thinking about trying it on—by bringing a case in the hope that it will not be defended—that the law is no longer on their side.[36]

Sadiq Khan, Shadow Secretary of State for Justice, questioned whether "the content really warrant[s] a Bill of its own".[37] He contended that "there is no evidence" to support the problem that Mr Grayling had described—"no great health and safety beast suffocating the life out of those doing good deeds, petrified into inaction at the prospect of having to fork out compensation after being sued".[38] He criticised the Government for relying on a survey done in 2006, "when the ink was not even dry on the Compensation Act 2006", for evidence about what was preventing people from volunteering. He argued that more recent evidence showed "not a fall, but a rise in volunteering" and that the biggest barrier to volunteering was not fear of litigation but a lack of spare time.[39]

No amendments were made to the Bill at committee stage in the House of Commons. A number of opposition amendments were discussed, several of which were re-tabled in identical form at report stage (see below). Issues raised by the Opposition at committee stage which were not revisited at report stage included:

- Replacing the word "must" with the word "may" in clauses 2, 3 and 4 (in connection with matters that the court "must have regard to") to "make it clear in each of the Bill's three operative clauses that these are matters entirely of judicial discretion".[40] The Minister argued that this change would "dilute" the message of the Bill and "simply serve to confuse the public about the Bill's intentions".[41]

- A probing amendment intended to clarify whether clause 4 would apply equally to "professional and amateur heroes" (ie to members of the emergency services and members of the public).[42] The Minister said the Government could see "no valid reason for treating them [members of the emergency services] differently from others who act heroically by excluding them from the scope of the clause".[43]

- Defining "acting heroically" and "emergency" in clause 4.[44] The Minister considered that "acting heroically" was already sufficiently defined in the Bill and that "emergency" was "a word in common usage and readily understood".[45]

For a more detailed summary of the second reading and committee stage debates, see the House of Commons Library Standard Note, *Social Action, Responsibility and Heroism Bill: Progress of the Bill*.[46]

---

[36] HC *Hansard*, 21 July 2014, col 1187.
[37] ibid, col 1196.
[38] ibid, col 1197.
[39] ibid.
[40] House of Commons, Public Bill Committee, Third Sitting, 9 September 2014, col 68.
[41] ibid, col 69.
[42] ibid, col 83.
[43] ibid, col 85.
[44] ibid, col 82.
[45] ibid.
[46] House of Commons Library, *Social Action, Responsibility and Heroism Bill: Progress of the Bill*, 16 October 2014, SN06997

5. Report Stage

No amendments were made to the Bill at report stage in the House of Commons. A number of opposition amendments were debated, all of which had already been considered by the Public Bill Committee.

Clause 1: Application

Andy Slaughter, Shadow Justice Minister, moved amendment 1, which would have added a provision into clause 1 to specify that "nothing in this Act confers on any person immunity from civil liability, nor does it change the relevant standard of care in negligence or breach of statutory duty".[47] The Opposition had moved an identical amendment at committee stage, where it was defeated by nine votes to five.[48]

Mr Slaughter sought clarification on whether the Bill would change the existing law. At committee stage, Shailesh Vara, Parliamentary Under-Secretary of State for Justice, had stated that "clauses 2 and 4 essentially reflect the current law but strengthen and emphasise it, while clause 3 changes the law".[49] Mr Vara had explained to the Public Bill Committee that clause 3 represented a change "in that it ensures that the court takes into account a defendant's general approach towards protecting the safety and interests of others when carrying out an activity. It is the general issue that is relevant there".[50] Mr Slaughter referred back to these statements during the report stage debate, stating that he could not see how this interpretation of clause 3 was "any different from what is in clauses 2 and 4, which [the Minister] concedes do not change the law".[51] He also argued that interpreting clause 3 as a change in the law was "in flat contradiction" to the assurances given by the Minister at committee stage that the Bill would not give immunity from civil liability or change the standard of care that was generally applicable. He therefore asked the Minister if the Bill would "make any difference to how the law of negligence works in the courts? If so, will he indicate how and explain the motivation? If it does not, what is the purpose of the Bill?".[52]

Mr Vara repeated that there was "absolutely nothing in the Bill that suggests it will give immunity from civil liability to anyone".[53] He explained that:

> Even if a defendant had been acting for the benefit of society, intervening in an emergency or acting responsibly during an activity when he injured somebody, he could still be found negligent or in breach of a statutory duty if the court considered that he did not meet the required standard of care. The Bill is not designed to encourage people to take unnecessary risks with people's safety, nor does it remove the court's ability to do justice in an individual case.[54]

Likewise, Mr Vara said that the Bill would "not change the relevant standard of care that applies when a court is considering whether somebody has been negligent or has breached a relevant

---

[47] HC *Hansard*, 20 October 2014, col 682.
[48] House of Commons, Public Bill Committee, Third Sitting, 9 September 2014, col 67.
[49] ibid, col 62.
[50] ibid, col 75.
[51] HC *Hansard*, 20 October 2014, col 683.
[52] ibid.
[53] ibid, col 684.
[54] ibid.

statutory duty".[55] He maintained that the Bill "simply requires the court to have regard to the factors in the Bill before reaching a decision on liability"; it would not "tell the court what conclusions to draw or prevent a person from being found negligent if the facts of the case warrant it".[56] The Government did not consider there to be "any risk of the clause being misinterpreted by the courts as somehow granting individuals immunity from civil liability or changing the standard of care that is generally applicable".

However, Mr Vara explained that a "very important distinction" between the Bill and the existing legislation was that "the Compensation Act says that the court 'may' take into account certain factors [whereas] this Bill says that the court 'must' take into account certain factors".[57] In response to Mr Slaughter's question about the purpose of the Bill, Mr Vara asserted that it would "send a powerful message to the members of the public that if they do the right thing, the court will take that into account and they should not be inhibited from doing the right thing in any heroic acts, social activities or whatever".[58]

In Mr Slaughter's opinion, the Minister's explanation "continued to go around in ever-decreasing circles".[59] He expressed concern that the "only explanation" for legislating to direct what the court "must" take into account was that the Government wanted to "fetter the hands of the judiciary in dealing with these matters". Mr Slaughter withdrew amendment 1.

Sir Edward Garnier QC, Conservative MP for Harborough, a former Solicitor General, also raised some general concerns about the purpose and application of the Bill, which he described as "a particularly silly piece of legislation".[60] He declared that he was "not at all sure […] that were a court to have regard, as it is required to by the legislation, that it would be in a better position than that of a court dealing with a case now, given the state of the common law and the existing statutory provisions".[61] He sought clarification about whether certain terms used in the Bill—such as whether a person was "acting for the benefit of society or any of its members" (clause 2), or had "demonstrated a generally responsible approach towards protecting the safety or other interests of others" (clause 3), or was "acting heroically" (clause 4)—would be "something that is found by the judge as a matter of law, or […] a matter of fact that could change from one set of facts to another".[62] Although he felt the motive behind the Bill was "entirely positive and laudable", he predicted the courts would treat it "with derision" as it did not "improve the situation in an intellectually sustainable and coherent way".[63]

Clause 3: Responsibility

Andy Slaughter spoke to a series of opposition amendments which would have amended clause 3 as shown below (the proposed deletions are shown in ~~strikethrough~~ text, and the proposed insertions are shown in *italics*):

> The court must have regard to whether the person, in carrying out the activity in the course of which the alleged negligence or breach of statutory duty occurred,

---

[55] ibid, col 686.
[56] ibid.
[57] ibid, col 685.
[58] ibid.
[59] ibid, col 686.
[60] ibid, col 695.
[61] ibid, col 696.
[62] ibid, cols 696–7.
[63] ibid, col 697.

> demonstrated a ~~generally~~ responsible approach towards protecting the safety ~~or other interests of others~~ *of employees or bystanders, in relation to the circumstances leading up to the alleged negligence*.

The Opposition had proposed identical amendments at committee stage, but had not pressed any of them to a vote. The amendments were intended, said Mr Slaughter, to improve the drafting of clause 3, which was "drawn very widely".[64] He argued that the amendments "would ensure that if material other than that specifically relating to a particular incident is taken into consideration, it should have a direct causal link—through time, location or type—to the incident being complained of. Otherwise we risk opening up a can of worms".[65]

Mr Slaughter also spoke to an alternative amendment (amendment 5), which would have removed clause 3 from the Bill altogether. He suggested that clause 3 was "an attempt to skew the balance in personal injury litigation, particularly between employers and employees".[66] The Labour Party feared that clause 3 was "designed to weaken the ability of those who have suffered injury at work […] to take their cases to court, and that they will either not be able to bring those cases, or will not succeed with them, despite their merit". Mr Slaughter accused the Government of having already made "full frontal, across-the-board assaults on health and safety in the workplace" in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which introduced reforms to civil litigation funding) and the Enterprise and Regulatory Reform Act 2013 (which reversed the legal position for strict liability in relation to breaches of relevant health and safety legislation).[67] He suggested that clause 3 would "bring in extraneous factors which will allow a defendant to deflect from or evade responsibility in negligence and breach-of-statutory-duty cases", stacking the cards "very much in favour of the employer in such cases".[68] Although he believed that clause 3 would be "ineffective" because the courts would "continue to find for meritorious claims, and against unmeritorious ones", he claimed that the intention of clause 3 was "malevolent".[69]

In response, Shailesh Vara said that the "core aim" of clause 3 was to "provide reassurance to ordinary hard-working people who have adopted a generally responsible approach towards the safety or other interests of others during the course of an activity that the courts will always take that into account in the event of something going wrong and their being sued".[70] He believed that "by showing them the law is on their side, the clause will give them greater confidence in standing up to speculative and opportunistic claims". He reiterated that the provisions of clause 3 "do not direct the courts to the conclusion they should reach and will not prevent a finding of negligence or breach of statutory duty where that is warranted".[71]

Mr Vara dismissed the opposition amendments to the drafting of clause 3 as "unnecessary" because, in his opinion, it was "perfectly clear" that the Bill was "concerned with the approach that the defendant adopted in the course of events that led to the injury, and not with their actions in other unrelated circumstances, or their health and safety record over a number of years".[72] He explained that the Government had "deliberately drafted the clause broadly" to

---

[64] ibid, col 687.
[65] ibid.
[66] ibid, col 688.
[67] ibid, cols 688–9.
[68] ibid, col 689.
[69] ibid, cols 689 and 691.
[70] ibid, col 691.
[71] ibid, col 692.
[72] ibid.

ensure that it would "be relevant in a wide range of situations and will enable the courts to take account of all relevant circumstances, and apply the provisions as flexibly as possible to achieve a just outcome".[73] He said that, as drafted, the clause could "in principle be applicable in relation to other issues of negligence, such as damage to property or economic loss, where issues of safety may not necessarily be relevant".[74]

Mr Slaughter pressed amendment 5 (to remove clause 3 from the Bill) to a division. It was defeated by 260 votes to 145.[75]

Clause 4: Heroism

Andy Slaughter spoke to an amendment which would have amended clause 4 as shown below (the proposed deletion is shown in ~~strikethrough~~ text):

> The court must have regard to whether the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger ~~and without regard to the person's own safety or other interests~~.

The Opposition had moved an identical amendment at committee stage, but had not pressed it to a vote. Mr Slaughter explained that the first aid charity St John Ambulance considered the wording of clause 4 as "irresponsible" because "all it encourages is reckless behaviour likely to put either the putative hero or others engaged in such action at some risk".[76] Shailesh Vara acknowledged the concerns of St John Ambulance and the Fire Brigades Union on this point, but said that "after giving this matter further thought", the Government remained of the view that the courts would interpret the words in question in accordance with the intended meaning—"that a person acts heroically by intervening to assist someone in danger, regardless of the fact that doing so might risk his or her own safety".[77] He did not believe that it would "be interpreted as sending a signal that members of the public should recklessly expose themselves to danger".[78]

Philip Davies, Conservative MP for Shipley, raised concerns—later echoed by Sir Edward Garnier—that, as drafted, clause 4 implied that an individual who paid regard to his or her own safety could not, by definition, be acting heroically.[79] In Mr Davies' opinion, this made clause 4 "unworkable".[80] Mr Vara said that the Government did not consider that the clause would "be misinterpreted by the courts or the public as somehow excluding people who did in fact have regard to their own safety or other interests, perhaps in the split second before they dived in, but decided to intervene anyway".[81]

Andy Slaughter withdrew the amendment.[82]

---

[73] ibid, col 693.
[74] ibid.
[75] ibid, col 699.
[76] ibid, col 689.
[77] ibid, col 694.
[78] ibid, col 695.
[79] ibid, col 694 and col 697.
[80] ibid, col 694.
[81] ibid, col 695.
[82] ibid, col 699.

6. Third Reading

At third reading in the House of Commons, Shailesh Vara, Parliamentary Under-Secretary of State for Justice, commended the Bill to the House, stating that it "adopts a fair and sensible approach, an approach that allays the fears of those who wish to undertake socially beneficial action, reassures organisations and individuals that a responsible approach to safety is recognised, and encourages a culture of altruism, not one of compensation".[83]

Sadiq Khan, Shadow Secretary of State for Justice, maintained that "the media were fed grand promises that the Bill would rid us of the compensation culture" but "it soon became obvious that the Bill would do none of the things the Justice Secretary claimed it would do".[84] He alleged that there was "simply no evidence of a health and safety or compensation culture", adding that: "the expert witnesses whom the Government invited to give evidence [to the Public Bill Committee] in support of the Bill saw no benefit in attending, and some even made clear why there was no point: the Bill would make no difference".[85] He said that his party would not oppose the Bill, but he felt it would now fall to the House of Lords to "attempt to give it purpose".[86]

The Bill received its third reading without division.

[83] ibid, col 704.
[84] ibid, col 704.
[85] ibid.
[86] ibid, col 705.