PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

SOCIAL ACTION, RESPONSIBILITY AND HEROISM BILL

Third Sitting

Tuesday 9 September 2014

CONTENTS

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Saturday 13 September 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Joe Benton, †Mr Adrian Sanders

† Browne, Mr Jeremy *(Taunton Deane)* (LD)
† Carmichael, Neil *(Stroud)* (Con)
† de Bois, Nick *(Enfield North)* (Con)
Evans, Chris *(Islwyn)* (Lab/Co-op)
Glass, Pat *(North West Durham)* (Lab)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
† Jarvis, Dan *(Barnsley Central)* (Lab)
† Jenrick, Robert *(Newark)* (Con)
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Morris, Grahame M. *(Easington)* (Lab)
Paisley, Ian *(North Antrim)* (DUP)
† Rutley, David *(Macclesfield)* (Con)
† Slaughter, Mr Andy *(Hammersmith)* (Lab)
Stevenson, John *(Carlisle)* (Con)
† Swales, Ian *(Redcar)* (LD)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Vara, Mr Shailesh *(Parliamentary Under-Secretary of State for Justice)*
† Wallace, Mr Ben *(Wyre and Preston North)* (Con)
† Williamson, Chris *(Derby North)* (Lab)

Matthew Hamlyn, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 9 September 2014

[Mr Adrian Sanders *in the Chair*]

Social Action, Responsibility and Heroism Bill

8.55 am

The Chair: Order. Before we begin I have a few preliminary announcements. Members may if they wish remove their jackets during sittings; I think I shall say that now, to apply for the duration of the Committee's sittings, so I will not need to say it again. I ask hon. Members and others in the Room to ensure that all electronic devices are turned off or switched to silent, and I remind hon. Members that tea and coffee are not permitted in Committee.

Before we begin our line-by-line consideration of the Bill, some brief explanation may be useful to those who are relatively new to public Bill Committees. The selection list for today's sitting is available in the Room. It shows how the amendments selected for debate have been grouped together. Amendments grouped together are generally on the same or similar issues.

A Member who has put their name to the leading amendment in a group is called first. Other Members, including the Minister, are then free to catch my eye to speak on any or all of the amendments in the group. A Member may speak more than once in a debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment to speak again. Before sitting down, they will need to indicate whether they want to withdraw the amendment or seek a decision. Any Member who wants to seek a vote on another amendment in a group needs to let me know.

Please will Members note that decisions on amendments do not happen in the order in which the amendments are debated, but in the order in which they appear on the amendment paper. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses following debates on the relevant amendments. This morning, the Committee will adjourn at 11.25 am. That is automatic; but this afternoon the timing is in the hands of the Whips, although an Adjournment at about 5 pm is conventional. I hope that those explanations are helpful.

Clause 1

Mr Andy Slaughter (Hammersmith) (Lab): I beg to move amendment 1, in clause 1, page 1, line 4, leave out "a" and insert "the relevant"

The Chair: With this it will be convenient to discuss amendment

Amendment 2, in clause 1, page 1, line 4, at end insert—

'( ) 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"

Mr Slaughter: It is a genuine pleasure to be here this morning under your chairmanship, Mr Sanders, to begin and—who knows?—perhaps end consideration of this short Bill. I have been reflecting, in the light of the evidence sittings that most of us were privileged to attend on Thursday, and have concluded that perhaps we have been a little harsh about it. Perhaps it is not so much a bad Bill as a sad Bill. There are two confusions or conflicts at its heart. One is the poor drafting. Amendment 1 is the first of the amendments intended to address that, although there are others to come.

I should perhaps say that I generally share the view of Mr Whitehead, representing the Law Society, who said in evidence on 4 September that he thought the Bill was so poorly drafted as to be "probably unamendable". That is clearly the Government's view; they have tabled no amendments. I could not resist tabling a few, but it is only a few, and they tend to fall into two categories, the first of which is to attempt to improve the drafting, which may be a vain hope.

Amendment 2 is in the second category. The debate may take a little while because I hope that the amendment will tease out from the Minister the Government's real intention. I think that a number of the witnesses—if they had views about it—were confused about that. I am still a little confused, but I have my own view. I think that the impact assessment and the remarks of the Lord Chancellor in some of his early press articles are probably right: the intention is not to change the law—but there is some doubt about that. Amendment 2 is intended to flush that out, and I will spend a little time on it.

I suspect that the Committee will not be terribly troubled about clause 1 stand part, although no doubt we will welcome short stand part debates as opportunities to give our differentiated views on clauses 2, 3 and 4. After amendment 2, I do not intend to spend a great deal of time speaking to any of amendments. Many of them are the equivalent of Gallic shrugs. I am effectively saying to the Minister, "What can that possibly mean?" or "Where can we possibly go from here?" For the benefit of *Hansard* I will try to communicate verbally rather than by gesture.

Amendment 1 may appear slightly pedantic but it may offer the Minister an opportunity to make my day. For the first time in all the Bills that we have sat on together since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 he could condescend to agree to one of our amendments. This is one of those things that rankles every time I read through the Bill. Clause 1 states:

"This Act applies when a court, in considering a claim that a person was negligent or in breach of statutory duty, is determining the steps that the person was required to take to meet a standard of care."

It is a long time since I was at law school but that is fairly first term stuff. When one is looking at negligence or breach of statutory duty, there is in each case a relevant standard of care. That is governed, as several witnesses reminded us, by the common law in the case of negligence. The test that has to be satisfied that there is a duty of care involves foreseeability, proximity and reasonableness. How much care is needed? Has that care been taken? What is the appropriate level of care of the alleged tortfeasor? Are they a professional? Are they a rescuer? Are they a surgeon or are they simply a bystander helping out? Has there been damage? Is there

foreseeability? The standard of care will vary from case to case. Equally, on breach of duty there will be a standard of care which is applied by the relevant statute.

Initially I thought of tabling an amendment to leave out throughout the Bill, the phrase

"or in breach of statutory duty"

because I thought that the highly inappropriate section 69 of the Enterprise and Regulatory Reform Act 2013 had effectively got rid of breach of statutory duty as a remedy and taken us back, as one of the witnesses said, to Victorian times. But I stood to be corrected by the experts who said that there were some reserved positions, either through inference or where limitation periods had not expired. In the future, I hope that we will look at repealing that provision and therefore I will not seek to pursue this now: I simply point out that where there is a breach of statutory duty there will be a relevant standard of care in each case. That is all I have to say on that. The amendment is better drafting. The Bill is sloppy drafting and our wording should be preferred. We shall see whether the Minister is feeling in a charitable mood.

Amendment 2 adds:

"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".

That may not go quite as far as I wanted to or as the Government previously went. I have taken some of those words from the impact assessment, which states:

"the Government believes that further legislation is needed to allay public concerns about this issue and to encourage participation."

In the Minister's letter to the Joint Committee on Human Rights from 23 June, which expresses the purpose of the Bill in broad terms, he says that

"it will send a strong signal to reassure people that the courts will consider, in all cases, the wider context of the defendant's actions before reaching a conclusion on liability."

We are told that the Bill will reassure people. We had a flurry of articles to launch the Bill, after which we lost interest and moved on. I will not quote all of those articles, but they emphasised that it was about not changing substantive law but sending out signals and reassuring. I tend to agree with the hon. and learned Member for Harborough (Sir Edward Garnier), and many others. The hon. and learned Gentleman made an excellent speech on Second Reading in which he said that this is not the purpose of legislation. He preferred to see black letter laws, which were clear and effective and which the courts were instructed to implement.

There is clearly often a need for judicial discretion and that issue will be raised when we debate some of the later amendments. However, simply using legislation to educate, urge, console and reassure in this way seems inappropriate. I suspect that is the reason there has been such—contempt is too strong a word—a desultory interest in the Bill from the start. I looked back at its progress, starting with the Queen's Speech, which both Houses debated. There were about 35 speakers in this House, two of whom mentioned the Bill, apart from those on the Front Bench. There were about 50 speakers in the other place; no one mentioned the Bill, apart from those on the Front Bench. My point is a patent one. On Second Reading, two Back Benchers spoke: the hon. and learned Member for Harborough and the hon. Member for Strangford (Jim Shannon). Both speeches were good but that is not a terribly impressive turnout for a Government Bill's Second Reading.

The Joint Committee on Human Rights sent the Minister a series of very detailed questions that go to the heart of my point, which is about identifying the real purpose of the Bill. Does it aim to change the law? Does it aim to dictate to courts and judges in such cases or, as appears to be the case from the quotes I gave, does it aim to turn away from the law and turn to the general public, exhorting them to volunteer to intervene? Those are all laudable aims but I do not know if legislation is the right place for that. The Minister may have sent a response to the Joint Committee's letter, but I am not aware that it has been published; I am sure he will correct me if I am wrong and give me a copy if he can. He may say that is a matter for the Joint Committee, but it is unfortunate that we do not have the letter before us.

We had the witness sessions last week. My maths is not exact but the point will be well made. When the original list of witnesses was drawn up before the recess, there were about 18 witnesses on the Government's list, most of whom—not all—would have supported or been expected to support the Government's case for the Bill. I thought that was somewhat imbalanced. We put forward our own list of about eight witnesses, of whom I think five were accepted. When we came to hear evidence, only five of the 18 witnesses whom the Government invited actually attended. I find that surprising. Even more surprising were the reasons given for not attending. The Forum of Private Business said it did not have anything to say on the issue and had no evidence base. The CBI said that it was not a Bill it was following and it does not have a membership mandate to comment on it. Even the Association of British Insurers—it was probably drafted by the ABI—could not be bothered to turn up. It really was extraordinary. All five of our witnesses turned up; they were very keen. I am sure the other three would have been as well; we had space for them.

Five out of 18 is not very good. Of those who did turn up, the National Council for Voluntary Organisations was broadly supportive, and the Forum of Insurance Lawyers was supportive of the principle. I will say something relevant to the amendment in a moment about the FOIL's attitude, which goes to the heart of the Government's dilemma. The FOIL was scathing about the drafting of the Bill. It thought it was dreadful and did not achieve any purpose at all.

The Health and Safety Executive did not know why it was attending. It did not have a clue why it had been taken away from work of national importance to give evidence on the Bill. The Law Society was so antagonistic that the Minister spent his time trying to undermine its evidence. I said he should have declared them a hostile witness if he wanted to examine them in such a way. The National Union of Teachers was also firmly opposed.

I preferred the interesting session with the lawyers, who could have kept going among themselves for several hours in a sort of endless loop without any questions at all, but it was fascinating stuff and cast a light on the issues. They shared my confusion about the purpose of the Bill.

On the point made by the FOIL, a written submission from the City of Westminster and Holborn Law Society came in last night. It made a similar point: it does not

[Mr Slaughter]

think the Bill goes far enough. When the Compensation Act 2006—I will say a little more about that in a moment—was under consideration, the Constitutional Affairs Committee made the same point. The Library brief refers to that. So several people have said that if we are serious about the issue, we need to change the law, and there were various suggestions for doing so. It can be applied to quantum rather than to liability, and we can reduce quantum if we wish.

The FOIL and the insurance industry are very robust. They think we should start with Tomlinson and go much further, and some of the more laissez-faire organisations, such as the Campaign for Adventure, would say the same thing. I disagree entirely with that. I agree with what some of the other witnesses said: this is a balancing act between risk and safety, and that should be left firmly and squarely with the courts. We should not be trying to micro-manage the individual decisions of the court, which is what I think the Bill sets out to do.

Amendment 2 is designed to be helpful and it is important to include it in the Bill. If the Minister does not accept it, we will press it to a vote. At the very least, the Government need to be clear. Is it right, as appears to be the case from what Ministers have said—the Minister will be on the record shortly and can confirm it—that there is no intention to change the substantive law here, and that this is just another layer of exhortation to add to the Compensation Act 2006 and to what Ministers have said? If that is right—I think that it probably is—it is a relatively harmless Bill and just unnecessary.

9.15 am

I think that a witness, or a member of the Committee, mentioned Lord Denning and Watt *v.* Hertfordshire County Council in 1954—always a good place to start in such debates—a case that set down the balance that needs to be struck, but which clearly talked about public benefit. However, the leading case in relation to this matter, which several witnesses mentioned, is still Tomlinson, a case in which a young man was tragically severely injured by diving into a shallow lake where there were warning signs and the relevant authority that had custody of it had taken steps. There were interesting legal arguments, but it has become the leading case because, as Lord Hobhouse put it,

> "The pursuit of an unrestrained culture of blame and compensation has many evil consequences and one is certainly the interference with the liberty of the citizen. Of course there is some risk of accidents arising out of the joie de vivre of the young, but that is no reason for imposing a grey and dull safety regime on everyone."

That is taken, in some quarters, as being a sea change in relation to balance of risk. I do not think that it was, by any means; it simply developed the law as case law has done, including in relation to the law of negligence and breach of statutory duty, over decades if not centuries.

I cannot see why Parliament constantly needs to interfere in this way—there were many references to this during the passage of the Compensation Act—in something that works extremely well and, as Mr Whitehead said, with fluidity. The courts respond not only to legal argument but to social change, as is obvious, and they do that balancing act in every case, but that balance changes over time. To introduce legislation in this way is, at best, confusing. If I am wrong in my interpretation of that being all it is, the Minister needs to be clear about that, because it is possible that the Bill will be misleading.

I differentiate between the three clauses, although none of them is brilliant, frankly. I am least concerned about clause 2, although all that can be said about it is that it is inoffensive; it duplicates what is contained in section 1 of the Compensation Act, with the difference that it has a "must" rather than a "may". Clause 4 is also well-intentioned, being designed to encourage people to intervene, but is terribly badly drafted and contains at least one positively dangerous part that we will seek to amend. We have the most problems with clause 3, which is primarily aimed at shifting the balance yet again in employment cases, although clearly it has a wider remit than simply employment cases.

The Bill is another part of the myth of the compensation culture. We do not live in a country with a compensation culture. Only about a quarter of people who have suffered personal injuries claim; that number has fallen in the past two years from just under 30% and it continues to fall. The number of money claims has been falling sharply in recent years. Everybody, from Lord Young on behalf of the Government—he said in his report that that culture is a perception not a reality—to Lord Dyson, as Master of the Rolls, has said clearly that the compensation culture does not exist and that it is just a perception.

The Minister may say, "Yes, it is a perception and we wish to correct it, because it is preventing people from volunteering and getting involved." That may be right, and I blame the Government in part for creating that perception. I have nothing against them trying to destroy that perception, but I do not think the Bill is a particularly good way of doing that. I do not think that the intention behind clauses 2 and 4 is particularly dangerous, but they are so poorly drafted that they will not achieve those objectives and could have deleterious effects, since they will be confusing to both individuals reading them and the courts trying to interpret them.

I do not have anything else to say at present, and we will return to some of these issues with later amendments. I am trying to be constructive—I always try and sometimes succeed—and I would like the Minister to accept amendments 1 and 2. I would very much like him to take this opportunity to give us an insight into, and a conclusive view of, the Government's intention behind the Bill.

The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara): I welcome everyone to the Committee; it is good to see that it is well attended. The hon. Gentleman raised a number of issues, principal among which was the purpose of the Bill. The Bill is important and sends out a powerful signal to the public. Indeed, it directs the courts to take certain factors into account.

We have said that clauses 2 and 4 essentially reflect the current law but strengthen and emphasise it, while clause 3 changes the law. We want courts to consider the factors in the Bill along with any other relevant factors whenever they determine a claim, and we made those points clear in our letter to the Joint Committee on Human Rights.

The hon. Gentleman speaks of the Bill not being substantive. It is important to recognise that, when Labour was in government, it also introduced legislation—the Compensation Act 2006—that was intended to send out a message. We believe that the Bill will be more effective than that attempt.

The hon. Gentleman has been quite dismissive of much of the oral evidence, but it is fair to say that he has been somewhat selective in his choice of examples. I will dismiss the contribution made by the so-called representative of the Law Society, Fraser Whitehead. It was abundantly clear that none of the thousands of Law Society members had been consulted, and Mr Whitehead admitted as much. When I pressed him and asked if he had bothered to consult the people on the relevant committees, he numbered them at around 30 and admitted that he had not consulted the majority of them. Apart from the odd reference to the Law Society, most of his evidence was in the first person: "I" this, "I" that, "my practice" and so on. As far as I can see, that is a personal contribution, albeit one masquerading as being from the Law Society. The hon. Gentleman also ignores the written evidence submitted by the Cheshire Fire and Rescue Service, the Campaign for Adventure and Westminster Law Society, which was broadly supportive.

Mr Slaughter: I referred to two out of three of those. I am happy that the Minister talks about the Cheshire Fire and Rescue Service's evidence, which I thought was disgraceful and seemed to be far more about limiting claims from people who had tripped over their hoses than the safety of firefighters.

Mr Vara: I am afraid that I must disagree with the hon. Gentleman's interpretation of the evidence. A survey conducted by St John Ambulance and referred to in written evidence also illustrated that the fears of liability remain. I take the view that amendment 1 is unnecessary and would make no substantive change to the effect of the clause. The standard of care that the court is required to apply will be obvious from the facts of the case, as will whether or not the clause is relevant to the case.

Amendment 2 is intended to clarify that the Bill does not confer immunity from civil liability upon any individual or class of individuals and does not change the relevant standard of care. Again, I take the view that this is unnecessary. Nothing in the Bill suggests that it gives immunity from civil liability. It also does not change the standard of care that is generally applicable. That is and remains what the ordinary and reasonable person should have done in the circumstances. The Bill simply requires the court to have regard to certain factors in deciding what steps should have been taken to meet that standard of care in a particular case. It does not tell the court what conclusions to draw or prevent a person from being found negligent if the facts of the case warrant it.

In a finely balanced case, if 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 towards the safety of others during an activity, or intervened to help somebody in an emergency, we would welcome that outcome. It would be for the courts to decide how much weight to give those factors on a case-by-case basis. We do not consider that there is any risk of the clause being misinterpreted by the courts as somehow granting individuals immunity from civil liability or watering down the standard of care that is generally applicable.

Chris Williamson (Derby North) (Lab): I do not really understand the Minister's rationale. If he argues that this does not avoid the duty on defendants to ensure that they fulfil their obligations, why does he reject the amendment tabled by my hon. Friend the Member for Hammersmith which simply clarifies the point that he makes? Surely it would be better for it to be in the Bill so that everybody knows where they stand. There would be no room for misinterpretation.

Mr Vara: I take on board what the hon. Gentleman is saying but certain things are taken as read. In this case it would simply be additional and superfluous wording. We are not in the business of adding wording that is not necessary and the courts can continue to interpret in the same way as they have done.

Chris Williamson: I hear what the Minister says, but this is hardly a big Bill, is it? It is one and a tad pages, and the Minister objects to an additional two lines. It is hardly verbose. I cannot understand the Minister's rationale. Surely it would make sense. There would be no room for any doubt in anybody's mind.

Mr Vara: When words are superfluous to requirement, they are superfluous regardless of whether a Bill is one page, 27 pages or 101 pages. I give the hon. Gentleman credit for trying, but he will not succeed on this one.

Ian Swales (Redcar) (LD): I am enjoying my time on this Bill Committee. I am not a lawyer. As we talk about the choices of words, will the Minister give us specific examples of cases where the judgment would have been different as a result of the Bill? The Opposition should do the same if they want to change the Bill.

Mr Vara: Each case will be judged on its facts. It would be difficult for me to stand here now and say, "The outcome of this case would have been different." But I will say that the Bill directs the court to take into account certain factors in every case of negligence. The law does not do that at present. Each case will be different. During the oral evidence sessions one of the lawyers gave the example of someone crossing red lights, and he used it to suit his arguments. I described different circumstances and he nodded his assent that in those circumstances the consequences would be different.

Ian Swales: I understand the Minister's point about the specifics of a judgment, but the Bill has been tabled to fix some kind of problems. As a non-lawyer I am struggling to know what those problems are. If not with specific cases, perhaps he could tell us generically what he thinks is going wrong that the Bill will fix.

9.30 am

Mr Vara: The thrust of the Bill is to send a powerful message to the public that when they do the right thing, the courts will take that into account and they will not be penalised. That is the thrust of it.

Karl Turner (Kingston upon Hull East) (Lab): Goodness me!

Mr Vara: I suggest that the hon. Gentleman speaking from a sedentary position looks at the Compensation Act 2006, which his party's Government introduced. It made a similar attempt, but the Bill goes a lot further. I simply ask the hon. Member for Hammersmith to consider withdrawing his amendment on the basis of the arguments that I have put forward. I hope he will see the rationale behind the clause and recognise its merits.

Mr Slaughter: I will not press amendment 1 to a vote, although I am disappointed, but I will press amendment 2 to a vote, because it goes to the heart of the Bill.

To respond to the points that the Minister made, I do not know what this particular animus is that has existed for at least four years now between the Government and the Law Society. The Law Society seems to be an excellent body of men and women doing their best to save the legal profession from its decimation—well, it is rather more than decimation—by the current Lord Chancellor, as we saw in the High Court yesterday.

It sits rather ill for this Government—particularly with the current Lord Chancellor, who does everything based on instinct and without evidence—to complain that people have not consulted. The evidence for the Bill is based on a survey of a weighted sample of 300 people taken 10 years ago. I would rather have the grey beards of the Law Society sitting around in conclave as my source than those folk.

The hon. Member for Redcar made a good point. I am not going to give any examples, because I do not want to change the law. I want to do what the Minister sometimes says he wants and sometimes says he does not want, which is to leave it to the courts to make a decision in every case.

Mr Vara: For the sake of clarity, the Bill does not direct the court on what conclusion it should arrive at. The courts will maintain that power and prerogative, and they will decide on the facts. The Bill simply directs them to take into account certain factors. Both the pre-eminence of the courts and their right to judge and come to conclusions based on facts still exist; we are not interfering in that area.

Mr Slaughter: Sadly, the Minister is adding layers of confusion rather than stripping them away. He said a moment ago that the Bill goes much further than the 2006 Act. We will see when we come to the next set of amendments that it is intended to fetter discretion to some extent, although it is not entirely clear to what extent. He also said—I do not think I had heard the Government say this before—that whereas clauses 2 and 4 are not intended to change the law, clause 3 is. That was my suspicion, and I now find it to be well founded. We will certainly be voting against clause 3 now.

To return to the point made by the hon. Member for Redcar, the central point is that the courts already take these things into consideration. I read part of the judgment in the Tomlinson case and, in that case and cases following it, that was exactly what the court did. In considering the Compensation Act 2006, a number of eminent persons said that it was unnecessary, because the courts already fulfilled that role, as they are in a prime position to do. The sort of meddling suggested in the Bill does not go down well.

The other point that the hon. Gentleman made, which I thought was spot on, was that we need to hear about some cases. Let us hear about the case of the person who was sued for clearing snow from outside their neighbour's front garden. Let us have the case of the heroic rescuer who rushed in, did his or her best, but caused some collateral damage and was sued for that. I cannot think of any actual cases for either. All the wise heads last Thursday could come up with was one case that they sort of remembered where somebody cracked someone's ribs doing cardiopulmonary resuscitation and there might have been some action resulting, but that is not a hero case in any event; it is simply a first aid case. Someone is not risking their lives to do that.

Cases such as I mentioned do not happen. They never happens—the Lord Chief Justice has said that. Straw men are being created, and I am not sure of the derivation of the Bill—perhaps another donation is due from the ABI. I ask the Minister to please get his story straight.

Mr Vara *rose—*

Mr Slaughter: I will give the Minister one more chance. Is the Bill about saying to the general public, "Don't feel worried about being a Scout master or trying to give first aid to someone by the roadside," or is it about saying to the senior judiciary, "You are getting this all wrong. You are supporting this compensation culture and you need to buck up"?

Mr Vara: May I point out that the hon. Gentleman is a former lawyer and that, therefore, he will appreciate the nuance that I am about to mention? I had intended to refer to this later, given the amendments that he has tabled to subsequent clauses, but whereas the Compensation Act says that a court "may" consider certain factors, the Bill directs that certain factors "must" be considered. Even he can appreciate the difference between "may" and "must".

At the moment, the court may take into account certain factors, which means that it does not have to do that. We are seeking to direct that the courts must do that. That is pretty simple and straightforward, but it is important. The hon. Gentleman seems to have missed that, because we will come to his amendments that would change that very feature of the Bill.

Mr Slaughter: The Minister is right, and we will come on to that issue shortly. He refers to amendments to clauses 2, 3 and 4, but the selection list has been magically altered as I speak. We will conclude clause 1 and then go on to consider the those amendments, and perhaps it will be more appropriate for the Minister to deal with the matter then. Perhaps can think about now and answer it when we get there.

To go back to the point made by the hon. Member for Redcar, the Minister can think about this question and answer it either now or when we get to that point. I know what I think, but what material difference does he think the change from "may" to "must" will make in

these circumstances? Let us say I was the judge who was trying a case. Would I look at the Bill and think, "It's a 'must', not a 'may'. I was just going to use my old Compensation Act trick, but now I've got a 'must' from this new piece of useless legislation. What am I going to do now?". The Minister may answer now, or perhaps we will wait for his answer and get some more clarification as the morning goes on and we all warm up a bit. Although I stand here more confused that I was 45 minutes ago, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 2, in clause 1, page 1, line 4, at end insert—

'( ) 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'—*(Mr Slaughter.)*

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 1]

AYES

Jarvis, Dan	Turner, Karl
Morris, Grahame M. *(Easington)*	
Slaughter, Mr Andy	Williamson, Chris

NOES

Browne, Mr Jeremy	Rutley, David
Carmichael, Neil	Swales, Ian
Hart, Simon	Vara, Mr Shailesh
Jenrick, Robert	Wallace, Mr Ben
Metcalfe, Stephen	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Mr Vara: Clause 1 sets out the circumstances in which the Bill's provisions apply. Committee members may be aware that, in determining a claim for negligence, the court must consider whether the defendant had the duty to take reasonable care towards the claimant and, if so, whether as a result of the breach of that duty the claimant had suffered loss or injury. In reaching a decision as to whether the standard of care has been met, the court will consider whether the defendant took reasonable care in all the circumstances, against an objective test: that of the ordinary and reasonable man.

The court performs a similar exercise in those cases where a defendant is alleged to have breached a statutory duty that requires a standard care to be met. What is necessary to meet the standard of care in a particular case must be decided by the court on a flexible basis, according to the circumstances of the case.

The clause provides that the Bill will apply where the court is considering the steps that the defendant was required to take in a particular case to meet the standard of care.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

SOCIAL ACTION

Mr Slaughter: I beg to move amendment 3, in clause 2, page 1, line 6, leave out "must" and insert "may".

The Chair: With this it will be convenient to discuss the following:

Amendment 5, in clause 3, page 1, line 10, leave out "must" and insert "may"

Amendment 9, in clause 4, page 2, line 15, leave out "must" and insert "may"

Mr Slaughter: We can move seamlessly from the last debate to this one. These are the amendments on discretion, and their purpose is to make it clear in each of the Bill's three operative clauses that these are matters entirely of judicial discretion, whatever factors the Government wish to shoehorn in to be considered.

It looks somewhat rude, if not oppressive, and it is certainly uncharacteristic of the Government, to draft clauses such as clauses 2, 3 and 4. Surely, the whole purpose should be to suggest to the court—as well as to the public, as the Government say—that the matters set out in those clauses ought to be considered. I believe that courts already take such matters into consideration under the Compensation Act; section 1 of that Act is very similar to clause 2 of the Bill, and it uses the word "may". Two slightly different sections of Acts will be lining up for consideration, and that will add a little bit more to the confusion.

What is also wrong with the drafting is that the courts will have to do what the Bill says: it is mandatory; they must consider it and therefore they will, but it will almost fall into contempt, because I think the courts will regard it as an affront to their exercise of discretion. They will go through the motions, so rather than being of genuine assistance, as with a true piece of discretionary advice, it will be a tick-box exercise. On each occasion, judges will read a standard sentence at that point, saying, "I now turn to consider the provisions of the Social Action, Responsibility and Heroism Act. I have considered those and they makes no difference at all to my judgment in this matter, which I have carefully considered, having heard all the evidence and sat as a judge for a number of years, thank you very much, Lord Chancellor." I do not think, whatever the Minister thinks, that this will help him in his intention; it certainly will not assist the courts.

9.45 am

If we read on, we see that clause 2 states:

"The court must have regard to 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."

That just sounds wrong to me. The conjunction of "must" and "have regard to" is trying to have your cake and eat it. It is either discretionary or it is not. I think that the Minister will say, "Of course the final discretion remains with the court. That's why it's 'have regard to'." That is why the FOIL and others objected to "have regard to". They want the law to be fundamentally changed in some respects, and I accept that the Minister

does not, at least in relation to clauses 2 and 4. However, I still think that it is another bit of poor drafting and confusion—the Government are trying to have their cake and eat it. They are saying, "Yes, we want to doff our cap to judicial discretion, but we also want to give the courts a bit of an arm twist." I do not think that sits very easily, and I do not think that the clause is well drafted. The Minister would be well advised to accept our amendments and, in clauses 2, 3 and 4, to change "must" to "may".

Mr Vara: Amendments 3, 5 and 9 would remove the requirement for the courts to consider the factors set out in the Bill in any case in which they were determining whether someone was negligent or in breach of a relevant statutory duty. Instead, it would be purely a matter of discretion whether they took account of the factors in the Bill. The aim behind the Bill is to send a clear message to the courts and the public that the courts will consider the context of the defendant's actions in every case that comes to court. Removing that requirement would dilute that message and simply serve to confuse the public about the Bill's intentions.

Section 1 of the Compensation Act 2006 includes a provision stating that the courts, when considering whether someone is negligent, "may" have regard to whether a finding of negligence could prevent a desirable activity from being undertaken or discourage people from undertaking functions in connection with such an activity. That Act clearly did not do enough to deal with people's worries about liability, as the recent surveys carried out by the National Council for Voluntary Organisations and St John Ambulance have shown.

We hope that the Bill will do more than the Compensation Act did to allay people's concerns about liability and to increase participation in socially useful activities, but the amendments would negate its impact. I am sorry that the Opposition treat the matter somewhat lightly and are dismissive in their approach to it. However, it is pretty straightforward that the Bill is designed to direct the court on what it ought to take into account, but ultimately it is for the court, on the basis of the facts before it, to come to its own conclusions as to how it decides. I hope that the hon. Member for Hammersmith will agree to withdraw the amendment.

Mr Slaughter: I shall not press the amendment to a vote, but I think that the Minister has just underlined the "facing both ways" point. Is the use of the word "must" actually about sending a message to volunteers? Is it about the issue of comfort again; is it about saying, "Don't worry. We will make sure that if you're in a situation in which you're likely to be sued for negligence arising out of your good will or the other cases that the Bill covers, a very strong message goes to the court"? I think that that is probably what the Government want to do, but it is a very inefficient way of doing it. One thing that all the witnesses agreed on was that not many people are going to sit down and read this Bill before they decide whether to volunteer. There are many other ways in which that can be dealt with. This is not a good way to legislate, but I have made the point and I shall not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Slaughter: I beg to move amendment 4, in clause 2, page 1, line 8, leave out

"or any of its members".

This is the first of the "what does that mean?" amendments. If one looks at clause 2—I will read it out; the advantage of this Bill is that we can read clauses out, as many times as the Committee wants, so as to take up more time—it says:

> "The court must have regard to 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."

Now, the Conservatives used to have trouble with "society", but that was because they did not believe that it existed, so I doubt they would have had trouble defining it. They have resiled from that position to some extent, so I think we are all happy with what "society" means, and probably with what "the benefit of society" means as well, although that is still a very vague phrase in this context. In the amendment I am concentrating on the additional phrase,

"or any of its members."

I am sure that the Minister will correct me if I am wrong, but I think that, in similar fashion to what the Compensation Act says, the phrase "the benefit of society" is a general reference to good deeds, effectively: things that objectively the man on the Clapham omnibus would regard as being a good thing to do. We got into trouble last Thursday on whether providing a golf course was to the benefit of society. I am not sure that it is completely, although I have nothing against golf. The Compensation Act states:

> "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…prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or…discourage persons from undertaking functions in connection with a desirable activity."

That may be a little more legalistic, but it is a better and clearer definition. However, it has the same problem of definition as the definition in the Bill. I do not make that point so much about the phrase itself, "the benefit of society"; the difficulty, as I put to Mr Johnson in our evidence session, is that if we say that running a golf course is a benefit to society, almost anything will be. The definition is so broad and so vague that we are not narrowing anything down at all.

Let us give the clause the benefit of the doubt on that, and say that the intention is to say, to people who—increasingly, as we heard—volunteer and give up their time to do good deeds, that that will be taken into consideration. The Minister might say that it already is but that we should reassure people that it is being taken into consideration.

I do not know what the phrase

"or any of its members"

adds to that. I have a genuine question as to what it means. Is it regarding specific instances? Is it trying to specify particular activities that individuals may do that benefit another individual? If so, I do not see what it adds to the phrase "the benefit of society". It confuses me and does not add anything. I will not say any more because I cannot until the Minister clarifies what it means.

Mr Vara: The phrase "the benefit of society" is intended to ensure that the clauses are broadly drafted and will apply in a wide range of situations in which people are acting for the benefit of others. The provision on social action could cover anyone who acts for the benefit of others on a voluntary basis or in a paid capacity. It could include organised charitable activities, such as running a village fête, or informal ones, such as helping an elderly neighbour with their shopping. It will also cover, for example, teachers, doctors and emergency service workers who act for the benefit of society as part of their jobs. It will be for the court to determine whether the provision is relevant in all the circumstances of an individual case.

We do not consider the amendment to be appropriate. Any fears that the clause may somehow extend to purely selfish actions that benefit the defendant are completely unjustified. The wording of the clause leaves no room for doubt. It is clearly concerned with activity that is

"for the benefit of society".

Chris Williamson: As the Minister will be aware, the Government have resumed the badger cull without any proper oversight. If one of the shooters were to injure a protester, would they be protected by the Bill? Are they acting for the benefit of society? It is a moot point. The vast majority of the British public would argue that those people are not acting in the interests of society at all.

Mr Vara: I will not go down the route that the hon. Gentleman seeks to take me down. I made it absolutely clear what the "benefit of society" means. The issue he raises has been hotly contested and other legal issues come into it, but I will not be drawn in that direction.

The title of the clause—"social action"—makes its purpose abundantly clear, and purely self-interested or self-centred actions will not fall within its scope.

Chris Williamson: I accept that the Minister does not want to go down the route of the badger cull. He explained that the clause only relates to fêtes; is that the extent of it?

Mr Vara: The hon. Gentleman really must try to listen. I did not say that the clause only related to those things; I gave them as examples.

Grahame M. Morris (Easington) (Lab): Opposition Members and, indeed, the whole Committee wish to encourage volunteering; we are at one in that regard. However, from the evidence I heard, there seems to be a risk of unintended consequences. Will the Minister clarify that there is not a conflict between the protection of health and safety and the aims of the Bill?

Mr Vara: I do not see any contradiction. Kevin Myers, acting chief executive of the Health and Safety Executive, said in his evidence that the HSE had some 311 examples on its website of health and safety myths. I have looked at one or two of them, and I must say that they are quite extraordinary. If the Bill can help to destroy some of those myths, I am all in favour of that. The Bill ensures that a powerful message is sent to the public that, if they do the right thing in the right circumstances, the law will consider that rather than simply tell them they should not have done it.

Ian Swales: This comment is an attempt to be helpful. In my local council, some sort of new broom is effectively driving a lot of community activity out of existence through an overbearing approach to risk assessments and health and safety assessments. Does the Minister believe that the Bill might help those organisations that are busy cancelling fêtes? The latest one is a Christmas street event which will now not happen because those organising it cannot deal with the council. How will councils react to the legislation? Will it make them soften their approach to community organisations?

Mr Vara: Each case will of course be looked at in context, but when people act for the benefit of society in a civic-minded way, I hope that—if the matter goes to court—the courts will be directed to consider that factor, which they are not allowed to do at present, and that they will take the view that people are acting in the right way.

10 am

I am mindful of a quote from the former Home Secretary and Foreign Secretary, the right hon. Member for Blackburn (Mr Straw). In July, he said:

"There is a strong lobby of lawyers claiming to act for the poor and vulnerable but in reality such firms are precipitating costs that lead to higher insurance premiums across the economy. There is a need to change behaviour in society—serious change in attitudes with regards to insurance fraud."

That may cover some of the issues.

The wording that the amendment seeks to remove is designed to ensure that the clause applies to acts of altruism towards individuals, such as driving elderly neighbours to hospital appointments, as well as more organised activities carried out by, for example, voluntary organisations, which may have benefit to society in a more general sense. Encouraging such acts can help to foster an environment of civic-mindedness and a culture of volunteering and positive behaviour. I hope that the hon. Member for Hammersmith will consider withdrawing the amendment.

Mr Slaughter: I shall not press the amendment to a vote. It is quite revealing that, although I did not say anything about selfish motives—I had thought about them, but did not say anything—the Minister rushed to deny that that was the case.

Mr Vara: Given the shadow Minister's reliance on everything that Fraser Whitehead from the Law Society said, it was something that he had said. I am sure the hon. Gentleman will have thought it, even though he did not say it.

Mr Slaughter: I did wonder what

"or any of its members"

meant, but I have a slightly more interesting point to make about the interests of others, so I will save it till we come to that.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3

RESPONSIBILITY

Mr Slaughter: I beg to move amendment 6, in clause 3, page 1, line 12, leave out "generally".

The Chair: With this it will be convenient to discuss the following:

Amendment 7, in clause 3, page 1, line 13, leave out "or other interests of others" and insert "of employees or bystanders".

Amendment 8, in clause 3, page 1, line 13, at end insert

"in relation to the circumstances leading up to the alleged negligence".

Mr Slaughter: This is perhaps the most troubling part of the Bill for us. In relation to amendment 6, we return to the point about vagueness. We suggest leaving out "generally" because we do not think it adds anything to a "responsible approach". I have a fear that, taken with the other parts of the Bill that we have taken exception to, the general thrust is to dilute the responsibility that the tortfeasor may have, on the basis of what are frankly extraneous factors. In amendment 7, we suggest leaving out

"or other interests of others".

That is clumsy phrasing, but what does it mean? What does

"protecting the safety or other interests of others"

mean? Does it mean shareholders' profits? Does it mean consideration that has nothing to do with personal safety at all? It could certainly be taken to mean that. It is one of two genuinely damaging phrases in the Bill. The other is in clause 4. Even if the Minister will not agree to amendment 7 now—I live in hope—he might go away to look at it. I will also ask him to go away and look at amendment 10 before the Bill has its Third Reading or is considered in the other place. That is where he needs to go if the Bill is to be fit for anything at all.

Amendment 7 would add: "of employees or bystanders". Amendment 8 would add:

"in relation to the circumstances leading up to the alleged negligence".

One talks about proximity of place and one talks about proximity of time. Both amendments, and amendment 6 which would leave out "generally", aim to bring the debate back to the incident complained about and which is at the centre of any potential claim. That seems right.

I would value hearing in some detail what the Minister means by introducing the responsible approach. Does it mean that an employer who generally has a good safety record, who puts the right notices up, who sends most of the staff on training, who subscribes to the right organisations and has most of the right safety gear on the premises, for example, is less liable if one member of staff does not get that training or does not get the safety gear, or is instructed to put themselves in a dangerous position? That seems grossly unfair.

Can the surgeon who has an excellent record of cutting off the right limb but cuts off the wrong limb argue, "I normally get it right. I almost always get it right but on this occasion I got it wrong and I should be given the benefit of the doubt because I generally have a responsible attitude towards my safety record"? *[Interruption.]* My hon. Friend the Member for Kingston upon Hull East finds this amusing. I do not know why because what else are we to take this to mean?

We have used examples from outside the workplace. The surgeon example is not an employer-employee relationship but there is clearly a duty of care. In fact, it is a higher duty of care. An employer has a duty to an employee or another member of the public, but the duty that the surgeon has in operating is even higher. Will we throw the Bolam test out of the window as a consequence of the Bill? I do not know where to go with this clause without some assistance from the Minister. It has that quality of vagueness but, and this is far more damaging, it could exonerate the tortfeasor of the offence based not on irrelevant matters but on matters that are not central to the facts under consideration.

I turn now to amendment 8. Again, we should be talking about matters that are proximate in time and place to the activity that has happened. That is the common-sense approach, to use a phrase that the Minister uses a lot, to take in these cases. We heard quite a lot in evidence and in briefings both about the ambiguity of a generally responsible approach and the other phrases that we have dealt with. However, without going over the cases that were mentioned in this context, I would like to consider what happens if people are injured, at work or not, and they bring a claim and need compensation to carry on with their ordinary life or get them over their recovery period, or because they have a debilitating injury, and they are told in any circumstances, "Sorry, you cannot receive that compensation even though previously your employer would have been found liable, because, generally speaking, they have a good safety record." Does it work the other way as well? That was one of the points that was put to us.

Perhaps the employee has been off on a frolic of their own. One reason why the clause is otiose—because of course the Lord Chancellor continually says that we want to protect the diligent employer from the reckless employee—is that a reckless employee does not get compensation anyway, in the same way that Tomlinson did not. The courts will look at their behaviour and if they acted unreasonably they will not succeed. In that case, if the claimant was somewhat reckless, would an employer with a very bad safety record, who generally speaking did not do the right thing, be more likely to be found liable as a consequence of clause 3?

The court would be looking at the question of a "generally responsible" approach. It might say that on the occasion in question it could have found a huge amount of contributory negligence or no liability at all, but that the employer was a pretty bad one, who did not mind tomfoolery in the workplace or take a serious attitude to safety; it might therefore take a different attitude.

The clause is a can of worms. It opens up a lot of possibilities. It will lead to more complex litigation. The process will become more bureaucratic, which is exactly what the Government say they do not want. The phrase "generally responsible approach" will come back to haunt the Government. Lawyers will go on fishing expeditions—it is what lawyers do—looking at the entire background of a case and bringing in extraneous matters. Whereas a judge might previously have felt able to say,

"I am sorry, but you will limit this to the facts under consideration," the lawyers will point to the clause—or section as it will be then—and say, "No, I am only trying to demonstrate a lack of a generally responsible approach towards protecting the safety of the employee."

Without amendments about what circumstances and "other interests" are relevant, and without any consideration of whether it is the immediate lead-up to the accident and the most relevant facts that are to be taken into account, as opposed to the entire conduct of the parties over an indefinite period, the clause will add layers of complexity to the trial process. The Government have said that they want the exact opposite of that to happen.

Mr Vara: I recognise that clause 3 has generated the greatest debate among stakeholders, including those who attended the evidence-taking session last week. It was said that negligent employers who cause injury to employees could try to hide behind clause 3 by claiming that they are responsible most of the time, that the incident was a one-off, or that they had not injured anyone else in the course of the previous year or so, and that the court should give them credit for that.

Amendment 6 asks the court to consider whether the defendant was "responsible" rather than "generally responsible" during the course of an activity. Amendment 8 asks the courts to focus on the defendant's approach to safety leading up to the alleged act of negligence as opposed to, for example, their track record on health and safety matters over a long period of time. I understand what has motivated those amendments, but I will explain why they are unnecessary.

10.15 am

Clause 3 already states that the courts should look at whether the defendant adopted a generally responsible approach towards the safety of others in the course of the activity in which the alleged negligence occurred. I emphasise the words "in the course of an activity" because they send a clear signal that the Bill is concerned with the approach the defendant adopted in the course of events that led to the injury. Employers may well have a good health and safety record over a number of years, but if on the day, during the activity in question, their actions are risky or careless and cause injury, there is nothing in clause 3 that says they cannot be found negligent.

Mr Slaughter: Can the Minister say what the effect of that provision will be? He said earlier that it changed the law, unlike the rest of the Bill. Can he clearly say how, rather than just being a bit of further advice, the clause changes the law to get the court to make, in some cases, a different decision from the one it would otherwise have made?

Mr Vara: We consider that clause 3 represents 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.

The clause states that if a person carries out an activity in a generally responsible way and, despite their best efforts, something goes wrong and somebody is injured, the court should take full account of the circumstances. That will help to deter people from bringing speculative and opportunistic claims and will give confidence to responsible employers and others that if they resist such claims, the law will be on their side. The Cheshire Fire And Rescue Service has provided a helpful example in its written evidence to the Committee. It describes what seems like a ludicrous situation, where it has been sued by passers-by who have tripped over the hoses as they were being unwound to extinguish a fire. Those incidents have occurred despite the fact that the engines are clearly marked. Firefighters arrive at the scene to put out a fire and their priority is to reach anybody who may be inside the burning building. It is right that the clause requires the court to take account of their general approach towards safety during the course of the activity in question.

Turning to the final amendment in the group, amendment 7 seeks to limit the clause to people who have been taking a generally responsible approach towards the safety of employees or bystanders. We deliberate drafted the clause broadly so that it would be relevant to a wide range of situations. We see no justification for narrowing the clause so that employers who demonstrate a generally responsible approach towards protecting the safety of employees benefit from the provisions, but voluntary organisations, religious groups or social clubs, for example, who demonstrate the same generally responsible approach, do not. The provisions 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. I am confident that the courts will continue to take a common-sense approach to those cases and will exercise the flexibility that the clause gives them to reach a just decision in all the circumstances of the individual case. I hope that on that basis hon. Members will be persuaded to withdraw their amendments.

Chris Williamson: It is a great pleasure to serve under your chairmanship this morning, Mr Sanders, and I think it is for the first time. I want to make a few brief comments in support of the amendments tabled by my hon. Friend the Member for Hammersmith. They are eminently sensible and I fear that the proposition outlined in the clause could potentially take us considerably backwards in the protections that we have managed to build up for employees over the years. Has the Minister, or anybody sitting on the Government Benches, ever been employed in a potentially hazardous occupation? If they had been, I am sure that they would support the amendment tabled by my hon. Friend, which would make the obligations more explicit by covering employees and bystanders. I am concerned about the wording of the clause, which states:

"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, demonstrated a generally responsible approach towards protecting the safety or other interests of others."

I will give an example of something that happened to me when I was employed as an apprentice bricklayer on a building site. Generally, the employer was good and demonstrated a responsible approach to protecting the safety and interests of others: he provided transport for us to get to the site on time and a cabin was provided for shelter when it rained and to have a cup of tea and a sandwich. He also went to the length of providing safety rails on most of the scaffolding; they just were

[Chris Williamson]

not on all of it and it so happens that I was unfortunate enough to step backwards where there was no safety rail and fall 15 feet on to a concrete staircase.

Luckily, I lived to tell the tale, but I could have been seriously injured, paralysed or killed. However, as a result of the way in which the clause is drafted, if I had been severely injured and paralysed would the employer have been able to escape responsibility? As I said, generally he was quite a decent employer—he provided transport, a cabin and there were lots of safety rails on the scaffolding—and, as far as I am aware, there were no other examples of employees sustaining industrial accidents on that site. My hon. Friend's amendment would give protection in such circumstances, so I hope that the Minister can find it in himself to concede on that point.

Mr Slaughter: I will not press any of the amendments, because the clause is so appalling that I would do better to make a few comments in the clause stand part debate and then vote against at that point. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Mr Slaughter: As I said, a clearer concern is that the Bill may go further than being simply irrelevant or nugatory and do some damage. It may restrict meritorious claims and in many cases it may continue the tilt away from the employee towards the employer. The balance is usually with the employer, because, when there are accidents at work, they have control of the site. The employee is often concerned—owing in particular to the weakening of employee rights under this Government—about making a complaint or claim against their employer and now there will be another series of hurdles through which they will have to jump.

I hope that the clause will receive some attention in the other place, where there are some extremely distinguished members of the legal profession and experts in employment law, personal injury law and other matters. Perhaps I should have declared that I was a personal injury practitioner, but I have not practised since I was elected in 2005 and, when I did, I worked almost entirely for defendant insurers. I am not sure I could go back to that, but we will see. I have certainly not taken instructions from any of the Committee witnesses, although my hon. Friend the Member for Kingston upon Hull East tells me that I should probably mention that my constituency party received a donation from Thompsons a year or two ago to the tune of £1,000, not the £5 million or £6 million that the Conservative party received from the insurance industry. None the less—*[Interruption.]* The Minister may intervene if he wants to, but for the avoidance of doubt I put the matter on the record.

The problems with the clause go beyond simply whether it confuses or complicates the matter. There is a change in the law. I am not sure I have understood from the Minister—if he wants to have one more go, he can—what the change in the law is in relation to the clause, but I think the intention is sufficiently clear. It is to dilute responsibility when an alleged tortfeasor—they may or may not be an employer—is liable to be held responsible. Not only a lot of time and a lot more money, which again means that the case will cost a lot more for the claimant, but lots of extraneous and often irrelevant information will be brought into the case. The consequence may be—although one hopes not because one trusts the good judgment and wisdom of the courts—that either the decision will go against a claimant who otherwise has a meritorious claim, or the claim will not be brought in the first place because the advice will be that they will have to look into it in a lot more detail than in a previous simple personal injury or employer's liability claim.

Grahame M. Morris: On the assurances that the Minister is seeking to give on the legislation, some witnesses expressed concern particularly about potential conflict with the general duties of employers to employees. The Minister said that brevity is one of the Bill's selling points, but surely it would be helpful to the courts if the Committee and the Minister said that it should not take precedence over, for example, section 2 of the Health and Safety at Work, etc Act 1974, but would protect the rights of employees. For the life of me, I cannot understand why we cannot make that clear or give such an assurance.

Mr Slaughter: I am grateful to my hon. Friend for making that point. He takes a great interest in these matters. I will leave it to the Minister to answer the point, but it is a concern. I have mentioned section 69 of the Enterprise and Regulatory Reform Act 2013 and that certain principles of employment law and health and safety law that have been taken as read, not just since 1974, but sometimes going back a century or more, are now being attacked. Employment claims generally are being suppressed. We know that they are down by 80% in a year because of the introduction of fees, and we welcome what the shadow Business Secretary had to say about that at the TUC yesterday.

The Government should go away and look at the matter again. I do not expect to win, but I will press it to a vote. They must get their story straight. Are they changing the law, or are they not changing the law? Are they upholding and supporting good practice, or are they again changing the balance in employment law? They can do both in the Bill, but if they do, they must be clear about it. This is the part of the Bill that causes us most concern, so we will vote against clause 3.

10.30 am

Mr Vara: Clause 3 provides that, in deciding whether or not a person was negligent in carrying out an activity, a court must have regard to whether the person accused of negligence demonstrated a generally responsible approach towards protecting the safety of others.

I was very sorry to learn of the circumstances of the accident referred to by the hon. Member for Derby North. It is good to see that it has had no long-lasting effects. I say to him and to the hon. Member for Easington, who raised another query about clarity, that clearly the courts would have the final say on all matters, depending on the circumstances. The Bill is not intended to pre-judge a decision without knowing the facts. Each case will be different, as will all the facts; it is for judges to decide. The Bill does not seek to take over the right of judges to make decisions as they see fit.

Grahame M. Morris: I am grateful to the Minister for that clarification. Nevertheless, with all due respect in recognition of the fact that the Minister is a lawyer, is there not an obligation on members of the Committee to give, where possible, clarification that the Bill should not supersede existing health and safety requirements, for example? I know that the Minister will not be drawn on individual cases, but he might recall the example given by Matt Wrack, the general secretary of the Fire Brigades Union. He told us about the sad case of the two firefighters attending an organised firework display. Are we not beholden to clarify that the provisions in the Bill should not supersede the health and safety commitments already set out in legislation such as the 1974 Act?

Mr Vara: I hear what the hon. Gentleman says. There is existing law and the Bill will be taken into consideration by the courts in the round, along with that law. The Bill is not intended to supersede this or that law; it is intended first to direct the judges in a court to take into account certain specific factors, which the Compensation Act 2006 currently does not do. That Act simply says that the court may take things into account; the Bill says that it must. Secondly, the Bill is intended to send a powerful message to the public that when they do the right thing, the courts will take that into account.

Ian Swales: May I press the Minister on the point raised by the Opposition, particularly the term "generally responsible"? I spent more than 20 years working in the chemical industry, which, in common with most heavy industry, has an attitude towards safety that is not just generally responsible but incredibly responsible. However, I would not expect that to be used as an excuse for a failure of the type mentioned by the hon. Member for Derby North. I have also done consulting for the construction industry, where one particular company showed a generally irresponsible attitude toward safety. I would expect that company to face the full force of the law. Returning to the companies that put safety as No. 1 and really mean it, surely the Minister would not expect that attitude to absolve them of responsibility in a particular case, would he?

Mr Vara: I may be misinterpreting what is being said, but I have full confidence in the interpretations made by our judiciary. I am confident that the courts will look at the facts of the case, the track record and the circumstances leading up to a particular issue or accident, and take everything into account. I do not feel that it is necessary to qualify what is already there. I have confidence that our judiciary will take into account the factors that Members on both sides of the Committee want them to take into account.

The clause is broadly drafted so that it will be of relevance in a wide range of situations. It is aimed at helping all individuals and organisations, including hard-working owners of small businesses who try to do the right thing by adopting a responsible approach towards the safety of others.

Mr Slaughter: I might be being obtuse, but I am not trying to be difficult, for once. I have yet to understand the difference between what the Government are trying to do in clauses 2 and 4 and in clause 3. I described the Opposition's additional concerns, but the Minister said at the beginning that the provisions changed the law, so what is the difference between how clause 3, as opposed to clauses 2 and 4, is supposed to act on the court?

Mr Vara: Clause 3 invites the court to consider placing weight on the defendant's general behaviour in relation to the activity in the course of which the negligence is alleged and to determine in that light whether they were in breach of the standard of care. There is a difference, because, while it is open to the courts to look at all the circumstances of a case in reaching a decision on liability, they are not currently obliged to consider whether a person took a generally responsible approach to safety during the activity in question. The language about acting in a generally responsible way does not feature in the case law.

Ian Swales: I think we are getting to the heart of this. Again, I am not a lawyer, but it seems that the distinction might be between the penalties and the judgments made. The company's record might be taken into account in determining the sanctions and penalties, but the Minister has once again suggested that it might also be relevant to the question of actual liability—in other words, in the judgment itself. Will he say a bit more about whether he is talking about it applying to the judgment? I can see the logic behind saying that, if a company is generally responsible, there may be some mitigation in terms of the penalty in the case.

Mr Vara: I say again to my hon. Friend and others that I cannot be drawn on hypothetical cases. I am confident that judges will look at this. The clause does make a change. The language about acting in a generally responsible way does not feature in the case law, and I am trying to be helpful in outlining where the Bill is different. The Opposition have said in the past that it makes no difference to the law, and I am trying to be helpful by pointing out where the changes are. I am also trying to make it clear that, while we direct the court to take certain things into account, I am not telling judges what decision they should come to as a consequence of looking at everything in the round.

Ian Swales: The Minister has now said something that really concerns me. If he does not believe that this approach exists in case law, judges are therefore judging each individual incident on its merits. Is he suggesting that they stop doing that and use a broader assessment of an institution's behaviour in a particular instance in coming to their judgment, putting far less weight on the circumstances of the incident? Is that what he expects to happen?

Mr Vara: I am saying that the courts must take into account the factors we have highlighted in the Bill. Then the judges—in the light of their experience and based on the facts before them in each case—must draw their own conclusions.

The Bill does two things: first, it directs the court to take into account certain things, which are discretionary at the moment; and, secondly, it is intended as a message to the public, as I said earlier on.

Clause 3 is broadly drafted so that it will be relevant in a wide range of situations. It is aimed at helping all individuals and organisations, including owners of small

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businesses, who try to do the right thing. If, notwithstanding their efforts, something goes wrong in the course of an activity, and somebody suffers loss or injury, the clause's provisions make it clear that the courts will take full account of the context and the surrounding circumstances in any ensuing claim for negligence or breach of statutory duty. That will help to deter people from bringing speculative and opportunistic claims and will give confidence to responsible employers and others that if they resist such claims, the law will be on their side.

The provisions do not direct the courts as to the conclusion that they should reach, and will not prevent a finding of negligence or breach of statutory duty where that is warranted. I am confident that the courts will continue to take a common-sense approach to these cases and will exercise the flexibility that the clause gives them to reach a just decision in relation to all the circumstances of the individual case.

I hope that I have been clear. I urge the hon. Member for Hammersmith to consider accepting the clause. We have dealt with the provisions, and on that basis I hope that clause 3 will stand part of the Bill.

Mr Slaughter: This clause has the same fault as the other clauses, in that it is not well drafted, but we will not vote against it on that basis. It may be my fault, but I am still not exactly with the Minister on his explanation of why this clause is being treated differently from the other clauses; I am referring to the impact that it will have in terms of legislative change. In a way, it should be a good thing if I cannot work that out. The sticking point for me is that I cannot see any merit to what is proposed in this case, whereas I can see that there is at least a good intention in clauses 2 and 4, whatever their limitations.

I think that the questions from the hon. Member for Redcar were very pertinent. I do not know whether he will vote with us on the clause, but that is a matter for him. There is no positive coming out of this; it seems to me that there are only negatives. I do not want to repeat myself. I have said that the clause is diluting responsibility for negligence. It is certainly confusing. It will certainly create more bureaucracy. I think that that is down to some mala fides on the part of the Government, and for that reason we wish to vote against clause 3.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 5.

Division No. 2]

AYES

Browne, Mr Jeremy	Rutley, David
Carmichael, Neil	Swales, Ian
Hart, Simon	Vara, Mr Shailesh
Jenrick, Robert	Wallace, Mr Ben
Metcalfe, Stephen	

NOES

Jarvis, Dan	Turner, Karl
Morris, Grahame M. *(Easington)*	
Slaughter, Mr Andy	Williamson, Chris

Question accordingly agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4

HEROISM

Mr Slaughter: I beg to move amendment 10, in clause 4, page 2, line 17, leave out

"and without regard to the person's own safety or other interests."

The Chair: With this it will be convenient to discuss the following:

Amendment 11, in clause 4, page 2, line 18, leave out "or other interests."

Amendment 12, in clause 4, page 2, line 18, at end insert—

'( ) This section shall not apply to members of the emergency services.

( ) In this section—

(a) "acting heroically" means the person undertook an act for which they received a recognised bravery award or life-saving decoration;

(b) "emergency" means circumstances in which life is threatened."

Mr Slaughter: The amendments would do slightly different things. I can deal quickly with amendment 11, because it makes the same point as we made in relation to amendment 7, which is that we cannot see a point, other than a damaging point, in bringing in this concept of "other interests" in addition to safety. If the Minister is against me on amendment 10, I shall pray in aid amendment 11 and say that that phrase is at best vague and at worst brings in matters irrelevant to the matter under consideration, which is the safety of the individual, and that it should be left out. I shall say no more about that.

Amendment 10 is the one that has given most concern to some of the commentators. It is succinctly summed up in the brief from St John Ambulance:

"Clause 4 of the SARAH Bill refers to individuals acting 'without regard to the person's own safety or other interests'. This is contrary to first aid practice—for example, the First Aid Manual states: 'Protect yourself and any casualties from danger—never put yourself at risk'. We cannot support this clause in its current form."

10.45 am

That is further than I am prepared to go. I am not prepared to vote against the clause, but I hope that the Minister will go away and think again about this provision. It is not the first time the matter has been raised. It was raised on Second Reading by his own colleagues, including his hon. and learned Friend the Member for Harborough. It is not about the health and safety culture; it is not trying to limit risk. We have heard about good practice: it is in the interests of the person who is being helped to ensure that the helper does not put themselves in danger or at risk. There would probably be universal agreement about that. It does not mean that heroic acts do not take place and that people do not put themselves at risk from time to time. I do not think anything we say here or any piece of legislation that we pass will stop people doing that.

The police often advise people not to have a go, but people still carry on having a go. Just as one can agree with the police, one can praise and respect people who

act in those circumstances. It is simply one of life's conundrums. But I do not think it is good practice to put it into legislation per se, and I am not sure that in many cases it will be of assistance to the victim or endangered person who is being helped.

Amendment 12 is a probing amendment, I suppose. It tries to tease out from the Minister whether he makes any distinction between professional and amateur heroes, if I can put it that way. We heard from the Fire Brigades Union. I preferred the evidence from the Cheshire Fire and Rescue Service in terms of priorities both in terms of the safety of firefighters and also in doing the duty that they do every day in protecting the public, keeping them safe and saving lives. Matt Wrack made the point very clearly that they rely upon very high professional standards of training, equipment and experience, and that in their relationship with their employer and the general public, the union has a role and of course their own professional training has a role. That is what ensures they are in the optimum position to give assistance when it is needed.

Heroes could be members of the emergency services who ignore their training and act recklessly, or they could be members of the public who put themselves in danger by rushing in, and consequently—we heard some examples of this—put the emergency services in danger. It seems there is some encouragement of that in the way in which the clause is drafted. The specific purpose of the first part of amendment 12 is to see whether the Government make any distinction between professionals and amateurs acting heroically. The law would say different standards apply in terms of duty of care and breach of that duty, but I do not know whether the Government extend that to the clause. I genuinely do not know and I would like to know.

The second part of amendment 12 draws attention to, and asks the Government to go away and think about, how these phrases are going to be interpreted by the courts. I think it was Mr Whitehead who ventured to ask in our evidence session what we would lose by leaving the word "heroically" out, so that the clause read "when the person was acting by intervening in an emergency to assist an individual in danger". I am not sure that we would lose much.

Adding the word "heroically" certainly creates a problem, however, because it has to be defined. That is why I posited the definition—I do not say it is perfect—in proposed paragraph (a) of amendment 12. Otherwise the Bill again sets hares running in the course of litigation: what will be classified as heroic actions and what will not? One person's heroic action may be another person's foolhardy one. A similar point can be made about the word "emergency". What is an emergency? Often, it is in the eye of the beholder.

The Minister will no doubt say that that is a matter for the court to judge in every case and every circumstance. I say—this is in danger of getting repetitive—that courts would do that anyway. I challenge him to name an example of someone acting heroically who was then sued by the person they were trying to assist, or indeed by a third party. In so far as the terms need to be defined, the courts are capable of doing that. Rather than individuals, it is behaviour we are talking about—it is about acting heroically. The same act could be heroic in one case and not in another.

All cases turn on the facts, and court is the best forum in which to address such matters. I do not think that the clause adds anything other than through its rather unwise final phrase. I ask the Minister to respond to all those points and in particular to give an indication of whether he is willing to go away and think about adopting amendment 10, as suggested by us and others.

Mr Vara: Amendments 10 and 11 would both remove part of the wording in clause 4 that provides clarification of what is meant by "acting heroically". The Government do not consider that that would be appropriate. The wording provides helpful clarification of the type of behaviour that we wish the clause to capture. A person who sees somebody struggling to stay afloat in a fast-moving current, for example, will often jump in to help on the spur of the moment without first deliberating whether they might be putting their own life at risk.

We do not consider that the clause will be misinterpreted by the courts 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. Nor do we think that it could reasonably be interpreted as sending a signal that members of the public should recklessly expose themselves to danger.

On amendment 11, it may be helpful if I explain why the words "or other interests" have been included. There are a wide range of circumstances in which a person may be faced with a decision on whether to intervene in an emergency to assist someone who is in danger. In some cases intervening may put their own safety at risk, but that will not always be the case. A person might be faced, for example, by other considerations, such as the possibility of failing to catch a train or missing an important appointment for a job interview. The wording we have used is simply intended to cover all the circumstances that might arise, and to make it clear 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 or might otherwise not be in his or her own interests.

Mr Slaughter: Those examples are helpful, but, however inconvenient it might be, I am not sure that missing a train or a job interview—possibly even missing a sitting of a Public Bill Committee—could be considered heroic.

Mr Vara: It is a matter of interpretation. I am sure the learned judges will be able to come to the right conclusion.

Amendment 12 would restrict the application of clause 4 in a number of ways, which taken together would severely limit the number of cases in which it is used. We do not consider that those changes would be appropriate.

First, the clause would not apply to members of the emergency services. That would mean that the court would not be required to have regard to their having acted heroically in the event of their being sued for negligence. As the evidence provided to the Committee by the Cheshire Fire and Rescue Service amply demonstrates, actions for negligence can and do arise against the emergency services.

The clause does not reduce the standard of care that members of the emergency services have to show, or do anything to encourage them to act recklessly. We can

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therefore see no valid reason for treating them differently from others who act heroically by excluding them from the scope of the clause.

The amendment would also restrict application of the clause to circumstances in which life is threatened, and in which the person intervening has received particular types of bravery award for their action. Again, we can see no reason why the clause should not apply to situations in which the individual concerned is at risk of injury, as well as those in which loss of life is threatened, or to situations in which the person's bravery is not formally recognised.

In any event, we see no need for definitions of the terms "acting heroically" or "emergency". The Bill already clarifies what is meant by the former, and the latter is a word in common usage and readily understood.

We want the clause to apply in as wide a range of circumstances as possible, so that all those who intervene in emergencies have the reassurance that the courts will have regard to the context of their actions in the event of their being sued. I hope that the hon. Member for Hammersmith is prepared to withdraw the amendments.

Mr Slaughter: I indicated that I do not intend to press any of the amendments to a vote. I suspect the Minister will return to some of these points of definition, as they do need further investigation. I certainly think the Government need to give consideration to amendment 10. That is not our amendment but is part of a critique of the subject that I have adopted.

Even in the example of Cheshire Fire and Rescue Service staff tripping over hoses, yes, in most cases if people are rushing to put out a fire and somebody trips over a hose they probably could have seen what was going on, and the court could decide that. If that were a blind or elderly person and an injury was sustained, one has to ask what insurance is for. There it is; the Minister has set out his stall. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5

EXTENT, COMMENCEMENT AND SHORT TITLE

Question proposed, That the clause stand part of the Bill.

Mr Vara: Clause 5 provides for the clause to come into force on the day on which the Act is passed and for the other provisions, including any transitional provisions that are appropriate, to come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument. The clause also indicates that the provisions extend to England and Wales only.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

11 am

Mr Vara: On a point of order, Mr Sanders, I want to be absolutely clear that three sittings remain to us if necessary. I want to be confident that no one in Committee feels that there has not been enough time for debate on everything. I am pleased that we have come to a rapid conclusion, but if more time is required, it is available.

If, however, there is to be no more debate, I take the opportunity to thank all members of the Committee for their diligence in attendance and for their contributions. I also thank you, Mr Sanders, and your co-Chair, who I suppose is happy that he does not have to chair any sittings. I also thank the Clerk and all the assistants, my own officials and all those who gave evidence in the oral evidence sessions.

Mr Slaughter: Further to that point of order, Mr Sanders, I thank you for chairing proceedings and the evidence sessions. It might be your first chairing of a Public Bill Committee, so I hope that it has been a sensible and rational introduction—unusual, I have to say, for the Justice and shadow Justice teams, but we will put on a better show next time.

For having finished in one sitting, I ask for credit points for when we next consider a Legal Aid, Sentencing and Punishment of Offenders-style Bill—there were 154 clauses in the LASPO Bill in the end. The Minister was a Whip at the time, and we have been through many Bills. Perhaps this is an indication of the trend for the Government's legislative programme that we have gone from a 154-clause Bill which, whatever else one thinks about it, has changed the face of legal services, legal aid and other matters, to a Bill that we can get through in two hours and which I think, and indeed hope, will change virtually nothing at all in the law of negligence. But we will see. That is a matter that we can now leave. I am satisfied that we have had sufficient time today for what is in the Bill.

We should all be grateful not only to everyone who has assisted here today, but to the witnesses who attended and who were of great assistance. When the Bill reaches the other place, we will endeavour, perhaps with others to help us, to make some improvements, which we failed to do today.

The Chair: We have gone through the Bill line by line, so there is no further debate. I am still waiting to hear an answer to the question posed about the surgeon who cut off the wrong leg—whether the patient would have a leg to stand on.

Bill to be reported, without amendment.

11.2 am

Committee rose.

Written evidence to be reported to the House

SA 04 Campaign for Adventure

SA 05 Law Reform Committee, City of Westminster and Holborn Law Society

SA 06 Greater Manchester Fire and Rescue Service