Public Bill Committee

SOCIAL ACTION, RESPONSIBILITY AND HEROISM BILL

WRITTEN EVIDENCE

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Written evidence submitted by the Cheshire Fire and Rescue Service (SA 01)

RESPONSE TO CONSULTATION ON SOCIAL ACTION, RESPONSIBILITY AND HEROISM BILL

1. **Summary:** This document is the response of Cheshire Fire and Rescue Service (the Service) to the consultation on the proposed Social Action, Responsibility and Heroism Bill (the Bill). The Service supports the Bill; this response sets out the views of the Service and gives examples of how it might be affected by the Bill.

2. The Service is responsible to the Cheshire Fire Authority for provision of fire and rescue services to the four Unitary Authorities that make up Cheshire.

3. The Service employs approximately 872 staff 677 of whom are operational firefighters employed on Whole time (24/7 shift system), Day crewed (9–5, five days/week) or On Call contracts; in addition we also have a number of volunteers who support aspects of our work in the community.

4. The Service is served with on average between eight and ten civil claims for personal injury each year. These fall either to our Employers Liability, Public Liability or Motor insurances; some of these we consider unjustified. We encourage our insurer to contest these unjustified claims. However with low value claims the insurer faces a financial dilemma of fighting the claim and winning but not being able to recover their costs when their costs outweigh the value of the claim; from the insurer's point of view it is sometimes better to settle on economic grounds even if the claim could be successfully defended.

5. We believe that the Bill may deter some of these unjustified claims.

6. The Service recognises the concerns that have been expressed by some groups with regard to the perceived loss of protection for employees and others should the Bill be introduced. We see the Bill affecting two separate areas, claims as a result of work activities and claims arising out of voluntary or volunteer activities.

7. With respect to work related claims the Service believes that the existing framework of legislation provides sufficient protection for both employees and others who may be affected by work activities; this is evidenced in the continued year on year reduction in the number of people killed or injured in the UK as a result of work activities. We do not believe that the Bill will remove the right of individuals to seek redress for injuries nor do we believe that individuals should be deprived of the right to reparation where there is a genuine claim. We do see that the proposed Bill will establish additional factors for the court to consider when examining the merits of a claim and introduce a measure of reasonableness to the outcome.

8. With respect to volunteer activities many of the larger, organised voluntary organisations will operate within the same risk management framework as employers. However this Bill should help to address some of the concerns expressed by volunteers and those taking voluntary action when responding in an emergency. There have been examples of employees who have been trained in First Aid who have expressed a reluctance to use this training outside of work because of the fear of legal action should something go wrong.

9. As a responsible employer the Service does assess and manage its risks as far as is reasonably practicable however the nature of our work is high risk; we respond to emergencies where our priority is the preservation of the lives of members of the public and mitigation of damage to their property and possessions. This means that we sometimes have to use our exemptions under the Road Traffic Act to arrive at an incident as quickly as possible. We train our drivers as to how and when they may use these exemptions and they undergo regular refresher training; the Officer in Charge (OIC) of the appliance knows his/her responsibilities with regard to responding to incidents and management of the appliance. Nevertheless we do have the occasional accident when driving in these circumstances, often a lack of attention by the third party is a major contributory factor but because we are not following the rules of the road we are held liable. The social benefit clause of the Bill should help reduce this type of claim or at least the level of damages paid.

10. We have had two claims from members of the public as a result of tripping over fire hoses at separate incidents. When attending an incident the OIC's first concern must be for those who may be in the property and to ensure that his/her crew are deployed safely, once this is accomplished the risk assessment process will start to address issues such as the safety of members of the public who may be passing by or who have come to watch. Despite the obvious noise, activity, liveried fire appliances and flashing blue lights these two members of the public managed, in daylight, to trip over hoses during the early stages of the incidents. We feel that both the social benefit and the responsible action clauses of the Bill will help address this type of claim.

11. The Service is legally obliged to provide training for its employees, for firefighters this must involve realistic exposure to the type of hazards and risks they will face operationally the residual risk in these activities is still relatively high and we have to accept that risk in order to provide the training and reduce risk at operational incidents. We have assessed the risk of all of our activities both operational and non-operational and put in place reasonably practicable measures to reduce the risk; however no activity is without risk and even after putting in place control measures there is always a residual risk. We have received several claims where we have done what is both responsible and reasonably practicable but nevertheless an accident has occurred.

We have lost some of these claims on the grounds of breach of statutory duty. In future claims of this type the Bill will require the court to take into account our actions as a responsible employer.

12. The Service has never been the subject of a claim as a result of an injury or loss where "an act of heroism" on the part of one of our employees was a contributory factor. We welcome the additional test to be applied by the court with respect to the extent to which our employees were putting themselves at risk should this ever apply.

13. The Service welcomes the proposed Bill and whilst we recognise that it will not, nor should, it stop all future civil claims the additional factors for consideration by the court will perhaps deter some of the more frivolous claims and add a degree of reasonableness to the outcome of others.

14. There will still be pressure on insurers to settle defensible claims on economic grounds when the cost of winning outweighs the potential compensation to be paid and this will continue to be a frustration.

August 2014

Written evidence submitted by the Association of Personal Injury Lawyers (SA 02)

About APIL

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers to represent the interests of personal injury victims. APIL is a not-for-profit organisation with 24 years' history of campaigning for changes in the law to help injured people gain the access to justice they need. APIL currently has around 4,000 members, comprising solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Executive Summary

1. The Social Action, Responsibility and Heroism Bill is legislation which is not needed, as it will not change the law. It is simply an unnecessary use of parliamentary time. The Bill adds nothing to the law which isn't already dealt with under the Compensation Act 2006, which already provides a direction to the courts to consider desirable activities when making a decision in a personal injury claim.

2. If the Government wishes to send a message to volunteers and "heroes" to reassure them, it should do this by means of education, and not legislation.

3. While not adding anything new to the current law, the Bill does have unintended consequences. As a result of the Bill, and especially the publicity it has generated, people will have the mistaken belief that they have protection under the law when they attempt to help people but cause injury, when this may not necessarily be the case. The Bill may also encourage people to cut corners, and could leave vulnerable people at even more risk.

The current law

4. APIL welcomes the opportunity to submit written evidence to the Public Bill Committee as part of its scrutiny of the Social Action, Responsibility and Heroism Bill. It is disappointing that in the last Queen's Speech before the general election, the Government chose to include a Bill which is an unnecessary use of parliamentary time, and one which will not help people injured through no fault of their own.

5. During the second reading debate on the Bill in July, Chris Grayling admitted that the Bill "does not rewrite the law in detail or take away discretion from the courts…". The Bill simply re-states the current law, and we question the need for it.

6. According to the impact assessment of the Bill, the aim of the Bill is "to reassure the public that if they participate in activities which benefit society, adopt a generally responsible approach towards protecting the safety of others in the course of a particular activity, or intervene to help somebody in an emergency, the court will always take the context of their actions into account in the event they are sued".

7. This is already the case. Section one of the Compensation Act 2006 gives the court the power to have regard to the activity that was taking place. The section says—

"Deterrent effect of potential liability

A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—

(a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or

(b) discourage persons from undertaking functions in connection with a desirable activity."

Education, not legislation

8. If the Government wishes to send out signals or messages, but not rewrite the law, then it should do this by means of education and guidance, and not legislation. On the Government's own gov.uk website, guidance is already provided for those who wish to clear snow from a road, path or cycleway. The guidance includes five points of advice, and says that, "you can clear snow and ice from pavements yourself. It's unlikely that you'll be sued or held responsible if someone is injured on a path or pavement if you've cleared it carefully".[1]

False protection

9. An unintended consequence of this legislation will be the confusion that it will cause about who is protected from the law, and to what degree. With the way the Bill is being championed by the Government, it is entirely likely that people will feel encouraged to wade in to help others and risk injuring them in the process, or making their injuries worse. It is commendable that people will want do this based on a genuine desire to help. We are concerned, however, that those people will be under the mistaken belief that they are protected by the law as a result of the Bill, should anything go wrong when, in fact, the courts will probably be just as likely to find them negligent (if their actions are, indeed, negligent) as they are now.

10. The "hero" will have no more protection under this Bill than he already has under the current law. The "hero" should always be aware that his actions may have adverse consequences, and this Bill should not be an invitation for volunteers not to provide proper care and attention, or to cut corners.

Removing protection

11. As well as providing a false protection for "heroes" and volunteers, the Bill may actually unwittingly remove protection that already exists. Those who "employ" volunteers may be under the mistaken belief that they can be less rigorous in their risk assessments, thereby leaving those in their care more vulnerable to harm. A chairman of a local football club, for example, may be tempted to cut corners in vetting the suitability of his volunteers in the mistaken belief that they are protected by the law because they are 'acting for the benefit of society', should anything go wrong. In this kind of environment children are particularly vulnerable to predatory adults, and need more protection, rather than less.

Protecting employees

12. Speaking during the second reading debate, Chris Grayling said that clause three of the Bill "has a particular importance in ensuring we provide proper protection for small businesses", as he says that "the compensation culture is tying their business is knots". Firstly, it is important to note that every report on the issue of a "compensation culture", including a report by Lord Young of Graffham, conducted on behalf of the Prime Minister, has found that it is merely a perception than a reality.

13. Secondly, an employer can only be sued successfully if the injured employee can prove the employer has been negligent, and not if the employee effectively injured himself by doing 'something stupid'. This protects both the employee and the employer.

14. An employer has a duty to provide a safe working environment, and to ensure there are systems in place and adequate training provided to ensure workers are competent. He is considered to be responsible for the conduct of his employees while they are at work (otherwise known as 'vicarious liability'). He is also responsible for ensuring the employee knows that if does 'something stupid' and someone is injured needlessly, the consequences will be serious. Legislation introduced more than 40 years ago made it compulsory for an employer to have insurance in case an injured employee can prove the employer has injured him through negligence and claims compensation.

15. Public pronouncements made when the Bill was published suggest that an employer who 'tries to do the right thing' should not be penalised by the law if someone is injured. This is broadly reflected in clause three of the Bill, although the wording is vague. This is, surely, an open invitation to the employer to take risk assessment less seriously, provided he can be considered to be 'doing his best'. But his 'best' may not be good enough, and if an employee is injured because his employer or another employee is negligent or incompetent, where is he to turn for the compensation he may need to be able to go back to work quickly?

16. The wording of clause 3 is currently vague, and is already causing discussion and debate as to who the clause will and will not protect, and to what extent that protection is either given or taken away. One possible implication this clause is that workers could be forced to take out personal insurance to protect themselves, if

[1] https://www.gov.uk/clear-snow-road-path-cyclewayt

they no longer have the protection of their employers' compulsory insurance, if they are injured at work. This would undoubtedly be a gift to the insurance industry.

September 2014

Written evidence submitted by St John Ambulance (SA 03)

Introduction

St John Ambulance welcomes the opportunity to contribute to the consultation on the Social Action, Responsibility and Heroism (SARAH) Bill. In this submission we will concentrate on Clause 4 which deals with heroic acts.

St John Ambulance is the nation's leading first aid charity. Our vision is that everyone who needs it should receive first aid from those around them. No one should suffer for the lack of trained first aiders. We teach young people both in and outside of school, train people in the workplace, provide life saving equipment and work in wider communities to teach life saving skills. Our charity also trains volunteers who then offer their first aid skills and their time to work at public events, as first responders in communities or providing back up to local ambulance services.

We welcome the Government's wish to support those who come to the assistance of people who are in trouble, so that more people come forward to help their fellow citizens. However, we have two major concerns. First, we are unconvinced that the SARAH Bill will have a major impact in encouraging wider first aid practice without additional, linked, activity (see pages 2–4 below). Second, we have deep concerns about the wording of clause 4, which contradicts first aid good practice (see pages 4–5).

Too scared to act? The evidence

1. In the Second Reading debate it was noted that some emergency bystanders have claimed that the reason why they did not help was that they were worried that they would be sued. This evidence is anecdotal, but there are previous findings from NatCen Social Research and the Institute for Volunteering Research that indicate that would-be volunteers are put off because of worries about risk and liability.

2. Emergency situations can be dirty or unpleasant. Bystanders may feel squeamish if blood is involved or if limbs are badly cut or have become deformed. In those instances it is possible that people may feel it is more socially acceptable to say they did not act because they feared being sued, thus protecting themselves against other criticism.

3. We would be concerned if the public had interpreted the SARAH Bill to imply that first aid knowledge was not important. We commissioned research from ICM[2] to clarify barriers to performing first aid, and whether the SARAH Bill would reduce these. We asked respondents to describe their current level of first aid skills, to consider their response to three first aid scenarios (a minor injury, a severe but non life-threatening injury, a life-threatening injury), to identify which of a number of factors might deter them from administering first aid, and whether SARAH would make them more or less likely to provide first aid or whether it would make no difference. Fieldwork was carried out online on 2,035 people aged 18 years and over in Great Britain; it took place on 22–25 August 2014.

4. Our findings are that the key factor that determines people's likelihood of acting is having been on a first aid course: for example, 57% of those with advanced knowledge of first aid would step forward in the case of a life-threatening injury, whereas 32% of those with no knowledge would not administer first aid at all.

5. The more recently people are trained in first aid is also a factor: in the case of a life-threatening injury those whose training took place more than five years ago were more likely (33%) than those who had completed training more recently (16% of those who had learned first aid within the last 12 months) to say they would administer first aid only if there was no other help available.

6. The primary reason why people are deterred from intervening in any situation requiring first aid is not concerns about legal repercussions (34%), but lack of confidence of their first aid knowledge (63%). For those who had attended a first aid course this latter proportion fell to 28%. The second highest deterrent is the severity of the injury.

7. Given that significant proportions of the research population completed first aid training over five years ago (30%) or have never completed any first aid training (43%, rising to 53% among 18–24 year-olds) it would seem that the highest priority in creating a nation of first aiders should be for more people to receive training, especially the young—yet the Government chose not to make first aid a mandatory part of the National Curriculum.

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[2] On behalf of St John Ambulance, ICM interviewed a random sample of 2,035 adults aged 18+ via online between 22nd–25th August. Surveys were conducted across the country and the results have been weighted to the profile of all adults. ICM is a member of the British Polling Council and abides by its rules. Further information at www.icmresearch.co.uk

8. There are some splits in response by region and age. For example, 49% of respondents in the East Midlands were concerned about legal repercussions but only 27% in London. Young people were more likely to be concerned about whether they knew the person concerned (14% of 18–24s) but this fell steadily across age groups to reach just 6% of those aged 65-plus.

9. We asked respondents whether the SARAH Bill would make them more or less likely to administer first aid. From our sample, 18% said they would be more likely, 14% would be less likely (ie. a 4% net positive outcome) and 68% said it would make no difference.

10. The overall 4% outcome can be broken down further:

Age	18–24	+16%
	25–34	+8%
	35–44	+3%
	45–54	+4%
	55–64	+1%
	65+	–6%
Current knowledge of first aid	Advanced knowledge (undertaken a course)	+9%
	Basic knowledge of first aid (read a guide or watched a demo)	+5%
	No knowledge	–10%
Nation	England	+3%
	Scotland	+5%
	Wales	–13%

11. We are encouraged that those with first aid training would as a result of the SARAH Bill be more likely to step forward. However the benefits do appear to be relatively small, except among the youngest age group.

12. Respondents with no first aid knowledge are less likely under the SARAH Bill to step forward. In one sense this is encouraging since they could make an emergency situation worse. However, it is also clear that if the SARAH Bill seeks to promote altruistic first acts then more needs to be done to promote first aid training.

13. There is no doubt that first aid training providers can do more to explain the current legal situation to those people who attend their courses.

14. First aid is a specific act and our questions were designed to elicit responses about first aid. Care should be taken when using this research to describe attitudes towards other forms of volunteering.

First Aid practice

15. 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*[3] states: 'Protect yourself and any casualties from danger—never put yourself at risk' (p.14)

16. We cannot support this clause in its current form.

Clause 4

17. If the SARAH Bill is to have a significant impact, it needs to encourage people to gain life saving skills.

18. One way in which this could be done—at the same time fixing the problem with Clause 4 as it currently stands, would be to replace the words and without regard to the person's own safety or other interests with words which encourage citizens to learn first aid.

September 2014

[3] St John Ambulance, St Andrew's First Aid, British Red Cross Society (2014). *First Aid Manual*. 10th Edition. London: Dorling Kindersley

Written evidence submitted by the Campaign for Adventure (SA 04)

THE CAMPAIGN FOR ADVENTURE:

CfA is UK national initiative to improve understanding of the important benefits for individuals and for society which stem from an adventurous approach to life in all its aspects. CfA is particularly concerned to remove red-tape and fear of litigation as blocks to adventure, enterprise and initiative-taking which it sees as three vital aspects of enjoying healthy, fulfilling lives. www.campaignforadventure.org

POINTS OF CONCERN WHICH INFORM OUR SUPPORT FOR THE SOCIAL ACTION, RESPONSIBILITY AND HEROISM BILL

1. There are many in our society whom believe deeply in volunteering—the value of giving extra both to themselves and to society. This volunteering may be either volunteering time (both professionally and as a lay-person) and volunteering effort and/or initiative (often termed 'going the extra mile') in paid employments. This latter volunteering is often characterised by activities such as after-school clubs, running field trips, giving more than expected within a job-role, showing initiative and otherwise committing to activities which might otherwise not be compulsorily undertaken. Some of these might be heroic, whether in the short (emergency) or in a long-term special commitment.

2. Those whom, as above, gift the extra mile to the benefit of our society (in the main) are unable, or choose not, to promote or even represent themselves. We should at least acknowledge and, even better, celebrate their donations to our greater society. Some may be represented by organisations—e.g., GuidingUK, Scouting, Samaritans and these are even further represented through umbrella orgs such NCVO and NCVYS. However, a report by Thomson in 1982 indicates only 10% of volunteers have any such representation. There is no reason to suggest this % has changed—except that shortages of volunteers now exist and the number of volunteers is now less and indeed is now insufficient—leaving waiting lists and gaps in UK society.

3. Subsequent reports have indicated a number of reasons for the shortage. The most informative was the CCPR (now Sport and Recreation Alliance) Report of 2006 which stated that the then main reason for potential volunteers not volunteering is a fear of litigation. It remains a serious deterrent, although arguably not for some the most serious, to both types of volunteering in the UK.

4. The 2006 Compensation Act sought to right this but, due to weak wording and poor publicity, it did not reach its potential.

5. Both prior to the 2006 Act and subsequently, it is the nature of lower-court judgements—and media that does the damage; subsequent judgements, in the main, go unreported and thus the public, including would-be volunteers, hear only the initial stories and are thus—and perhaps rightfully given the often wayward judgements—fearful of litigation.

6. CfA keeps in close connection with both the time volunteer and the 'healthy initiative-takers' employed in education, youth-work, outdoor education, training & sport, social & community work, etc. We are very aware that the worry about litigation is still a very present problem, whether media driven or not. It is also used as an excuse for not undertaking extra work, especially in schools, but also in communities, sports and when society is in distress. It will remain so until our society ensures such ''extra mile' work (extra hours working, local club work, parent-volunteers, etc.), is ceaselessly and universally supported at all levels - by the public, by the local government, education managers, by the judiciary and by parliament....and thus, perhaps, even the media.

7. The 2006 Compensation Bill was a first helpful step, increasingly used, but significantly missing its opportunity to raise confidence by our society that acts with good intentions always mean something. The new bill has got it right - stating that courts must take into account the intended social value/good intention. This will confirm to those whom wish to make a contribution to our society that their intention, generosity, selflessness, courage and goodwill are seen and supported by our courts—given sensible and appropriate preparation.

8. "No longer is the keen and enthusiastic teacher or leader willing to take on the responsibilities such adventurous activities involve and indeed some Teachers' Unions have even indicated that it is against their wish that teachers should so do, for fear of prosecution if an incident leads to injury or death."—Young Explorers' Trust—2014

9. There have been great efforts by the HSE, the RSA and others—insurance companies, The APPG on Adventure and Risk in Society to put things right. We believe this has failed and that a clear and unequivocal statement by parliament is necessary.

10. HRH Prince Philip, in calling for the Campaign for Adventure, stated "The danger for humanity lies not in taking risks, but in not taking enough risks."

11. Comments from the guiding document for Campaign for Adventure:

> "The Campaign for Adventure (CfA) is a national initiative to improve understanding of the important benefits for individuals and for society which stem from an adventurous approach to life in all its aspects. This Campaign arises from a developing awareness in many quarters that the increasing tendency to protect people from danger and the concern to avoid risk, if carried too far, will stifle natural creativity and enterprise. The major impetus for the Campaign came from the Conference "A Question of Balance", held at the Royal Geographical Society on November 29th 2000."

> "The tradition of adventure in the UK is deeply ingrained. Throughout our history, individuals and groups have extended the scope of human knowledge and capability by venturing beyond the safe boundaries of known terrain into the unexplored regions of the physical, social and intellectual landscape. In doing so, they have gained deep personal insight and reward and also performed an important service to the wider community. By exploring beyond what is known, in any field of activity, people exercise creativity, they expand understanding, they extend human capability, and they identify new visions and new techniques for future advances. This process lies at the heart of human progress in every field. Thus the importance of adventure is both economic and psychological. We know that innovation and risk-taking are fundamental elements of successful enterprise. And we need to experiment with and practice new behaviours in order to be able to adopt them."
>
> "All adventurous, innovative or exploratory activity entails uncertainty of outcome and possible exposure to hazard, and thus involves some level of risk to those involved. "
>
> "However, this has led to an increasingly restrictive and even pessimistic approach to life, in which the emphasis on risk is frequently out of proportion, in which every hazard is seen as something to be avoided and risk-taking is regarded as unacceptable. This tendency is compounded by a culture which often attempts to attach blame and to seek compensation for any errors or misjudgements which occur. The result is that courage is sacrificed to caution; and many people are reluctant or fearful to engage in any project involving adventure and uncertainty, which may entail hazard and perceived risk. Perhaps more damagingly, they become unwilling to encourage or even allow others (and particularly children) to engage in adventurous or experimental ventures, often through fear of litigation should any error of judgement be made. There is an alternative danger that, by choosing to stay within the realms of the safe and the familiar, our society may inhibit discovery and enterprise and fail to take advantage of opportunities which can only arise through reaching out into the unknown. There is a real possibility that the necessary culture of safety may degenerate into a damaging and restrictive culture of fear. The purpose of the Campaign for Adventure is to counter this tendency by providing a more accurate understanding of the benefits, as well as the joys, of living life adventurously."

September 2014

Written evidence submitted by the Law Reform Committee, City of Westminster and Holborn Law Society (SA 05)

Introduction

1. This Society is a voluntary association of lawyers, predominately solicitors working in the area of its name. Uniquely among local law societies it has a Law Reform Committee, which studies and from time to time originates various proposals for law reform, and makes submissions, usually to the Law Commission or the Ministry of Justice. This submission has been prepared by that Committee.

2. We support the aims of the Bill, as detailed in the letter dated 23rd June 2014 from Shailesh Vara MP, Parliamentary Under-Secretary of State for Justice, Ministry of Justice, to the Chairman of the Joint Committee on Human Rights. We proposed last year to the Law Commission that reform along some such lines should be included in its next programme of law reform, but that proposal was not taken up. We have however misgivings about the effectiveness of the Bill in its present form. It is submitted that a modest amendment would meet most of the difficulties.

3. In this paper:

> 'mitigation' is used to mean reduction of damages under the suggested amendment to the Bill—not to be confused with use of the word in any other context.
>
> 'Accident' usually refers to an unintended incident for which the defendant would but for the Bill be wholly responsible in negligence.

4. The Bill provides only that a court considering claims in negligence or breach of statutory duty must have regard to each of the three matters summarised in the Bill's short title. However we agree with many other lawyers that those matters must always be considered by the court if relevant to the claim, and it cannot be that the Bill intends to make no change in the law. If the law is to be properly reformed by the Bill the court must be given a new power to give effect to those matters. We suggest that the right method is through a discretionary power exercisable by the courts.

5. The weakness in the Bill is that it addresses only the scope of the defendant's duty of care. It must, we submit, also extend to certain cases where the defendant has failed in his duty of care. Almost any voluntary activity can cause damage or injury should it go wrong. Under present law the court ascertains only whether the defendant owed a duty of care, and (contributory negligence apart) breach of that duty—negligence—results in full liability by the defendant to the claimant. To avoid liability the defendant must show that he was not negligent, and if he cannot he is fully liable to the claimant.

6. That is not always just. Accidents happen because everybody from time to time unintentionally fails in some way or other to exercise the care he should. It is an inherent risk in every human activity. That is why people do, and for some activities must, insure themselves against the consequences of their own negligence. We submit that, if the defendant's activity was not for his own benefit and the circumstances included the matters described in clauses 2, 3 and 4 of the Bill, he should be treated broadly as if he had assumed less than 100% of the risk of his own negligence. In the event of an accident he should be liable for that proportion only of the damages that would be otherwise payable. The rest of the loss should lie with the claimant. There is nothing unfair in that, except on the untenable basis that every accident must be compensated by a claim against somebody.

7. Our solution is fairer than that at present proposed in the Bill, which confines the issue to whether or not the defendant had a duty of care. A finding in favour of a defendant under clauses 2, 3 or 4 of the Bill as it now stands might wholly deprive the claimant of any remedy at all. That may be argued to be as unjust as the position under present law, or indeed to be an infringement of the claimant's human rights. The amendment would meet those difficulties. There are important questions involving insurance, which are dealt with later in this paper.

8. The courts would be well able to exercise their proposed discretion. It would probably be no more difficult than the task of apportioning liability in cases of contributory negligence. The reform, as amended, would not involve any additional public expense.

Proposed Amendment to the Bill

9. It is proposed that the Bill should be amended by addition of the passages shown below in italics:-

> **1 When this Act applies.** 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
>
> *[add]* ***and/or determining the amount of damages payable by the person to the claimant.***
>
> **2 Social action.** 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.
>
> **3 Responsibility.** 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.
>
> **4 Heroism.** The court must have regard to whether the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger and without regard to the person's own safety or other interests.
>
> *[add new clause]*
>
> ***4A If the court shall find that the person had been acting in one or more of the circumstances mentioned in sections 2 or 4 of this Act and in accordance with the matters set out in section 3, and if it should further appear to the court that it would be unjust in all the circumstances of the case that the person should be held fully liable to the claimant, it may refuse an award of damages or may reduce the award by such amount or proportion as it shall think fit.***
>
> **5 Extent, Commencement and Short Title. (…….)**

10. The proposed reform will doubtless be invoked comparatively rarely, but it ought not to be rejected on that ground. It should be an important point of principle that the law ought not to require the court to make an order that it would consider unjust.

11. The need for the reform is most obvious where persons carry out selfless tasks individually—without the guidance or support of a charity or other organisation. For example,

(a) A in dangerous conditions rescues a drowning swimmer but negligently injures him as he helps him ashore (heroism);

(b) B clears snow from his neighbour's doorstep, but negligently fails to inform the neighbour of ice causing the neighbour to slip and suffer injuries (social action); or

(c) C opens his garden to the public for payment to raise funds for a charity. A visitor trips on a dangerous step which C had negligently failed to fence off (social action).

Relevance of Insurance

12. Existence of Insurance. If the defendant was covered by insurance against the accident it seems impossible that a court could in its discretion apply mitigation which would benefit only the insurer, because

(a) Insurance must clearly be a circumstance to be considered under clause 4A, and in such a case full liability by the defendant could not be said to be unjust.

(b) A primary purpose of effecting the insurance (it should be assumed for this purpose) is to ensure that the victim of any accident would be fully compensated. Mitigation would defeat that purpose.

This meets the argument that the Bill is for the benefit of insurers.

13. Failure to Insure. If the defendant was the voluntary organiser of a substantial public event it may normally be expected that he should have effected insurance against the claim, particularly if funds were available out of which premiums could have been paid. In such case the court would be almost bound to hold that the defendant's liability ought not to be mitigated. But if insurance had been effected but was insufficient to meet the claim, there could be a stronger case for mitigation, for example by the amount of the uninsured loss.

14. Assuming that in none of the three examples above the defendant had insured, a court might approach the mitigation issue by first considering whether it was normal and reasonable to expect him to have insured. In examples (a) and (b) the answer would doubtless be no, and the court should be ready to consider mitigation. In example (c) the court might think fit to enquire why the property was not insured against the risk under a normal household insurance policy, and perhaps also whether the event was held as part of an organised scheme which could have provided insurance. Questions of that kind would be just some of many matters that might be relevant for consideration under Clause 4A.

Conclusion

15. We submit that with the amendments we have suggested the Bill would create a worthy reform to the law of negligence.

September 2014

Written evidence submitted by the Greater Manchester Fire and Rescue Service (SA 06)

Introduction to GMFRS

1. Greater Manchester Fire and Rescue Service (GMFRS) is the second largest fire and rescue service in England. We protect and improve the quality of life of a growing population of around 2.7m residents across 500 square miles and 10 local authorities.

Summary

2. GMFRS applauds the intent and supports the principle of legislation designed to protect emergency service employees and indeed members of the public from litigation following an emergency incident. However, we do not believe that the Bill as it is currently written will provide this level of protection. We consider that the Bill requires clearer definitions of certain key concepts and we expand on this below.

Relevant court cases

3. At the second reading of the Bill (21.07.14) there was some discussion around court cases and their effects on individual members of the fire service. Examples of court cases brought against senior fire officers following incidents can be found online and include:

a) An incident in Manchester where our previous Chief Fire Officer faced corporate manslaughter charges following the tragic death on duty of firefighter Paul Metcalfe in 1999. Five years after the incident and following a six month investigation CFO Barry Dixon was cleared of neglect.[4]

b) An incident in Warwickshire in 2007, where four firefighters tragically died in a warehouse blaze. In 2010, three fire service managers who were in command of the incident were charged with manslaughter by gross negligence and spent two days in police custody. The officers were cleared in 2012.[5]

4. Examples also exist of cases brought against fire services over claims that health and safety rules delayed firefighters from acting during an incident:

a) In 2008 Alison Hume fell down a mineshaft in Ayrshire. A subsequent fatal accident inquiry under Sheriff Desmond Leslie found that Mrs Hume's death "may have been avoided" if a number of "reasonable precautions" had been taken. He found that the emergency services should have acted sooner in assessing the mineshaft and surrounding area and the danger to Mrs Hume of a "prolonged stay in cold and wet conditions". In 2013 the Crown Office decided that there was insufficient evidence that a crime had been committed to raise criminal proceedings.[6]

[4] http://news.bbc.co.uk/1/hi/england/manchester/3482971.stm
[5] http://www.bbc.co.uk/news/uk-england-coventry-warwickshire-18251348
[6] http://www.bbc.co.uk/news/uk-scotland-glasgow-west-25153177

b) There was widespread national coverage in The Guardian,[7] The Daily Telegraph,[8] and the Daily Mail[9] following the death of Simon Burgess in Hampshire in 2011. On arrival at a lake firefighters concluded that Mr Burgess had drowned and that they would not enter the water as it was more than "half a boot" deep and not a life-critical situation. In 2012 Coroner David Horsley recorded a verdict of accidental death. He told the court, "In this case, the delay in arrival of the specialist team has not been a significant factor in this tragic death," but called on the emergency services to re-examine their protocols in dealing with such situations.[10]

5. The need for legislation designed to protect fire service employees from litigation following an emergency incident, therefore, is self-evident. But the legislation must also be designed to make fire service employees more confident to act—and less risk averse—during an incident without fear of breaching rules and the possible implications of such breaches. We would contend, though, that the Bill as it is currently written will not provide this level of protection. Predominantly, this is because of problems with definition.

Lack of definition

6. The Bill as it is currently written does not provide any definitions of certain key concepts and it is important these definitions are agreed.

7. Clause 4 references "an individual in danger", but "danger" is not defined, and the sense of danger will vary hugely from one individual to another. Danger is very much linked to the concepts of risk and hazard (concepts that have proved problematic in the fire service) and, in part at least, lead to the cases illustrated. A firefighter with direct experience and specific training has a deeper understanding of what constitutes a dangerous situation than a member of the public; and sometimes firefighters will identify dangers that members of the public fail to recognize. More broadly, what is a dangerous situation: risk of death or injury to a firefighter; risk of death or injury to a member of the public; risk of damage to the environment? So deciding whether a situation is dangerous or not in the heat of the moment is one thing; it becomes increasingly difficult and diluted by time after an incident has taken place.

8. The Bill also fails to define "heroism". We believe that a helpful aid to this process would be to make reference to the Health and Safety Executive's (HSE) definition of heroism in the fire and rescue service.

> *"HSE views the actions of firefighters as truly heroic when it is clear that they have decided to act entirely of their own volition in putting themselves at risk to protect the public or colleagues and there have been no orders or other directions from senior officers to do so and when their actions have not put other firefighters at similar high risk. Firefighting is a complex activity requiring clear definition of roles and responsibilities on the incident ground and is normally undertaken by teams of firefighters. It is important that command and control discipline is maintained to ensure the safety of firefighters and others. This means that there are few circumstances in which an independent decision by a firefighter to put himself at risk will not result in risk to others in the team. There are some circumstances when firefighters working together, in a fast-moving dangerous situation, may decide to put themselves at risk when they have not received specific orders or there is no relevant safe working procedure for them to follow."*[11]

9. The HSE's definition helps provide some clarity around acts of heroism by individual firefighters. However, there is still work to be done around protecting officers in charge regarding the decisions they make during an incident, and it's no coincidence that the proceedings outlined above are all levelled at officers.

10. Responding to emergencies inherently involves a level of risk and intrinsically brings with it uncertainty and ambiguity, and a need for decision making with incomplete information. Officers in charge must make plans which therefore expose their firefighters to some degree of risk. It would be helpful if new legislation takes this into account, and offers some degree of protection to officers who have taken considered, proportionate risks but—with the benefit of hindsight and more complete analysis than was available to that person at the time—it becomes apparent that an alternative course of action was available. So, some form of "acting in good faith" approach. This would facilitate a greater sense of learning from when crises happen, rather than a sense minimising personal risk and exposure, particularly from those in charge. This is not to provide complete dispensation from foolhardy decisions, rather intruding a greater sense of fairness and proportionality.

11. This is by no means a new perspective and one which is supported as long ago as 1954 in a Court of Appeal decision by Lord Justice Denning who asserted:

> *"The saving of life or limb justifies taking considerable risk, and I am glad to say there have never been wanting in this country men of courage ready to take those risks, notably in the Fire Service."*[12]

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[7] http://www.theguardian.com/uk/2012/feb/22/man-drowned-lake-firefighters
[8] http://www.telegraph.co.uk/news/uknews/law-and-order/9097017/Firemen-refused-to-go-in-3ft-deep-lake-as-man-floated-face-down.html
[9] http://www.dailymail.co.uk/news/article-2104358/Simon-Burgess-drowned-firemen-refused-wade-3ft-deep-lake-health-safety-rules.html
[10] http://www.bbc.co.uk/news/uk-england-hampshire-17131333
[11] http://www.hse.gov.uk/services/fire/heroism.htm
[12] http://www.bailii.org/ew/cases/EWCA/Civ/1954/6.html

12. This perspective is also supported recently by some of the comments made by Alex Botha, Chief Executive of the British Safety Council who in his support for the Bill stated:

> *"We must remember that…rescuing someone from a burning building, [is] a critical part of the risk equation. People should not be punished if they have acted in good faith for the benefit of society, their community or of one person who is in trouble. Of course we do not support reckless actions and risk education is an important part of this debate, but decisions sometimes have to be made in seconds. It is important that the context of any incident is taken into account by the courts. Great Britain's health and safety system is not a prescriptive system. It places responsibility on those who create risks and enables them to control the risk in a way that is sensible and proportionate. To sue people who act in line with this approach undermines a system that has led to great improvements to our health and wellbeing at work since the inception of the Health and Safety at Work Act, 40 years ago."*[13]

Whilst we agree with this perspective we do not believe that the Bill will support it.

What the Bill should address

13. There is already a large number of documents and protocols pertaining to operating procedures, safe systems of work, HSE recommendations, DCLG directives etc. that attempts to reduce risk by seeking to proceduralise to the ultimate degree.

14. GMFRS concurs with some of the sentencing remarks from Justice MacDuff following the Warwickshire ruling mentioned previously,

> *"…one of the real difficulties here has been the proliferation of paper which has been generated in recent years both before and after the passing of the Fire and Rescue Services Act 2004…There are many obvious deficiencies in the paper work. Many of the ever increasing number of directives and other papers are couched in language which borders on the impenetrable. We have found internal contradictions and entirely different flowcharts purporting to show the same thing…There is no time for debate at the fire ground."*

15. GMFRS believes that any Bill looking at litigation following emergency incidents should look to liberate the dynamic type of decision making necessary to deal with an unfolding emergency, and not, unintentionally, add to the massive amount of operational paperwork that already exists for emergency services. Instead it should offer firefighters clarity and definition and therefore confidence when involved in a dynamic and complex emergency incident.

Conclusion

16. In summary, GMFRS supports legislation designed to protect firefighters and officers-in-charge from litigation following an emergency incident, legislation designed to offer clarity and make fire service employees more confident to act without fear of justifying themselves in court several years later. GMFRS, however, does not believe that the Bill as it is currently written can achieve this and, indeed, potentially runs the risk of adding to the burden rather than reducing it. It is necessary to achieve greater clarity around the concepts of danger, risk and hazard and the ability for the same situations to be seen in different ways by different people.

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[13] https://www.britsafe.org/news/british-safety-council-supports-new-law-designed-protect-those-who-step-help-others