

Title: Social Action, Responsibility and Heroism Bill IA No: MoJ013/2014 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)	
	Date: 25/04/2014	
	Stage: Development/Options	
	Source of intervention: Domestic	
	Type of measure: Primary legislation	
Contact for enquiries: Robin Edwards		
Summary: Intervention and Options		RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?
£m	£m	£m	Yes/No
			Measure qualifies as In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?
As part of the Government's broader aims, it wants to encourage more people to play an active role in civil society. However there is some evidence to suggest that one reason why people are deterred from volunteering, helping others or intervening in an emergency is the fear of risk and/or liability. The Government also wants to make sure that when people, including employers, have been taking a generally responsible approach towards the safety of others during an activity, the courts will take this into account in the event they are sued for negligence or for certain breaches of statutory duty. The Government wishes to introduce legislation to address these concerns.

What are the policy objectives and the intended effects?
The provisions which we are bringing forward are designed 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. The provisions do not give anyone immunity from civil liability and the courts will still be able to find that a person was negligent where the circumstances of the case warrant it.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: No changes are made to the current law.

Option 1: Introduce legislation to reassure the public that if they act to help others, intervene in emergencies or adopt a generally responsible approach towards protecting the safety of others, the courts will consider the context of their actions in any claim for negligence or breach of statutory duty.

The Government's preferred option is option 1.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 07/2019					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce legislation to reassure the public that if they act to help others, intervene in emergencies or adopt a generally responsible approach towards protecting the safety of others, the courts will consider the context of their actions in any claim for negligence or breach of statutory duty.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by 'main affected groups'

The costs associated with this measure are not quantifiable.

Other key non-monetised costs by 'main affected groups'

Potential claimants may be slightly less likely to pursue a case against somebody who had been acting for the benefit of society, intervening in an emergency or adopting a generally responsible approach toward the safety of others in the course of the activity in which the alleged negligence occurred. If they do pursue a case, they may be less likely to be awarded damages in cases where the provisions tip the balance in favour of the defendant. This could mean that slightly less compensation in aggregate is paid in relation to claims for negligence or breach of statutory duty.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by 'main affected groups'

The benefits associated with this measure are not quantifiable.

Other key non-monetised benefits by 'main affected groups'

Those who participate in activities which benefit society, demonstrate a generally responsible approach towards protecting the safety of others in the course of the activity concerned or intervene to help others in emergencies will be reassured that the courts will take the context of their actions into account if they are being sued for negligence. This may lead to fewer people being found negligent when things go wrong.

There would also be a potential wider benefit to society if the measures encourage participation in volunteering and other socially valuable activities. This may lead to a greater sense of community spirit and happiness for the wider public.

Insurers and other defendants may gain from slightly reduced aggregate compensation paid and this may feed through to lower insurance premiums.

Key assumptions/sensitivities/risks

While there may be a slight drop in the number of negligence cases brought to court as people may be deterred from bringing a claim, we do not expect this to be substantial.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs:	Yes/No	IN/OUT/Zero net cost
Benefits:		
Net:		

Evidence Base

Problem under Consideration

1. There is some evidence to suggest that worries about risk and/or liability can deter people from participating in voluntary or charitable activities. For example, “Helping out: a national survey of volunteering and charitable giving” in 2006/2007¹ found this was one of the main reasons² cited by just under 300 respondents to the survey who did not currently volunteer. The Government also wants to make sure that when people, such as employers, have been taking a generally responsible approach towards the safety of others during an activity, the courts will take this into account in the event they are sued for negligence or for certain breaches of statutory duty.
2. The issue of what is required to meet the standard of care which applies in cases of negligence and breach of statutory duty has partly been addressed by earlier reforms. Under the current law, the court must determine whether the defendant owed a duty of care to the claimant and, if so, whether his or her conduct fell short of the applicable standard of care. In making that determination the court will consider all the circumstances of the case. Section 1 of the Compensation Act 2006 confirms that in considering what was necessary to meet the standard of care in a particular case, the court can look at whether a particular requirement might prevent a desirable activity being carried out to any extent or discourage people from undertaking it.
3. However, the Government believes that further legislation is needed to allay public concerns about this issue and to encourage participation.

Rationale for Intervention

4. The Government wishes to encourage and enable people to play a more active role in civil society. The Coalition Agreement included a specific commitment to “take a range of measures to encourage volunteering and involvement in social action”³. This could include encouraging people to get involved in organised activities such as helping out at a community fete, sports event or a local care home, or less formal activities like helping an elderly neighbour with his/her shopping. Similarly, the Government believes that people should be actively encouraged to intervene to help others in emergencies – for example, if they see somebody collapse in the street they and are in a position to administer first aid. There is some evidence⁴ to suggest that people avoid getting involved in socially useful activities because they are worried about the legal risks which could arise if something went wrong and somebody was injured. The Government considers that action is needed to reassure the public and increase participation in such activities. The Government also wants to make sure that when people, such as employers, have been taking a generally responsible approach towards the safety of others during an activity and something goes wrong, the courts will take full account of the circumstances.

Policy Objective

5. The provisions which the Government is proposing to bring forward are designed to reassure the public that if they provide help to other members of the community, intervene in an emergency or demonstrate a generally responsible approach towards the safety of others during the course of an activity, they can be secure in the knowledge that the court will take into account the context of their actions if something goes wrong and they are sued for negligence or certain breaches of statutory duty.

¹ Helping Out: A national Survey of Volunteering and Charitable Giving, September 2007 - <http://www.ivr.org.uk/component/ivr/helping-out-a-national-survey-of-volunteering-and-charitable-giving>

² Participants were given a number of different options through the use of ‘cue cards’ to encourage their response. Answering one of these options did not exclude them from answering future questions. Overall, 47% of the respondents (who did not currently volunteer) felt the worry about risk/liability was a reason for not volunteering. Of these, 16% felt this applies ‘a lot’.

³ “The Coalition: our programme for Government” (May 2010): <https://www.gov.uk/government/publications/the-coalition-documentation>

⁴ See footnote 1

6. The provisions are not intended to give anyone immunity from civil liability and they could still be found negligent if the circumstances of the case warrant it. The courts are already very experienced in dealing with these cases, and the provisions will support them in continuing to reach fair and just decisions.

Groups and Sectors Affected

7. The groups that are likely to be affected by these provisions are:
 - a. Her Majesty's Courts and Tribunals Service (HMCTS)
 - b. Judiciary
 - c. Anybody who is acting for the benefit of society or any of its members
 - d. Anybody who acts heroically by intervening in an emergency to assist somebody who is in danger
 - e. Anybody who demonstrates a generally responsible approach towards the safety or other interests of others
 - f. Defendants and their insurers
 - g. Lawyers working on negligence cases

Costs and Benefits

8. This Impact Assessment attempts to identify both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
9. A qualitative assessment is provided here as the aggregate impacts could not be quantified. The impacts of the proposed provisions are heavily dependent on behavioural changes, which are inherently difficult to quantify. In 2012/13, there were over 1 million⁵ compensation claims brought to the courts, although it is not possible to distinguish from these statistics which relate to negligence, or even to break these down further to those where volunteers or those acting for the benefit of society or its members were involved. In addition, some negligence cases are settled out of court, so it is not possible to have a full picture of the numbers and values involved.

Option 0: Do Nothing

Description

10. Under this option the courts would continue to apply the current law in relation to claims for negligence or breach of statutory duty. Under the current law, the court must determine whether the defendant owed a duty of care to the claimant and, if so, whether his or her conduct fell short of the applicable standard of care. . Under the current law the courts can take a wide range of factors into consideration in making that determination. They would look, for example, at the size of the risk, the likelihood of the risk happening, the gravity of the consequence, the cost and practicability of avoiding the risk as well as the effect of a finding of negligence. Section 1 of the Compensation Act 2006 confirms that in considering the steps to be taken to meet the standard

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of care, the court can look at the social value of the defendant's activity and the need not to discourage others from undertaking desirable activities.

11. In spite of the provisions in the Compensation Act 2006, there remains evidence that people are deterred from volunteering because of a perceived legal risk. "Helping out: a national survey of volunteering and charitable giving⁶" demonstrates that there is potential to get more people into volunteering by removing barriers – such as the perceived risk from litigation – that dissuade individuals from giving up their time.
12. The do nothing option is included for comparative purposes. As its costs and benefits are compared against themselves, they are necessarily zero, as is its net present value.

Option 1: Legislate for negligence claims and breach of statutory duty

Description

13. Option 1 would require the courts, when considering what steps a defendant to a claim should have taken to meet a standard of care in any claim for negligence or breach of statutory duty, to have regard to:
 - a. whether the alleged negligence/breach of duty occurred when the defendant was acting for the benefit of society or any of its members;
 - b. whether, in carrying out the activity in the course of which the negligence/breach of statutory duty occurred, the defendant had demonstrated a generally responsible approach towards protecting the safety or other interests of others; and
 - c. whether the alleged negligence/breach of duty occurred when the defendant was acting heroically by intervening in an emergency to assist an individual in danger and without regard to his own safety or other interests.
14. The provisions are intended to require the courts to consider the context of the defendant's action when considering a negligence claim, but they do not tell them what conclusion to draw and do not prevent a person from being found negligent if the circumstances of the case warrant it.

Costs

15. There will be one-off familiarisation costs to the judiciary and lawyers.
16. Any new legislation will have to be interpreted by the courts. This may in the short term generate some initial litigation costs arising from cases testing the courts' interpretation of the provisions.
17. The overall volume of negligence cases may decrease slightly as some claimants might no longer pursue some cases in future. This could be because they would be unsure of their chances of success and possible damages available, or be otherwise persuaded not to go through the process. In these cases, claimants might lose out from not securing compensation payments. Both the possible reduction in case volumes and the size of any compensation payments are unknown, but are likely to be small.
18. If the volume of negligence cases falls, then this would generate a cost in terms of reduced business for lawyers who currently work on such cases. The volume of these is unknown. Lawyers might respond to this changing pattern of demand by focusing on other areas of business. The overall impact on lawyers is unknown, however at a minimum, adjustment costs would be incurred.

⁶ Helping Out: A national Survey of Volunteering and Charitable Giving, September 2007 - <http://www.ivr.org.uk/component/ivr/helping-out-a-national-survey-of-volunteering-and-charitable-giving>

19. Depending on how the courts interpret the provisions, some people who will claim for negligence or breach of statutory duty may not receive compensation. This would result in an unquantifiable loss to individual claimants.
20. HMCTS may experience a reduced volume of cases and associated reduced court fee income. However, as HMCTS operates a full cost recovery regime, the overall financial impact is considered to be neutral.

Benefits

21. People who act for the benefit of society, intervene heroically in emergencies or adopt a generally responsible approach towards protecting the safety of others in the course of the activity concerned would receive reassurance that the courts will take the context of their actions into account. This would benefit them and also the wider public if it encourages participation in socially valuable activities. It may also have an additional benefit of incentivising others who are currently not engaged in such activities to participate. This would bring wider benefits to society.
22. It may be the case that fewer people who act for the benefit of society, intervene in emergencies or demonstrate a generally responsible approach towards protecting the safety of others in the course of a particular activity, will be found negligent when things go wrong. However, the provisions do not provide immunity from civil liability and are not intended to prevent a person from being found negligent if the circumstances of the case warrant it.
23. There may be a fall in the number of claims brought to the courts as a result of these proposals, resulting in a positive operational impact on HMCTS. However, it is not anticipated that any such reduction would be substantial. In addition, as HMCTS operates a full cost recovery regime, such that any reduction in operational costs would be accompanied by a reduced fee income, the overall financial impact is considered to be neutral.
24. Insurers and other defendants may gain from slightly reduced aggregate compensation paid and this may feed through to lower insurance premiums.

Risks and assumptions

Assumption	Risk
<p><u>Policy Option 1</u></p> <ul style="list-style-type: none"> • The provisions will encourage participation in socially useful activities, as people will be secure in the knowledge that the context of their actions will be taken into account in the event they are sued. • The courts will deliver fair and just outcomes in negligence / breach of statutory duty cases. • The provisions are unlikely to impose any additional burden on those potentially affected (i.e. anyone who is acting for the benefit of society, intervening to help somebody in an emergency or adopting a generally responsible approach towards the safety of other others during the course of an activity in which negligence is alleged to have occurred). 	<ul style="list-style-type: none"> • That the level of participation does not increase because people remain concerned about being found negligent – the provisions will not give them immunity from liability. • The courts may not award compensation in cases where they might have done previously • There may be additional burdens on those required to implement the changes, for example in terms of providing additional training for the judiciary etc.

<ul style="list-style-type: none">• There will not be a considerable change in the number of cases that are claiming for negligence or breach of statutory duty.	<ul style="list-style-type: none">• There may be a change in the number of cases being brought before the courts.
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Business Impacts

25. The provisions may have some impact on the private sector because they will be general in application and may benefit, for example, people who are acting for the benefit of society or demonstrating a generally responsible approach towards the safety of others in the context of their employment. However, there is not expected to be a substantial direct impact on business. As such the proposals do not fall within the 'one in, two out' procedure.

Summary and preferred option/implementation plan

26. The Government considers that legislation as set out in Option 1 is the preferred option, and intends to introduce this at the first available opportunity.