

Modern CLAIMS MAGAZINE

What's the point of SARAH?



Few activities in life are risk free and the ill-considered promotion of health and safety always has the potential inadvertently to prevent socially-desirable activities. The Health & Safety Executive (HSE) website pages on dispelling H&S myths provide some insight. They describe hundreds of examples of H&S being used as the excuse for many bizarre rules or bans,

unjustly in the Executive's view. Yet, the existence of those pages and the volume of reported scenarios (301 over 31 months), are testament to UK's paranoia about being sued for breaches of H&S rules.

Is this paranoia justified? *Tomlinson v Congleton BC* might suggest otherwise. The case concerned an individual severely injured after diving into a shallow artificial lake who had seen his claim fail because he ignored clear warning signs. Lord Hobhouse remarked: "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." The case was appealed to the House of Lords before that outcome was accepted.

The day-to-day picture is of a judiciary ready to push the boundaries of what is considered negligent, in order to see an injured individual compensated. Wider implications such as the cost of public liability insurance, or the viability of continuing to provide socially beneficial services, are frequently ignored.

So will the Social Action, Responsibility and Heroism Bill (SARAH) redress the balance? The Bill's wording is a concern. When determining whether there has been a breach of duty/negligence, the courts must 'have regard to' whether the defendant was acting 'for the benefit of society or any of its members', 'demonstrating a generally responsible approach towards protecting the safety or interests of others' and/or acting 'heroically by intervening in an emergency'. Such an assembly of subjective terms does not bode well.

Preserving judicial discretion is one thing but the Bill currently does not appear to move matters very far forward from *Tomlinson* and s.1 the Compensation Act 2006, which already requires the Courts to 'have regard to' whether requiring particular steps to be taken would prevent or discourage persons from taking part in 'desirable activity'. As laudable as SARAH may be conceptually, one wonders whether ultimately it may not end up being a toothless tiger.

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