

Is it the end of the road for liability without fault?

Has section 2(2) of the Animals Act 1971 and the interpretation placed upon the wording in this section by the House of Lords in the 2003 case of *Mirvahedy v Henley* had its day?

The industry will recall that horse owners, Andrew and Susan Henley were held strictly liable following the court's interpretation of the Animals Act 1971 after Mr Mirvahedy sustained injuries in a car accident after their horses escaped from a field.

If Stephen Crabb MP has his way with his private members Bill (which has the support of the government) entitled "Animals Act 1971 (Amendment) Bill 2007-2008" then long awaited relief for the industry might be in sight.

The 1971 Act imposes no fault liability on the keepers of dangerous animals if they cause damage. A dangerous animal is defined in the Act as an animal not normally domesticated in the British islands. No fault liability is also imposed for non dangerous animals such as horses and ponies if certain conditions are satisfied. The Court in *Mirvahedy* interpreted the wording of one of the conditions prerequisite in 2(2) so broadly that liability without fault caused by horses and other non dangerous animals is considered by many to be a probability in all cases where damage is caused.

The *Mirvahedy* decision has as the industry well knows had a negative impact. It has allegedly caused insurance premiums to rise considerably and to force some equestrian centres out of business whilst for others they have had to consider their ongoing viability. As to the need for insurance, the industry will be aware of the Riding Establishments Act 1970 which like its predecessor (the 1964 Act) requires compulsory liability insurance for any injury caused by a horse.

The Private Members Bill introduced on the 5th of December 2007 for its first reading in parliament hopes to restore the balance between members of the public and keepers of domesticated animals such as horses and ponies.

Stephen Crabb's Private Members Bill is intended to reverse the high-water mark created in *Mirvahedy*. Specifically it would limit no fault liability to dangerous species and to non dangerous animals like horses and ponies only if an unusual or conditional characteristic was known to its keeper.

A second reading of the Bill took place in the House on the 14th March 2008, when considerable scrutiny of the Bill took place. The Debate was stood over until the next available date being the 9th of May 2008, when it is hoped by many in the industry, that the Bill will get its second reading which will allow it to proceed further.

Presently the main issues which separate supporters and opponents are based on public policy and whether the present position on no fault liability should be rebalanced in favour of common sense (the stated objective of the Bill) or whether in the alternative the present position should stand or be reinforced whereby all owners of animals are to made liable to victims for the consequences of their animals actions.

The above information is not intended to be a complete or definitive statement of the law as it is. For further information, please contact **Peter Johnson** at epj@awdry.co.uk or on **01249 815110**.