

# How Should the Law of Torts Reform, If At All, The Reasonable Man Standard?

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## Introduction

The reasonable man standard (RMS) operates as a central legal benchmark in English law where it establishes the standard of care against which a defendant's conduct is judged. Despite its purported objectivity, the RMS has attracted sustained criticism for embedding implicit biases and prompting debate over whose standpoint is truly reflected under the recent label of the 'reasonable person.'

## Criticisms of the RMS

Regarding the RMS, critics have argued that:

1. The RMS was developed with an explicitly male frame of reference and is applied by a male-dominated judiciary.
2. Men are made the normative standard (reasonable 'man'), penalising behaviour shaped by female conditioning.
3. The conflation of 'reasonable' with 'socially acceptable' risks reinforcing biased stereotypes.

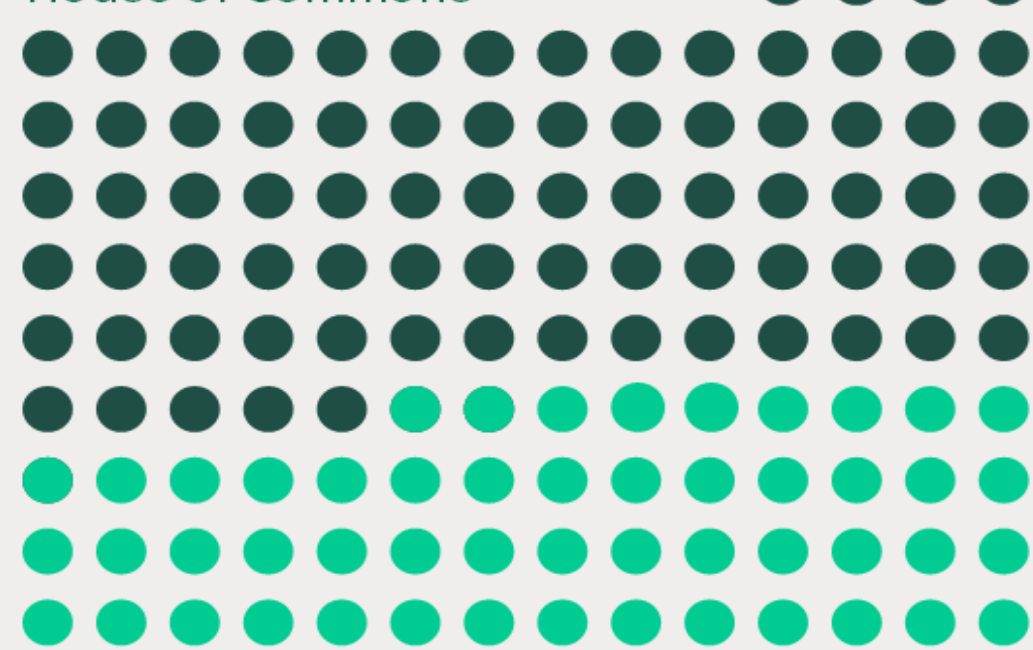
### There are more men than women in both Houses of Parliament

Members by sex, as of Dec 2024

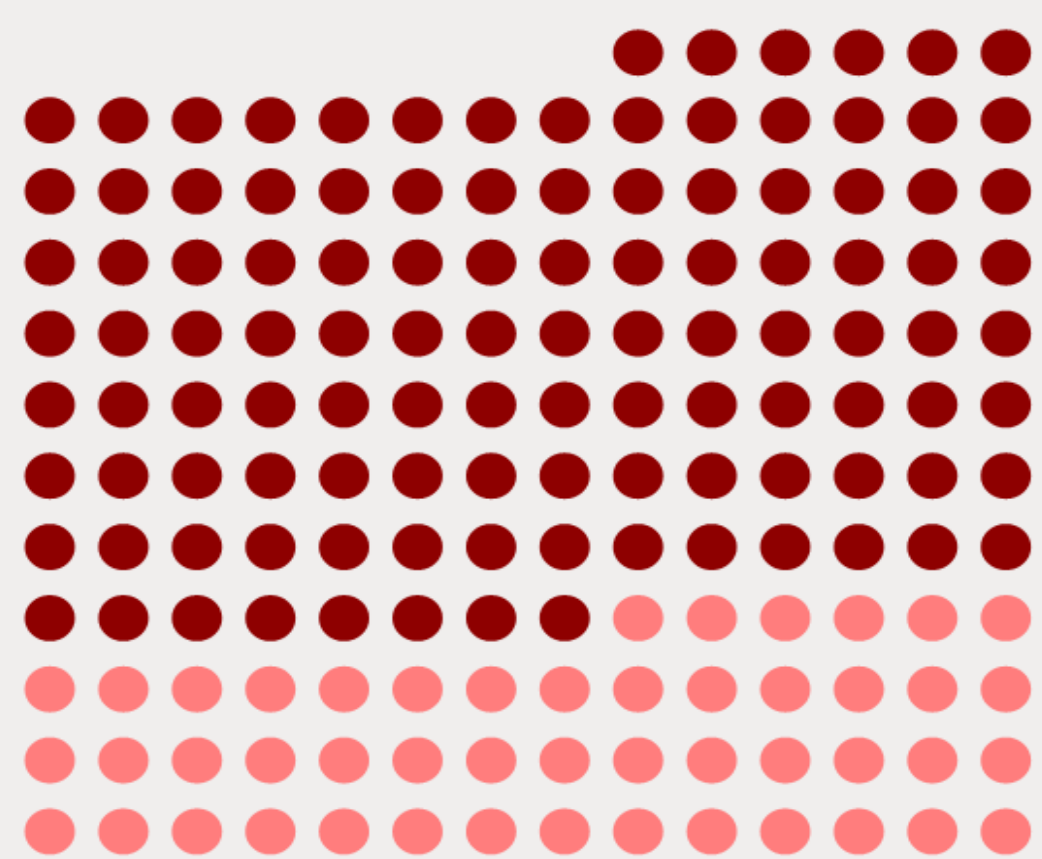
each circle represents five Members

● Male  
● Female

House of Commons



House of Lords



## Conclusion

While intended as an objective benchmark, it has often reflected male, white, middle-class biases, even under the "reasonable person" label. Reform efforts have raised further issues. What is needed is a clearer definition of reasonableness: the factors a defendant should consider and the criteria, economic or otherwise, by which conduct should be judged, without confusing common practice with what is truly reasonable.

## Reforms

Reform of the RMS aims to move beyond its male-centric roots toward more an inclusive and consistent standard.

Suggestions include:

1. A "Reasonable Woman Standard" (RWS) for cases like sexual assault, though critics fear it risks stereotyping or multiplying identity-based norms.
2. Behind identity-based reforms, C. Jaeger has proposed re-imagining the RMS as aspirational or principle-based, using criteria such as economic rationality to provide clearer guidance.
3. Another suggested reform is diversifying the judiciary, so that those applying the test reflect broader life experiences, although this too cannot guarantee a unified female or minority perspective.

Ultimately, reform efforts seek a standard that is clearer, less reliant on the implicit sense of what a judge perceives as reasonable and capable of promoting fairer, more coherent outcomes.

### Key references

- Bender, L. A Lawyer's Primer on Feminist Theory and Tort. (1988) 38 J Legal Educ 3.
- Blyth v. Birmingham Waterworks Co. (1856) 11 Ex Ch 781 (per Alderson B at [480]).
- Conaghan, J. Tort Law and the Feminist Critique of Reason in Anne Bottomley (ed), Feminist Perspectives on the Foundational Subjects of Law (Routledge Cavendish 1996) 58.
- Donald Nolan and Ken Oliphant. Tort Law: Text and Materials (6th edn, OUP 2017) 2.
- Glasgow Corporation v. Muir (1943) AC 448 (HL) (per Lord Macmillan).
- Jaeger, C. The Empirical Reasonable Person (2021) 72 Alabama L Rev 887, 938-949.
- Meeds, M. Applying the Reasonable Woman Standard in Evaluating SH Claims: Is it Justified? (1993) 65 S Cal L Rev 207, 220.
- Moran, M. Rethinking the Reasonable Person: An Egalitarian Reconstruction of the Objective Standard (OUP 2003) 263-287.
- Rackley, E. Women, Judging and the Judiciary: From Difference to Diversity (Routledge 2012).