

## Employer's duties to employees travelling overseas

22 MAY 2015

**CATEGORY:**

ARTICLE

Two recent negligence cases cast a spotlight on employers' health and safety duties towards their employees travelling abroad for work:

*Dusek v Stormharbour Securities LLP*

The High Court held that an employer ('Stormharbour') owed its employee a duty to take reasonable care to ensure that he was not subject to unnecessary risk when he was required to take a chartered helicopter ride abroad in the course of his employment. Stormharbour owed this duty even though it had not chartered the flight itself, because:

- it could not transfer its duty to ensure the safety of its employees to anyone else, and
- it knew that the flight involved obvious potential dangers: passing over a remote, inhospitable, inaccessible and mountainous area in the Peruvian Andes

Stormharbour had not inquired into the helicopter company's safety record, or whether the Peruvian company which chartered the flight had flown with the helicopter company before, had carried out a risk assessment or had made any investigations concerning the safety of the flight. Stormharbour's failure to enquire into the safety of the trip or make an appropriate risk assessment breached its duty of care to its employee, and was held to be a cause of his death when the helicopter crashed, killing all the passengers. The court held that there were readily available safe alternatives to the chartered flight, and that if Stormharbour had enquired about the safety of the flight they would have ordered their employee not to take it.

*Cassley v GMP Securities Europe LLP*

In this case, the High Court gave guidance on the steps which a company requiring its employee to travel abroad in the course of his employment should have followed. The dependants of a financier, killed when a private charter flight he took in the course of his employment crashed between Cameroon and the Republic of Congo, sought damages from his employer and the third party company which chartered the plane ('the charterer'). The primary cause of the crash was held to be pilot error, but the employee's family settled out of court with the aviation company ('the carrier').

The employer had signed a waiver of liability in the event of their employee's injury or death at the request of the charterer, which had indicated to the employer that the trip involved some risk. The carrier was engaged as a last-minute substitution, but

- had been used successfully once before by the charterer to fly to the same destination
- was recommended to the charterer
- possessed the requisite documentation and insurance, and
- had three independent audits in its favour

Unknown to the charterer, however, the carrier had an inadequate culture of safety and was on an EU 'banned' list.

In terms of the employer's duties, the court held that:

- The employer had breached its duty to take reasonable care to ensure that its employee was reasonably safe when travelling in the course of his employment
- Although entitled to rely on the charterer to a large extent, the employer should have satisfied itself that the trip was reasonably safe by checking the Foreign and Commonwealth Office website for information about the two countries, and by asking the charterer about:
  - the carrier
  - the route
  - how the charterer had satisfied itself that the proposed flight was safe
  - whether the carrier had an air operator's certificate
  - the carrier's insurance position

- whether the carrier had been recommended
- whether the charterer had used the carrier before to its satisfaction
- The waiver of liability had no legal effect because the charterer did not countersign it and because it would have offended against the Unfair Contract Terms Act

#### What this means for you

Both judgments are a clear reminder that the duties employers owe to ensure the health and safety at work of their employees are not limited to the UK, but also apply where employees are working abroad in the course of their employment. An employer's duty may extend to taking reasonable care to protect their employees from unnecessary risks in premises belonging to third parties abroad, or from risks involved in travelling to and from their place of work. The duty may even extend to advising employees to take medical advice to receive relevant inoculations before going abroad in the course of their employment.

Although the facts in both cases involved charter flights, the judgments could apply equally to employees required to travel abroad by car. The employer still owes a duty in cases where travel has been booked by a third party, but what the employer is reasonably required to do will vary depending on circumstances such as the risks associated with the countries or mode of travel and the extent of the employer's knowledge of those risks. The judge in Dusek felt that a company would not need to do anything where an employee was taking, for example, a scheduled flight from London to New York, but would be expected to make inquiries where an employee was taking a chartered internal flight in an underdeveloped country, or with an airline with a poor safety record.

To comply with their duties in relation to employees' travel employers should:

- Ensure that they have a suitable occupational road risk policy to cover employees required to work abroad
- Conduct a risk assessment in relation to employees' work-related travel abroad
- Make enquiries of any third party which has chartered an employee's travel regarding the safety arrangements put in place by the travel operators, or at least ask the third party of any relevant safety concerns
- Ensure that employees have adequate insurance cover for foreign travel.