

## Success for William Audland QC in the Court of Appeal

On Thursday 26<sup>th</sup> April the Court of Appeal handed down judgment in the appeal of ***X v Kuoni Travel Limited***, a package holiday claim of significance and wide application. With a majority judgment, Sir Terence Etherton MR and Lady Justice Asplin dismissed the appeal.

William Audland QC appeared on behalf of the respondent.

On 8<sup>th</sup> July 2010 Mr and Mrs X arrived in Sri Lanka for a 15 day package holiday booked through Kuoni Travel Ltd ("Kuoni"). They stayed at the Club Bentota Hotel ("the Hotel"). In the early hours of 18<sup>th</sup> July, Mrs X was sexually assaulted by an electrician ("N") employed by the hotel.

She sued Kuoni for "improper performance" of the contract she made with Kuoni who organised and sold the package holiday to her.

Clause 5.10(b) of the contract provided "*... we will accept responsibility if due to fault on our part, or that of our agents or suppliers, any part of your holiday arrangements booked before your departure from the UK is not as described in the brochure, or not of a reasonable standard,*

The issues in the appeal were as follows:

(1) whether the conduct of N formed part of "the holiday arrangements" in clause 5.10(b) for which Kuoni accepted responsibility under the first part of that clause; and

(2) if so, whether:

(a) N or the hotel is to be treated as the "supplier" of that part of the holiday arrangements; and

(b) Kuoni avoided liability under clause 5.10(b) which provided a defence for any failures due to "*unforeseen circumstances which, even with all due care, [Kuoni] or [its] agents or suppliers could not have anticipated or avoided*".

*On issue 1*, the court found that on its proper interpretation, the expression "holiday arrangements" did not include a member of the hotel's maintenance team, known to be such to the hotel guest, conducting the guest to the hotel's reception, which was no part of the functions for which the employee was employed.

*On issue 2*, the court held that the hotel, and not N, was the supplier of any services performed by N and noted that there was an absence of any proven fault on the part of Kuoni or the hotel.

In a dissenting judgment, Longmore LJ concluded that if a member of hotel staff offers to guide a guest to reception that is a service for which Kuoni accept responsibility for that service being done to a reasonable standard. He further observed at [23] – [24] that the concept of a "supplier" may be a question of degree.

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