

# Local Standards Evidence

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## The Package Travel Regulations 1992 & 2018

- ▶ The Package Travel Regulations impose a liability on a defendant to perform its contractual obligations.
- ▶ It is always necessary to consider the precise scope of the contract in order to assess whether a claim can be brought within the ambit of the Package Travel Regulations 2018.
- ▶ In package travel litigation, there are three main types of implied term to the contract:
  - ▶ Terms requiring the exercise of reasonable care and skill
  - ▶ Terms implied by the 1992 or 2018 Package Travel Regs
  - ▶ Terms implied by the Supply of Goods and Services Act 1982 (SGSA 1982) and the Consumer Rights Act 2015 if applicable
- ▶ The role of local standards in determining whether or not there has been a breach of any term as to reasonable care and skill is of critical importance in the context of package travel claims.

## Local standards: duty of care

- ▶ *Wilson v Best Travel* [1993] 1 All ER 353

Philips J:

*“Save where uniform international Regulations apply, **there are bound to be differences in the safety standards applied in respect of many hazards of modern life between one country and other.** All civilised countries attempt to cater for those hazards by imposing mandatory Regulations. The duty of care of the tour operator is likely to extend to checking that local safety Regulations are complied with. Provided that they are, I do not consider that the tour operator owes a duty to boycott a hotel because of the absence of some safety feature which would be found in an English hotel unless the absence of such a feature might lead a reasonable holidaymaker to decline to take a holiday at the hotel in question.”*

# Why does local standards evidence matter?

► *Gallagher v Airtours Holidays Limited* [2001] CLY 4280:

*I have no expert evidence to advise or help me as to whether or not the activities of the skiing instructor on that day did, in the eyes of a properly qualified professional, fall below the standard of care to be exercised by a reasonably prudent ski instructor of the variety of which he was. The burden of proof lies on the party who brings the actions. It is plain from what I am going to be referring to in my judgment that there is no such expert evidence. **It is a complete mistake to think that the court possesses any expertise in this field whatsoever. I am a judge.** It is a basic principle that a claimant bears the burden of proof in a civil action. The standard of proof is the balance of probabilities. It is unfortunate if a claimant comes to court without the requisite evidence. Counsel for the claimant has sought to persuade me that the matter was so obvious that the case was proved. But, with respect to him, I beg to differ.*

# Why does local standards evidence matter?

- ▶ The typical claim for personal injury arising from a holiday abroad will consist of:
  - ▶ An English / Welsh Claimant
  - ▶ The English / Welsh Defendant Tour Operator
  - ▶ An accident abroad
- ▶ To prove negligence / breach of contract, the Claimant must prove that the tour operator fell below the standards of safety recognized in the foreign jurisdiction.
- ▶ This is a question of fact. For example:
  - ▶ How lit does a staircase need to be in Mauritius? *TUI v Morgan* [2020] EWHC 2944 (Ch)
  - ▶ What risks must a ski instructor guard against in Bulgaria? *Goldbourn v Balkan Holidays Ltd* [2010] EWCA Civ 372
  - ▶ How much anti-slip paving needs surround a swimming pool be in Portugal? *Healy v Cosmoair Plc* [2005] EWHC 1657 (QB)

## Why do local standards matter?

- ▶ A Court will generally not be able to infer local standards without any, or any adequate, evidence.
- ▶ The Court can (and in some instances does) infer that the standards are the same as English Law, however a Claimant relies on this “at their own peril” (*Lougheed v On the Beach Limited* [2014] EWCA Civ 1538).
- ▶ For Claimants: Local standards can sometimes be superior to that of the UK! If that’s true, you want to know that.
- ▶ For Defendants: Certain venues seek to attain higher standards than what might be the prevailing standard.

## Establishing local standards

- ▶ In practice the question of local standards will involve:
  - ▶ A report from a qualified expert to determine the relevant local standards, regulations or guidelines (*First Choice Holidays v Holden*, 22 May 2006, QBD)
  - ▶ Documentary evidence (such as maintenance and inspection records, risk assessments, accident report forms, health and safety audits, photographs and videos of the hazard)
  - ▶ Witness evidence (eg hotel staff, pre and post accident visitors)
- ▶ Obtaining an expert report which complies with the CPR and understands the 'local standard' concept is often a challenge. The Court of Appeal in *Lougheed* emphasised that the burden is on the claimant to establish what, if any, 'local standards' of safety apply to the accident circumstances.
- ▶ Claimants should always consider making an application to adduce expert evidence on the issue of local standards.

# What to look for in a local standards report

- ▶ Reasonableness.
- ▶ Regulated cases: Statutory, regulatory or customary standards.
- ▶ Unregulated cases: what do other hotels do?
- ▶ Verifiable conclusions and obvious questions answered.



## Local standards report: key considerations

- ▶ An appropriate expert must be identified, with sound qualifications in the relevant field.
- ▶ The expert must understand that the English court will apply English law, but the local standard. Reliance on local law or procedure is incorrect. A claimant cannot rely on rules such as strict liability or reversal of the burden of proof.
- ▶ The report must be CPR-compliant. It should set out the local standard at the time of installation of the feature complained of, by reference to local building codes, standard practice or any informal understanding there may be.

# What to do if it isn't good enough

- ▶ Go back to your expert and make sure it is!
- ▶ A Local Standards Report is critical in establishing accountability for the accident as it demonstrates that the accident would not have happened but for the failure to adhere to the required standards of the country.

## What if I can't find any?

- ▶ Look at the contract and brochure, can you instead bring a claim for breach of:
  - ▶ Terms implied by the 1992 or 2018 Package Travel Regulations;
  - ▶ Terms implied by the Supply of Goods and Services Act 1982 (SGSA 1982) and the Consumer Rights Act 2015 if applicable.
- ▶ International Obligations.
- ▶ Second limb of Wilson: *“absence of such a feature might lead a reasonable holidaymaker to decline to take a holiday at the hotel in question”*
- ▶ Ask others.

# Please do not forget

- ▶ Causation.

Thank you!

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