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## **What is the scope of an employer's duty of care for transport abroad?**

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**Personal Injury analysis:** Sarah Stewart, a partner in the aviation and travel department at Stewarts Law, and Peter Neenan, a senior associate in the department, point out that the court's decision in *Dusek* is a reminder to employers of their positive obligation to adequately assess any risks posed to their employees while they are performing their jobs.

### **Original news**

*Dusek and others v StormHarbour Securities LLP* [2015] EWHC 37 (QB), [2015] All ER (D) 138 (Jan)

*The deceased died following a helicopter crash while employed on a project by the defendant employer. The deceased's wife brought a claim against the employer. The Queen's Bench Division held that the scope of the defendant employer's duty extended to the charter of the helicopter and the flight, that the duty had been breached and that breach had caused the deceased's death.*

### **What is the significance of this decision?**

Tomas Dusek was killed during the course of his employment on 6 June 2012 when the helicopter in which he was travelling in Peru crashed into the side of a mountain killing all on board. His widow and two young children brought a claim in the UK against StormHarbour Securities LLP claiming that they had breached their duty as employers to provide Mr Dusek with a safe place of work, safe equipment and a safe system of working. The trial was heard between 2-9 December 2014 and judgment in the family's favour was handed down on 19 January 2015. The decision in the case is a reminder to employers of their positive obligation to adequately assess any risks posed to their employees while they are performing their jobs. On the facts, it was reasonable to have expected StormHarbour Securities to have considered the safety of Mr Dusek's modes of travel abroad, when he was travelling on their behalf.

### **How did the court address the scope of the employer's duty of care in relation to the charter flight?**

In the specific circumstances of the case, Mr Dusek was required to be in a remote part of the world in the course of his employment and expected to board flights run by local air operators. On the facts, it was foreseeable to his employers that he would have to board the helicopter flight in Peru and he was acting in the course of his employment when he did. As such, StormHarbour owed him a duty to take reasonable care not to subject him to unnecessary risk. It was argued that the modes of transport that employees are expected to take should therefore be subject to risk assessments by employers.

### **How might this decision affect future cases on the extension of employers' liability and transport abroad?**

On the facts of this case StormHarbour was under a duty to take reasonable care to see that Mr Dusek was reasonably safe while travelling to and from and at his place of work abroad where he was required to go in

the course of his employment. Employers have a positive obligation to ensure that they are not sending their employees into danger. The decision emphasises the need for employers to be safety conscious, adopting reasonable practice safeguards in terms of the risk assessments they complete and the enquiries they make, before they require their employee to travel on business.

### **Are there any unresolved issues in this area?**

It was concluded in this case that StormHarbour was in breach of its duty of care in doing nothing to investigate the safety of the proposed flight. It is however important to note that Mr Justice Hamblen acknowledged that this conclusion was reached on the individual facts of the case. In *Dusek* there was a foreseeable risk to the safety of Tomas because the journey was dangerous and had StormHarbour Securities made brief enquiries into the journey they would have discovered that the helicopter was unsuitable, flying a route that was inherently dangerous in bad weather, and the flight was operated by a company in financial difficulties of a kind that jeopardised passenger safety. Had this been taken into account with a risk assessment by the employer, StormHarbour would never have permitted Mr Dusek to board the flight.

The trial concerned liability only. Subject to the outcome of any appeal by StormHarbour the parties will now move towards a hearing to assess the level of damages that Tomas's widow and children should receive.

### **What should lawyers take from this decision?**

When advising clients, it is paramount that they realise that regardless of the industry they operate in, as an employer, they should adopt reasonable practices to make sure that they are not risking the safety of their staff. The case factually establishes that there is a duty to assess the dangers posed to employees when travelling for work purposes. This is part of a wider principle that employers need to assess the risks associated with the activities they expect or ask of their employees.

*With over 15 years of experience in acting for claimants in complex personal injury and fatal accident claims, Sarah Stewart has a growing reputation in domestic and international claims arising from aircraft accidents. Speaking French and with a wide breadth of experience in pursuing individual and group actions to trial or settlement, Sarah has acted for numerous families of victims involved in major air disasters, fatal helicopter and light aircraft accidents in the UK, Europe and worldwide. A significant number of her cases involve supporting families through the official accident investigation and Coroner's Inquest. Sarah works with determination in a team which strives to give families a chance for their voices to be heard and for improvements to be made to air safety.*

*Peter Neenan has been with the department since its inception in 2006. Prior to his career in law, Peter read Theoretical Physics to Masters level. He now applies that specialist knowledge to the department's independent aviation investigations, with a particular interest in avionics and flight stability. Peter also has a second Masters degree: an LLM in Advanced Air & Space Law from the Institute of Air & Space Law, Netherlands. Peter has been a guest lecturer at the Institute for the last three years, lecturing on plaintiff aviation litigation.*

*Interviewed by Kate Beaumont.*

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