

TRAVEL RISK MANAGEMENT: LEGAL RISKS AND MITIGATION

15 NOVEMBER 2022
INNER TEMPLE, LONDON

PRESENTED BY:



GLOBAL SECURE
ACCREDITATION

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Morvillo
Abramowitz
Grand Iason
& Anello PC

WHAT'S ON THE AGENDA?

- 15:05** Corporate travel update
Lee Whiteing, GSA
- 15:15** ISO 31030 and latest developments
Bob Quick, GSA
- 15:25** Criminal legal risk and civil law
risk in corporate travel
Andrew Wallis and Paul Johnson,
Peters & Peters
- 15:55** The U.S. Perspective
Benjamin Fischer, MagLaw

16:05 The French perspective
Frédéric Bellanca and Fabrice
Dubest, DDB&A

16:15 REFRESHMENTS BREAK

16:30 Adopting ISO 31030
Laetitia Piroddi, PwC

16:45 Risk Mitigation
Brian Moore, GSA

17:00 Q&A SESSION

17:30 NETWORKING DRINKS &
CANAPES

THE CORPORATE TRAVEL LANDSCAPE

LEE WHITEING
GLOBAL SECURE ACCREDITATION



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TRAVEL INDUSTRY UPDATE

- Multiple surveys in recent months
- More than a third of airline and agency leaders believe travel will return to pre-pandemic levels by the end of 2024; a further third believe this will happen in 2025 or later
- Some organisations getting back to 2019 volumes or above
- Other companies are still well below 2019 levels
- Many saying 2019 numbers will not be hit again
- At the GBTA Europe conference last week, it was stated that across all businesses, the industry will be at 65% of 2019 volumes by the end of 2022 but will not hit 100% until mid-2026

TRAVEL INDUSTRY UPDATE

- Increased focus on sustainability
- Actions
- Reporting
- Safety & security/duty of care remain important but have lost a little of the pre-pandemic focus
- Traveller well-being is another high priority
- Mental health awareness
- Hospitality industry labour shortages
- Hotel occupancy
- Combined business/leisure trips



ISO 31030: OVERVIEW AND LATEST DEVELOPMENTS

BOB QUICK, GLOBAL
SECURE ACCREDITATION



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ISO 31030 TRAVEL RISK MANAGEMENT

Guidance for Organisations

‘The worlds first global benchmark for travel risk management standards’



Published September 2021

WHO IS ISO?

International Organization for Standardization

- Founded in 1947
- Independent
- The world's pre-eminent standards body - authority
- Non-governmental organisation
- Global network of national standards bodies
- 1 member per country (BSI in the UK / ANSI in US)



WHO IS ISO?

ISO is an independent, non-governmental organisation made up of members from the national standards bodies of 166 countries.



- More than 50,000 experts
- 800+ technical committees
- Over 28,000 International Standards
- UN Economic and Social Council
- Supporting Global Industry and Commerce

ISO 31030: RATIONALE

- A response to increased levels of **anxiety** about travel risk (survey data 2015-20)
- Increased complexity and intensity of **threats** and risk
- Increased media reporting of **incidents**
- Increasing **litigation**
- Corporate '**Duty of Care**' and new emphasis on health, safety and security



TYPES OF ISO STANDARDS

TYPE A - MS

- Specification Standard
- Sets out requirements
- Can be assessed with certification provided

TYPE B - MS

- Guidance Standard
- Provides recommendations
- Can be assessed or audited, but not certified

**ISO 31030 likely to graduate to Type A Standard in due course*

ISO 31030: TRAVEL RISK MANAGEMENT STANDARD

Top management should establish a TRM policy that:

- **Define** principles, intention and direction to achieve objectives
- **Integrated** (Risk, Security, HR, OH, TM, Legal, Procurement, IT, TMC Partners, Service Providers etc.)
- **Appropriate** to needs, resources and risk criteria
- **Relevant** legislation, standards and codes of practice
- **Aligned** with BCM, RM, procurement and sustainability policies
- **Establish** principles for risk assessment processes
- **Roles**, responsibilities and accountabilities defined

ISO 31030: TRAVEL RISK MANAGEMENT STANDARD

‘Duty of care’ - moral responsibility or legal obligation of the organisation to protect the traveller from hazards and threats

Adaptable to organisational characteristics of size, scale, locations, activities, risk appetite / tolerance

ISO 31030: SCOPE

ISO 31030 IS A 'TRAVEL RISK MANAGEMENT' BENCHMARK (2021)

- Planning, Policies and Procedures
- Traveller Assessment
- Authorisations and Booking
- Journey & Transport Modes
- Destinations – National / Regional / Local Assessments
- Accommodation
- Activities
- Briefing, Monitoring, Support & Communication
- Security Threats – Crime / Cyber / Terrorism
- Safety Hazards – Risk of Accident / Hygiene / Food Safety / Natural Disaster
- Health Risks and Medical Support
- Bleisure

ISO 31030: BENEFITS



Corporate
management
assurance



Increased
safety and
security /
reduced risk



Reduced risk
of litigation



Staff and Staff
Association
assurance



Increased
confidence &
productivity



Continual
improvement

ASSUMPTION



ASSESSMENT - ASSURANCE



ISO 31030: ROLL OUT DEVELOPMENTS

- Much higher awareness of ISO 31030
- Internal reviews of TRM Programmes
- Gap Analysis
- Audits
- Recruitment
- Internal ISO 31030 lead – coordination
- Legal implications?
- Papers from Peters & Peters, DDB&A and MagLaw
- Specification for suppliers?
- Type A MS

CRIMINAL AND CIVIL LEGAL RISK IN CORPORATE TRAVEL

ANDREW WALLIS & PAUL JOHNSON
PETERS & PETERS



ISO GUIDANCE: WHY FOLLOW?

- Not regulation or law
- Range of factors which may influence decision of whether and how to follow the guidance. To be balanced against competing demands of resources and company risk profile
- However, BSI/ISO standards have historically been found influential by the courts in England and Wales

*Governors of Hospital for Sick Children v McLaughlin & Harvey
Plc 1987 10 ConLR 25*

“British Standards Codes of Practice are not legal documents binding upon engineers or upon anyone else, but they reflect the knowledge and expertise of the profession at the date when they were issued. They are guides to the engineer and in my view they also provide strong evidence as to the standard of the competent engineer at the date when they were issued.”

HHJ Newey QC, p93

Ward v Ritz Hotel (London) Ltd [1992] Lexis Citation 3704

“Mr McDonnell submits that the judge gave too little weight to the British Standard, and I agree with him. As he says, they represent the consensus of professional opinion and practical experience as to the sensible safety precautions. How much weight they attach to them is shown by the words which I have quoted used in the laying down of the Standard.”

McCowan LJ

Green v Building Scene Limited and Another [1994] PIQR P259

“Looking at a photograph of the stairs, I would myself form the view that they are reasonably safe... But it is a fact that the stairs did not comply with the Building Regulations, or the relevant British Standard. That is evidence which we must certainly take into account. It represents the current professional opinion as to what is desirable in order that accidents should be avoided. But it is one thing to lay down regulations and standards, with that objective, and another to define what is reasonably safe in all the circumstances of a particular case.”

Staughton LJ, p269

Wray (A Minor) v Derry City and Strabane DC [2020] NIQB 39

“The court is satisfied that the risk which arose in this case derived from the activity of the Plaintiff and not by reason of anything which the Defendant had done or omitted to do. The purpose of the fence, self-evidently, was to keep persons out of the Centre during hours when the Centre was closed and its configuration was such as to deter those who might be interested in climbing over it. The court is of the view that the Plaintiff was aware of these matters. Like Deeny J, as he then was, in Phillips, this court will take account of the fact that the fence was perfectly legal and conformed with British Standards. A sign which warned against persons climbing it was unnecessary. The risk, in short, was not one which required other measures for the protection of the Plaintiff.”

Maguire J, §61

2 Entertain Video Ltd v Sony DADC Europe Ltd [2021] 1 All ER 527

“British Standards Codes of Practice are not legally binding or conclusive in respect of issues of reasonable skill and care but they reflect the consensus of professional expertise and opinion as to acceptable standards and practice for their stated application. As such they provide strong evidence as to the standard of the competent professional at their date of issue: Ward v The Ritz Hotel [1992] PIQR 315 per McCowan LJ at p.327.”

O’Farrell J, §59

UK POSITION: CIVIL

How is the new ISO standard relevant to civil litigation in the UK?

- Employers owe a duty of care to their employees to protect their health and safety and not to expose them to unnecessary risk
- If employees travelling for work suffer harm, they may bring a claim against the employer

UK POSITION: CIVIL

What is a UK court likely to consider in these circumstances?

For the court to find an employer liable, it is likely to consider three things:

- Whether there was a duty of care owed
- Whether that duty was breached
- Whether the employer's breach of its duty causes loss to the employee

UK POSITION: CIVIL

What UK cases have considered duty of care and risk assessments in corporate travel?

- *Dusek v Stormharbour Securities LLP* [2015] EWHC 37 (QB)
 - The helicopter crashed, killing all on board
 - English LLP owed a duty to take reasonable care
 - By taking no steps at all in conducting a proper risk assessment, the employer had breached its duty of care

UK POSITION: CIVIL

What UK cases have considered duty of care and risk assessments in corporate travel?

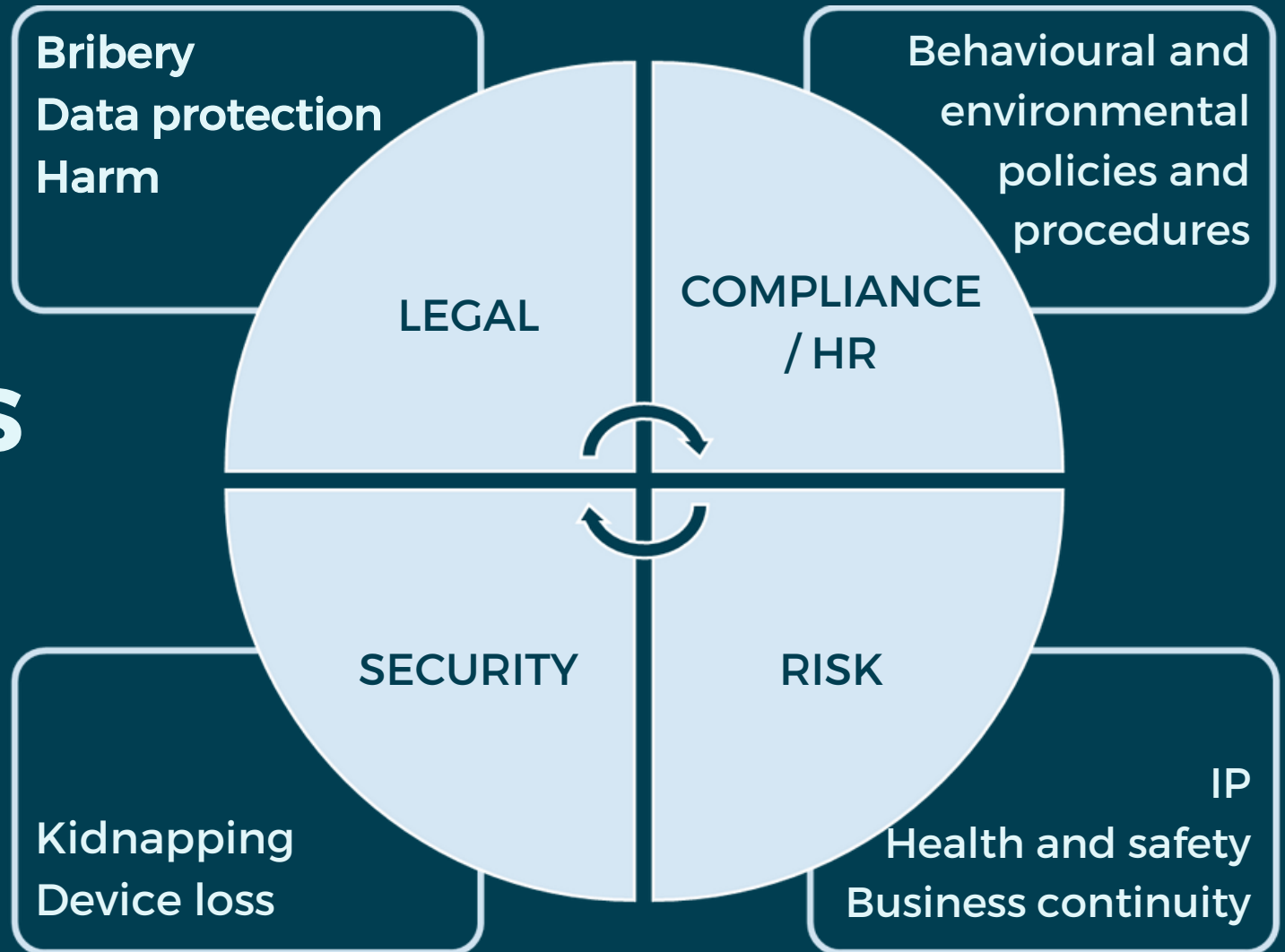
- *Cassley v GMP Securities Europe LLP* [2015] EWHC 722 (QB)
 - A private charter flight crashed in the Republic of Congo
 - Court found that the employer has breached its duty of care
 - The court will ask what the employer should have done
 - If the employer's actions in the counterfactual would have made no difference, the employer may be found in breach of duty, but will not be required to pay compensation

UK POSITION: CIVIL

Has the ISO standard been used in any UK cases?

- Not yet, but it's quite new
- The fact it exists and there has been some standardisation may make it easier to bring breach of duty claims, but only time will tell

CRIMINAL IMPLICATIONS IN RELATION TO TRAVEL



UK POSITION: HEALTH AND SAFETY CRIMINAL LAW

- The Health and Safety at Work Act 1974
 - “so far as is reasonably practicable”
 - “in the course of his employment”
- *Coult v Szuba* [1982] R.T.R. 376
 - “the least artificial point to draw the line’.”



BRITISH
TRANSPORT
POLICE



UK POSITION: CORPORATE MANSLAUGHTER

- Corporate Manslaughter and Corporate Homicide Act 2007
- An organisation will be guilty of the offence if all of the following criteria apply:
 - the way in which its activities are managed or organised causes a person's death;
 - the death results from a gross breach (meaning conduct which falls far below what can reasonably be expected of the organisation in the circumstances) of a relevant duty of care owed to that person; and
 - the way in which senior management managed or organised the organisation's activities forms a substantial element of the breach

THE COMPLEXITY OF INTERNATIONAL LEGAL RISK



PROPORTIONATE RISK-BASED STEPS

- Internal risk assessments and mapping as a starting point
- Engage with internal stakeholders
- If serious risks are identified, consider legal risk analysis
- Executive training on health & safety risk
- Read the three papers if relevant geographically
 - See: <http://bit.ly/3AeRvZY>

THE U.S. PERSPECTIVE

BENJAMIN FISCHER
MORVILLO ABRAMOWITZ GRAND
IASON & ANELLO PC



Morvillo Abramowitz
Grand Iason & Anello PC

**U.S. CIVIL/REGULATORY
FRAMEWORK:
DEFINING THE DUTIES**

**Potential Relevance to
Department of Justice
Investigations and Corporate
Criminal Investigations**

RELEVANCE TO PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS:

- a) The nature and seriousness of the offense**
- b) The pervasiveness of wrongdoing within the corporation**
- c) The corporation's history of similar misconduct**
- d) The corporation's willingness to cooperate with governmental authorities and agents**
- e) The adequacy and effectiveness of the corporation's compliance program at the time of the offense**
- f) The corporation's timely and voluntary disclosure of wrongdoing**

RELEVANCE TO PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS:

- g) The corporation's remedial actions**
- h) Collateral consequences including to shareholders, pension holders, employees, and others**
- i) The adequacy of remedies such as civil or regulatory enforcement actions**
- j) The adequacy of the prosecution of individuals responsible for the corporate misconduct**
- k) The interest of the victims**

TRENDS IN DEFINING DUTIES OF CARE



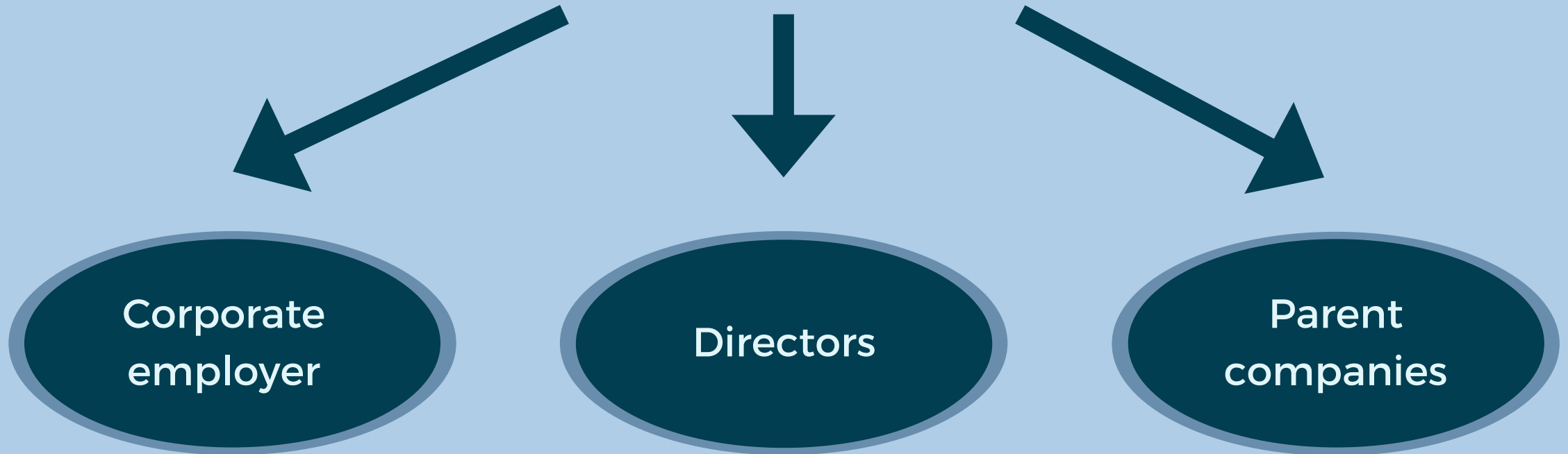
THE FRENCH PERSPECTIVE

FRÉDÉRIC BELLANCA
& FABRICE DUBEST
DARTEVELLE DUBEST
BELLANCA & ASSOCIÉS



EMPLOYERS' CIVIL LIABILITY AND ISO 31030

Who owes the duty of care?



POTENTIAL RELEVANCE TO CRIMINAL LAW LIABILITY

- **Endangering the life of others:** deliberate breach of a particular duty of care or safety required by law or regulation that created a mere possibility of damage caused to the employee
- **Unintentional injuries/Manslaughter:** the act of causing by clumsiness, carelessness, inattentiveness, negligence or failure to comply with a particular safety obligation or duty of care required by the law or regulations, the harm/death of another person

**TIME FOR
A BREAK**





PERSPECTIVE OF A TRAVEL Risk MANAGER

LAETITIA PIRODDI, PWC



ADOPTING ISO 31030

Travel Risk Management Programme

- Dedicated team
- Travel security policies and procedures
- Travel approval process
- Pre-departure briefing
- 24/7 Security Operations Centre to support risk identification, analysis and reporting
- Itinerary tracking tool
- Mass communication tool
- Training
- Incident management planning

Benefits of adopting ISO 31030

- Meet duty of care obligations
- Measure your Travel Risk Management Programme against best practices
- Provide reassurance to staff and clients
- Enable business
- Promote safety and security culture


RISK MITIGATION

BRIAN MOORE
GLOBAL SECURE ACCREDITATION



GLOBAL SECURE
ACCREDITATION

EXPERT KNOWLEDGE OF YOUR ORGANISATION



OUR OBJECTIVES,
GOALS,
PRIORITIES
ARE...

WHICH RISKS ARE THE KEY RISKS?

- "Who holds our key relationships?"
- "Who has our vital knowledge and know how?"
- "Who do I send on important missions?"

What would happen if they were not available?



FEEDBACK FROM 75+ ORGANISATIONS

Challenges	Good Practice
<u>A</u> lignment between departments	Integrated risk forum
<u>B</u> leisure	Yes, you can restrict recreation
<u>C</u> omms with senior management	Senior sponsor
<u>D</u> ata re traveller health	4 routes to resolution
<u>E</u> xercising	Practise the reasonable 'what ifs'
<u>F</u> eedback from travellers	Quid pro quo



**ANY
QUESTIONS**