



SETTLING THE 'SCORE'

JUNE 2019

A recent decision of the Court of Appeal serves to provide employers with a useful reminder of the importance of the duties that they owe to their employees and the consequences of failing to successfully discharge them.

The English Decision

The Court of Appeal has recently dismissed an appeal made by Royal Opera House Covent Garden Foundation (**ROH**) in respect of a claim that had been brought against it by a former orchestra member, Christopher Goldscheider (**Mr Goldscheider**).

Mr Goldscheider was a viola player with the ROH. In 2012, after the third day of rehearsals of Wagner's *Der Ring der Nibelungen* for the upcoming season, Mr Goldscheider suffered acoustic shock, an injury to his hearing that ended his professional career. A claim for damages was brought against ROH by Mr Goldscheider on the basis that the ROH had not taken sufficient steps to protect him during the rehearsals.

The Court found that the ROH has not implemented sufficient safety and protection measures and decided in favour of Mr Goldscheider. The ROH was ordered to pay damages to Mr Goldscheider. This was the first instance of loss arising from acoustic shock to be ruled on by the English Courts.

The ROH was granted permission to appeal the decision to the Court of Appeal. When the appeal was heard, the ruling judge upheld the lower Court's order (on narrower terms) and found that the ROH was indeed liable to pay damages to Mr Goldscheider for his injury.

The decision from the case serves as a valuable aide-mémoire to employers that failing to adequately protect their employees' safety can lead to financial consequences.

Considerations for Guernsey Employers

Employers should be well aware that the law (primarily under The Health and Safety at Work etc. (Guernsey) Law, 1979, as amended) imposes both general and specific duties on them to keep their employees safe. There are further Ordinances of the States and guidance from the Health & Safety Executive to set other requirements in relation to specific workplaces or professions.

An employer's general duty to its employees is to ensure the health, safety and welfare of its employees whilst at work. This duty applies whether the employee is working from the employer's premises or working at a different location. In high-level terms, the discharge of this general duty falls into five separate categories:

1. Equipment

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The principle is that the equipment that employees use and the methods in which it is used must be safe. All and any equipment and/or machinery that employees use as part of their job must be kept in a safe and serviceable condition. Safe working practices must be implemented for use of the equipment.

2. Articles and Substances

For workplaces that deal in or store any harmful substances, appropriate action must be taken. Matters such as the storage, handling and transport of these substances will have to be considered carefully by the employer (in line with any relevant recommendation of the manufacturer).

3. Information, Instruction and Training

Employers are expected to provide their employees with a sufficient level of training and supervision so as to ensure their safety. The level of training given must cover aspects that are common to the workplace (fire drills, first aid, etc.) and specific to an employee's role and rank.

4. Workplace

The meaning of 'workplace' will be greatly different based on a certain organisation's circumstances and business. The employer has a duty to ensure that, in any event, the workplace (under their control) is kept in a safe condition. The regulations in this area reflect both the inherent safety of the environment (such as structure, stairs and lift) together with any more specific aspects of a workplace (such as those that include scaffolding, boats or open-air sites).

5. Welfare

Together with ensuring the general safety of the workplace, an employer must have regard to an employee's welfare. The actions that will be taken must be considered in light of the employee's role and the attributes of the particular workplace. Aspects of welfare should consider lighting, heating and ventilation. If in ensuring conformity with the law, the provision of safety equipment is required, employers cannot charge their employees for such equipment.

Employers must comply with their obligations "*so far as is reasonably practicable*", meaning that in deciding whether to implement a practice or invest in any equipment, the difficulty or cost in doing so will be considered against the relative risk of the incident being mitigated. This means that what is required for an employer to discharge their duty will vary based on the particular circumstances of the workplace.

Where an employer has in excess of five employees, it is a requirement that both a written health, safety and welfare policy, together with appropriate arrangements to implement that policy, are in place.

The duties that employers owe to their employees should be kept in mind at all times. The failure of an employer to adequately protect their employees not only puts the safety and well-being of its employees at risk, but, as seen in the case of the ROH, opens the employer up to adverse financial consequences.

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