LOCAL STANDARDS IN HOLIDAY CLAIMS: TIME FOR DEFINITIVE GUIDANCE BY THE COURT OF APPEAL?

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The recent Court of Appeal case of Japp v Virgin Holidays Ltd. involving a claim where a holidaymaker was injured by walking through glass doors in Barbados, has yet again brought into the spotlight the issue of ‘local standards’ for holiday claims. There has been considerable case law over recent years on this point which has to a degree generated an element of uncertainty in the law. This article will examine the background to the debate and question whether or not the Court of Appeal has brought some clarity to this vexed area of law. The fundamental question for the courts is, when consumers go on holiday, should they expect to be accommodated in hotels or apartments that match the safety standards of premises in the UK, or should the standards be set by the local laws, regulations and customs of a particular foreign country?

The Law on Local Standards

The leading authority on the issue is the case of Wilson v Best Travel. The claimant bought a package holiday from the defendant at the Vanninarchis Beach Hotel in Kos, Greece. On the morning of the second day of the holiday he caught his foot in a curtain, tripped and fell through a glass patio door at the hotel. The glass in the door complied with Greek but not British standards of safety. The claimant was seriously injured in particular to his leg, the gravity of the consequences attributable to the fact that the glass fractured into fragments of razor edged sharpness. The issue at stake was what liability should be imposed on the tour operator in respect of the quality of the glass in the patio door.

There was no express term in the contract about the quality of the glass and the court was asked to imply a term under section 13 of the Supply of Goods and Services Act 1982 that services must be supplied with reasonable care and skill. Phillips, J found that the tour operator was under a duty based upon section 13 to exercise reasonable care in respect of the glass. What this amounted to was that as long as the glass complied with local standards and those standards were not so low as to cause a reasonable holiday maker to decline to take a holiday at the hotel in question, then the duty was satisfied. In this instance the tour operator was not held liable. The hotel had to comply with two sets of regulations, those imposed by the building authority and those imposed by the Greek tourist organisation EOT. The glass required to

1. [2013] EWCA Civ 1371, reserved judgment delivered November 7th.
2. [1993]1 ALL ER 353.
be fitted had to be 5mm thick and it was. It satisfied the local requirements and had been inspected and approved. However, it was not safety glass and had not fragmented into innocuous small pieces when broken, which explained why the injuries caused by the jagged glass had been so severe. Safety glass though was not required to be fitted in Greek hotels by Greek regulations.

The claimant called an expert with long experience in the glass industry who confirmed that toughened safety glass was a requirement to be fitted to meet British Standards regulations. Thus standards currently applying in Britain in the interests of safety had yet to be adopted in Greece and the court felt that had the incident occurred in England it was arguable that the hotelier would be held liable for breach of the common duty of care imposed by s 2(2) of the Occupiers Liability Act 1957. The question for the court however, was, what is the duty of a tour operator in a situation such as this? Must they refrain from sending holidaymakers to any hotel whose characteristics, in so far as safety is concerned, fail to satisfy the standards which apply in Britain?

Phillips J. held they did not, and that save where uniform international regulations apply, there are bound to be differences in the safety standards applied in respect of the many hazards of modern life between one country and another. The court took the position that all civilised countries attempt to cater for these hazards by imposing mandatory regulations and that the duty of care of a tour operator is likely to extend to checking that local safety regulations are complied with. Provided that they are, the duty of the tour operator does not extend to boycotting 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 (for example say no fire alarms or safety exits). Implicit in the claim was that the hotel should not have been featured in the brochure because of the lack of safety glass, but the court held that if that contention were valid, it would apply to many if not the majority of the other hotels, pensions and villas featured in the defendants’ brochure and no doubt the brochures of the other tour operators who sent their clients to Greece.

The principle established by the case of Wilson has proved an extremely fertile ground for litigation in the ensuing years and was followed in Codd v Thomson Tour Operators Ltd.3 The claimant was aged 10 at the time and caught his finger in the door of a lift in a hotel in Majorca whilst on holiday. One of the doors to the lift had jammed and when pulled, closed very quickly catching the finger, resulting in serious injury. The defendant had provided evidence that, in accordance with Spanish law, the lifts at the hotel were inspected on a monthly basis by managers and regularly by engineers. The lifts were also working satisfactorily prior to and after the accident. There was no evidence to suggest the engineers or the hotel had failed in their duty to keep the lifts properly maintained. The Court of Appeal found as the judge at first instance had, that it was impossible to say why the door had closed in the way that it had and no evidence that it had slammed closed through poor maintenance. The claimant argued that the British standards of maintenance and upkeep should have been applied, that the onus was on the defendant to establish that they had not been negligent and not on the claimant to establish that they had. The lift had not been maintained properly and
in addition there was no emergency equipment or proper advice in the lift as to what to do if the door did not close or if the lift failed to operate correctly. However, this was not a requirement of Spanish law albeit it was in English law.

Lord Justice Swinton Thomas made it very clear that the judge had been right to conclude that there was no requirement by the regulations then in force in Spain to have in place any further instructions other than those which were present and that whilst the law in England applied to the case in establishing negligence, there was no requirement that a hotel in Majorca is obliged to comply with British safety standards. It was not a correct approach to the law to say there was a breach of duty according to English law in a case such as this where an accident occurred in a foreign country. This was not a case in which it was appropriate to say the tour operator or hotel was liable for the accident without proof of negligence. In order to succeed the claimant needed to prove that the hotel management was negligent either in relation to the maintenance of the lift or in relation to the safety procedures, and this had not been established.

The principles above have become even more entrenched following the High Court decision in Holden v First Choice Holidays & Flights Ltd.4 The claimant whilst on holiday fell from the third step of a flight of stairs which led from the hotel ground floor down to the lower ground floor restaurant in her hotel in Tunisia, fracturing her left thumb and right wrist. She claimed that the steps were wet and slippery, and that the defendant was in breach of contract, negligent and alternatively that they were in breach of the Workplace (Health, Safety and Welfare) Regulations 1992 and the Occupiers Liability Act 1957. The defendant denied that the UK Regulations and Act applied in Tunisia but accepted that the Package Travel Regulations did apply to the contract. At trial evidence was produced by the defendant that the hotel had an appropriate cleaning system in place at the time of the accident and that spillages were swiftly dealt with. In addition, the restaurant manager stood at the doorway of the restaurant preventing people from taking drinks into and out of the restaurant.

In upholding the defendant’s appeal Goldring J. held that it was for the claimant to prove that the hotel was in breach of local safety standards. Even in the UK it would not have been reasonable, as suggested by the judge at first instance, to have a system whereby the stairs were checked every time a person with a drink in an open container came into the restaurant. Significantly, the claimant had not adduced any evidence of the applicable local standards (a theme running through much of the case law in this area)5 which proved fatal to her case. It was not for the defendant to prove anything and the appropriate legal standard, in the

5. See further the numerous illustrations on this point in Saggerson 5th Edition pp211-213 and in particular the telling quote from the Judge in Gallagher v Airtours Holidays Limited [2000] 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 action. 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 the 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”.
absence of evidence, could not be inferred from what the hotel did or did not do in practice. *Holden* made it clear that the evidential burden was on the claimant, and it was not sufficient, as had occurred in some cases, for them to rely on the defendant’s pleadings of what systems it had in operation and then to suggest that as they had not complied with those systems, they were thus in breach of the duty of care, what has been referred to as the ‘evidential own goal.’ Though it has to be noted that defendants cannot simply lie back and do nothing either for if they become too complacent about evidence, particularly from decisions in the higher courts, they may face a *res ipsa loquitur* style argument akin to the slip and trip case of *Ward v Tesco Stores Ltd.*

**Proof of Local Standards**

The approach of the court in *Holden* raised some very real financial and theoretical problems, for example in many cases the question of what the local standard is may not be readily ascertainable. Unless there are local regulations drafted very clearly which require strict compliance as Saxby (2007) rightly points out there is likely to be genuine dispute as to whether any given system or structure meets local requirements. How and where and at what cost are claimants to get such evidence? Often the appropriate expert will be a local lawyer according to Saxby but the practical and financial difficulty is obvious and the position almost untenable in the majority of low cost claims. As a matter of principle too, he argues further, that it will be seen to be plainly unsatisfactory where both claimant and defendant in response, are required to obtain competing foreign expert reports for an English judge to routinely be asked to determine which of the two he prefers, whilst nominally considering breach of an English contract and applying the English law of negligence.

Post *Holden* it has been accepted by the courts that the burden of proving local standards rests with the claimant, and as Dowd (2010) makes clear it has been a powerful case relied on by tour operators, resulting in the dismissal of many claims. For a while the issue of proof of local standards often requiring expert evidence was the subject of a flurry of cases, with the higher courts at times deciding lack of such evidence would prove fatal to a claim, yet other decisions appearing to down play the importance. Mason and Prager (2008) for instance describe *Holden* as being enforced with rigour in the county courts and of it not being uncommon for claims to fail because the claimant has not provided any evidence of local standards. Disturbingly they found that rather dogmatically the courts were dismissing cases notwithstanding overwhelming evidence that hotels had breached what might be thought to be minimal English standards and cite an example of one case where a submission of no case to answer had been successfully upheld because of the lack of evidence of local standards. They also highlight the case of *Drabble v Sunstar Leisure Limited*, a Court of Appeal decision. Whilst on holiday in Turkey the claimant walked into a glass partition separating the bar from the lounge. The glass shattered causing lacerations to the hand and knee.

glass was not safety glass and was 4mm annealed glass. The claim was brought under regulation 15 of the Package Travel Regulations (1982) – failure to perform or improper performance of the obligations under the contract – and section 13 of the Supply of Goods and Services Act 1982. There were expert engineers for both sides. The claimant’s expert provided evidence that Turkish building standards were at least as advanced as the UK and therefore ought to have installed safety glass. The defence expert stated that the 4mm glass was common place in Turkey although 80% of Turkish hotels had stickers warning of the presence of glass, at eye level. The claim was dismissed and the Court of Appeal held that it was for the claimant to prove absence of stickers, not for the defendant to prove presence. Keene LJ felt there was no good reason for departing from the normal principle by suggesting it was for the defendant to prove compliance with local standards:

“Quite frankly given the failure to prove the absence of a warning sticker, there is no realistic prospect of establishing such a breach of duty.”

Mason and Prager conclude from this robust approach that the Court of Appeal has no intention of revisiting the issue of the burden of proof in package travel cases in the foreseeable future and that Holden is firmly entrenched in English law, and likely to remain so. Despite it would seem contrary decisions which have decided the opposite. For example in a Northern Ireland case, Griffin v My Travel UK Limited the High Court took a very different view about the lack of evidence concerning local standards. In this case the claimant received an injury to his foot whilst on holiday in Rhodes. His bed was not sufficiently attached to the wall and was moved by the maid when cleaning. When he went to pull the bed sheet back the bed dislodged and fell onto his foot. His claim was in negligence for breach of the duty of care and breach of contract as under the terms of the contract the tour operator agreed liability for injury caused by the negligence of staff or suppliers, and under regulation 15.

The defendant argued that the claimant had not proved that there had been a lack of reasonable care and skill and in particular had provided no evidence of local regulations or standards relating either to the design or maintenance of such beds. McCloskey J. on a review of the authorities held that Wilson, (a pre-regulation case), as the Court of Appeal in Evans v Kosmar Villa Holidays held, did not purport to be an exhaustive statement on the issue and that the formulation of the tour operator’s duty, as set out in Wilson was ‘unjustifiably narrow, and properly analysed, was probably not intended to constitute an all encompassing exposition.’ Relying on the judgment of Richards LJ in Evans (see further below) in which though the claimant lost on causation, the court held that compliance with local safety regulations is not necessarily sufficient to fulfil that duty. Mc Closkey J. therefore held that failure by the tour operator to exercise reasonable care and skill in the provision of services
to the consumer could be established even where there is no evidence of non-compliance with the local safety standards and regulations. Compliance with such regulations would not necessarily be determinative of the question of liability. It has been argued by Dowd (2010) that Griffin may cause tour operators to fear that the decision opens the door to more claims which can be brought without the claimant being exposed to the costs of obtaining a foreign expert on local standards of engineering evidence.15 However, he also makes the point that whilst Holden may have been viewed by over-eager defendants as a ‘knock out’ blow it was never an impediment to a claim in every case. Holiday claims are fact specific and circumstances can arise where the question of compliance with local standards and regulations does not assist in determining the duty owed and whether the duty was breached. Local standards are but one of several matters which should be considered by a court in assessing whether there has been a breach of contractual duty.

The application of the law on local standards can also be seen in decisions often involving the issue of causation, where the courts have either determined local standards to be irrelevant and simply sidestepped the issue, or found that even where there has been a breach, inability to prove causation has been fatal to a claim.

Causation

There have been a number of tragic cases involving life changing injuries where claimants have dived or fallen into the shallow end of swimming pools that has seen the courts continuing to wrestle in particular with the local standards, regulations, customs and practices of foreign countries, when examining the question of liability. The following cases by way of illustration often factually have a common thread, in particular the effect of alcohol combined with a lack of or a lowering of awareness of risks and surroundings by holiday-makers when holidaying abroad (or even at home for that matter).

In Singh v Libra Holidays Ltd.16 the claimant whilst holidaying at the Christabelle Hotel and Apartments in Ayia Napa, Cyprus, sustained complete tetraplegia. The hotel catered for young boisterous groups and a relaxed air had developed, particularly regarding diving into the pool, and supplying of drinks at all hours from the bar by the pool, where swimming continued well past the official closing time. The claimant had used the pool numerous times previously and had shallow dived without incident nor had any staff stopped him, despite there being ‘no diving’ signs. On the night in question he had been out drinking and returned to the poolside bar about 3 or 4am. Between 7 and 8am he walked to the nearby edge of the pool and dived in. On this occasion his outstretched hands slipped apart on contacting the tiled floor allowing his head to come violently into contact with it, wounding his head and causing him to immediately lose all sensation from the neck down. By express terms in the contract the defendant accepted liability for any deficiencies in the services it was contractually bound to provide and of the failure of such services to reach a reasonable standard and for bodily injury arising from negligent acts or omissions of the defendant’s employees, agents, suppliers or contractors.

The claimant’s case for breach of the express terms of the contract and under regulation 15 was that diving into the pool was dangerous. Local Cypriot Regulations had not been complied with regarding the number, positioning and details of the warning signs, nor had there been adequate supervision by hotel personnel. Whilst accepting some form of contributory negligence, the claimant argued that all reasonably practical precautions had not been taken. Holland J found that the signs were inadequate and did not serve to fulfil the hotel’s standard of care and accepted the claimant’s evidence that he had not seen them. The defendant opened the pool officially from 9am but the Judge found that in fact it was in use from 8.30am and even so there had not been sufficient supervision to meet the appropriate standard of care. However, the claimant accepted he did not need a sign, nor anyone to tell him not to dive into the shallow end of the pool. Members of the hotel staff had also been seeking to move the drunken party away from the pool area but to no avail. The Judge held that there was no basis for finding that the breach of duty with respect to signage made any material contribution to the accident. The claimant was the author of his own misfortune. Thus whilst there had been a breach of the duty of care – as clearly evidenced by breach of the relatively strict Cypriot Public Swimming Pool Regulations 1996, the claim ultimately failed on causation.

In a similar case, Healy v Cosmosair Plc & Others the claimant, a family man went to jump into a pool but lost his footing and fell, twisting in the air as he did so, hitting his head on the bottom of the pool and breaking his neck. He claimed breach of express terms in the contract and regulation 15, in particular that the pool terrace tiles caused him to slip, they were deficient as they were not of a reasonable (non-slip) standard, and did not comply with Portuguese regulations that required a 2m non-slip ring around the edge of the pool (there being only 400mm). The defendant claimed it was a dive, his judgment was impaired by alcohol and that the tiles were non-slip and did comply with local regulations as the recently built complex was so certified. Expert evidence satisfied the court that this was not a dive. The court also found that there was improper performance in that the local standards had not been complied with. However, again the claim failed on causation and that he had failed to prove factually he had been on a wet terrace tile at the time the uncontrolled fall was triggered (the claimant was unable to say what had caused him to lose his footing).

These cases demonstrate how the arguments involving local standards and sometimes clear breaches of them, become redundant, when claimants have failed to clear the hurdle of causation. This point is clearly demonstrated in Evans v Kosmar Villa Holidays referred to above. The claimant whilst on holiday in Corfu at an apartment complex dived into the shallow end of the small swimming pool in the early hours of the morning and hit his head on the bottom sustaining serious injuries which resulted in incomplete tetraplegia. The apartments catered for the young and lively and again were very relaxed about what was permitted and attracted large groups of young adult holidaymakers who drank substantial amounts of alcohol. The bar near the pool was often open very late and with the pool lights on. When the bar closed the pool lights went out but not the lights along the pathway to the pool and the court found that the use thereafter by guests was still authorised. There were two signs regarding ‘no diving’ but one was partially covered by foliage and despite which diving
did take place without any reprimand. The claimant had used the pool only once before and had seen people diving in from all areas and had assumed the pool was reasonably deep all round. About 3.30am, unable to sleep as it was hot and due to the noise from the pool where people were swimming and diving, the claimant joined in and suffered his injuries. Again the claim was brought for breach of contract and also relying on regulation 15 improper performance of the contract. The judge at first instance found Kosmar liable with 50% contributory negligence.

The Court of Appeal upheld Kosmar’s appeal. There were two experts who broadly agreed that the signage warning of danger was inadequate. However the defendant’s case was that the duty of care did not extend to guard against an obvious risk of the kind that existed here, namely that diving into shallow water or into water of unknown depth, may cause injury. That risk was obvious to an ordinary able-bodied adult. The evidence showed that he knew of the risk and was able to assess it for himself. He took a deliberate decision to dive in. The claimant accepted he dove in due to a brief state of inadvertence. Lord Justice Richards, relying on Tomlinson v Congleton Borough Council18 held that Kosmar was under no duty to warn him against such a course of action or to take other measures to prevent it. The claimant’s case was also cleverly argued that it was not simply a question of him taking an obvious risk but because of the inadequate warning signs it was a question of guarding against the possibility of a mistaken assessment of the risk. This argument however, was rejected as the risk in this case was such an obvious one of which the claimant himself was previously aware and should have been aware of at the moment he dived. The fact that at the moment he acted thoughtlessly, in a brief state of inadvertence, was not a good reason for holding Kosmar to have been under a duty that it would not otherwise have owed him. The court took the view that there was no duty to give the claimant any warning about the risk of diving into the pool, let alone to have better placed or more prominent signs than those actually displayed, or to take any other step to prevent or deter him from using the pool or from diving into it. His dive and its terrible consequences were matters for which he must take full responsibility.

Thus it would appear that in some cases the issue of local standards may in fact recede into the background where, regardless of whether there had or had not been compliance, there will not be a breach of the duty of care where a person takes a patently obvious risk.19 Further, even where there is negligence and a breach of the duty of care, the claimant must also prove on the balance of probabilities that the injuries sustained were caused by that breach.

Following the above principles, the unwary may be surprised at the concept that although an English tour operator provides a contract governed by English law, the standards of the duty

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18. [2004] 1 AC 46. Involving a lake in a country park where swimming was prohibited and prominent warning signs were displayed. The complainant dived in and broke his neck. He claimed damages but failed in the House of Lords who held that there was no breach of the duty of care where the claimant had taken such an obvious risk of his own free will and the risk was not due to the state of the premises.

19. See also Clough v First Choice Holidays and Flights Ltd. [2006] EWCA Civ. 15 where the claimant slipped and fell from a wall into a swimming pool in Lanzarote and broke his neck. The wall should have been coated in non-slip paint. He had consumed a large amount of alcohol and his feet were wet. The judge took the view that given the combination of water and suntan oil mixture it was inevitable the wall would be slippy, even with non-slip paint. Had the claimant not taken so much alcohol he may not have gone on the wall but if he had would probably have been able to avoid the consequent fall and the claim was again dismissed on causation.
of care under that contract will be judged by the local laws, regulations and even customs of the country where the holiday takes place. The case of Holden has been described as ‘a thorn in the side of travel practitioners’ by appearing to condemn claimants to the time consuming, costly and often wholly disproportionate task of obtaining ‘expert’ evidence to deal with any issue that might touch on whether the local supplier had complied with its obligations. Nevertheless, it would appear that the courts have brought a more common sense and fair approach in more recent decisions by either sidestepping the point or finding the issue irrelevant to a particular case.

Following the decision in Japp however, the law now appears to be in a state of flux once again. Mrs Japp received £19,200 (subject to a 20% deduction for contributory negligence) in damages by HHJ Hayward at Brighton County Court in October 2012. Whilst on holiday at the Crystal Cove Hotel in Barbados she went onto her balcony to read a book and closed the glass patio doors to keep the air conditioning working. Later she went to return to her room, walking quickly to answer the phone that was ringing, not realising the glass doors were closed and she walked through them.

On appeal Lord Justice Richards confirmed that the courts have been consistent in following the approach in Wilson as to the applicability of local standards, though the legal framework has been altered to some extent by the Package Travel Regulations 1992, in particular regulation 15, as the focus is now on the exercise of reasonable care in the operation of a hotel itself rather than in the selection of the hotel as had previously been the law. At the heart of the issue of local standards in this case was the Barbados National Building Code 1993 Edition in which it stated safety glass shall be installed. The balcony doors at the hotel, which was constructed in 1994, did not comply with the Code. It was argued by the defendant’s expert that the Code was merely voluntary and not legally binding. The Judge at first instance however, held that the Code did reflect the custom and/or standard to be expected but went further, holding that a hotel runs the risk of being held liable if it breaches the Code or, as there is a continuing duty to have regard to safety issues, fails to update to comply with it. The Code was not complied with when the hotel was built and by the time of the accident in 2008, the hotel should have been updating to comply with the Code, and were therefore liable to Mrs Japp for her injuries. Virgin Holidays appealed.

There were three grounds of appeal:-

(i) The judge was wrong as a matter of law to find that the duty of care fell to be considered by reference to custom and practice at the date of the accident, rather than at the date of the construction of the hotel.

(ii) The judge was wrong as a matter of law to find that the hotel owed a continuing duty to update the fabric of the premises as custom and practice developed.

(iii) The judge was wrong as a matter of fact to find that the custom and practice at the date of construction of the hotel was to comply with the Code, this finding not being justified on the evidence before him.

Lord Justice Richards agreed that the judge was wrong to hold that the question of compliance with the duty of care in relation to the balcony doors fell to be considered by reference to standards prevailing at the date of the accident, rather than the date of installation. To hold otherwise would mean hoteliers under a continuing duty to tear out and replace all features of their premises that do not comply with developing standards and that was too onerous a duty, absent any local standards requiring them so to do. Further the judge was wrong to look at the matter in terms of compliance with local standards as at the date of the accident in 2008, or in terms of a duty to update the hotel so as to comply with developing standards. So far so good for the appellants as the Court of Appeal upheld grounds (i) and (ii).

However, the appeal was dismissed entirely on the basis that it was common ground the balcony doors at the hotel did not comply with the Code at the date when the hotel was constructed in 1994 and that the Code represented the ‘local standards’. The lower court having received two expert reports, one from a chartered builder and surveyor based in Barbados for the claimant, and one from an attorney-at-law with a firm of international legal consultants in Barbados, unsurprisingly preferred the claimant’s expert. His report included an unqualified statement that, “it is the custom and practice by professionals in the industry to follow the Code.” The expert also stated the provisions were an ‘essential minimum’ and the glass in the door was known to be very dangerous and not fit for purpose. It was inevitable the Court of Appeal found that the Code represented the ‘local standards’ and the hotel had not complied with them.

Lord Justice Richards nevertheless held that the appeal has served to establish an important point of principle in the appellant’s favour on the question whether, in relation to a structural feature such as the balcony doors, the duty of care falls to be considered by reference to local standards at the date of construction/installation or at the date of the accident. The decision has brought a little clarity in the guidance on that particular aspect of the issue of local standards and has reinforced the Wilson line of authorities that hotels and apartments must comply with the local standards prevailing at the time of construction at least. If they do not then hoteliers and ultimately the tour operator, will be liable. The question hanging over the case remains though, what if the premises did comply with the local standards at the time, but several decades ago. Is there no obligation then to upgrade say electrical wiring that may be of some antiquity? Perhaps those hotels may fall into the Wilson category of being so unreasonably unsafe as no consumer would venture to stay? Of course from a practical and cost point of view one can see the argument about it being far too onerous to constantly update. However, on the other hand, what price is safety?

Counsel for the appellants in this case was quoted at the time the judgment was reserved, that exporting English standards of reasonableness abroad is going to create great difficulties for the tourist industry and lead to a lack of clarity, as some nations are more risk averse than others. No doubt more is yet to come in what may be one of the most dynamic and fluctuating areas of travel law to date.

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