

UMAL NEWS

SPRING 2008

Travel Safety and Security

When all 136 passengers and 16 crew on board Flight BA 38 from Beijing were evacuated safely after the stricken aircraft lost power, landing short of the runway at Heathrow, it was evident a near catastrophe had been averted.

On the flight were two members of staff from one of the London University members of UMAL; the passengers escaped comparatively unscathed. Coincidentally, at the same time as the Boeing 777 was making its emergency landing, Nigel Deaves, Senior Claims Executive at UMAL, was hosting a Major Incident Planning seminar at St Mary's University College, Twickenham. Of the five scenarios explored by attendees, one assumed an aircraft accident at Heathrow with major casualties and the destruction of the institution's residential wing.

The two events highlighted the risks inherent in travelling. In particular, travellers themselves can face various challenges when heading off to destinations, whether to take up a work placement or field work, embark on the lecture circuit or on-site research.

Today, the Higher Education sector is a fast-moving, fluid environment where students and staff regularly undertake trips abroad and increasingly operate in an international sphere. While electronic communication has a clear role, it is sometimes preferable to meet face-to-face with counterparts across the globe or get out 'in the field'. However, leaving the confines of an institution means travellers must consider the various perils such trips can entail.

Leon Martin, Assistant Underwriter at UMAL, says, "There is a range of risks, from having an accident or losing baggage, to being caught up in an outbreak of SARS or social unrest." The 9/11 attack on the World Trade Center serves as one example. "We had various members with people in the USA when they closed their air space," Leon explains. "No-one was going anywhere for a fortnight, so there were many people who were stranded or couldn't travel. Therefore, we had a lot of claims for cancelled trips or trips that had to be extended."

While 9/11 was unprecedented, the need for

travellers to effectively minimise risk is an essential component for any trip. As such, UMAL members can take advantage of an invaluable service delivered by specialist risk consultancy, Control Risks.

They host regular travel security workshops to disseminate the necessary knowledge and skills travellers need to handle unforeseen events. Subjects covered include common scams, pre-trip preparation, action in emergencies and residential security.

The workshops can prove particularly useful if travelling to recognised hotspots. "The kind of places most people are trying to leave, academics will invariably be trying to enter. We have had people going to Iraq, Lebanon, Colombia and various African countries during periods of civil unrest," says Leon.

Before heading off to such volatile destinations UMAL members should access Control Risks' online services: Country Risks Forecasts and City Brief to assess the situation. The consultancy also provides 24-hour security support to personnel abroad via CR24, which delivers expert advice, help and, ultimately, assistance with evacuation.

Alongside security support back-up, travel cover must be flexible and comprehensive. "The UMAL travel cover is far broader than anything else I've seen in the travel insurance market," Leon says. "There are very few exclusions, and even if travel is to places that might be considered to have a high, or even extreme, risk, as long as travellers are aware of the risks, there has been an assessment of them and the institution has given approval, then the cover will apply."

UMAL provides cover for staff travelling on business and students undertaking travel worldwide as part of their courses. This equates to some 71,000 staff members and 465,000 students. This activity inevitably generates a number of claims during the year – around 500 – in several categories. It is rare to see serious medical emergencies but the emergency assistance facility has proved invaluable to travellers in difficult circumstances. The recently introduced CR24 help line for travellers is designed to provide an additional dimension to support travellers in times of need.



Risk to researcher in Kenya

Durham University's Ulrike Fillinger, a Research Associate with the Disease Ecology Group, School of Biomedical Sciences, was working on an ongoing malaria project in Kenya during the country's recent period of political and social unrest.

Based at a field station of the International Centre of Insect Physiology and Ecology in Mbita, near the shores of Lake Victoria, Ulrike was away from the main hotspots but still experienced the impact of the turmoil. "Due to blocked roads no transport was reaching the area. Prices of food increased substantially and road travel was impossible for almost two weeks after the election."

Remaining in contact with Claire Robinson, the insurance officer at Durham, Ulrike received Control Risks' Evacuation Monitor relating to Kenya. However, while evacuation was considered unnecessary, Claire discussed the issue with UMAL to ensure the necessary costs would have been covered. Ulrike has now returned to the UK as scheduled and is looking forward to returning to Kenya and continuing her work as soon as possible.

Commercial Contracts

HIGHLIGHTS FROM THE

Surveying your liabilities

Catherine Hawkins, partner at Berryman's Luce Mawer, gave an overview of the pitfalls of commercial contracts in English Law and how institutions can secure advantage.

Universities entering into a commercial contract have to consider a number of factors. Firstly, the terms implied by law can have a bearing, such as those within the Sale of Goods Act 1979, which determine the quality of goods supplied and their fitness for purpose. Similarly, the Supply of Goods and Services Act 1982, determines that any service provided will be carried out with reasonable care and skill.

Attention should be given to other elements within contracts, ranging from practical and commercial considerations, payment to any third parties who may be injured, and whether any losses will be insured. Any onerous terms, guarantees and warranties are further areas that demand close inspection, particularly those that are more onerous than terms implied by law. These can lead to situations where the university or college is liable when it has had no control over the performance of individuals or third parties. This can all create complications for securing cover.

Similarly, terms where the university or college actually agrees to be liable can have an effect on the ability to access cover because of commonplace insurers exclusions. Care should also be taken with contract terms that give clients access to the university's cover.

Universities may also wish to consider seeking to limit or restrict liability. This is important in various areas, such as where they cannot control the circumstances, where the liabilities are not commensurate with the contractual agreement and with liabilities due to delay and loss of profit.

However, universities must also avoid potential pitfalls when seeking to limit liability. For example, it is not possible to exclude liability for death and personal injury.

Reaching agreement over jurisdiction and law clauses may also be an essential component in any contract with a foreign element. Where possible, it is best to ask for English and Welsh jurisdiction. Attention should also be given to pre-litigation dispute resolution procedure or having an arbitration clause.

Mike Stones, UMAL's Technical Risk Manager, addressed the question of what risk experts are looking for during Liability risk management surveys to UMAL Members

Liability risk surveys usually take place every two years, can last from a day to one week and are designed to provide advice and risk recommendations to UMAL members.

During inspections, the surveyor will look at a wide variety of areas, ranging from the documentation of safety rules and procedures, safe systems of work and occupational health, to safety training, third party controls and claim defence capability.

The survey will also investigate the systems in place for risk assessment, accident investigation, reporting, work equipment and occupational health.

Within all of these subject areas, the visit is an opportunity for members to gain information about the latest legislation and advice. It also brings a 'fresh pair of eyes' to their systems for working, which can prove a valuable asset for recalibrating

any aspects that are revealed to be lacking.

A liability survey can also explore the notion of accidents. HSE statistics reveal that in 2006-07 there were 119,000 reports of an accident or work-related illness in education, the prevalence rate stands at 4.4% (all industry is 3.9%). Furthermore, there were also 1.4 days lost per worker for accidents, and 1.2 days due to illness.

The importance of establishing comprehensive procedures for accident investigation and regular audits are other factors visits can address. Similarly, the need to deliver a range of training programmes is explored.

A liability survey will also help universities understand their public liability claim potential and third party controls. This includes contractor controls, visitor controls and off-campus activity, such as field trips.

The dangers in data

Tim Smith, partner at Berryman's Luce Mawer delivered an overview of The Data Protection Act 1998.

Tim Smith explored the idea of why data protection matters to Higher Education, examining the breadth of the Data Protection Act, its complexity and the various claims and disputes that have arisen since it became legislation.

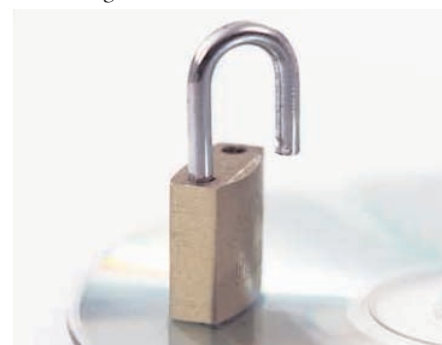
The various sections of the Act were examined to ascertain what is covered, including information recorded by equipment or held by public authority. Similarly, the rights under the Act, encompassing subject access, prevention of processing, compensation and rectification.

Tim explained that the wording of the Act is considered cumbersome and uses broad concepts, such as 'fair and lawful processing'. He highlighted the risks to organisations, detailing how processing data can lead to claims, alongside the improper release of third-party information in relation to subject access requests, and the subsequent costs involved.

The experience of Berryman's Luce Mawer

revealed that the Act has resulted in a high ratio of litigated claims from tenacious litigants - often in person.

Tim advised keeping abreast of the key and current issues surrounding the Act, allowing universities to determine such factors as what personal data is, how to undertake risk management, and how to handle requests for material that includes third party information. Much of the information can be gleaned from the Information Commissioner's website at www.ico.gov.uk



Freeing your information

Ella Pirgon, Solicitor at Berrymans Lace Mawer, explored the impact of the Freedom of Information Act (2000).

Since it became law, the FOI Act gives a general right of access to a wide range of information held by public authorities. It also sets out the exemptions that apply under the Act, which are either absolute or qualified.

While the definition of a 'public authority' is very broad, including the Royal Botanic Gardens, it also encompasses all universities and colleges within the Higher Education sector.

Under the Act universities have to adhere to two main responsibilities:

- They are required to institute a 'publication scheme' that includes the production of a guide to the information they hold and which is publicly available.
- They must also deal with individual requests for information.

Any person wishing to make a request for information held by universities has to do so by

writing, including email, to the institution. The university must then inform the applicant whether they hold such information and whether there will be any cost involved. Strict time limits apply for the response, which must be made within 20 working days.

The need to ensure good practice in the handling and storage of information is of paramount importance to universities. Comprehensive retention and destruction policies should be instituted and employee training needs to stress the importance of the FOIA and its requirements. There should also be a good publication scheme put in place, alongside an appropriate precedent refusal notice.

The recent decision notice by the Information Commissioner, responsible for overseeing and enforcing the FOIA and the Data Protection Act, issued to the University of Cambridge, again highlighted the need to have appropriate



structures in place.

A complainant requested information about successful applicants to the University, broken down by school or college, gender and course. While Cambridge provided the majority of the information requested, it withheld that which revealed groups of less than five under Section 40(2) of the Act. The Commissioner found that the information withheld was personal data; but that disclosure would not breach any of the data protection principles and the University was required to make the disclosure. Furthermore, the university's refusal did not fulfil the procedural requirements of section 17 of the Act, but the breach did not necessitate remedial action.

Office of the Independent Adjudicator

Richard Wilkins, Associate at Berrymans Lace Mawer and Nigel Deaves, Senior Claims Executive at UMAL, looked at the work of the Office of the Independent Adjudicator (OIA).

The Office of the Independent Adjudicator was established by Parliament in 2003 as a not-for-profit company charged with resolving student complaints against Higher Education institutions in England and Wales.

There are currently 146 higher education institutions which are required to comply with the rules of the OIA's Statutory Scheme for student complaints.

Anyone who was or is registered as a student at a participating HE institution can bring a complaint relating to a range of areas. These can include teaching and facilities, bullying and harassment, discrimination, procedural irregularities and disciplinary matters. The OIA does not have responsibility for admissions, academic judgement, student employment or matters already considered by

a court or tribunal.

Students considering a complaint against their university must first exhaust the institution's internal complaints procedures. Only then, if still unsatisfied, can they pursue the complaint further and approach the OIA.

The OIA's procedures are informal; they are not legalistic in approach and it is seen as an alternative rather than a substitute for the courts. It generally reviews a complaint based on information provided by both parties, and can demand co-operation, such as the disclosure of documents. The OIA expects to make decisions without the need for face-to-face meetings or hearings.

The OIA's Reviewer will normally draft a decision so that both parties can comment on

any material inaccuracies before a formal paper decision is issued within three months of completion of procedures.

If the Reviewer finds that the complaint is wholly or partly justified, they may make certain recommendations. These can include monetary compensation being paid to the complainant, improvements to the university's procedures or other remedies.

While the OIA has no power to make its findings binding on the HE institution, they are expected to comply and no institution has yet fail to do so. The student, however, is not bound by the recommendations of the OIA and can still decide to take legal action.

Since its formation, the OIA has seen a steady year on year growth in complaints. For 2008-2009, this is expected to increase by 20% as more students become familiar with the scheme in a climate of higher tuition fees, alongside increased foreign exchanges and further disability and equality legislation.



Insurance to cover travel and the impact of hostilities

By Pollyanna Deane of Berwin Leighton Paisner.

“We strongly recommend that comprehensive travel and medical insurance is obtained before travelling. You should check any exclusions, and that your policy covers you for all the activities you want to undertake.”

This concludes the FCO's advice on travel to Afghanistan, which opens with strong advice against travel to Afghanistan. Obviously, travelling to a country where terrorism and armed conflict are current is going to be risky and there are specialist providers of insurance to cover those who need to operate permanently in those countries. Thanks to Employers Liability insurance (“EL”), employers automatically provide employees with protection for accidental death or bodily injury arising out of workplace accidents. Employees thus have protection against injury at the time of a disaster or incident, irrespective of its magnitude.

Employees of many organisations travel overseas, and their death or illness can severely impact on their employer. For this reason, employers generally provide comprehensive travel insurance which should also provide for repatriation or even rescue from hostile territories. Off the peg travel insurance is unlikely to be sufficient in this area. In addition, separate cover is available for kidnap and ransom, if employees are seconded to or travel to the world's ‘hot spots’.

However, it is important to note that certain insurers seek to impose limits, the most common of which includes limits on the countries to which travel may be made. For example, the FCO's list of countries provides many insurers with an easy guide and using the list to restrict cover for travel follows the current thinking within the insurance industry about loss mitigation and indeed prevention. As well as providing a cap on total liability, group personal accident insurances or travel policies may limit the amount the insurer will pay in event of multiple claims arising out of one vehicle, particularly aeroplanes or buses. This limitation also discourages a large number of people travelling on the same vehicle.

Multiple insurances triggered by one incident

The World Trade Center has become a classic example of how various personnel-related insurances can be called upon, as substantial claims were made under the following types of policies:

- Workers' compensation
- Personal accident
- Travel
- Key person
- Salary continuance
- Superannuation, especially death benefit coverage.

Personnel insurances required after a disaster

These arise where employees:

- Have to stay in the disaster zone
- Help with the salvage
- Have to get home as soon as possible, i.e. repatriation

In any event, the insurance cover should already be in place, but some specialist covers may have to be immediately arranged to protect both the employees and employer. As employees are regarded as the lifeblood of any organisation, obviously the appropriate insurance should be in place before any disaster occurs, irrespective of its cause, magnitude or location. If the insurance is not in place, or the insurer decides that the policy is invalid for any reason, then the liability to meet the costs of the medical assistance, repatriation etc. will fall initially upon the employee who will naturally seek reimbursement from the employer.

Liability of the employer

An employer must provide employers liability insurance. This is compulsory in the UK and provides indemnity in respect of an employer's legal liability for compensation for accidental injury arising in connection with their business to any employee caused during the course of their employment. The employer's obligations to its employees include providing staff with (a) a reasonably safe working environment, and/or (b) a full warning of any dangers in the work environment which they (the employee) may not be able to discover.

For this reason, employers sending employees to overseas postings are encouraged by their insurers to give full details of the proposed destination and where a particularly dangerous country is envisaged, require employees to sign up to a statement of the dangers and risks.

Nonetheless, potential claims may be made by employees for negligence against an employer. An employer is generally deemed better able to protect an employee because of their influence or greater bargaining power. However, to be proved negligent an employer must have been reasonably able to foresee that there was danger. This might be because it had knowledge greater than the employee's of the existing facts and could reasonably foresee that harm might follow because of those facts. It is essential that the potential danger was reasonably foreseeable. The employer's conduct would be judged against the known options at the time that the decisions and actions were taken or not taken and not with the benefit of hindsight.

The elements of any successful negligence or tort claim must include the following three elements:

- (1) The organization has a legal duty of care to conform to a certain standard,
- (2) The organization fails to meet that standard, and
- (3) The staff member is injured as a result of this failure.

The standard of care owed is that of a reasonably prudent organization of the relevant kind. Further possible obligations which may trigger liability for employers stem from the other obligations owed to employees:

- (1) Failure to follow applicable health and safety laws and take care of the safety of their employees,
- (2) Failure to care adequately for a staff member who has been injured,
- (3) Discrimination on the basis of race, sex, nationality, religion, age or disability,
- (4) Failure to purchase Employers Liability insurance, or
- (5) Commission of fraud or misrepresentation.
- (6) Insurers failing to pay

The travel insurance industry provides consumer associations with multiple tales of woe. Travellers who thought that they were covered find that their policies contain an exclusion particularly for terrorism. This situation was an issue when a British couple, Christian and Jennifer Donelan, were badly hurt following a nail-bomb attack in Male, the capital of the Maldives. Their insurer refused to pay for an emergency evacuation to a specialist burns unit, citing an exclusion that it would not cover any claim arising from terrorist activity. Eventually the Maldivian government stepped in and provided an airlift so the couple could receive the medical treatment needed.

According to the ABI, terrorism cover is routinely excluded by 40% of all policies, with others offering only partial cover. EL will rarely cover travel although it should cover employees' temporary activities overseas. Thanks to the obligations on employers to protect their employees, employers should ensure that a comprehensive travel policy is available as they may be unable to rely on the EL cover.

Conclusion

Where employers send their employees overseas, they should ensure that their employees are provided with as much protection as they may need. If dangerous locations are involved, an employer would need to acquire cover relevant to the dangers. However, the requirement to meet the obligations owed to its employees more generally suggests that an employer will need to ensure that its insurance cover, whether through the EL or travel insurance policies, covers all the problems that its employees may be faced with.

