



Employers' liability

It is a long-established principle that employers can be liable for personal injuries or losses caused by their employees, or by other individuals with whom they have an employment-like relationship (e.g. workers).

Two recent decisions of the Supreme Court have, however, highlighted - and possibly broadened - the scope for employers to be liable for acts which are outside of their control. We consider those decisions and their implications for businesses below.

Mohamud v WM Morrison Supermarkets plc

– the facts

Mr Mohamud went into a Morrisons petrol station and asked Mr Khan, an attendant at the petrol station, for assistance printing some documents. Mr Khan refused and used threatening and racially abusive language towards Mr Mohamud. Mr Khan ordered Mr Mohamud to leave the store and then followed him out onto the forecourt, where he subjected Mr Mohamud to further verbal abuse as well as a severe physical attack. Mr Mohamud had done nothing to provoke the attack.

– the decision

The key point for the Supreme Court to determine was whether Mr Khan's actions were so closely connected to his employment that it would be just and reasonable to impose liability on Morrisons for the personal injury caused to Mr Mohamud. The Supreme Court held that it was and that Morrisons should be liable.

It first considered what the nature of the job entrusted to Mr Khan was and did so in the broadest terms. It held that his job was to attend to customers and to respond to their enquiries.

It then considered whether there was a sufficient connection between the employment and the employee's wrongdoing to make it right for the employer to be held liable. The Court found that there was a sufficiently close connection because Mr Khan was employed to assist and interact with customers, among other duties. It was in this role (and acting on behalf of Morrisons) that he ordered Mr Mohamud to leave the premises. The actions which followed were an "unbroken sequence of events". The assault by Mr Khan may have been a gross abuse of his position, but it was in connection with the business in which he was employed - it was irrelevant that the assault was motivated by personal racism.

Cox v Ministry of Justice

– the facts

Mrs Cox, an employee of HM Prison Swansea, was responsible for supervising both civilian staff and prisoners working in the prison kitchen. She was injured when a prisoner negligently dropped a sack of rice on her back and Mrs Cox argued that the Ministry of Justice (MoJ) should be held vicariously liable for the prisoner's negligent act.

– the decision

This case turned upon whether the relationship between the MoJ and the prisoner was one that could give rise to vicarious liability. The Supreme Court held that it was - vicarious liability can apply to employment-like relationships, not just actual employer/employee relationships. The prisoner was carrying out activities which were an integral part of the prison's activities and were for the prison's benefit, and the injury to Mrs Cox had arisen as a result of the prison assigning responsibilities to the prisoner. As such, the MoJ was liable for Mrs Cox's injuries.

What does this mean for businesses?

The Mohamud decision demonstrates that businesses can be liable for the actions of its employees or workers regardless of whether it could, in practice, have prevented those actions, and regardless of whether the actions of the employee are outside the scope of their expected conduct. This decision could make it more difficult for employers to avoid liability even where the acts of its employees or workers are only remotely connected to their job role or are outside the scope of expected behaviour.

The decision in Cox, meanwhile, serves as a reminder that vicarious liability in the workplace can extend beyond the traditional employer/employee relationship, and can even extend so far as to apply where there is no commercial activity or wage bargain involved.

What should businesses do?

Unlike vicarious liability for discriminatory acts, it is no defence for an employer to show that it had taken all reasonable steps to prevent wrongdoings which have led to personal injury. However, businesses should consider what steps they can take to prevent wrongdoings in the first place (thereby preventing the

claim from arising). For example, businesses should:

- Ensure all relevant policies are up-to-date – typically this would mean policies covering health and safety, equal opportunity, bullying, grievances, whistle-blowing and disciplinary, as well as rules on conduct and expected standards of behaviour;
- Carefully consider which of these policies should apply to non-employees working for, or on the premises of, the business;
- Ensure that all relevant individuals are aware of and trained on the relevant policies, practices and procedures;
- Carefully define the scope of individual job roles; and
- Ensure appropriate management and supervision is in place.

However, notwithstanding such preventative measures, it is difficult to legislate for the actions of an individual, particularly one who chooses to act with deliberate intent and without regard for the rules. To prepare for such an eventuality, employers should ensure that they have appropriate mechanisms in place to deal with any financial liability. For instance, businesses should:

- Consider whether the scope of cover in any relevant insurance policies (such as public liability or employer's liability insurance policies) covers all losses for which a business may be vicariously liable, and whether there is a particular risk given the nature of the business; and
- Include suitable indemnities in contracts with agencies and labour suppliers.

*(Mohamud v WM Morrison Supermarkets plc [2016] UKSC 11;
Cox v Ministry of Justice [2016] UKSC 10)*

Contact

For further information please contact:



Roger Bull
Partner

+44 (0) 117 902 2701
roger.bull@burses-salmon.com



Huw Cooke
Senior Associate

+44 (0) 117 902 7719
huw.cooke@burses-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2016. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burses-salmon.com.