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Parent companies and trading subsidiaries – risk and potential liabilities

The Court of Appeal held that a parent company owed a direct duty of care to the employee of a subsidiary who had contracted asbestosis through exposure to asbestos dust. This is the first reported case in which a parent company has been considered to owe such a duty of care. Charities with trading subsidiaries should consider the possible implications of this case for their organisation and in particular how they maintain separation between the charity and its trading subsidiary.

A parent company and a subsidiary are distinct legal entities and there is no assumption of responsibility or liability for the activities of a group company solely because a company is the parent of another. The key ruling from Chandler v Cape plc was that in certain circumstances, a parent company can be considered to owe a legal duty of care to its subsidiary's employees. The circumstances include:

- Where the businesses of the parent and subsidiary are in a relevant respect the same;
- Where the parent has, or ought to have, superior knowledge on a relevant health and safety aspect of the particular industry;
- Where the subsidiary's system of work was unsafe and the parent company knew, or ought to have known; and
- Where the parent knew or ought to have forseen that the subsidiary or its employees would rely on it using that superior knowledge for the employees' protection.

The Court emphasised that their ruling did not mean that that parent companies would now automatically assume responsibility and liability for a trading subsidiary. The essential

question was whether what the practices and knowledge of the parent company amounted to taking on a direct duty to the subsidiary's employees.

This case highlights important issues for trustees to consider. First, it is essential to ensure that the charity's insurance will sufficiently protect it from claims and that the subsidiary itself has sufficient insurance protection. Secondly, trustees may wish to review their health and safety and other policies and decide whether it would be possible (and desirable) to further protect the parent company from risk. A practical example of how a charity could limit the risk for the parent company would be to ensure that each subsidiary is responsible for its own health and safety policies and risk assessments. Trustees should consider the value of minimising risk in this and other ways, when offset against the potential additional cost and reduced control for the parent company.

Finally, while this case turned on its own particular facts and the Court did not seek to 'pierce the corporate veil,' a detailed review of the governance and operations of both organisations would be sensible to ensure clear separation of decision making and keeping detailed minutes of those decisions.

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