If asked whether a parent company could be responsible for injuries caused to an employee of a subsidiary, instinctively your first response is likely to be “no”. You would, understandably, suggest the corporate veil protects the parent. At first sight then, the recent decision to the contrary in Chandler v. Cape¹ may seem surprising. However, the Court reached its decision without overriding the principle of the corporate veil, and instead found a direct link of responsibility between the parent and its subsidiary’s employee. This responsibility sat alongside, rather being an assumption of, the subsidiary’s duties. This case concerned health and safety, but it might equally apply to environmental matters.

Principle behind group structures

The shielding principle of the corporate veil is the basis for group structures within organisations. Each company within a group is a separate legal entity, with separate legal rights and liabilities. A business may therefore seek to shield itself from liability exposure from its more risky operations by organising itself so that such operations are carried out by a subsidiary.

Circumstances must exist which indicate that a group structure is a mere façade concealing the true facts for a court to “pierce” or “lift” the corporate veil. However, it is well established that a court is unable to lift the veil where a subsidiary is incorporated to ensure that legal liability of the group falls on the subsidiary as opposed to another member of the group.

Establishing a duty of care

The Court in Chandler did not override the principle of the corporate veil, rather it imposed a direct duty of care on a parent company for its subsidiary’s employees for the first time.

The threefold test for imposing a duty of care is well established² – the damage must be foreseeable, there must be a sufficiently proximate relationship between the parties, and it must be fair, just and reasonable to impose a duty.

In Chandler, the court applied this test to the parent company in respect of a subsidiary’s employee, who suffered damage from exposure to asbestos. This duty of care cut across the defendant’s group structure, without lifting the corporate veil.

Key evidence for establishing a duty of care for the subsidiary’s employee in Chandler was that the parent employed scientific and medical officers responsible for all employees within the group. Whilst subsidiaries were responsible for implementation of relevant health and safety policies, the parent retained overall responsibility for and dictated policy on health and safety issues.

A Business should determine which of its policies are set or managed at group level as it may trigger a duty of care. A parent may therefore be subject to a duty where a subsidiary’s employees, its trading partners, or third parties...
imposing a duty of care on a parent company

where the business of a parent and subsidiary are in a relevant respect the same, such as involvement with similar hazardous substances or operations, there is a real risk that the parent might be under a duty of care in respect of its subsidiary’s operations. to attract liability, the parent must have superior knowledge on some relevant aspect of environmental or health and safety management, which it knew, or ought to have foreseen that, the subsidiary or its employees would rely on.

it is not necessary that a parent intervenes in the health and safety or environmental policies of its subsidiary for a parent to be under a duty of care in relation to a subsidiary’s activities – a court will look at the relationship between the companies more widely. for example, evidence of a parent intervening in trading operations of the subsidiary, such as on production and funding issues, may mean a subsidiary or its employees can rely on the parent using superior knowledge to ensure the subsidiary operates a safe system of work.

where relevant criteria exist, and a parent company knew or ought to have known that a subsidiary’s system of work is unsafe or giving rise to environmental risk, a person suffering damage as a result may have a claim for breach of duty against the parent. it remains to be seen whether regulators will take the same approach when assessing culpability for environmental and health and safety breaches, but Chandler provides the reasoning for direct responsibility of parent companies. in most cases the offence can be committed by both those who caused and those who knowingly permitted the breach, so the regulators certainly have scope to approach liability in the same way.

implications for group structures

where your group operations involve the same or similar potentially hazardous activities, such as handling or trading of substances that have the potential to cause injury or damage to third parties or a subsidiary’s employees, a “group” approach and parent’s superior knowledge are likely to trigger a duty of care. you should therefore assess whether these triggers are applicable to your business in respect of group operations, which are potentially hazardous.

it is common for parent companies to be involved, in some form or other, in the trading operations of a subsidiary. you should also assess how companies within your group interact with each other, and whether the parent interferes in the trading operations of its subsidiaries. if you think these factors might be applicable to your business, you should undertake a review of how a parent company with superior knowledge seeks to share its know-how and best practice, to ensure it discharges its duty of care.


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