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Please quote: LT4/0419F/DZF/EG1

Your reference: 035 000 535 AZ 002

Date: 25 June 2004

Via e-mail only:

Dear

Duty of care to staff in Iraq

I am replying to your e-mail to Peter Bennett dated 23 June 2004. Like you I think that the proposed statement is a sensible idea, and my advice as to its suitability is as follows.

1. I agree that DFID, in common with all other employers, owes its employees a duty to take reasonable care for their physical and mental health and safety in all the circumstances of the case so as not to expose them to unnecessary, reasonably foreseeable risk of personal injury or death. The duty of care includes the provision of competent co-workers and adequate materials as well as a safe system of working. It also includes the provision and maintenance of a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work. But the duty does *not* extend to, for example, the provision of personal accident insurance against special risks arising out of postings or travel overseas or, for that matter, advising employees to obtain appropriate insurance cover.
2. The standard of care is that to be expected of a reasonable and prudent employer, taking positive thought for the safety of its employees in the light of what it knows or ought to know. Where there is developing knowledge, DFID must keep reasonably abreast of this and not be too slow to apply it; and where it has greater than average knowledge of the risks, it may be thereby obliged to take more than the average or standard precautions. DFID must weigh up the risk in terms of the likelihood of injury or death occurring and the potential consequences if it does; and DFID must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience these involve.
3. What DFID must do in order to comply with the duty of care depends on what is reasonable in all the circumstances, which include not only its own knowledge of the risks but also the degree of control it has over its employees given where they are, their experience and the nature of their work. Beyond that I am not competent to comment on the precautions that DFID is committed to take, or to suggest what, if any, additional measures it should or could take. However, it seems to me that DFID has undertaken to do considerably more than it may be required to do by law, which is of course to be applauded.

Simon Harker - Group Head
Peter Bennett - Team Leader



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4. DFID's employees, for their part, must be prepared to look after themselves only insofar as DFID's duty of care does not extend to protect them from economic loss and to the extent that DFID has not expressly provided them with appropriate insurance. They must, however, take reasonable care in the performance of their duties. They must also carry out the lawful and reasonable instructions of DFID, including as to the use of protective clothing and equipment with which they are provided.
5. Should DFID's employees be in Iraq at all, given current circumstances? The answer is that DFID is free to employ its employees on work which will expose them to unavoidable risk of injury or death (i.e. against which it cannot guard by taking precautions); and, in the absence of express stipulation to the contrary, the risk is held to be with them and not with DFID. The law, however, requires DFID to use all reasonable care to diminish any inherent dangers, if it cannot eliminate these; and, if (as I presume to be the case here) it cannot effectively eliminate the dangers so that significant risks remain, it may be required to give its employees such information which is available to it to help them to evaluate properly the benefits of being in Iraq against the risks. However, such a duty is more likely to arise where the risks are *not* common knowledge (which I would say they probably are here).
6. DFID is not legally obliged to provide staff of consultancy organisations with the same level of support as it gives its own employees. Nor is it required by law to underwrite the steps taken by NGOs to support their staff working in Iraq. I would be inclined to omit the guidance for consultancy organisations and for NGOs unless this has been agreed with them, assuming that this is intended to be read by their staff as well as by DFID's own employees.

I am happy to discuss my advice.

Yours sincerely,

for the Treasury Solicitor

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