

THE LEGAL CONSEQUENCES OF BREAKING THE RULES

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**There are four types of legal
consequence to be considered**

- ❖ **Employment**
- ❖ **Criminal**
- ❖ **Regulatory**
- ❖ **Civil**

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EMPLOYMENT

Taylor v Alidair

“there are activities in which the degree of professional skill which must be required is so high, and the potential consequences of the smallest departure from that high standard are so serious, that one failure to perform in accordance with those standards is enough to justify dismissal”

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CRIMINAL

- ❖ UK aviation safety legislation (including EASA Regulations) is part of criminal law
- ❖ Any breach is a criminal offence
- ❖ CAA given responsibility by DfT to enforce
- ❖ CAA has team of investigation officers to investigate and CAA will prosecute where appropriate
- ❖ Police/CPS responsible for other and more serious offences eg manslaughter

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Manslaughter

This would be a matter for the Police/CPS

Gross negligence or recklessness

Conduct was so bad in all the circumstances as to amount to a criminal act or omission.

Recklessness means indifference to an obvious risk of injury, or actually to have foreseen the risk but to have determined nevertheless to run it

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Negligence and the ANO

The most serious offence in the ANO
– reckless or negligent endangering -
also requires the prosecutor to prove
recklessness or negligence.

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CRIMINAL

Negligence and the ANO

A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man (of that profession) in his situation would exercise

- ❖ “it is so easy to be wise after the event and to condemn as negligence that which was only misadventure”
- ❖ “a mere error of judgement is not negligence.”

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REGULATORY

- ❖ CAA must be satisfied as to fitness and competence of licence/approval holders etc
- ❖ May provisionally vary or suspend and/or propose to substantively vary suspend or revoke
- ❖ Right of review of proposal
- ❖ CAA cannot take away a licence to punish

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CIVIL

Civil liability largely depends on whether there has been negligence

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Ingredients of negligence

Four ingredients of a negligence claim are:

- a person is negligent
- loss or injury is suffered by some other person;
- the negligent person owed a *duty of care* to the person who has suffered loss or injury; and
- that loss or injury was reasonably foreseeable

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BEING NEGLIGENT

Negligence

A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man (of that profession) in his situation would exercise

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Duty of care

A duty of care is owed to “*persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the act or omissions which are called in question*”.

No negligence - no liability
regardless of duty of care

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BEING NEGLIGENT

VICARIOUS LIABILITY

Where an individual is negligent ***during the course of his employment***, the employer is liable.

Employer liable for acts of employee where he is doing something within the scope of employment possibly in an unauthorised manner or which is necessarily incidental to something which he is employed do to.

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BEING NEGLIGENT

VICARIOUS LIABILITY

Employee entitled to be indemnified by employer.

Nothing can prevent an individual being sued, but he will be entitled to look to his employer to deal with any such claim.

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MINIMISING RISK

Negligence is an important part of civil and criminal liability and indirectly of regulatory and employment liability

So how can the risk of negligence arising be minimised?

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MINIMISING RISK

Almost always where negligence is proved it turns out that either –

- ❖ no proper procedures have been developed at all or
- ❖ there are perfectly adequate procedures but they have not been complied with

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MINIMISING RISK

The Organisation -

- ❖ Develops appropriate procedures
- ❖ Keeps up to date
- ❖ Recruits, trains, manages and supports adequate staff
- ❖ Monitors and enforces compliance

The individual –

Works within such a framework

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