

<b>Committee(s)</b>	
Summit Group – For decision	23.10.2019
Establishment Committee – For approval	<b>10.12.2019</b>
<b>Subject:</b> Draft Overseas Travel Policy (Health and Safety)	<b>Public</b>
<b>Report of:</b> Director of Human Resources	<b>For approval</b>
<b>Report author:</b> Justin Tyas, Health Safety and Wellbeing Manager	

### Summary

The primary purpose of this report is to articulate the need for a corporate Overseas Travel Policy for Health and Safety.

Overseas travel requires additional advance planning, care and informed common sense. Travel abroad may expose staff to a number of health, safety/security and wellbeing hazards/issues arising specifically from the travel itself and/or the conditions within the country being visited. These may not be necessarily directly work-related.

The City of London Corporation proactively encourages overseas travel which supports the Square Mile, and a diverse and sustainable London within a globally successful United Kingdom (UK). A significant number of staff travel and work overseas. Students also travel as part of their education outside the classroom.

Civil case law in relation to the employer's duty of care for employees while overseas has highlighted the need to take all reasonable best practice precautions to ensure the safety and security of employees on overseas assignments.

To ensure the City Corporation consistently meets its duty of care and mitigates the risk of conduct being found to be unreasonable, a corporate policy for overseas travel specifically in respect of health and safety is recommended. The proposed policy is designed to meet these requirements, positively supporting our corporate objectives.

### Recommendation(s)

Members of the Establishment Committee are asked to:

- Note the report and approve the draft Overseas Travel Policy (Health and Safety) which is appended.

## **Main Report**

### **Background**

1. The Health and Safety at Work etc. Act (HSWA )1974 does not apply overseas; such work is subject to the health and safety legislation of the country concerned. However, there are good reasons to ensure staff do not work to a lower standard of health and safety just because they happen to be working abroad. The obvious benefits of this include, inter alia, avoiding harm to employees, preventing financial losses and employee absence.
2. Employers under United Kingdom (UK) common law have a duty to take reasonable care for their employees. This duty of care continues to exist when employees are sent to work in other jurisdictions, either on a short-term basis or as part of a longer-term arrangement. It may also cover a worker's travel arrangements to or from work on a day-to-day basis while working abroad as well as the employee's safety while in transit.
3. Case law has upheld the above position. **Appendix 1** provides further information about recent health and safety case law concerning the Duty of Care in relation to overseas working. The duty of care to students will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances, for example, during overseas travel.

### **Current Position**

4. The Foreign and Commonwealth Office (FCO) estimate that between 3.5 and 4 million UK citizens travel overseas every year for work purposes. This figure is expected to grow over the coming decade as the United Kingdom realigns its position following the expected withdrawal from the European Union.
5. Promoting the Square Mile and beyond to the world is at the heart of what the City Corporation does best. From the Lord Mayor flying the flag for the City of London, to educational visits by our young people overseas as part of their learning beyond the classroom.
6. There is significant good practice associated with the planning and management of overseas working and travel. For example, our Independent schools have educational visits policies and procedures, and areas of expertise and specialism are well developed in places including visits undertaken by the Lord Mayor as managed by the Programmes Team at Mansion House.
7. Technical expertise is available internally on specialist matters including physical and data security, legal, insurance and risk management. In addition, the City Corporation has an established policy for Business Travel. However, there is currently no overarching corporate policy arrangements articulated in respect of health and safety.
8. Subordinate guidance (HSG 60 – Health and Safety for Overseas Travel) has already been developed to support those responsible for the planning, coordination and management of overseas working and travel.

## **Proposal**

9. Organisations sending staff to more volatile locations have an obligation to maintain a duty of care that ensures their staff can operate in a safe and secure environment. The proposed policy (with subordinate guidance) is designed to ensure responsibilities are consistently fulfilled, aligned to expert advice and best practice, both internally and externally (e.g. Foreign & Commonwealth Office) as necessary. Emphasis is given to pre-planning, agreed systems of communication and the development of robust emergency arrangements.
10. To ensure the City Corporation consistently meets its duty of care and mitigates the risk of conduct being found to be unreasonable, a corporate policy for overseas travel specifically in respect of health and safety should be articulated. The policy will be aligned to and support the City Corporation's objectives.

## **Corporate & Strategic Implications**

11. The proposed Overseas Travel Policy (Health and Safety) supports the delivery of the corporate objectives but in particular it contributes the outcomes of:
  - People are safe and feel safe
  - People enjoy good health and wellbeing
  - We have the world's best legal and regulatory framework and access to global markets
  - We are a global hub for innovation in finance and professional services
  - We inspire enterprise, excellence, creativity and collaboration

## **Financial, Security, Equalities, Resources and Legal Implications**

12. Failure to ensure the City Corporation consistently meets its duty of care, mitigating the risk of its conduct being found to be unreasonable and could result in legal action, with associated costs (including successful claims for negligence) and adverse publicity from failure to effectively manage health safety and security.
13. There are no anticipated additional costs associated with implementing the policy. Any control measures required for overseas travel will continue to be met from departmental local risk budgets. Providing an overarching corporate framework for overseas travel (health and safety), will ensure a consistent approach, predicated on sensible risk management. This supports our underpinning principle of targeting resources where they are most needed and reducing potential waste of our valuable resources.
14. The City Corporation is committed to equality and continues to strive to increase the diversity of our workforce. Every country has different cultures and laws. Actions that would be innocent in the UK may have serious consequences in other countries, e.g. drinking alcohol or even dropping litter. The consequence of violations of local standards can range from quiet disapproval to criminal charges and punishment.
15. The proposed Overseas Travel Policy (health and safety) is designed to help ensure that the City Corporation fulfils our requirement to eliminate unlawful

discrimination, advance equality of opportunity and foster good relations between people (both employees and others) who share a protected characteristic and those who do not.

### **Consultation**

16. The proposed OST(H&S) Policy has been subject to significant consultation including with departmental Safety Managers Forum members; Mansion House (Programmes Team) / SMT; Innovation and Growth SMT; the City Corporation's Independent Schools; the Strategic Director of Security, City Pride Chair (Staff Networks); City Corporation, Lead Officer, Diversity and Business Engagement; and has the approval of the Health Safety and Wellbeing Committee and People Policy Security Board. All Chief Officers were directly consulted on the draft policy before proceeding to Summit Group where it was endorsed.

### **Conclusion**

17. There is significant good practice associated with the planning and management of overseas working and travel. However, there is currently no corporate policy for overseas travel in respect of health, safety and security.

18. To ensure the City Corporation consistently meets its duty of care and mitigates the risk of conduct being found to be unreasonable, a corporate policy for overseas travel specifically in respect of health and safety is appropriate. The proposed (draft) policy is designed to meet this need, whilst also supporting our corporate aims and wider objectives.

### **Appendices**

- Appendix 1 - Overseas working – health and safety case law
- Appendix 2 –Draft Overseas Travel Policy (Health and Safety)

### **Background**

HSG 60 – [Health and Safety Guidance for Overseas Travel](#)

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## Appendix 1 - Overseas working – health and safety case law

The case of ***Palfrey v Ark Offshore Ltd (2001)*** relates to a UK company (Ark Offshore), which was sending staff to West Africa. Although aware of the malarial risks that existed and telling Palfrey that he needed to ensure he sought medical advice and guidance before travelling, they failed to do so. While in the country he contracted malaria and died from it.

His family successfully sued as **the judgement ruled that an employer must be proactive in ensuring the safety and well-being of staff that are sent overseas.**

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### ***Dusek v StormHarbour Securities LLP (2015)***

On 19 January 2015 the High Court in London ruled in favour of the family of Tomas Dusek who was killed in the course of his employment with StormHarbour Securities LLP in a helicopter crash in the Andes Mountains in Peru on 6 June 2012. The London based financial firm, StormHarbour Securities LLP, was held to be responsible for the death of Tomas Dusek.

The court heard that StormHarbour should never have permitted Tomas to be on the helicopter, which was unsuitable, flying a route that was inherently dangerous, in bad weather, and which was operated by a company reported to be in financial difficulties of a kind that jeopardised passenger safety.

Having heard all the evidence during the course of a two-week trial, Mr Justice Hamblen found that “***StormHarbour owed a duty to take reasonable care to safeguard [their employees] from the danger involved. In the factual circumstances of this case ...that required StormHarbour to make at least some form of inquiry into the safety of the trip and carry out some form of risk assessment***”. Had StormHarbour done so, it would not have permitted their employee to go on the trip.

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**R v Bodycote (2010).** Precedent for internationally operating organisations in terms of an incident that had previously occurred at a site in another country was an aggravating factor when the same system failure took place in the UK leading to two deaths.

The basic facts of the case are that Bodycote had an incident at its California site which led to the deaths of two of its employees. Three years later, a similar incident happened at the UK Bodycote site which resulted in the death of two employees. When sentencing Bodycote in the UK for the second incident, it was found to be a “***serious aggravating feature***” that very similar scenarios had led to both tragedies.

**The sentencing judge stated that the UK had not adequately heeded the warnings from the failures in California.** As a result of an early guilty plea, the fine was reduced by one third to £533,000, a sum that was upheld by the Court of Appeal.

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The case of ***Dennis v Norwegian Refugee Council (2015)*** that was heard in Oslo. Steve Dennis was a seasonal aid worker who was working for the Norwegian Refugee Council (NRC) in the Dadaab camp close to the Kenyan/Somalia border. The convoy he was travelling in was ambushed by Somali gunmen and he, along with three other colleagues, was kidnapped and taken on foot into Somalia. After three days they were rescued by pro-Government militia.

Injured and suffering from post-traumatic stress Dennis successfully sued NRC for gross negligence and was awarded \$500,000 when it was ruled that NRC failed to correctly assess the extent and nature of the risks that existed in the Dadaab camp, which their staff were subjected to. It also found that the security investigative process was flawed.

This case demonstrates that even organisations sending staff to more volatile locations have an obligation to maintain a duty of care that ensures their staff can operate in a safe and secure environment.

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