

LOCAL STANDARD - HOW NOT TO SLIP UP!

Strange as it may seem to a lawyer faced with a consumer demanding compensation for an accident abroad, across the world more tourist establishments than not, as in the UK, generally conform to their local technical standard. But, beware, first impressions can be deceptive.

If you are a Defendant legal specialist, you may feel that majority compliance means the balance of probabilities is always with you. However, the wrong floor tile in the wrong place can put a hotel on the wrong side of local standard.

If you are a Claimant legal specialist, the very idea of majority compliance may seem like Defendant bias. After all, human beings, wherever they live and work, are vested with equal minimum common sense and perception of risk. But, witness car driving in a range of countries and you will see that the commonality assumption just doesn't stand up.

Local standard is what it says it is, a complex mixture of constitutional, national, regional, provincial and/or local laws, supported and/or substituted, depending on the situation, by formal standards, technical instructions, local and/or national codes as well as other documented sources of best practice and augmented, on occasions, by technical custom and practice, traditional techniques, cultural and / or historical factors.

Nowhere is the resulting diversity of technical understanding better illustrated than when it comes to slipping incidents. Very few countries have a reliably detailed knowledge of the mechanics involved. Confusion is further bolstered by urban myths such as "it's shiny so it must be slippery" and the erroneous idea that you can test a floor by simply walking through water tipped over it. Other topics create other false impressions, all of which are hard to shift even in the face of the strongest and most fundamental of scientific first principles.

But, be thankful, there are ways through the technical maze (as opposed to the legal one, which is the province of Judges and other legal experts) including:

- 1 A standard is retrospective if it says so. If not, a significant event in the establishment's history is usually needed to bring the date of the standard closer to or up to the date of the incident.
- 2 Beware the "costs proportionality" trap especially in slipping cases. Floors cannot be assessed on paper alone but need first-hand testing to the relevant locally applicable standard. Proper site investigation (which need not be expensive) enables effective decisions to be made earlier in a case.
- 3 Interior building standards cannot normally be applied to external incident scenes.
- 4 Lack of local enforcement varies technical practice and effectively modifies the documented standard (if there is one).
- 5 Being in the EU doesn't mean that each country has only (and the same) Euronorms (ENs). ENs can be adapted by individual members while being adopted and can stand alongside a country's own standards.
- 6 Fire precautions, disability access and workplace standards come with their own limitations, the relevance of which will be case-dependent.
- 7 Poor quality photocopy photographs encourage misleading speculation and should be banned.

Whatever the combination of case and incident, to start an effective local standards investigation, the instructing lawyer needs to include at least:

- 1 the correct name of the establishment in full with postal address and telephone number (some hotel names can appear similar but be different establishments with the same words in the title arranged in a different order)
- 2 good quality photographs of the incident scene; in wider view, from various angles and in close-up (especially in slipping cases). Even if the case arrives some time after the incident, helpful photographs can still be taken, noting any changes since the incident happened.
- 3 some basic measurements, if possible, even if it is just the height of the Claimant in one of the pictures
- 4 as much incident detail as possible (especially age, weight and height of the Claimant in a slipping case)

Accurate details, good photographs and at least a handful of useful measurements are the essential way to start to avoid slipping up on local standard.

ENDS