

UK COURT OF APPEAL DENIES JURISDICTION IN RELATION TO HUMAN RIGHTS CLAIMS AGAINST SHELL

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Legal Briefings

The UK Court of Appeal has [held](#) that the English court does not have jurisdiction to hear claims against two companies in the Shell group (domiciled in the UK and Nigeria respectively) relating to alleged pollution in the Niger Delta in Nigeria. This case is part of an emerging trend being pursued in the English courts and elsewhere where human rights violations are pleaded alongside environmental torts. Although the claimants in this case are looking to appeal the decision to the UK Supreme Court, this highlights the legal and factual difficulties faced when attempting to hold a UK parent company liable in the UK for alleged actions of its subsidiaries abroad.

In this case, the Claimants allege that environmental damage was caused by a joint venture vehicle operated by Shell's Nigerian subsidiary ("**SPDC**"). Instead of suing SPDC in Nigeria, the claimants attempted to bring the claims in the English courts by also bringing a claim against Royal Dutch Shell ("**RDS**"), a UK-domiciled parent company of SPDC. The claimants claim that RDS owed a duty to the Nigerian claimants as a result of the control which it allegedly exercised over SPDC's operations. The [first instance court](#) declined jurisdiction over all claims on the basis that there was no real issue between the claimants and RDS which it was reasonable for the court to try. The claimants appealed this decision.

In confirming that the English Courts do not have jurisdiction in these circumstances, the majority of the Court of Appeal (2 to 1) considered that there is an important distinction between a parent company which controls, or shares control of, the material operations of a subsidiary, and one which issues mandatory policies and standards which are intended to apply throughout a group of companies in order to ensure conformity with particular standards. The issuing of mandatory policies cannot of itself mean that a parent has taken control of the operations of a subsidiary (and, necessarily, every subsidiary) such as to give rise to a duty of care in favour of any person or class of person potentially affected by the policies. The court concluded that the legal test for establishing a duty care failed on two grounds: (i) there was not sufficient "proximity" between the claimants and RDS; and (ii) it would not be fair, just and reasonable to impose a duty of care on RDS in the present circumstances.

Delivering a dissenting judgment, Lord Justice Sales considered that, if RDS could be shown to have at least exercised joint control over the management of SPDC, the claimants would have an arguable case against RDS so as to found jurisdiction before the English Courts. Although he agreed that simply setting global standards to guide the conduct of operating subsidiaries would not be sufficient to lead to the imposition of a duty of care against RDS, he considered that such standards were capable of providing a mechanism for real practical executive control by RDS over the affairs of SPDC (particularly where those policies are mandatory and are accompanied by "close monitoring, intervention and enforcement"). In the circumstances, he considered that it was plausible that there was particularly close monitoring and direction by RDS of the implementation those standards by SPDC.

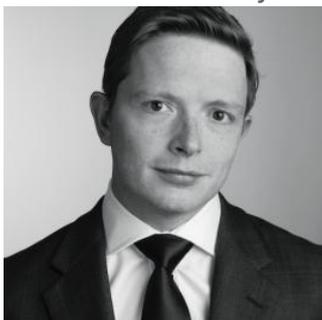
It is understood that the claimants intend to appeal to the UK Supreme Court. In the meantime, all eyes remain on the UK Court of Appeal and the claimants' appeal in the [Unilever case](#) (on similar issues) that is due to be heard this month.

You can read more about this case in our HSF Litigation Notes posts: [here](#) and [here](#).

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



OLIVER ELGIE
SENIOR ASSOCIATE,
LONDON
+44 20 7466 6446
Oliver.Elgie@hsf.com

JOHN OGILVIE
CONSULTANT,
LONDON
+44 20 7466 2359
John.Ogilvie@hsf.com

DANIEL HUDSON
PARTNER, LONDON
+44 20 7466 2470
Daniel.Hudson@hsf.com

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