

## **ENGLAND AND WALES**

# **Local Authority Liability for Abuse by Foster Carers: *Armes v Nottinghamshire County Council* [2017] UKSC 60**

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## **Facts and Legal Issues**

- Armes was in the care of Nottinghamshire County Council from the ages of 7 – 18
- The local authority placed her in foster care with Mr and Mrs A in 1985/1986 and with Mr and Mrs B in 1987/1988
- She was physically and emotionally abused by Mrs A and sexually abused by Mr B
- She argued that the council were liable for the abuse because they were:
  - In breach of a non-delegable duty; or
  - Vicariously liable

## **Decision**

- Trial judge and Court of Appeal: no liability on either ground
- Supreme Court (Lord Hughes dissenting):
  - Local authorities are not under a non-delegable duty to ensure that reasonable care is taken for the safety of children whilst with foster carers: would be too broad and too demanding a responsibility
  - But the local authority were vicariously liable for the wrongdoing of the foster carers

## Relationship Required for Vicarious Liability

- Whilst traditionally confined to particular legal relationships (e.g. employment), a 'more fine-grained approach' now taken
- *Various Claimants v Catholic Child Welfare Society* [2012] UKSC 56
  - Identified 5 features of the employment relationship which justify imposition of vicarious liability
  - Where a non-employment relationship has the same features, it is 'akin to employment' and appropriate to impose vicarious liability

## **Features of the Relationship in *Armes***

### **1. Tort results from activity undertaken on behalf of employer**

- Local authority were under a statutory duty to look after children committed to their care
- As part of this, they recruited, selected, trained and paid allowances to foster carers

### **2. Employee's activity part of employer's business activity**

- Foster carers not carrying on independent business of their own: impossible to draw sharp line between activities of local authority/foster carers

## **Features of the Relationship in *Armes***

### **3. Employer created the risk of the tort**

- Children vulnerable to abuse because placement in foster care creates a relationship of authority and trust between foster carers and children
- Even though in best interests for children in care to be fostered, appropriate for local authority to compensate if risk of abuse materialises

## Features of the Relationship in *Armes*

### 4. Employee under employer's control

- Local authority exercised powers of approval, inspection, supervision and removal and so exercised significant degree of control over foster carers
- In any event, micro-management, or high degree of control, not necessary for the imposition of vicarious liability

### 5. Employer more likely to be able to compensate

- Most foster carers have insufficient means to pay substantial damages

## Comment

- Policy issues?
  - Opening of the floodgates?
    - Negligence as well as deliberate wrongdoing
    - Applicability of judgment to more recent care legislation?
  - Discourage placements with foster carers in favour of residential care?
  - Diversion of public resources?
  - Encourage better vetting and supervision of foster carers?
- Further (though modest) expansion of vicarious liability