

# Armes v Nottinghamshire County Council [2017] UKSC 60

By Thomas Evans

3PB Barristers

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In a far-reaching decision for victims of abuse; the Supreme Court has held that local authorities can be held vicariously liable for the torts of foster carers.

## Relevant Background

Ms Natasha Armes (“the Appellant”) was under the care of Nottinghamshire County Council (“the Respondent”) from the age of 7. Between 25 March 1985 and 27 March 1986, the Appellant was placed into foster care with Mr and Mrs Allison. While under their care she was the victim of physical and emotional abuse by Mrs Allison. Between 23 October 1987 and 23 February 1988, the Appellant was placed with Mr and Mrs Blakely where she was the victim of sexual abuse by Mr Blakely.

Allegations of negligence in the selection and supervision of the foster placements were the subject of a successful summary judgement application by the Respondent and the claim proceeded on the basis of vicarious liability and the existence of a non-delegable duty of care.

At first instance, Males J found in the Appellant’s favour in respect of issues of limitation and the facts of the abuse. However, he determined that the Respondent was not subject to a non-delegable duty of care to protect foster children from harm and could not be held vicariously liable for the torts of foster parents. Accordingly, the claim was dismissed. That decision was later upheld by the Court of Appeal.

## Judgement of the Supreme Court

Lord Reed, giving the leading judgement, highlighted that non-delegable duties were “exceptional, and have to be kept within reasonable limits.” Applying the factors outlined by Lord Sumption in *Woodland v Swimming Teachers Association and Others* [2013] UKSC 66, he confirmed that an essential requirement was that the delegator was under a duty to perform that which had been delegated. In this case, it was not the duty of the Respondent “to perform the function in the course of which the claimant was abused (namely, the

provision of daily care), but rather to arrange for, and then monitor, its performance.” Consequently, the appeal in so far as it related to the existence of a non-delegable duty of care was dismissed.

However, it was held (Lord Hughes dissenting) that the Respondent was vicariously liable for the torts of the foster carers: the abuse was committed in the course of an activity carried on for the benefit of the Respondent; placing a child in foster care creates an inherent risk of abuse; it is the local authority (not the foster parents) who retain parental control in respect of foster children, and; in this instance, the tortfeasors were unable to compensate the Appellant.

## Conclusions

This decision will have a significant impact on the ability of victims of abuse while in foster care to seek compensation. However, it is important to recognise that an element of the decision is fact specific: if the tortfeasor can be located and is able to satisfy a claim it is arguable that it would not be fair, just or reasonable to hold a local authority vicariously liable. Further, the decision relates only to foster care and not to circumstances where a ‘looked-after child’ remains with their parents or other family members (the principal distinction being that a local authority is responsible for the recruitment, selection and training of foster carers). In addition, the Court were concerned with the statutory framework as it existed at the time of the abuse and it could be argued (most likely unsuccessfully) that the decision is limited to such historical claims.

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### **Thomas Evans**

*Barrister*

*3PB Barrister*

01202 292 102

Tom.evans@3pb.co.uk

3pb.co.uk