Autumn 2026 - Abuse

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Welcome

This edition brings together a range of significant developments in the field of abuse litigation from the past six months and highlights a number of significant legal and safeguarding developments affecting abuse litigation and risk management.

Featured topics include one of the first reported decisions to consider the impact of the new limitation provisions, recent judicial developments concerning vicarious liability, emerging issues relating to child sexual abuse material and artificial intelligence (AI), an update on the implications of the Crime and Policing Act 2026 for organisations working with children, and an update in respect of two new abuse-related public inquiries in Scotland.

I am delighted to share the insight and expertise of several members of Keoghs market-leading abuse team, who have contributed their analysis of these important developments. We hope you find this edition both informative and thought-provoking. Should you wish to discuss any of the topics covered, our contributors would be pleased to hear from you.

Ian Carroll, Partner and Head of Keoghs Abuse Team, examines the High Court's decision in *KHX v Isle of Wight Council [2026]* EWHC 1949 (KB), one of the first reported authorities to consider the new limitation provisions introduced by the Crime and Policing Act 2026, namely sections 11ZA and 11ZB of the Limitation Act 1980 in relation to child sexual abuse claims. Ian also reviews the Court of Appeal's decision in *Burger v Risk Solutions BG Ltd & JD Wetherspoon PLC* [2026] EWCA Civ 804, which provides important clarification and reaffirmation of the independent contractor defence.

Lauranne Nolan, Senior Associate Solicitor and Safeguarding Lead within Keoghs Abuse Team, considers the Privy Council's judgment in *Bethel v Attorney General of The Bahamas* [2026] UKPC 26, in which the employer was found vicariously liable for the actions of its employee applying the principles established by the Supreme Court in *BXB v Trustees of the Barry Congregation* [2023] UKSC 15.

Chris Wilson, Partner in Keoghs Abuse Team, analyses the High Court's decision in [2026] EWHC 2192 (KB), with particular focus on its implications for the second stage of the test for vicarious liability.

Patrick Williams, Senior Associate in Keoghs Abuse Team, explores the rapid advancement of AI and recent guidance issued by the National Crime Agency (NCA) and the Internet Watch Foundation (IWF), highlighting the scale of this emerging risk and the safeguarding challenges facing organisations, professionals and families. Patrick also reviews the Court of Appeal's decision in *ABC v Huntercombe (No.12) Ltd & Others* [2026] EWCA Civ 1161, which provides important guidance in respect of whether an employer's vicarious liability to third parties for employees' pre-transfer conduct would pass to a transferee under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Anna Churchill, Senior Associate in Keoghs Abuse Team, discusses the significant safeguarding changes introduced by the Crime and Policing Act 2026 following the removal of the supervision exemption from the definition of regulated activity. As a result, many volunteer roles will now require enhanced vetting and barring checks. Anna explains the changes, why they matter and the practical steps organisations should take to prepare.

Laura Baxendale, Partner in Keoghs Scotland Abuse Team, discusses the Scottish Government's recent announcement of a statutory inquiry into Scotland's response to group-based child sexual abuse and exploitation, and considers the significance of the inquiry for the handling and defence of civil abuse claims.

Keoghs market-leading abuse team has cross-border expertise and members who are listed in the legal directory rankings as being experts in this area. The team has over 20 years' experience of both recent and non-recent abuse cases and advises on safeguarding issues in several sectors, including:

- Education
- Faith
- Local Authority
- Police
- Military
- Charities
- Inquiries
- Care Home and Private Care
- Sporting Clubs and Associations



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New limitation law on child sexual abuse claims – an early decision: *KHX v Isle of Wight Council* [2026] EWHC 1949 (KB)

The High Court's decision in *KHX v Isle of Wight Council* [2026] EWHC 1949 (KB) is one of the first reported authorities to consider the effect of the new limitation provisions introduced by the Crime and Policing Act 2026 in relation to child sexual abuse claims – namely, sections 11ZA and 11ZB of the Limitation Act 1980.



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The case is significant for:

- Its consideration of whether the abolition of limitation for child sexual abuse claims also applied to associated physical abuse allegations;
- Giving an indication of the approach the courts are likely to take to the new "fair hearing" test under section 11ZB;
- Confirming the continuing relevance of forensic prejudice arising from delay, missing records and deceased witnesses
- Affirming the distinction between a claimant's genuine belief in abuse and proof of abuse on the balance of probabilities.

Background

The claimant alleged that while resident in a local authority children's home during the 1980s he was subjected to physical abuse by a residential care worker, Mr Bucket, and sexual abuse by a residential care worker, Ms Moorse.

The local authority accepted that if abuse were established, it would be vicariously liable for the acts of both employees. The allegations were first reported to police in 1998, but civil proceedings were not commenced until October 2024.

The defendant did not rely upon limitation in respect of the sexual abuse allegations, accepting that they fell within the new statutory scheme under section 11ZA and did not seek dismissal of the claim based upon the new "fair hearing" test under section 11ZB. However, it maintained a limitation defence in respect of the physical abuse allegations.

Does section 11ZA apply to physical abuse allegations?

The claimant advanced an argument that because the proceedings included allegations of child sexual abuse, the new limitation regime should apply to the entirety of the action, including allegations of physical abuse. The argument relied heavily on Parliament's use of the word "action" within section 11ZA. The claimant contended that once a claim included child sexual abuse allegations, all causes of action within those proceedings should benefit from the removal of limitation.

The court rejected this submission. The court held that section 11ZA must be read as a whole. While the section refers to an "action", it only applies where the claimant's injuries are attributable to conduct constituting sexual abuse. Physical assault allegations cannot be transformed into child sexual abuse claims merely because they appear in the same proceedings.

It therefore remains that child sexual abuse allegations will fall within section 11ZA, but non-sexual abuse claims remain subject to sections 11 and 33.

Section 33 and physical abuse claims

Having determined that section 11ZA did not apply to the physical abuse allegations, the court then considered whether the limitation period should be disapplied under section 33. The factual position strongly favoured a refusal to disapply because the primary limitation period expired in 1995, proceedings were issued approximately 29 years out of time, and the alleged abuse occurred almost 40 years before trial. Further, Mr Bucket died before trial.

The judge accepted there was substantial forensic prejudice. Memories had faded, records were incomplete, and the defendant had lost the ability to call and test evidence from the alleged perpetrator.

However, the court concluded that these factors did not make the trial unfair. The allegations had been reported to police in 1998, a police investigation had been undertaken, and substantial records survived. Consequently, the court considered there remained sufficient material to evaluate the claim fairly. The limitation period was therefore disapplied under section 33.

The new section 11ZB "fair hearing" test

Although no formal application was pursued under section 11ZB, the judgment contains some observations. Section 11ZB provides that a child sexual abuse claim must be dismissed if the defendant proves that it is not possible for a fair hearing to take place. The defendant chose not to invoke section 11ZB in relation to the sexual abuse allegations, it appears on the basis that Ms Moorse was still alive and able to attend trial to give evidence. Accordingly, the court did not have to make a formal ruling on whether a fair hearing remained possible.

Nonetheless, throughout the judgment reference was made to the existence of surviving police investigations, notes and other documentary records, as well as the availability of key witnesses, and the court's ability to assess credibility and reliability which meant that a fair hearing was likely to have been deemed possible.

Liability findings

Despite overcoming the limitation hurdle on the physical abuse claim and facing no limitation defence on the sexual abuse claim, the claimant ultimately failed on liability.

The court accepted that the allegations were longstanding and the claimant had reported abuse many years before commencing litigation and that the claimant genuinely believed his account. However, the judge drew an important distinction between sincerity and reliability.

The court identified concerns regarding the evolution of allegations over time, differences between police statements and trial evidence, and allegations that emerged only in later accounts. The judge ultimately concluded that there was insufficient confidence in the reliability of the claimant's evidence to find either physical or sexual abuse proved on the balance of probabilities. Both claims were therefore dismissed.

Conclusion

This is an early decision on the post-2026 limitation landscape. The judgment confirms that the abolition of limitation for child sexual abuse claims does not extend to separate physical abuse allegations. Ultimately, the claimant's case failed not because limitation barred the claims (as the alleged abuser in respect of the sexual abuse allegations was still alive), but because the court was not satisfied that the allegations had been proved on the evidence. It therefore remains that physical abuse claims ought to be subject to the limitation challenges presented by section 33 and the decision in *AB & Others*, and that defendants should continue to plead limitation in respect of physical abuse and other non-sexual abuse allegations notwithstanding the limitation reform.

However, this decision does not reference or seem to take into account the views of Mr Justice Irwin in *AB and Others v The Nugent Care Society* [2009] EWHC 481. This decision focused not on whether a fair hearing was possible, but whether a claimant who alleged physical assault had a justifiable explanation for their delay. In AB & Others, even where there were relevant convictions for physical abuse, the court said it would not be reasonable or proportionate to be expected to try such allegations of a purely physical nature after the expiry of the limitation period. Mr Justice Irwin stated that there is "no significant inhibitory factor produced" by physical abuse and "excessive punishment could not possibly be thought to carry the same stigma as sexual abuse, or to bring in its train the same inhibition from reporting, addressing or discussing what took place".

Further, the difference in this case is that the claimant made allegations of both physical and sexual abuse. The court therefore appears to have treated both the physical and sexual abuse allegations together on the issue whether the claimant had a reasonable explanation for not pursuing the allegations sooner, i.e. the claimant would not be expected to have reported his allegations of physical abuse sooner than his allegations of sexual abuse. However, this ignores the fact the court had already determined that the physical abuse allegations are subject to a separate limitation regime and are a separate cause of action. The effect of this means that if allegations of physical and sexual abuse are made in the same claim, despite separate limitation regimes applying to each cause of action, a claimant could inadvertently benefit from the new limitation regime for child sexual abuse when being required to explain their delay in respect of the physical abuse allegations.

No doubt there will be further cases before the court to address these issues and the determination of the application of the new limitation regime.

Restating the limits of vicarious liability: *Burger v Risk Solutions BG Ltd & JD Wetherspoon PLC* [2026] EWCA Civ 804

The Court of Appeal's decision in *Burger v Risk Solutions BG Ltd* provides important clarification and reconfirmation of the independent contractor defence. In a case arising from a serious assault by door supervisors outside a Wetherspoon pub, the Court reaffirmed the traditional boundary between employment and independent contractor status, rejecting an attempt to extend vicarious liability to a business that had outsourced security services.

This judgment represents an endorsement of the Supreme Court guidance *Barclays Bank v Various Claimants* (in which Keoghs were instructed) and *BXB v Watch Tower,* confirming that true independent contractors still remain outside the scope of vicarious liability.



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Factual background

The claimant suffered a serious injury after being restrained by door supervisors outside a pub operated by JD Wetherspoon (JDW). The supervisors were employed not by JDW but by Risk Solutions BG Ltd, a specialist security contractor engaged under a commercial contract. Although judgment was obtained against Risk Solutions, the company had entered liquidation and was dissolved, leaving JDW as the only viable defendant for the claimant to pursue.

At first instance, the Recorder found that the door supervisors had committed an unlawful assault and held JDW vicariously liable. The claimant was awarded damages of nearly £70,000. The decision relied upon the concept where relationships are 'akin to employment', including factors such as integration, business benefit and elements of control.

However, the High Court overturned this decision finding that the Recorder had erred by failing to consider the threshold question of whether Risk Solutions was a true independent contractor. In this respect, the contractual arrangement showed that Risk Solutions did in fact retain control over its staff and operated as a separate business to JDW.

Court of Appeal

The Court of Appeal upheld the High Court's decision, confirming that Risk Solutions was clearly a genuine independent contractor and that JDW was not vicariously liable for the acts of its employees.

The Court reaffirmed that the expansion of vicarious liability does not extend to true independent contractors. The independent contractor defence therefore remains a firm boundary beyond the scope of vicarious liability. In particular, it was reaffirmed that the correct approach requires first determining whether the tortfeasor was operating within an independent business. If so, there is no need to consider whether the relationship is akin to employment.

The Court also emphasised the importance of contractual terms, particularly where they clearly allocate control, management and responsibility to the contractor. Features such as integration into the defendant's business or the importance of the services provided are still not sufficient to establish vicarious liability.

Conclusion

The decision therefore provides confirmation of the established guidance and represents a clear reaffirmation of the limits of vicarious liability.

Despite the harsh outcome for the claimant given the defendant against which liability would have rested was insolvent and there was no insurance to respond to the claim, the Court maintained the traditional distinction between employees and independent contractors must remain. This therefore represents a further authoritative example of the courts resisting attempts to extend vicarious liability.



Bethel v AG of The Bahamas [2026] UKPC 26: Applying the test on vicarious liability in BXB.

The Privy Council has handed down its judgment in the case of *Bethel v AG of The Bahamas [2026] UKPC 26* in which it found that the employer was vicariously liable for the actions of its employee when applying the test set out in *BXB v Trustees of the Barry Congregation [2023] UKSC 15.*



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Factual background

Mrs Bethel was a Jamaican citizen who had been living in the Bahamas under a valid spousal permit since 2010. In the early hours of Saturday 13 December 2014, the police raided the Twilight Bar where she worked. Mrs Bethel was arrested for "immigration purposes" along with 11 other Jamaican women. At all material times she had in her possession a copy of her spousal permit allowing her to remain in The Bahamas, which she presented.

She was interviewed by the police and kept at a detention centre from approximately 3pm on the 13 December until 3.55pm on Monday 15 December 2014. Following an interview with Senior Immigration Officer Mr Norman Bastian ('Bastian') and a female immigration officer, Bastian sought permission from the Director of Immigration to leave the detention centre with Mrs Bethel to verify the information she had provided to the authorities. Bastian indicated that they would be accompanied by a female (the implication being that this would be a female immigration officer). Permission was given on that basis and Mrs Bethel was handed over to his custody.

Bastian was in fact accompanied by a female friend, not an immigration officer, but who remained with them while Bastian drove them to a number of locations, including a mechanics, a fast-food restaurant and Mrs Bethel's home. Following this, the female friend was dropped off, and Bastian took Mrs Bethel to his office where he interviewed her again before taking her to a liquor store to purchase alcohol, to a Starbucks, and to his home address.

Bastian proceeded to rape Mrs Bethel twice and detained her unlawfully overnight before taking her back to her own home at 2.30pm on Tuesday 16 December 2014. Mrs Bethel subsequently reported the rapes to the police.

At the trial, in her judgment delivered on 27 January 2023, Madam Senior Justice Charles found:

1. Mrs Bethel's arrest and detention by the police was not unlawful prior to 3pm on Saturday 13 December 2014 (albeit that her subsequent detention in the detention centre was unlawful and entitled her to damages for the tort of false imprisonment).
2. Mrs Bethel's detention and rape by Bastian entitled her to damages against him for the torts of false imprisonment, assault and battery but did not render the other defendants vicariously liable for those torts.

Mrs Bethel's estate (following her death due to Covid in May 2021) and Bastian both appealed.

In June 2024, Bastian's appeal was dismissed. The Court of Appeal proceeded to overturn the decision on vicarious liability and found that Bastian's wrongful conduct was sufficiently connected to his duties as an immigration officer to impose vicarious liability on his employers.

This was primarily because Bastian at all relevant times had custody of Mrs Bethel in his capacity as an immigration officer, was doing duties as an immigration officer, and did not release her from his custody until the Tuesday afternoon. Bastian had told a police officer that Mrs Bethel was still under arrest, and it was found that in contrast to the relationship of friendship in BXB, Mrs Bethel's relationship with Bastian was only in the capacity of an arrested person in the custody of an immigration officer.

The defendants appealed the decision of the Court of Appeal. There were two issues on appeal:

1. whether Mrs Bethel had been unlawfully detained by the police, constituting tortious false imprisonment; and
2. whether Bastian's employers were vicariously liable for his torts of false imprisonment, battery and assault.



Court of Appeal Judgment

The Board considered the police false imprisonment issue and noted that Mrs Bethel had been arrested under section 9 of the Bahamian Immigration Act, which permitted arrest on suspicion that a person had committed an offence if it appeared necessary "in order to secure that the ends of justice [...] shall not be defeated". Officers were required to have in mind the nature of the suspected offence and a factual basis for suspecting it. The Board found that the evidence of the Superintendent who had led the arrests was inconsistent, failing to establish what was in his mind at the time of the arrests or any need to make the arrest order to secure the ends of justice. Mrs Bethel's arrest and consequent detention were unlawful, comprising the tort of false imprisonment.

In addressing the vicarious liability issue, the Board emphasised five points from the BXB judgment:

1. There are two stages. Stage 1 is concerned with the relationship between defendant and tortfeasor, Stage 2 with the link between the commission of the tort and that relationship.
2. The Stage 1 test is whether the relationship is, or is akin to, one of employment.
3. The Stage 2 test is "whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of his employment or quasi-employment".
4. The standard common law application of principles from past case law should generally be used without needing to examine the underlying policy.
5. "In a difficult case, it can be a useful final check on the justice of the outcome to consider whether the outcome of applying the tests is consistent with the policy underlying vicarious liability": that the employer should bear the cost of the wrong committed by their (quasi-) employee.

It was common ground that the Stage 1 test was made out. The Board also found that the Stage 2 test was satisfied. Bastian had the power to detain people as part of his role as a Senior Immigration Officer. He had purported to exercise that power when he took custody of Mrs Bethel, unlawfully detained her, and committed the rapes. Mrs Bethel was under his control and afraid of him. He was also under a common law duty of care to keep Mrs Bethel safe from harm while in his custody. There was a seamless sequence of events, with Mr Bastian never taking off his "metaphorical uniform".

BXB was distinguished as, unlike in that case, there was no close relationship of friendship between the claimant and the tortfeasor. The only relationship between Bastian and Mrs Bethel arose from the seemingly official detention to which Mrs Bethel was subject. The "rape was an abuse of that relationship". For these reasons, the Board dismissed the appeal.

Comment

When applying the test and points from the judgment in BXB, the Board concluded that the torts were clearly so closely connected to the actions the tortfeasor was authorised to undertake in his role as a Senior Immigration Officer that it was just to hold his employer vicariously liable. Notwithstanding the fact that Bastian drove Mrs Bethel around to various locations, including to restaurants which were clearly unrelated to his employment, before committing the rapes and false imprisonment.

TWG v The Scout Association [2026] EWHC 2192 (KB)

On 19 August 2026, the High Court handed down judgment in the case of *TWG v The Scout Association* [2026].



Author:
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Summary of Facts

***TWG v The Scout Association* involved a claim for personal injury arising from a series of sexual assaults committed against the claimant, identified as TWG, while he was a 10-year-old member of the First Midsomer Norton Scout Group between 1966 and 1969. The perpetrator, Leroy Grubb, was an Assistant Cub Scout Leader within the organisation.**

The claimant alleged that, after weekly Cub Scout meetings, Grubb would follow him on his walk home, intercept him in a secluded area and subject him to repeated sexual assaults. Grubb was subsequently convicted in 1969 of multiple indecent assaults against other boys, but it was asked that an assault on the claimant be taken into consideration during sentencing.

The claim was issued in 2024 and was pursued solely on the basis of vicarious liability. The claimant contended that Grubb's role within the Scout movement enabled him to gain the claimant's trust, identify his vulnerability and repeatedly access him for the purpose of abuse. The Scout Association accepted that Grubb had been an Assistant Cub Scout Leader but denied that his assaults were sufficiently connected to his scouting role. It argued that the abuse occurred away from scout premises, after meetings had ended, and while the claimant was making his own way home. The defendant therefore maintained that scouting merely provided the opportunity for contact and not the close connection required by the authorities to make them vicariously liable.

A further issue arose concerning limitation. At the time of the trial, the claim was approximately 44 years out of time and the claimant sought relief under section 33 of the Limitation Act 1980. However, before judgment was handed down, the Crime and Policing Act 2026 came into force, introducing sections 11ZA and 11ZB into the Limitation Act 1980 and effectively abolishing limitation periods for claims arising from child sexual abuse, unless a fair hearing was impossible. The defendant accepted that a fair hearing could still take place.

Conclusions

As the limitation argument had essentially dropped away, the central issue, therefore, was whether the Scout Association was vicariously liable for Grubb's intentional sexual assaults.

Mr Justice Sweeting noted that the first stage of the two-stage vicarious liability test was undisputed: Grubb's relationship with the Scout Association was sufficiently akin to employment. The dispute concerned the second stage, namely whether the assaults were so closely connected with Grubb's entrusted role that it was fair and just to impose liability on the Scout Association.

Mr Justice Sweeting concluded that the close connection test was satisfied.

Although the assaults occurred away from Scout premises and after formal Scout activities had ended, the Judge found that these factors were not determinative. The crucial question was whether the abuse represented an exploitation of the authority, trust, power and opportunity conferred on Grubb through his role as Assistant Cub Scout Leader.

Mr Justice Sweeting accepted the claimant's evidence that Grubb had used his scouting position to gain trust, identify the claimant as a vulnerable child, learn his movements and present himself as a trusted adult who would "make sure" the claimant got home safely. The claimant was targeted because he was a Cub Scout under Grubb's supervision. The abuse was repeated, followed a consistent pattern, and arose from a relationship cultivated through scouting activities.

The Judge distinguished cases where employment merely provided an opportunity for contact and instead found the facts closer to authorities such as Lister, X v Wandsworth, and FZO, where abuse was facilitated by relationships of authority and trust created by the defendant organisation. He concluded that Grubb had misused the very position entrusted to him by the Scout Association and that the assaults could fairly be regarded as having occurred in the course of his quasi-employment. Accordingly, the Scout Association was held vicariously liable.

Implications

This judgment introduces a potentially broader application of the close connection test in cases involving youth organisations and voluntary activities, when previous judicial guidance on vicarious liability had narrowed the circumstances in which the stage 2 test would be satisfied.

The decision indicates that vicarious liability does not solely depend upon the abuse occurring on organisational premises or during authorised activities. The Court placed far greater emphasis on whether the abuser's organisational role conferred authority, trust and access to the victim, and whether those features were instrumental in facilitating the abuse. Where a claimant can show that the abuser exploited a relationship of trust created through an entrusted role, liability may arise even where the abuse itself occurred away from the organisation's premises and outside formal activity hours.

The judgment also highlights the continuing influence of *Lister* and related authorities while illustrating how courts may distinguish more recent restrictive decisions such as *BXB*. The key distinction remains whether the abuse arises from a personal relationship independent of the role, or whether the role itself created and facilitated the relationship that enabled the abuse.

On a hypothetical spectrum of positions involving responsibility for children, the judgment arguably now places the role of a scout leader closer to that of a teacher as opposed to more peripheral or incidental volunteer roles, such as a football coach. For example, in *TVZ & Others v Manchester City,* the High Court found the abuse did not occur in close connection with a volunteer football coaches' duties as the abuse (which occurred at the football coaches' house) was not the abnegation of any positive duty allocated to him by the Club. The court's reasoning in this case now emphasises the trust placed in scout leaders, their supervisory responsibilities, the conferral of authority by the organisation, and the extent to which children and parents are expected to rely upon them, to render them vicariously liable.

- Finally, this judgment may prove controversial because it appears to push the boundaries of the "close connection" test in a direction that sits uneasily with the restrictive approach adopted by the Supreme Court in both Trustees of the *Barry Congregation of Jehovah's Witnesses v BXB* [2023] UKSC 15 and *Various Claimants v Morrisons Supermarkets plc* [2020] UKSC 12. The Supreme Court in those cases emphasised that it is not enough that a defendant's enterprise merely creates the opportunity for wrongdoing. Rather, there must be a close connection between the tort and the functions entrusted to the wrongdoer. In Morrisons, Lord Reed stressed that "but for" causation is insufficient; the mere fact that employment provides the opportunity to commit a tort does not justify the imposition of vicarious liability. Likewise, in *BXB* the Supreme Court rejected liability notwithstanding that the elder's religious position had facilitated contact with the claimant, holding that the rape arose from a personal relationship rather than from the exercise or misuse of authority conferred by the role itself. The Court repeatedly warned against treating mere status, opportunity or causal connection as enough to satisfy stage 2 of the test.

- The judgment therefore arguably represents a more expansive application of *Lister* and *FZO* (which the Supreme Court Judges in *BXB* said appeared to have been wrongly decided) than the narrowing approach favoured by the *Supreme Court in Morrisons and BXB.*

  It remains to be seen whether there will be an appeal.

Court of Appeal Clarifies that TUPE Does Not Transfer Vicarious Liability to Third-Party Claimants: *ABC v Huntercombe (No.12) Ltd & Others* [2026] EWCA Civ 1161

The Court of Appeal's decision in *ABC v Huntercombe (No.12) Ltd & Others* provides important guidance for insurers, public sector bodies, healthcare providers, local authorities, educational institutions and other organisations involved in TUPE transfers.

The judgment addresses a significant and potentially far-reaching question: does an employer's vicarious liability to third parties for employees' pre-transfer conduct pass to a transferee under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)?

The Court of Appeal's answer was unequivocal: it does not.



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Factual background

The claim arose from allegations made by a former patient, anonymised as ABC, who had been detained at Huntercombe Hospital, a privately operated psychiatric facility for young people. The claimant alleged that she suffered abuse and mistreatment during her admission to the hospital in 2018 and 2019.

In 2021, the operation of the hospital transferred from Huntercombe (No.12) Limited to Active Young People Limited (AYPL), pursuant to TUPE. As part of the transfer, the relevant workforce moved to AYPL and became employees of the transferee.

The claimant contended that Huntercombe's alleged vicarious liability for the pre-transfer acts and omissions of those employees transferred to AYPL under Regulation 4(2)(a) of TUPE. The argument was of particular significance because Huntercombe had entered liquidation, and although it had insurance there was a large deductible of £250,000 per claim, therefore limiting the prospects of recovery against the original employer. The claimant therefore sought to pursue AYPL as the current operator of the undertaking.

The issue also carried wider significance, with reports indicating that more than 50 related claims are being pursued in connection with alleged treatment at Huntercombe facilities.

The Legal Issue

Regulation 4(2)(a) of TUPE provides that, upon a relevant transfer, "all the transferor's rights, powers, duties and liabilities under or in connection with" employees' contracts of employment transfer to the transferee.

The claimant argued that:

- vicarious liability arises by reason of the employment relationship;
- the liability is therefore sufficiently connected with the transferring employees' contracts of employment; and
- responsibility for such liabilities should accordingly transfer to the new employer under TUPE.

AYPL contended that TUPE is designed to protect employees and preserve employment rights, rather than to create additional routes of recovery for third-party claimants.

Court of Appeal

The Court of Appeal dismissed the appeal and upheld the first-instance decision, holding that TUPE does not transfer a transferor's vicarious liability to third parties for employees' pre-transfer acts or omissions.

The Court emphasised that both the Acquired Rights Directive and TUPE are fundamentally concerned with safeguarding employees' rights when an undertaking changes hands. The legislation is directed at rights and obligations arising between employer and employee, rather than liabilities owed by an employer to unrelated third parties.

In reaching its conclusion, the Court held that:

- Employees have no legal right to require their employer to be vicariously liable for their wrongdoing;
- Vicarious liability is a liability owed to the third-party claimant, not to the employee;
- Claims brought by third parties therefore fall outside the purpose and scope of TUPE's transfer provisions;
- A transferee does not assume responsibility for undisclosed third-party claims merely because the relevant employees transferred under TUPE.

The Court distinguished earlier authorities in which liabilities owed directly to employees had transferred under TUPE, noting that the present case concerned liabilities owed to third parties rather than rights arising from the employment relationship itself.

Implications

The decision provides a welcome clarification for insurers, acquiring organisations and risk managers involved in corporate acquisitions, outsourcing arrangements and public sector reorganisations.

The judgment confirms that TUPE protects employees' rights and transfers employment-related liabilities but does not transfer an employer's vicarious liability to third-party claimants for historic wrongdoing committed by employees before the transfer.

Had the claimant succeeded, transferee organisations could have inherited substantial liabilities arising from historical conduct predating the transfer, including abuse claims, negligence claims, human rights claims and other forms of litigation, often without any prior knowledge of the allegations. Such an outcome would have created potentially significant and unpredictable exposure for acquiring organisations.

Indeed, the Court expressly recognised the unfairness that could arise if a transferee became liable for potentially multi-million-pound third-party claims – which TUPE does not require a transferor to disclose as part of the employee liability information provided before the transfer.

Conclusion

The Court of Appeal's judgment defines an important boundary to TUPE's operation and offers greater certainty to organisations involved in business transfers and service provision changes. While TUPE transfers employment-related rights and liabilities, it does not operate to transfer an employer's vicarious liability to third parties for employees' pre-transfer wrongdoing. Nevertheless, organisations involved in TUPE transfers should continue to undertake thorough due diligence.



Child Sexual Abuse Material and Artificial Intelligence: Emerging Risks and Safeguarding Responsibilities

The rapid advancement of artificial intelligence (AI) is transforming how individuals learn, communicate and create content. However, alongside these benefits, there are growing concerns in respect of the use of AI to create, manipulate and distribute child sexual abuse material (AI-CSAM). This has led to guidance issued by the National Crime Agency (NCA) and the Internet Watch Foundation (IWF) highlighting the scale of this emerging risk and the safeguarding challenges facing organisations, professionals and families.



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What is AI-CSAM?

AI-CSAM refers to child sexual abuse material that has been wholly generated, manipulated or enhanced using artificial intelligence technologies.

This can include:

- The creation of highly realistic (often referred to as photorealistic), manipulated images and videos of a child or young person. This can be done by altering existing photos or videos or creating entirely AI-generated sexual abuse content.
- The use of so-called 'Nudifying' or 'undress' AI tools can be used to digitally remove clothing from images creating sexual abuse imagery of a child or young person.
- The use of real child sexual imagery to feed AI models to create new image sets and videos of existing survivors.

Importantly, material does not need to depict a real child or a real abuse event to be unlawful. Under UK legislation, AI-generated indecent images of children, including content such as cartoons, illustrations and animations, may constitute criminal offences.



A Rapidly Escalating Threat

The guidance highlights the increasing prevalence of AI-generated abuse material. According to the IWF's 2025 Annual Data and Insights Report, 8,111 AI-generated child sexual abuse images and videos were identified from 498 reports, representing a 154% increase compared with the previous year. The data reflects growing accessibility to powerful image-generation tools and an evolving threat landscape that is challenging traditional safeguarding approaches. As professionals working with children and young persons, understanding these risks is essential to help protect them from potential harm and to respond effectively to incidents.

Legal and Safeguarding Implications

Under UK legislation, the creation, possession, and distribution of indecent images or pseudo-photographs of children are criminal offences, irrespective of whether the material is generated using artificial intelligence. The involvement of AI technology provides no defence to criminal liability and does not lessen the harm associated with the production and dissemination of such material.

The NCA and IWF also stress that AI-CSAM can cause significant harm even where no direct contact has occurred. Victims may experience distress, humiliation, loss of control and ongoing anxiety arising from the knowledge that AI-generated sexual images of them exist or may be disseminated online. Additionally, the creation and circulation of such material can contribute to the wider normalisation of child sexual exploitation.

Prevention Through Consent and Digital Awareness

The UK Online Harms Early Warning Working Group issued guidance hosted by the UK Safer Internet Centre to protect school images from AI manipulation and abuse. It advises schools and youth organisations to minimize high-risk digital sharing of identifiable children's photos and manage online media securely.

Further, organisations working with children are encouraged to review image consent processes regularly, ensure parents and carers understand how photographs may be used, and consider whether images featuring children are necessary at all.

The guidance for parents and carers similarly recommends:

- Reviewing privacy settings on social media platforms.
- Auditing existing online content featuring children.
- Limiting the audience for shared images.
- Revisiting image-sharing consent as children grow older.
- Encouraging open discussions about AI, deepfakes and online safety.

Responding to Incidents

Where AI-generated sexual abuse imagery is discovered, the NCA and IWF guidance recommends a prompt and measured response.

Key actions include:

- Reporting concerns to safeguarding leads or appropriate authorities.
- Avoiding the downloading, sharing or storing of offending content.
- Preserving evidence such as messages, usernames and links.
- Reporting material to the relevant platform.
- Contacting the police where appropriate.
- Ensuring emotional and wellbeing support is available for affected children and families.

For children and young persons who become victims, services such as Report Remove | Childline can assist in seeking the removal of images from online platforms.

Click here for Report Remove I Childline >

A Rapidly Escalating Threat

For organisations working with children and young persons, the emergence of AI-CSAM reinforces the need for robust safeguarding frameworks, regular staff training and clear reporting procedures. Existing policies concerning image sharing, cyber safety and harmful sexual behaviour should be reviewed to ensure they adequately address AI-related risks.

The guidance also illustrates a broader point relevant to all organisations: the misuse of AI technology is creating new legal, reputational and safeguarding challenges that require proactive governance. Awareness, education and early intervention remain the most effective tools in reducing risk and protecting vulnerable individuals.

The End of the Supervision Exemption: What the Crime and Policing Act 2026 Means for Organisations Working with Children

From 1 September 2026, the Crime and Policing Act 2026 removed the supervision exemption from the definition of regulated activity, significantly expanding the scope of roles that require enhanced DBS checks and barring checks. As a result, many volunteer positions that were previously outside the regime now fall within it. This article explains what has changed, why the changes are important for safeguarding, and the practical steps organisations working with children should take to ensure compliance and protect those in their care.



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What Has Changed?

The Crime and Policing Act 2026 has introduced a significant change to the definition of regulated activity with children by removing the long-standing "supervision exemption". The change came into force on 1 September 2026 and affects organisations working with children across England.

Regulated activity is defined by the Safeguarding Vulnerable Groups Act 2006 and identifies work from which barred individuals must be excluded. Historically, some volunteers carrying out activities such as teaching, training, instructing, caring for or supervising children were not considered to be engaged in regulated activity where they were under reasonable day-to-day supervision by an individual already undertaking regulated activity.

The new legislation has removed this exemption, meaning that supervision will no longer determine whether many volunteer roles fall within the scope of regulated activity. Instead, the focus will be on the nature and frequency of the activities being carried out.

How Have the Rules Changed?

Under the previous framework, a volunteer who regularly worked with children could fall outside regulated activity if suitable supervision arrangements were in place. This meant that organisations were often unable to obtain a Children's Barred List check for those individuals, even where they had regular contact with children.

From 1 September 2026, individuals who frequently:

- teach children;
- train or instruct children;
- care for children; or
- supervise children,

will generally be considered to be undertaking regulated activity regardless of whether they are supervised by another adult.

The change primarily affects volunteers because paid staff undertaking these activities were already likely to be engaged in regulated activity. As a result, many volunteer roles that previously fell outside the regulated activity framework will now fall within it.

Example

Before September 2026, a volunteer helping children with reading once a week in a school may not have been undertaking regulated activity if they were supervised by a teacher. From September 2026, that same volunteer is likely to be considered to be undertaking regulated activity regardless of supervision and will therefore require an Enhanced DBS check with Children's Barred List information.

Impact of the New Rules on Organisations

The reforms are intended to strengthen safeguarding arrangements and address concerns that barred individuals could still access volunteer roles involving substantial contact with children.

Enhanced Safeguarding

Removing the supervision exemption creates a clearer and more consistent safeguarding framework. Individuals carrying out the same activities will be subject to the same regulatory requirements regardless of the supervision arrangements in place.

Greater Access to Barred List Checks

Where a volunteer is undertaking regulated activity, organisations will be able to obtain an Enhanced DBS check including Children's Barred List information. This helps organisations identify individuals who are prohibited from working with children before they commence their role.

As a result, organisations can verify whether volunteers carrying out regulated activity are barred from working with children. The reforms seek to address a safeguarding gap by allowing appropriate barred list checks where volunteers are carrying out regulated activity.

Increased Public Confidence

The reforms reinforce public confidence in safeguarding arrangements by ensuring that individuals who work regularly and directly with children are subject to the highest level of pre-engagement vetting, irrespective of the supervision arrangements in place.

Practical Impact on Childcare and Other Organisations

While the change is relatively straightforward in principle, organisations will need to review their existing arrangements carefully.

Review Volunteer Roles

Schools, nurseries, childcare providers, youth organisations, sports clubs, faith organisations and charities should review volunteer positions to determine whether they now fall within the definition of regulated activity.

Volunteers are likely to be undertaking regulated activity where they teach, train, instruct, care for or supervise children on more than three days within a 30-day period, or overnight. Roles previously excluded because of supervision may now require an Enhanced DBS check with Children's Barred List information.

Update Recruitment Procedures

Organisations will need to ensure that recruitment and onboarding processes reflect the new requirements. Volunteers undertaking regulated activity will require an Enhanced DBS check with Children's Barred List information before engaging in the role.

Review Policies and Training

Safeguarding policies, volunteer management procedures and staff training materials should be reviewed and updated to ensure they accurately reflect the new legal position. Organisations should also ensure that managers understand which activities now constitute regulated activity.

Additional Administrative Burden

Some organisations may experience an increase in administration and compliance costs as a greater number of volunteers become eligible for barred list checks. However, these requirements are likely to be viewed as proportionate in light of the safeguarding benefits that the reforms are intended to achieve.

Legal Responsibilities

It remains a criminal offence for a barred person to engage in regulated activity and for an organisation knowingly to permit a barred person to undertake such work. It is therefore essential that organisations correctly identify those roles that now fall within the definition of regulated activity.

Conclusion

The removal of the supervision exemption is one of the most significant changes to the regulated activity framework since the reforms introduced by the Protection of Freedoms Act 2012. By shifting the focus from supervision arrangements to the nature of activities being undertaken, the Crime and Policing Act 2026 simplifies the assessment of many volunteer roles and strengthens safeguarding protections for children.

While the reforms are likely to increase DBS checking requirements for many organisations, they provide a clearer and more consistent safeguarding framework.

Grooming-Related Abuse Claims: Two New Public Inquiries

Grooming and group-based child sexual exploitation (CSE) continue to attract significant public and media attention. Against that backdrop, both the Westminster and Scottish Governments have announced statutory public inquiries into grooming gangs.



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'Grooming' refers to the process by which an individual builds a relationship with a young person or vulnerable adult in order to abuse or manipulate. While most commonly associated with sexual offending, grooming can also facilitate other forms of exploitation and criminal activity.

In England and Wales, the Independent Inquiry into Grooming Gangs, chaired by Baroness Longfield, follows Baroness Casey's 2025 National Audit on Group-Based Child Sexual Exploitation and Abuse. The inquiry will focus on victims and survivors, examine failures in local and national responses, and investigate whether issues relating to ethnicity, religion, or culture influenced decision-making by public authorities.

The Scottish Government has announced a statutory inquiry into Scotland's response to group-based child sexual abuse and exploitation. The inquiry will be chaired by Professor Alexis Jay and is expected to run alongside the ongoing Scottish Child Abuse Inquiry. Terms of reference are awaited.

The Independent Inquiry into Grooming Gangs in England and Wales

In December 2025, the UK Government announced the establishment of a statutory Independent Inquiry into Grooming Gangs, chaired by Baroness Longfield.

The inquiry responds to recommendation two of Baroness Casey's National Audit on Group-Based Child Sexual Exploitation and Abuse, published in June 2025. The audit sought to examine the scale of group-based child sexual exploitation and evaluate the effectiveness of public sector responses.

One of the audit's key findings was the difficulty in establishing the true scale of offending.

The definitions of child sexual exploitation were inconsistent and confusing. As a result, the data was not clearly captured by public authorities or the police. What can be said is that grooming and child sexual exploitation are underreported.

There are a variety of reasons for this. Grooming is subversive – it involves manipulation to create the illusion of consent. If, on the face of it, a person has consented, where is the problem?

The audit made 12 recommendations, covering legislative reform, criminal justice processes, data collection, information sharing, and wider regulatory issues.

Terms of Reference

The terms of reference have been finalised and published:

- The inquiry will be focused on victims and survivors. The audit identified that the majority of CSE victims are girls, aged between 10 and 15 years.
- It will focus specifically on group-based CSE committed by 'grooming gangs'. These are often large-scale criminal enterprises with a high level of organisation.
- The purpose and objectives of the inquiry are to identify failings in historic and current practices in tackling grooming gangs in local areas and the role of the national government.
- It will examine historic and current failings by public authorities in identifying and responding to offending. In particular the inquiry will examine how ethnicity, religion or culture played a role the local and national responses.
- It will also investigate failures in accountability mechanisms where concerns raised through previous reviews or investigations were not acted upon.

Scottish Inquiry

Scotland is set to undertake its own examination of group-based child sexual abuse and exploitation.

The Cabinet Secretary for Education has announced that a statutory public inquiry would be established to investigate Scotland's response to group-based child sexual abuse and exploitation. The inquiry will be chaired by Professor Alexis Jay, who previously chaired the Independent Inquiry into Child Sexual Abuse (IICSA).

As with the inquiry in England and Wales, the Scottish inquiry will adopt a survivor-focused approach and will examine how public bodies responded to reports of exploitation.

The inquiry is expected to consider the prevalence of group-based child sexual abuse and exploitation in Scotland's recent past and assess whether existing systems adequately protected victims and identified perpetrators.

Importantly, it will operate alongside the ongoing Scottish Child Abuse Inquiry (SCAI) as child exploitation and failures of institutions is considered in phase 10 of the SCAI. The inquiry will also draw evidence from both the National Review and Police Scotland review processes.

Formal terms of reference are still awaited.

Why does this matter for civil claims?

Public inquiries frequently bring new evidence to light and encourage survivors to come forward. They also place historic institutional responses under scrutiny. As a result, organisations may face increased examination of their safeguarding practices, reporting processes, information sharing arrangements, and responses to allegations of abuse.

The findings of both inquiries are likely to be closely watched by those involved in abuse litigation and may influence future claims involving allegations of systemic or institutional failings.



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