



CHILD ABUSE: THE NEW CLAIMS LANDSCAPE

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CLEAR ► CONCISE ► CONNECTED

1. Where we are now: child abuse profile and numbers
2. The legal landscape: The mood of the courts
3. What next and where next
4. Paths to resolution: some solutions

1. WHERE WE ARE NOW

- ▶ Savile and CSE
- ▶ Disbelief to belief
- ▶ Police activity
- ▶ Media activity
- ▶ Claimants solicitors, portal and QOUCs
...and the numbers so far

2. THE LEGAL LANDSCAPE



- ▶ Avoiding gross and offensive injustice
- ▶ Compensating from the deepest pockets
- ▶ Vicarious liability...a brief digression

3. THE BASIS OF VICARIOUS LIABILITY



▶ There are **two** aspects to establishing vicarious liability and both have been broadened:

▶

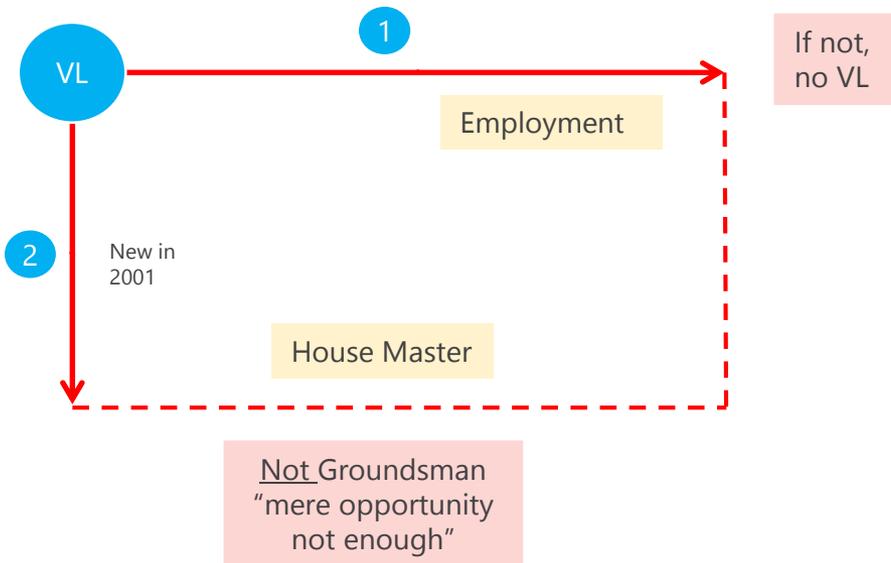
- ▶ **First**, there must be a sufficiently close relationship between the person (tortfeasor) and the employer/institution. (see "JGE")
- ▶ **Second**, there must be a closeness of connection between that relationship and the person's acts. (see "Various Claimants")

Lister had originally set the limits on these two parameters, but that original set of limits has been extended in both directions.

4. VL - LIMITS SET BY LISTER (2001)

VL in 2001

Lister v Hesley Hall Ltd (HL) 2001



The position today is not so clear at all.

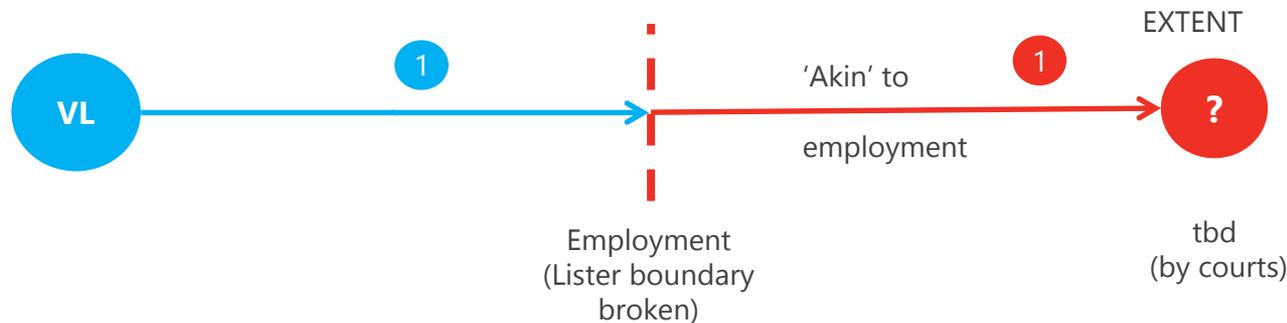
The house-parent was caught because he was the dormitory superintendent and *'the torts were so closely connected with his employment'* that VL would apply.

The groundsman would not be caught because the work was not so closely connected that VL would apply – the groundsman would *only have 'mere opportunity'* and that would *not be enough*.

5. JGE V PORTSMOUTH DIOCESE (CA) 2012



JGE

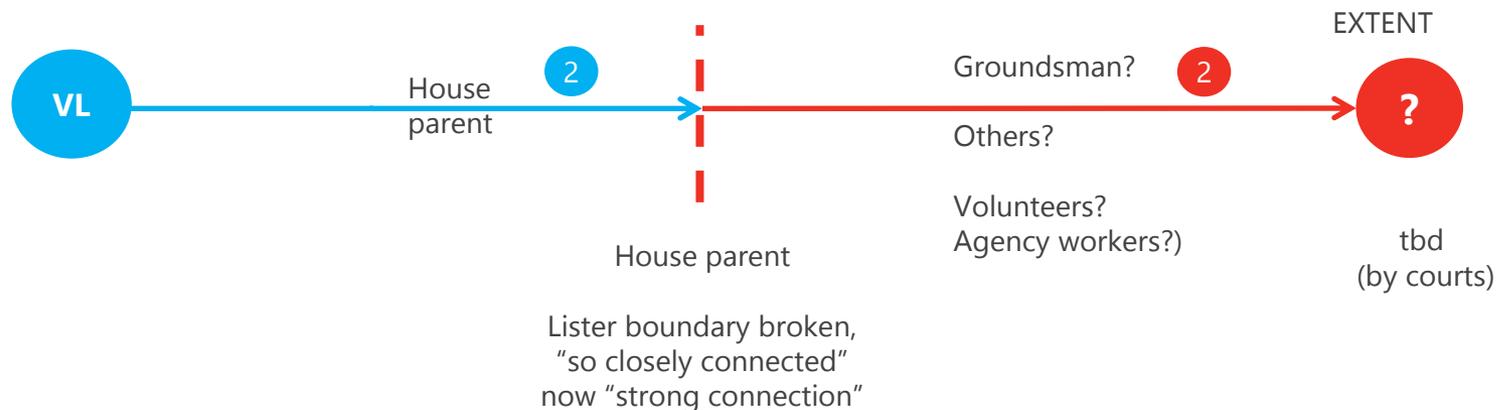


Formerly , to satisfy the first stage, actual employment was necessary. It is now sufficient to show that the relationship is one that is **'akin to employment'**.

The court will now look at the overall character and context of the relationship between a tortfeasor and the organisation to determine whether vicarious liability could exist.

6. 'VARIOUS CLAIMANTS' (SC) 2012

'Various claimants'



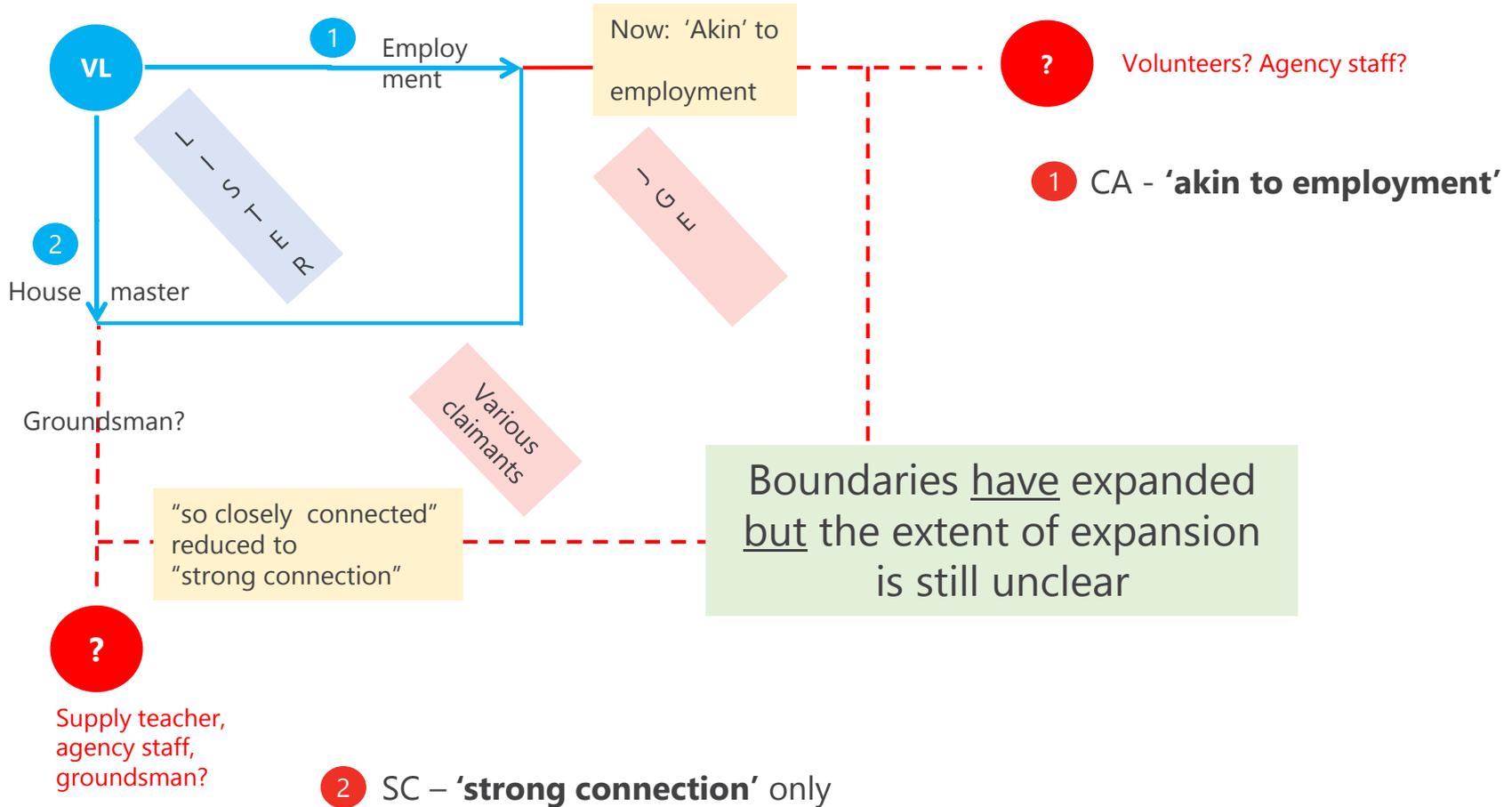
In relation to the *second limb* of the test, the SC has decided that where there is a strong connection between what the employer is asking the person to do and the wrongful act, so that the employer significantly increased the risk of harm by putting the person in that position, vicarious liability attaches.

This too is an extension of the Lister boundary.

7. VL – (UNCERTAIN) LIMITS AT 2014



VL in 2014



8. THE THIRD DIRECTION? MORE THAN ONE EMPLOYER!



Additionally: the Supreme Court in *Various Claimants* ruled that

VL can apply to more than one 'principal'

for the same tortious act

(perhaps in an outsourcing situation or agency workers/ volunteers?)

- ▶ Therefore, careful consideration should be given to the relationship between the person and all potential defendants
- ▶ in order that consideration can be given to bringing contribution proceedings against a second principal.

9. THE LEGAL LANDSCAPE (CONT.)



- ▶ Avoiding gross and offensive injustice
- ▶ Compensating from the deepest pockets
- ▶ Vicarious liability
- ▶ Limitation
- ▶ Quantum and costs

10. WHAT NEXT AND WHERE NEXT



- ▶ The Goddard and other Inquiries
- ▶ Continuing police and media activity
- ▶ CSE
- ▶ Ambassadorial claims: VL and other soft legal touches
- ▶ Sharing the blame...and the numbers again?

11. PATHS TO RESOLUTION: SOME SOLUTIONS



- ▶ Identifying some legal lines in the sand
- ▶ Non legal/lobbying options
- ▶ Engaging with the claimant solicitor community
- ▶ Getting the defendant PR right
and...
- ▶ Apologies

12. QUESTIONS?

