

Trial and appeals of lead claims in the litigation

60. From 26 February to 6 April 2001 (with a week's break mid-trial for Easter), Mr Justice Connell heard all of the evidence in the trial of 14 lead claims at the High Court in Chester. Nine of the claims involved sexual abuse, and five non-sexual physical abuse. The lead claims that were tried included those of the following core participants in this Inquiry: [AR-A20] [AR-A21] [AR-A22] [AR-A23] and [AR-A46]. The core participant [AR-A26] was one of two reserve cases, neither of which found their way into the trial of lead claims. Owing to time pressures, the judge ordered that closing submissions be adjourned to 14-16 May 2001 in London.
61. Shortly after the evidence had been heard, but before closing submissions had been filed, the House of Lords delivered its judgment in *Lister v Hesley Hall Ltd* [2002] 1 AC 216 (judgment delivered on 3 May 2001). That judgment, in another case of sexual abuse of children at a privately operated residential school, significantly developed the law of vicarious liability as previously understood. Following that judgment, it was possible for claimants to establish vicarious liability by proving a sufficient connection between the work for which the perpetrator had been employed and the abuse. This is a less exacting legal test than the one commonly applied by the Courts before the *Lister* judgment. The problem still remained for claimants that claims based on vicarious liability for deliberate assault were understood to be subject to a non-extendable six-year limitation period, although that legal position was to be challenged over the period that followed, as described below.
62. The fact that the *Lister* judgment was handed down on 3 May 2001, after the trial had been completed, meant that the claimants had focussed their energies at trial on establishing liability for systemic negligence (failure to prevent abuse) whereas there was now a potentially more straightforward basis for at least some of them to advance claims.
63. The parties still had to deal with closing submissions, and duly did so between 14 and 16 May 2001.
64. Mr Justice Connell delivered his judgment on 26 June 2001 (cited as *Various Claimants v Bryn Alyn Community Holdings Ltd and RSA* (2001 WL 753345)). He held that Bryn Alyn had been negligent in all but one case, which was that of the core participant [AR-A23]. Although all the claims in negligence had been brought outside the three-year primary limitation period, the judge exercised his discretion under section 33 of the Limitation Act

to allow all to proceed. He also held that vicarious liability was established for the assaults of employees (applying the new test from *Lister*).

65. Mr Justice Connell then went on to assess damages in the 13 successful claims, using as his benchmark the recent decision (coincidentally also within the North Wales Children's Homes Litigation) of *v* *Flintshire County Council*, in which Mr Justice Scott Baker had provided helpful guidance on the quantification of psychiatric damage in CSA claims.
66. Mr Justice Connell gave the claimants permission to appeal on certain findings in relation to vicarious liability. He refused permission to appeal on the issue of date of knowledge for limitation purposes (by reference to sections 11 and 14 of the Limitation Act 1980). He allowed RSA permission to appeal on the issue of the factors relevant to the discretion to extend limitation in these cases.
67. Certain claimants then renewed applications for permission to appeal at an oral hearing before Lady Justice Hale on 4 September 2001. Lady Justice Hale granted further permission to appeal as follows:
 - Three claimants were permitted to argue that, although they had succeeded overall, they should have had the benefit of findings of negligence in relation to certain specific abusers.
 - The same three claimants were granted permission to appeal on the application of *Lister* to their cases.
 - All but one claimant (the core participant AR-A21 who had withdrawn that part of his appeal) were granted permission to appeal their quantum awards.
 - One claimant (core participant AR-A23) was given permission to appeal on limitation as it had effectively been held by the judge that her claim could succeed only in assault and not in negligence.
68. Submissions on all of these complicated issues were heard by the Court of Appeal over five days in February 2002.