

### 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

### Further legal developments – A v Hoare

93. Shortly after the conclusion of the insurance proceedings described above, there were further radical developments in the law which profoundly affected the remaining claims against Bryn Alyn.
94. In January 2008, the House of Lords handed down judgment in the case of *A v Hoare* [2008] 1 AC 844. The effect of that judgment on limitation in non-recent abuse claims was revolutionary. First, it overruled *Stubbings* and decided that claims based on deliberate assault were subject to a three-year limitation period that could be extended without limit (under section 33 of the Limitation Act). Secondly, it adopted a different approach to date of knowledge provisions from that taken by the Court of Appeal in *Young v Catholic Care* [2007] QB 932. Thirdly, it included significant guidance on the application of the section 33 discretion in cases of non-recent abuse.
95. This judgment had a significant effect on how the remaining Bryn Alyn claims were pursued. Having begun with claims alleging systemic negligence, the remaining Bryn Alyn claimants now proceeded on a completely different legal footing. After *Hoare*, they primarily based their claims on the allegation that Bryn Alyn entities had been vicariously liable for deliberate abuse, taking advantage of (a) the broader view of vicarious liability taken in *Lister* and (b) the decision in *Hoare* that limitation could be extended without limit in a claim of this kind.

### Resolution of the remaining claims

96. Following consideration of the judgment in *Hoare*, the legal representatives in the Bryn Alyn litigation met in Liverpool to discuss the most effective way in which to resolve the remaining claims, of which there were 43. This meeting took place on 10 September 2008 and involved discussion of limitation issues and the categories of claims for which RSA could be wholly or partly liable.
97. After the meeting, some claims were withdrawn, often because RSA could not be obliged to indemnify Bryn Alyn for those claims (for example those based solely on allegations of abuse by Mr Allen or claims based solely on allegations dating back prior to 22 August 1976). The claims that were withdrawn at this point included those of the core participants AR-A26 AR-A24 AR-A47 and AR-A30