

## Could your charity be liable to volunteers or trustees for insurance claims?

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The Court of Appeal has recently given detailed consideration to the question of when a relationship is 'akin to employment', for the purposes of making an organisation vicariously liable for the actions of people working for it.

A recent decision by the Court of Appeal gives useful guidance about employer liability. The case of *JGE v The Portsmouth Roman Catholic Diocesan Trust* specifically concerned the relationship between a Roman Catholic priest and the Roman Catholic Diocesan Trust in Portsmouth, but the decision is potentially relevant to any relationship between an organisation and those who are not its employees in the conventional sense, such as volunteers or trustees.

The case is a reminder to charities to review the adequacy of the arrangements they have in place to insure against breaches of the law by employees, trustees and volunteers.

### Why employers are held vicariously liable

The law on vicarious liability is drawn from the policy that organisations, which engage in activities, must run the risk of members of the public being harmed because of the way in which those activities are carried out. There is no need for any fault on the part of the organisation. Vicarious liability is, in effect, a device for allocating loss and risk to those best able to pay.

There are two aspects to the question of when it is just and fair to hold an employer liable for the acts of its employees:

- whether the relationship is of the right kind to give rise to vicarious liability;
- whether the activities that caused harm were closely enough connected to the work the individual was employed to do.

### The case

This case considered the first question – was the relationship of the right kind to give rise to liability? The Court of Appeal decided, by a majority of two to one, that the Diocesan Trust was liable and that the relationship between the Diocese and the priest was, on the particular facts of the case, sufficiently 'akin to employment' for vicarious liability to arise. The decision was made by reference to:

- the amount of control to which the priest was subject (i.e. where his accountability lay rather than whether or how his work was directed by the Diocese);
- how far the work that the priest did was a central part of the work the church was undertaking in the Diocese and whether it was helping to further the church's objectives; and
- the extent to which the priest's activity was integrated into the organisational structure of the church.

### Would a case against a charity be decided in the same way?

As the law in this area has developed in response to policy considerations, it is conceivable that a court faced with the question of whether and to what extent a charity should be liable for the act of unpaid volunteers or trustees would arrive at different conclusions from those reached in this case. Lord Justice Tomlinson, who gave the minority judgment to the effect that the Diocesan Trust was not liable, pointed to what he considered to be the relative lack of control that the Diocese exercised over the priest. He thought that this lack of control meant that the relationship was not close enough to employment for it to be fair and just to hold the Diocese liable. That is an argument that might be used if a charity was faced with a claim based on the acts or negligence of a volunteer (or trustee) who was acting independently, or without supervision, or was being relied upon to exercise his or her own independent judgment to a significant degree.

All three of the judges acknowledged that it is the particular facts of the relationship in question that matter and that the law does not establish clear categories in which vicarious liability does or does not ever arise.

Review your insurance cover

The case makes absolutely clear that there is potential liability arising out of a wider category of relationships than those of employment in the generally understood sense. It is not enough for the charity to say 'they are not our actual employees and we cannot therefore be liable'. The legal risk is clearly established and charities should protect themselves by making sure that they have adequate public liability insurance in place to cover the activities of trustees and volunteers as well as the paid employees of the organisation.

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