

Employment

Widening scope of vicarious liability and its implications for employers

Summary

The High Court has held in *Various Claimants v Barclays Bank Plc* [2017] EWHC 1929 (QB) that Barclays bank (“Bank”) was liable for the alleged sexual assaults by a doctor who was not employed by the bank who conducted medical examinations on prospective employees of the Bank. The doctor had died and the claimants who were mostly teenage girls at the time of the alleged sexual assaults could not claim liability from the doctor’s estate for damages.

Core issue

The main issue for the Court was to determine whether the Bank was vicariously liable in respect of the alleged sexual assaults. The Court applied a two-stage test:

- i. Is the relationship (between the Bank and the doctor) one of employment or akin to employment?
- ii. If so, was the tort sufficiently closely related to that employment or quasi employment?

In tacking the first question, the following factors were said to be relevant:

- i. The tort will have been committed as a result of activity being taken by the doctor on behalf of the employer;
- ii. The doctor’s activity is likely to be part of the business activity of the employer; and
- iii. The employer, by employing the doctor to carry on the activity, will have created the risk of the tort being committed by the doctor.

Conclusion

In considering the above factors in relation to stage 1, the Court held in respect of each of the above:

- i. The examinations by the doctor were performed on behalf of the Bank and for its benefit as the applicants had to see the doctor to satisfy the Bank of their medical fitness and secure employment.
- ii. The doctor was acting for the benefit of the Bank and in doing so was an integral part of the business activity of the Bank.
- iii. The Bank did create the risk of the tort being committed as the Bank directed the claimants to attend the doctor’s home for an examination in a room alone and the examination included a chest measurement, among other things.

In relation to stage 2, the Court held that the alleged sexual abuse was inextricably linked with the carrying out by the doctor of his duties pursuant to his engagement by the Bank therefore stage 2 test was met.

Recommendation

Advice for employers from this development is that there does not have to be an employee-employer relationship between the perpetrator and the employer to give rise to liability on the part of the employer. The potential for liability is ever widening (as the scope of vicarious liability widens) and we urge employers to review their current practice and contractual arrangements of engaging external providers such as doctors, auditors and third party contractors who carry out duties on behalf of the employer.



Sungjin Park
Solicitor Advocate
E: sungjin.park@3hrco.com



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The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3hrco.com