

Vicarious liability for kinship foster carer abuse: Implications for local authority insurers

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Insurers may see an increase in claims against local authorities (including historical claims going back decades) brought by individuals alleging they were harmed in kinship or 'connected person' foster care.

It has long been accepted that the best people to care for children whose parents are unable to look after them are other relatives or adults who have a close connection to the child. This type of care is often referred to as 'kinship' or 'connected person' care.

Research shows that this type of care provides more stability, reduces the need for legal separation from birth parents, increases the chances of a firm psychological foundation for permanent relationships in adulthood, and maintains a link with the extended family network.

Kinship, a UK-based charity, reports that an estimated 160,000 children in England are being brought up by family members or friends, and that the great majority are outside of the child welfare system. By contrast, government statistics show that at the end of March 2023, there were 8,400 kinship fostering households, many of which provided homes for multiple foster children.

Occasionally, this kinship care happens without local authority involvement through informal arrangements made by the birth parents themselves. Sometimes arrangements are a little more formal. This is known as private fostering; an arrangement made between a parent and a responsible adult for the care of a child. These private arrangements are ones which a local authority should be notified of but may not be involved in setting up.

A local authority is much more likely to be involved in kinship care for children who are looked after by a local authority. In these situations, the local authority goes through an approval process with the relative coming forward to care for a child. Similarly, when the court is invited to make a Child Arrangement Order or a Special Guardianship Order, local authorities may be involved to provide reports to the court.

The standards to which kinship foster carers are held when local authorities are involved, are lower than 'ordinary' foster carers. For example, fostering services' minimum standards allow for different standards of training and development for kinship carers.

Also, a connected person foster carer might be approved for particular children, notwithstanding specified cautions or convictions of themselves or their families. If there are cautions or convictions an ordinary application would be barred as part of the ordinary foster care process. However, as it's recognised that family connections are important, this provision permits approval if a relative of the child.

Kinship claims

In the *Armes v Nottinghamshire County Council* [2017] UKSC 60 decision, the court said it would be slow to fix a council with liability for the actions of a relative who is fostering a child. Seven years later, the Court of Appeal has been persuaded to do exactly that. In *DJ v Barnsley* 2024 the [Court of Appeal extends liability for kinship foster carers](#).

Once an aunt and uncle accepted their nephew into their care and had been approved as kinship (described as 'de facto') foster carers, the court found their care of their nephew was integral to the local authority's business of discharging its statutory duties towards the nephew. Accordingly, the Court of Appeal found that it was possible that a child's uncle might render the local authority vicariously liable for his alleged sexual assaults of the child.

This judgment appears to be an extension of the principle of vicarious liability beyond Armes to include some if not all kinship carers. While the way in which the judgment was delivered suggested it was fact-specific, the sequence of events was not in any way unusual. Social workers asked an aunt and her husband to care for their nephew on a voluntary basis, and after several months the arrangement was formalised.

Once the principle is established, we may see an increased number of claims brought not simply about serious sexual abuse, but any alleged tortious act by the kinship foster carer. If these claims increase, it will be increasingly likely that kinship foster carers will need to be parties to proceedings, since these are likely to be the alleged principal tortfeasors and may ultimately need to fund the claims.

Limitation is not a powerful defence in these claims, with claimants successfully leaning heavily on the court's discretion under s33 of the Limitation Act 1980, and the courts reluctance to order split trials or preliminary issues on limitation. That means insurers could see claims going back years if not decades. Indeed, in DJ, the claim was based on alleged events in 1979-1983.

There are powerful social and economic arguments for the increased use of kinship care ([England's first ever kinship care strategy launches](#)). Nevertheless, this decision means the increased liability risks of a substantial change in policy in this area should not be underestimated.

What does this mean for insurers?

Public authority [insurers](#) should be mindful of the impact of this recent judgment and the apparent widening of the application of vicarious liability. Whilst most relevant [policies](#) will be on an occurrence basis, so there is very little that can be done in respect of historic exposure, insurers will nevertheless want to ensure their underwriting going forwards includes consideration of the number of kinship fostering arrangements and the supervision and vetting process of the insured authority. Equally, insurers should review their books to ensure they are sufficiently reserved in respect of their legacy exposures.

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