OUTER HOUSE, COURT OF SESSION

[2026] CSOH 6

PD485/24

OPINION OF LORD BRAID

In the cause

JWE

Pursuer

against

LGBT YOUTH SCOTLAND

Defender

Pursuer: Langlands; Jones Whyte
Defender: Black; Clyde & Co (Scotland) LLP

28 January 2026

Introduction

[1] From the age of around 15, the pursuer, now aged 31, attended a youth group run by the defender, a charity for LGBTQ+ young people aged 13-25, for whom it claims to create safe spaces. The pursuer's case, in brief, is that far from being safeguarded by the defender's employees, he was groomed by them over time and introduced to adult venues which led to his being sexually abused by older men he met there. He sues the defender for damages of £900,000 for the harm he claims to have suffered due to that grooming and abuse.

[2] The case called before me for debate at the instance of the defender, which initially sought to have the action dismissed, although in the course of the debate that was watered

down to an argument that certain averments should be deleted from the pleadings before a proof takes place. Four main issues were discussed, although not all of these ultimately proved controversial: first, whether the pursuer has pled a relevant case against the defender that it had a duty to safeguard him from harm at the hands of its employees; second, whether Scots law recognises the wrong of grooming (as distinct from any sexual abuse which might follow therefrom); third, whether the pursuer has relevantly pled that the defender is vicariously liable for the acts of its employees in grooming the pursuer and introducing him to exploitative environments; and fourth, whether any liability could extend to the acts of third parties (for whose acts the defender is admittedly not vicariously liable) in abusing the pursuer. I will consider each in turn, but first will narrate the pursuer's averments insofar as material.

The pursuer's averments

[3] In statement 4 of the record, the pursuer avers (given that these averments have not yet been tested at proof, I have anonymised the employees in question for present purposes):

> "In or around 2010, the pursuer commenced attending the defender's premises. He attended there for group meetings. He did so as a user of the defender's services. The meetings took place approximately twice per week. Over time, the pursuer was groomed by the defender's employees. It started with him being given cigarettes. That progressed to him being given alcohol. He was taken out for drinks. One member of staff gave the pursuer his (the member of staff's) passport to enable the pursuer to gain entry to adult venues. That member of staff was SG."

[4] In statement 5, he avers:

> "SG progressed to introducing the pursuer to older men in 'gay bars'. The pursuer was plied with alcohol for free. He was encouraged by the defender's workers to engage in sexual activity in exchange for money. He was encouraged to sleep with

> older men that he met in these bars. He was given money by them to perform sexual acts. He was drugged by these men on a number of occasions."

There then follow averments of how the pursuer was sexually abused by at least two of the men he met in the bars to which SG had introduced him. It is not contended that those men were employees of, or had any connection whatsoever with, the defender, nor that SG participated in, or was present during, the sexual abuse.

[5] In statement 6, he avers:

> "In the toilets of the defender's premises another of the defender's staff made the pursuer show the worker his torso. The pursuer felt he had to do it because of the power imbalance between them. The worker was either P or S..."

[6] In statement 7 he avers:

> "As a result of the defender's employees grooming of the pursuer, the pursuer has suffered loss, injury and damage. When he first attended upon the defender's organisation, he had a history of mental health problems. He was at an elevated risk of further symptoms of mental disorder..."

The pursuer then avers what symptoms he developed, before the averments continue:

> "Following the grooming by the defender's workers, the pursuer went on to engage in sex work. The actions of the defender's workers in introducing the pursuer to that environment resulted in the pursuer being socialised to believe that sex work was the prevailing normative behaviour of gay men. In addition, the likelihood of him engaging in sex work was materially increased by the actions of the defender's workers in grooming him and introducing him to exploitative environments and sex work."

[7] In statement 10, the pursuer makes averments about the duties owed to him by the defender:

> "The pursuer's claim is based on the defender's breach of the common law duty of care which it owed to the pursuer. The defender knew, or ought to have known, that the users of its services were vulnerable. It ought to have had in place clear policies pertaining to safeguarding and/or child protection. Such policies ought to have prohibited employees engaging in personal activities with service users. The defender ought to have had clear policies in place which prohibited employees taking workers on nights out which involved attending bars, clubs and consuming alcohol. That was especially so when the service users were under eighteen years of age. The defender ought to have properly trained its staff about such policies. It

ought to have trained them in relation to all aspects of safeguarding and/or child protection. In employing workers to help service users in circumstances where the defender did not have the above averred measures in place the defender created a foreseeable risk of grooming and abuse of service users by its employees. It failed to have adequate measures in place to prevent such grooming and abuse. *Esto* it did have such measures in place, it failed to enforce them. As a result of the defender's failures, it caused the pursuer to suffer the loss, injury and damage condescended upon. Absent the grooming of the pursuer by the defender's employees or volunteers, the pursuer would not have been abused in the manner condescended upon."

[8] In statement 11, the pursuer makes averments about vicarious liability:

"*Separatim*, the defender is vicariously liable for the acts and omissions of its employees. *Esto* the workers were not employees of the defender, they were volunteers working in furtherance of the defender's enterprise. They were in a relationship with the defender which was akin to employment. As such the defender is vicariously liable for them. The pursuer came into contact with the workers at the defender's premises. Through their work with the defender, the workers would become aware of the individual circumstances of the defender's service users. They worked for the defender to support its service users. Part of their duties require them to provide emotional support to service users. This was in circumstances where those service users were vulnerable people. The workers' abuse of the pursuer was closely connected to their employment with the defender. The workers engaged in a course of risky behaviour with the pursuer. They groomed him. They did so by supplying him with cigarettes. They also supplied him with alcohol. They supplied him with ID to enable him to gain access to licensed premises. This was despite them knowing that the pursuer was under the age of eighteen years. They groomed the pursuer. They introduced him to older men. The older men paid for the 'sexual services' of the pursuer. SG was present when money exchanged hands. In grooming the pursuer and introducing him to the environment which led to these events, SG was complicit in what happened to the pursuer. The defender's workers involved in the grooming of the pursuer knew, or ought to have known, the consequences of such introductions. They ought to have anticipated the likelihood of such introductions leading to the pursuer being abused. The defender's employees knowingly put the pursuer in positions of danger. *Esto* they did not knowingly do so, it was reasonably foreseeable that the positions in which the defender's workers put the pursuer would be dangerous for the pursuer. By engaging in a course of conduct designed to groom the pursuer, they encouraged him into such positions. As a result of such behaviour, they caused the pursuer to suffer the loss, injury and damage condescended upon. The pursuer attended upon the defender's organisation for support. Instead, he was groomed and thereafter abused. Absent the grooming of the pursuer by the defender's employees or volunteers, the pursuer would not have been abused in the manner condescended upon. Had he not been introduced to these environments and this lifestyle by the defender's workers, he would not have been in situations where he would have been drugged and sexually

> assaulted. Instead, had he been treated properly at the defender's organisation, he would have received the necessary support which he craved when he first attended upon the defender."

The safeguarding case

[9] The duty to safeguard the pursuer, in contrast to the other duties alleged to have been breached, is said to have been incumbent upon, and breached by, the defender itself. The pursuer's averments in support of his safeguarding case are those in statement 10 of the summons (repeated at paragraph [7] above), where he sets out those duties which he maintains the defender breached. The defender admits that it owed certain duties of care to the pursuer but asserts that it fulfilled all those duties. In particular, it avers in some detail the policies which it had, and how they were implemented.

[10] As both parties came to accept, the pursuer's averments in support of the safeguarding case are relevant for proof. Evidence will be required before the court is able to determine whether the defender breached any duties which it owed to the pursuer. I therefore need say nothing more about the safeguarding case.

The grooming case

[11] Counsel for the pursuer acknowledged that he had identified no authority which demonstrated the existence of a duty not to groom another person, or a duty not to introduce another person to exploitative environments and sex work; it was therefore possible that Scots law did not currently recognise grooming as a delict in and of itself. However, non-consensual sexual activity gave rise to a breach of duty, from which it followed that where conduct which *prima facie* appeared consensual, but was not consensual because it arose from grooming, then the courts ought to hold that sexual assault had

occurred. If a harm arose not just from the sexual assault but from the distinct actions of grooming, a pursuer should also have entitlement to recourse in respect of the grooming. Counsel derived support for that argument from a case from the High Court of Ireland, *Walsh* v *Byrne* [2015] IEHC 414, in which Michael White J said, at para [167]:

> "22. In this case, the mental trauma suffered by the plaintiff, is not just confined to the acts of assault and battery, but arises also as a result of the consequences of the breach of trust of the defendant who had played such an important role in the plaintiff's life. The court's objective consideration of the purpose of the defendant's kindness, concern and considerable investment of time, to the period when the abuse stopped was for the insidious purpose of satisfying his own sexual desire. For those reasons, it is appropriate to extend the law of tort, to cover what is now a well recognised and established pattern of wrongdoing, where a child is befriended, where trust is established and where that friendship and trust is used to perpetrate sexual abuse."

However, some doubt had been expressed about that finding in another Irish case, this one from the Court of Appeal, *McDonald* v *Conroy* [2020] IECA 239, where Collins J, with whom the other Justices agreed, said, at para [176]:

> "The appeals here give rise to significant questions about whether there is a stand-alone tort of grooming and, if so, what its constituent elements are and how it relates to established torts such as sexual assault. Issues of consent also arise on the facts here. In my opinion it would not be appropriate to resolve those difficult issues in these appeals."

[12] In any event, the purported delict of grooming was perhaps no more than a modern-day application of the delict of seduction, as considered in *Murray* v *Fraser* 1916 SC 623 where it was held that "an action of damages for seduction will only lie where some species of fraud or deceit has been practised": Lord Dundas at 633, quoting Lord McLaren in *Cathcart* v *Brown* (1905) 7F 951 at 953. If the court did accept that a delict of grooming ought to or indeed does exist, the extent to which it arose in the present case and whether there had been any fraud or deceit amounting to a breach of duty was a matter for evidence.

[13] It is unnecessary to express any view on these arguments since counsel for the defender accepted that whether the duties contended for existed or not could be determined only after the court had heard evidence, and that the grooming case, too, was suitable for inquiry. Accordingly, that part of the pursuer's case must also be allowed to proceed to proof.

The vicarious liability case

[14] The duties not to groom the pursuer, or introduce him to exploitative environments, are said to have been owed to the pursuer, and breached, by the defender's employees, specifically SG. The issue which then arises is whether the defender is vicariously liable for such wrongdoing.

[15] The modern law on vicarious liability was recently restated by the Supreme Court in *Trustees of the Barry Congregation of Jehovah's Witnesses* v *BXB*, [2023] UKSC 15, at para [58] (and, in a Scottish context, still more recently in *X* v *Lord Advocate* [2025] UKSC 44 at para [21]). There is a two-stage test: the first stage looks at the relationship between the wrongdoer and the defender, the second at the connection between that relationship and the commission of the wrong by the wrongdoer. The second-stage test is whether the wrongful conduct was so closely connected with acts that the wrongdoer was authorised to do that it can fairly and properly be regarded as done by the wrongdoer while acting in the course of the wrongdoer's employment or quasi-employment. There is no dispute in the present case that the first-stage test is satisfied: SG and the other workers are accepted as being the employees or quasi-employees of the defender. The sole issue is whether the second-stage, or close connection, test is also met. As counsel for the defender acknowledged, that is a particularly fact-sensitive issue: *NM* v *Henderson and Another*, 2025 CSIH 22 at [32], referring

to the *dictum* of Lord Burrows in *Trustees of the Barry Congregation of Jehovah's Witnesses* v *BXB* at para [58]. Nonetheless, he submitted that the case was capable of being dealt with at the level of principle and that even taking the pursuer's case at its highest the circumstances failed the second-stage test. There was an insufficiently close connection between the work that the employees were employed to do, and the acts of abuse complained of. None of the acts of alleged sexual abuse founded on by the pursuer was averred to have occurred whilst SG was acting in the course of his employment. There was no averred connection between SG's actions and the particular instances of abuse specified in statement 5. The alleged actions of SG (and further still, of the perpetrators of the acts of sexual abuse) were not sufficiently closely connected with SG's volunteering activities with the defender for vicarious liability to attach. The difficulty faced by the pursuer was that the perpetrators of the abuse were not employees or quasi-employees. On the pursuer's pleadings there was no connection between his attendance at adult venues, and the activities at the youth group.

[16] Counsel for the pursuer submitted that the duties assigned to SG included looking after the pursuer and safeguarding him. It was through his work with the defender, which did not simply run youth groups but specialised in providing assistance to children and young people exploring their sexuality, that SG met the pursuer. The pursuer's position was that in the course of his interactions with SG, the latter not only failed to safeguard him, but actively groomed him by providing him with cigarettes and alcohol and introducing him to adult venues where it was known he would meet older men. It could not be said that the pursuer was bound to fail to establish that there was a sufficiently close link between SG's employment or quasi-employment, and the act of grooming.

[17] On this issue, I prefer the submissions of the pursuer. It cannot be said, on the pursuer's averments, that he is bound to fail to establish a sufficiently close link between

SG's employment and the acts which are said to constitute grooming. In *C and S* v *Shaw and Another* 2023 CSIH 36, the Inner House said, at paras [18] and [19], that while authority over the abused person was not a touchstone of vicarious liability, there was no one test or list of factors which will always be relevant, and (quoting Lord Nicholls in *Dubai Aluminium Co* v *Salaam* [2002] UKHL 48 at para [26]) that essentially the court makes an evaluative judgment in each case having regard to all the circumstances and to the assistance provided by previous court decisions. In the present case there are undoubtedly some factors which point towards vicarious liability (such as that some acts of grooming took place in the defender's premises; and that the defender, by employing its workers to provide services to vulnerable young people such as the pursuer, created the risk of the wrong of grooming being committed), and others which point in the opposite direction (such as that other acts took place elsewhere). Ultimately, whether the defenders are held to be vicariously liable for the acts of their employees can be determined only after the court has heard evidence. To the extent that the defender argued that none of the acts of sexual abuse occurred while SG was acting in the course of his employment, that is an argument best dealt with under the next section of this opinion, dealing with the scope of the duty.

[18] For the foregoing reasons, the pursuer's averments about vicarious liability are sufficiently relevant for the pursuer to be allowed a proof thereon.

Scope of duty: liability for acts of third parties

[19] This is the principal disputed issue which I require to resolve at this stage: are the pursuer's averments that he was sexually abused by third parties relevant, or must his case, insofar as it is based upon that abuse, necessarily fail, in which latter event the pleadings about that abuse would be deleted, and the scope of the proof greatly restricted.

Submissions

Defender

[20] Counsel for the defender acknowledged that this was an unusual case with no authority directly in point. He submitted that to the extent that the pursuer sought to have the defender found liable for the deliberate acts of third parties unconnected with its organisation and outside its sphere of influence, both the pursuer's "safeguarding" case and his vicarious liability case were irrelevant. The averments about those deliberate acts should not be admitted to probation. The extent of SG's involvement was averred to be introducing the pursuer to older men in gay bars and encouraging the pursuer to engage in sexual activity with those third parties in exchange for money. Notably, there were no averments that SG knew about or was in any way involved on the particular occasions on which the pursuer was sexually abused. That being so, the specific alleged acts of abuse founded upon by the pursuer were the criminal acts of a third party. As a matter of general principle, there was a reluctance in law to impose liability on a defender in respect of injury, particularly deliberate injury, caused by a third party. Viewed as an issue of the scope of duty, there was no duty on the defender to guard against deliberate wrongdoing of a stranger: *Mitchell* v *Glasgow City Council* 2008 SC 351, per Lord Reed, dissenting, at [90] to [92] and [94], subsequently approved by the House of Lords: *Mitchell* v *Glasgow City Council* [2009] 1 AC 874. As an exception to that general principle, liability for the deliberate acts of a third party could arise (1) where there was vicarious liability; (2) where there was an obligation to supervise the third party; (3) where the defender created the risk of danger; and (4) where there was an assumption of responsibility: *Mitchell* v *Glasgow City Council*, above (apparently a reference to the speech of Lord Brown of Eaton-under-Heywood at [81]

and [82]). None of those exceptions could apply here. The defender could not be vicariously liable for the wrongs of a stranger. As a matter of logic, there could be no obligation on a defender to supervise a third party over whom it had no control and with whom it had no connection. It could not sensibly be said that the defender had created the risk of danger; nothing said to have been done by the abusers had any connection with the defender and in any event was very far removed from the context of a duty to take reasonable care to safeguard the pursuer from harm arising from his attendance at a youth group. There were no averments from which an assumption of responsibility by the defender could be inferred: *cf N* v *Poole* 2020 AC 780 at [66]-[69], [102].

Pursuer

[21] Counsel for the pursuer submitted that the reason the courts generally did not allow recovery in respect of harm caused by third parties was because of the absence of a relationship between the pursuer and defender, such that the defender was under no duty to protect the pursuer from harm. Cases such as *Mitchell* v *Glasgow City Council* (above), which addressed the duty of A to protect B from harm by C, could be distinguished from the present case for two reasons. First, rather than the pursuer being unconnected to the defender such that no duty ever arose, the pursuer and the defender were in a proximate relationship such that it was fair and reasonable to impose upon the defender a duty to have prevented the pursuer from being harmed by third party abusers. The pursuer was, at the material time, a vulnerable child seeking the assistance of the defender. Second, the harm arose because of the deliberate introduction by SG of the pursuer to the very environment and people which gave rise to the harm inevitably occurring. Such introduction was averred to be for the purpose of sexual activity taking place between the pursuer and adults.

In those circumstances there was a clear duty on SG to have prevented the pursuer coming to harm at the hands of the third parties by not having made the introduction. Properly categorised, that was not a failure by omission but by conscious delictual acts by SG.

[22] *Dorset Yacht Co Ltd* v *Home Office* [1970] AC 1004 was one of the few cases in which the general rule that a defender was not liable for harm caused to third parties had found exception. Lord Reid had considered the question to be one of remoteness of damage, and whether the action which caused the harm was a *novus actus intereniens*, going on to say, at page 1030:

> "...if the intervening action was likely to happen I do not think that it can matter whether that action was innocent or tortious or criminal. Unfortunately, tortious or criminal action by a third party is often the 'very kind of thing' which is likely to happen as a result of the wrongful or careless act of the defendant."

Decision

[23] It is instructive to begin with *Mitchell* v *Glasgow City Council*, above. In that case, a tenant of the defender was assaulted and killed by his next-door neighbour, also a tenant. The House of Lords held that there had been no duty on the defender to warn the deceased that it had summoned the neighbour to a meeting to discuss recovery of possession of his flat, or to advise the deceased of what had happened at that meeting. It is evident from the dissenting opinion of Lord Reed in the Inner House (which received approval in the House of Lords) and from the speeches in the House of Lords itself, that while foreseeability of harm is insufficient to impose a duty of care on a person, A, to prevent harm from being done to B by C, nonetheless there are situations in which the law does impose such liability. Counsel for the defender appeared to submit that liability could arise only in a finite range of circumstances, being those mentioned by Lord Brown of Eaton-under-Heywood at paras [81] and [82], but there is no indication that those circumstances were intended to

comprise an exhaustive list. Lord Reed, at para [97], following a reference at para [96] to the analysis carried out by Lord Goff in *Smith* v *Littlewoods Organisation Ltd* [1987] AC 241, observed that the list of examples given in that analysis was not intended to be exhaustive, and he did not doubt that the list was capable of extension. As Lord Reed went on to say:

> "At the risk of making rather a sweeping generalisation, however, it can I think be seen that all the examples of primary (as opposed to vicarious) liability involve situations where it is readily understandable that the law should regard the defender as being under a responsibility to take care to protect the pursuer from the risk of deliberate injury by a third party."

[24] In the House of Lords that approach was endorsed. Lord Hope of Craighead, at [23], gave examples of the kind of situation identified by Lord Reed, as for example, where the defender creates a source of danger; where the third party who causes damage was under the supervision or control of the defender (as in *Dorset Yacht Co Ltd* v *Home Office* [1970] AC 1004); or where the defender had assumed responsibility to the pursuer which lies within the scope of the duty alleged, as in (among other cases), *R (Amin)* v *Secretary of State for the Home Department* [2004] 1 AC 653, where a prisoner was placed in a cell with another prisoner with a history of violence who perpetrated a racist attack on him from which he died; and *Stansbie* v *Troman* [1948] 2 KB 48, where a decorator who was working alone in a house went out leaving it unlocked and it was entered by a thief while he was away.

[25] Lord Scott of Foscote, similarly, did not attempt to lay down an exhaustive list of the circumstances in which a duty of care may arise to prevent harm by a third party. Describing some situations where liability might arise, he said this, at para [40]:

> "The requisite additional feature that transforms what would otherwise be a mere omission, a breach at most of a moral obligation, into a breach of a legal duty to take reasonable steps to safeguard, or to try to safeguard, the person in question from harm or injury may take a wide variety of forms. Sometimes the additional feature may be found in the manner in which the victim came to be at risk of harm or injury. If a defendant has played some positive part in the train of events that have led to the risk of injury, a duty to take reasonable steps to avert or lessen the

> risk may arise. Sometimes the additional feature may be found in the relationship between the victim and the defendant (eg employee/employer)... In each case where particular circumstances are relied on as constituting the requisite additional feature alleged to be sufficient to cast upon the defendant the duty to take steps that, if taken, would or might have avoided or lessened the injury to the victim, the question for the court will be whether the circumstances were indeed sufficient for that purpose or whether the case remains one of mere omission."

[26] Lord Rodger of Earlsferry, for his part, also referred to a number of cases in which liability had been found to exist, prompting him to observe, at para [58]:

> "In all these situations the defender's act which provides the opportunity for the third party to injure the claimant is itself wrongful...that is not enough to make for liability in delict for the harm which a third party subsequently deliberately chooses to inflict. But it is, at least, a start."

[27] Finally, as Baroness Hale of Richmond put it, at para [76]:

> "In essence there must be some particular reason why X should be held to have assumed the responsibility for protecting Y from harm caused by the criminal acts of Z."

[28] While the circumstances in the present case perhaps do not fall neatly into any of the examples referred to above, nonetheless they are closer to some of those examples than to the facts in *Mitchell*. While there was an existing relationship between the defender and the deceased in that case, that was purely a relationship of landlord and tenant, whereas here the pursuer and the defender were in a proximate relationship whereby it was the defender's duty to safeguard the pursuer from harm while attending its youth group. It is to be assumed for present purposes that the act of SG in grooming the pursuer and introducing him to adult venues was in breach of the duty owed to the pursuer. It was that introduction (says the pursuer) which provided the opportunity to third party males to sexually assault the pursuer. In the words of Lord Rodger, that may not be enough for SG (and through him, the defender) to be liable for the harm, but it is at least a start. Further, this is not an omission case. The pursuer's case is not that SG omitted to warn him against

the perils of frequenting adult venues but that he actively groomed and encouraged him to do so; and that the very thing which was likely to happen if he was introduced to such venues, did in fact happen. That is not so very far removed from the example of the decorator leaving the house unlocked, with the result that the house was burgled; or of the violent prisoner murdering his cellmate.

[29] It follows that, in light of the authorities, it cannot be said in this case that the pursuer's case is bound to fail, that being the test at this stage. A decision as to whether any liability on the part of the defender extends to the acts of third parties can be taken only after evidence has been led. I will therefore allow the pursuer's safeguarding and vicarious liability cases to proceed to proof in their entirety.

Disposal

[30] The case is governed by chapter 43 of the Court of Session Rules and so there are no pleas-in-law to repel or sustain. Instead, I will refuse the defender's motion that certain of the pursuer's averments be excluded from probation and will grant the motion lodged by the pursuer before the debate was fixed, to fix an 8-day diet of proof.