IN THE COUNTY COURT AT SOUTHEND

Case No: B60YP192

Courtroom No. 1

Tylers House
Tylers Avenue
Southend-on-Sea
Essex
SS1 2AW

10am – 12pm
Wednesday, 2nd May 2018

Before:
MR RECORDER CATFORD

B E T W E E N:

SANDRA SHELBOURNE

and

CANCER RESEARCH UK

MR T GROVER appeared on behalf of the Claimant
MR M WHITE appeared on behalf of the Defendant

JUDGMENT
(Approved)

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MR RECORDER CATFORD:

1. On the evening of 7 December 2012 the claimant attended a Christmas party at the defendant's Cambridge Research Institute. The claimant was employed by the defendant as an animal technician. Also at the party was one Robert Bielik, who was not an employee of the defendant. Towards the end of the evening Robert Bielik picked the claimant up without her consent; he then dropped her, causing her serious injury. This is the trial of the preliminary issue of liability, evidence having been heard on 10, 11 and 12 January 2018. Page references in this judgment are to pages in the Trial Bundle.

2. Robert Bielik would clearly be liable to the claimant in damages for trespass to the person and in negligence. Robert Bielik, however, is not a party to this action. I do not know the reason and I do not speculate as to that. The issue before the court is therefore as follows: whether the defendant is liable on one of two alternative bases. First, in negligence. It is contented that a duty of care was owed (1) as her employer, and/or (2) as host of the party. That duty extended to reducing the risk of attendees drinking too much and/or behaving inappropriately, intervening when inappropriate behaviour did occur. That resulted in much examination in evidence as to risk assessment and security staff arrangements. It is contended that if those steps had been taken this accident would have not occurred. Secondly, it is contended that the defendant is vicariously liable for the actions of Bielik.

3. I shall begin by considering the facts insofar as they are agreed or undisputed, then review the evidence of the witnesses who were called at trial, before proceeding to my findings of fact, consideration of the applicable legal principles, and my conclusions.

The Agreed / Undisputed Facts

4. In December 2012 the claimant had been employed by the defendant for about five years. She worked as an animal technician. Her husband and daughter also worked at Cancer Research. Cancer Research UK is the well-known charity, which carries out research into the origins and treatment of cancer. Much of the research can be characterised as sensitive. What follows is taken from the unchallenged evidence of Mr John Wells. In 2007 Cancer Research UK set up its Cambridge Institute, which I shall refer to as 'The Institute', at the Li Ka Shing Centre, making use of expertise from the University of Cambridge, and especially the proximity of Addenbrooke's Teaching Hospital. As at 7 December 2012 The Institute was part of CRUK. The Institute was not part of the University. CRUK leased The Institute building from the University. There was agreement on certain operational aspects whereby university staff in neighbouring departments and CRUK staff exchanged information and collaborated on joint projects. The position changed in 2013 when ownership of The Institute was transferred to Cambridge University, but that is not relevant to the present case.

5. Robert Bielik was a visiting scientist at The Institute. He was employed by the University working at the Wolfson Institute Brain Imaging Centre.

6. Annual Christmas parties were held in the canteen at the Li Ka Shing Centre. They were organised by volunteers from different areas of work within the Centre. The bar at these events was also run by volunteers, from a body with the acronym 'CRISES' (that is Cancer

Research Institute Social Entertainment Society). The party was open to staff and their guests by ticket, to be purchased in advance or at the door. For the price of the ticket there was a ceilidh, followed by food, and then a disco. Attendance was not mandatory, nor was it otherwise expected of staff that they would attend.

7. As to the party venue, a hand drawn plan was prepared at trial, which is marked 'J1'. It shows the main entrance leading into an area with security marked. To the right is an atrium gallery; then right again from the gallery, the canteen where the bar was. Left from the gallery is a lecture theatre. Returning to the main entrance, turning left was a security barrier, which led on to another atrium area and doors to the laboratories.

8. The claimant finished work at about 4pm and waited at an onsite social club prior to going on to the party at about 7pm. The accident occurred at about 10.30pm when the claimant was on the dancefloor dancing with her supervisor, Tracy Crafton. Bielik went up to them and attempted to lift the claimant off the ground. In so doing he lost his footing or balance and managed to drop the claimant, resulting in a serious back injury.

The Evidence of the Witnesses

9. I now turn to the evidence of the witnesses called at trial. The first witness to be called was the claimant. Her witness statement is dated 7 June 2017, and is at pages 60 to 63. At paragraph 10 she states that:

> 'The first and only time I noticed Robert Bielik prior to the incident was at the bar quite early in the evening, between about 7.30 and 8pm. He was with a group of people and he broke into spontaneous very loud opera singing. I jokingly said to a friend, "I'll have what he's having". He was clearly very drunk'.

10. Moving on to the accident, she says as follows:

> 'My recollection of the incident is that I was dancing facing Tracy. I turned to my left and saw Robert Bielik. At which point he ran at me and lifted me up in the air, lost his footing, and fell forwards. I had never actually met or spoken to him, and he said nothing at all before lifting me up. It all happened so fast that I really did not know what was going on, but he was clearly very drunk and not strong enough, so fell forwards, dropping me on my back in the process'.

11. She was cross-examined and confirmed that her understanding was that the party was not compulsory. She accepted that the party was usually organised by a group of volunteers, and that guests could be brought. It was what she described as an optional get together. She was asked about paragraph 10 of her witness statement, to which I have just referred, and she described Robert Bielik's behaviour as singing, exuberant and having fun. She said to counsel that she thought no more about it at the time (referring to the incident in the bar); and she said, 'He looked like a chap having fun'.

12. She was asked about the statement which appears from a Dr Messent in the bundle at page

73, in which that witness describes Bielik trying to lift up Tracy Crafton first, who resisted, and then turning to the claimant and picking her up. The claimant said, 'No, that did not happen. He did not attempt to lift Tracy; he just came to me and lifted me up off the floor'. She was also asked about a report, which had been made by a Suzanne Rush of Human Resources (who I will refer to later on in this judgment), and the description which is recorded there from the claimant, in which the words 'threw up in the air' are used. The claimant said that that was not correct; but what he did do was lift her, in her words, 'fiercely'.

13. She was asked about paragraph 15 of her witness statement, and it was suggested that Bielik was immediately apologetic and acted appropriately after the accident, and that he was not so drunk as to be able to take those steps. The claimant said she honestly could not say. She said quite candidly that she did not know at the time how much Bielik had had to drink.

14. In re-examination she said that she had heard about the party on email at work, via her Cancer Research UK email account. She confirmed that she had no opportunity to resist or avoid the accident. She was asked about the opera singing, which I have already referred to, and she said, 'If you were there you would have noticed it. I was at the bar; he was queuing up behind'. You would hear him if within a distance similar to the width of the courtroom, or further. She said that the impression was one of drunkenness. However, he could have been, in her words, 'an extrovert'.

15. The next witness to be called was Mr Wayne Shelbourne, the claimant's husband. He gave a witness statement, again, dated 7 June 2017, at pages 64 to 66. In particular, paragraphs 8, 9 and 10 deal with an incident in the gentlemen's toilet at about 7.30pm. Mr Shelbourne says in his witness statement as follows:

> 'My first encounter with Robert Bielik was in the gents' toilet at approximately 7.30pm. I was washing my hands when he came crashing through the doors to the toilets. He came straight over to me and started saying what a great party it was, and he insisted on trying to shake my hands whilst I was trying to wash them. I would describe him as, "hammered". Shortly after this, at about 8pm, I was close to the bar with Sandra when I noticed Mr Bielik again, but this time he burst into a rendition of opera singing of sorts, very loudly, and, again, he was clearly very drunk indeed. At about 8.30pm I saw Mr Bielik lift up Michelle Osborne', (now Pugh). 'Mr Bielik didn't look any less drunk but I didn't think anything of seeing him lift Michelle at that stage. I couldn't see if he was egged on by Michelle, and I had no reason to question why he lifted her up. The lift was in the middle of the dancefloor and would have been in full view of the organisers. I don't know if they saw this, but James Hadfield and his team were present, and as far as I could tell James at least wasn't drinking and he certainly behaved appropriately'.

16. As regards the incident itself, he deals with that at paragraphs 13 and 14. He confirms that he did not see the incident. He says that he was told about it and obviously went to his wife: 'She was clearly in discomfort and seemed more embarrassed than anything else, and we were both pleased that she had managed to avoid hitting her head as the floor in that area was solid'. He goes on:

> 'We sat for a while and at about 10.45pm CJ Gurung, who was supposed to be on security duty, showed up. It was the first time I'd seen him or any security staff all evening. He didn't speak to Sandra or me and disappeared. He came back again at 10.55 and told the people behind the bar to close it. I had specifically noticed the absence of security staff, as I pop into the security office almost daily in my role and know them reasonably well'.

17. He was cross-examined by counsel for the defendant, and he was asked to begin with about the episode in the toilet. He reiterated that Bielik could barely stand at the time, 'He was uneasy on his feet and he almost fell over to me'. He was asked whether there was anything in Bielik's behaviour at the bar or in the toilet that he felt needed reporting to security, to which Mr Shelbourne said, 'Not then, not at that moment. In the gents he was really merry'. He said:

> 'When he picked Michelle up I saw a problem. I was talking to Jason Fox, Michelle skipped across, he lunged at her with such force she was up in the air hanging on for dear life, and it was entirely inappropriate sexual behaviour. I said, "If he drops her he's going to kill her"'.

18. He was asked about his witness statement at paragraph 10, and it was put to him that that was inconsistent and completely different. He accepted that it would seem that way. The statement of Michelle Pugh at paragraph 20 (page 109), was put to him, in which there was no reference to a sudden lunge and no sexual gyrating, to which Mr Shelbourne's response was, 'That's absolute piffle. She's lying about that. She didn't have a drink in her hand'. He said, 'It was early in the evening and if he' (Bielik) 'had done it more times I'd have had more concern'. He said that given that Bielik picked up three people somebody should have intervened. He confirmed that there were about 200 attendees at the event, and he said someone should have seen. He said Mr Hadfield was walking around. It was not in the middle of the dancefloor that Michelle Pugh was picked up; it was at the edge, more or less. He said it was about two and a half to three metres from the edge. Whether the organisers saw it or not, he could not say. He said if he was asked, he considered that there had been a cover up, in his words. He said that Mr Hadfield and others should have seen what was going on, and Bielik should have been asked to leave.

19. He was asked about the involvement of CJ and PJ Gurung, the security officers, whose evidence I shall refer to later. He said that, 'They certainly were not at the party. If they had been I would have seen them'. He said, 'I was in pretty much the same position all night'. He said that, 'We went out for food late and there was no one on the desk or the door at that stage. That was at or about 8pm'. He said that CJ and PJ Gurung were nowhere to be seen. He said all that he saw was CJ at a quarter to 11, as described in his witness statement. He said if they had been coming into the party area he would have seen them. He would have been blind not to have seen them.

20. In re-examination Mr Shelbourne reconfirmed that when in the toilet Bielik was unsteady on his feet, merry but unsteady on his feet. He said that the incident with Michelle Pugh was probably no further than the distance between himself and counsel who was re-examining at that stage.

21. Tracy Crafton, who I have already referred to, and who was the claimant's supervisor, was called to give evidence. Her witness statement is dated 5 September 2016. It is at pages 70

to 71. That can be dealt with relatively briefly. She deals with the incident at paragraphs 7 to 9. She said at paragraph 12, that prior to the incident she had not noticed Mr Bielik. She had not been paying any attention to what was going on generally at the party. She was not a very observant person, and she personally did not witness Bielik pick anyone else up, although she was later told that he had tried to do so with several other women.

22. She was cross-examined briefly, and confirmed that Bielik had never attempted to pick her up; and the first she was aware of matters was when Bielik was attempting to pick the claimant up. She, therefore, disagreed with the witness statement of Dr Messent, to which I have already referred.

23. David Maguire was the fourth witness called by the claimant. He is a Security Supervisor at The Institute, and he was directly responsible in reporting to The Institute Facility Manager, a Martin Frohock. Mr Maguire was asked to organise security cover for the party every year. His witness statement is dated 30 September 2016 (pages 67 to 69). At paragraph 5 of his statement he says:

> 'At the time I supervised a team of seven people. I arranged for two of my officers, known as CJ and PJ Gurung, to cover the party. They are both former Gurkhas. I gave them explicit instructions to man the doors at the party. I repeated this instruction to them on several occasions. The doors they were to man were the main entrance, speed lane, [atrium white doors]. I told them they could swap over between themselves for a change of scenery, but they needed to cover both doors at all times'.

24. At paragraph 6 he refers to CCTV footage the following day. That footage was not produced in evidence before me. At paragraph 7 he says:

> 'I made some enquiries with CJ and PJ Gurung, who initially confirmed they didn't know about the incident. This concerned me as they should have known about it had they been covering the doors as instructed. They reported to me, however, that some of the women from the organising department genomics had effectively taken control of the doors, so both of them went to sit at the main reception. This was in contravention of my express instructions'.

25. At paragraph 9 Mr Maguire said that he felt that his men were not adequately trained as SIA (that is Security Industry Authority) door supervisors for budget reasons. At paragraph 11 he says that he had been SIA licensed prior to taking this job:

> 'It needs to be renewed every three years, and Mr Frohock had refused to pay for the renewal so it had lapsed. I and my team have since had the training, including CJ and PJ Gurung. The training covers technical aspects of restraining people as well as identification of risk from drunken individuals and how to safely eject them. It covers our responsibility of both visitors and to the drunken person after ejection as well as the general safety of everyone involved. Had we all been properly trained and licensed at the time of the 2012 party I am convinced that the incident with Mr Bielik would not have occurred'.

26. In cross-examination he confirmed that he tasked CJ and PJ Gurung to cover the doors; and he said that, 'The instruction I gave was to man the doors and under no circumstances were unauthorised people to gain entry'. He said that his main criticism of them was in not manning the main door. It was put that it was not part of CJ and PJ's task to monitor guests at the party, and he said, 'I would expect that. I would expect them to do more than just the doors. I instructed them to check tickets. They were not tasked separately by me to go round checking desks'. He confirmed that the SIA qualification is a bouncer's licence. It was put to him that if such a licence had been acquired by the staff it would have made no difference on the evening in question. He said that he believed that it would. He said, 'If someone was drunk they would either be ejected from the building, and there would have been training in dealing with drunk people. Further', he said, 'if they had followed my instructions it would have made a difference'.

27. In re-examination he confirmed that Mr Frohock had asked him to provide security for the Christmas party. He was asked what details had been given to which his response was, 'No details were given to me. I just had to get cover for the party'. He said to me in questions, 'I have received no training as to security for this type of party', but he confirmed he was the Security Supervisor. He said he had no input into the risk assessment, nor was he asked for input into what the security might be.

28. Finally, the statement of Dr Anthea Messent, dated 20 March 2017, and exhibited note (at pages 72 following) was admitted under the Civil Evidence Act as hearsay evidence. That evidence describes a young man as drinking heavily and being drunk at an early stage of the evening. He is described by Dr Messent as trying to lift Tracey Crafton but, when she resisted, picking up and dropping the claimant.

29. That was the evidence adduced by the claimant.

30. The defendant called first Mr James Hadfield. He is Head of Genomics at the University of Cambridge, and is based at the Li Ka Shing Centre. His evidence is central to both the bases on which the claimant puts her case, and therefore it is necessary to consider his evidence in some detail. His witness statement (at pages 81 to 83) is dated 13 October 2016. At paragraph 9 he says, 'As part of my organisation we sent out an all staff email, and from recollection we posted a number of notices around the building informing staff of the party'.

31. In terms of risk assessment and security staff he said in his statement:

> 'As part of the organisation I completed a risk assessment to cover all the foreseeable hazards of an event at CRUK. The primary concern is to prevent people/guests returning to the labs during the course of the event or after the event, and access was therefore restricted to these areas after a certain time. In my former role prior to coming to CRUK I worked at the John Innes Centre in Norwich. Here I was trained in the completion of risk assessments. As part of my role I complete risk assessments in relation to my lab on a regular basis. The idea of the risk assessment for the Christmas party was to cover as many eventualities as possible regarding potential hazards and how to mitigate them. The risk assessment covered all the usual aspects of the event, and included the giant games, hard and uneven surfaces, and also included collisions with other participants during activity.

As part of the planning for the event I had two additional security staff on duty to prevent access to the lab'.

32. At paragraph 19 he says that 'during the course of the night I did not see any incidents. I did not see anyone lifted up or dropped on to the dancefloor'. At paragraph 22 he says:

> 'As the organiser no boisterous behaviour was reported to me, and if there had been I would have spoken to the individual or with the security staff to ask them to calm down. If the behaviour had continued they would have been asked to leave. To my knowledge no one was asked to leave. Further to this, I am unaware of any incidents happening previously at Christmas parties, and I know that there has not been a Christmas party since this incident, although there have been functions in the summer'.

33. In cross-examination there was an exploration of the position of visiting scientists. CRUK could give or revoke permission to work at CRUK. Robert Bielik worked under a CRUK supervisor, Professor Kevin Brindle. Mr Hadfield was asked about the temporary access form, Part One of which appears at pages 136 to 137. He confirmed that that had to be completed before a visiting scientist could work at CRUK. Of note on that form, it is recorded that the arrival date of Bielik was 1 July 2012, and the departure date was to be 30 June 2013. Under 'work carried out', the entry is all three areas in which lab work might be allowed. Mr Hadfield confirmed that Robert Bielik would also have had access to public areas. The reason for the permit was as follows: collaboration on project development of the new positron emission tomography imaging marker of de novo acid synthesis in tumours based on branched fatty acid pathways. In answer to 'Will CRI be their main place of work?', the entry was, 'No'. The name of the visitor's employer is Wolfson Brain Imaging Centre. In answer to 'Who is paying the visitor's salary?' is 'Wolfson Brain Imaging Centre'. 'Is CRUK making any salary contribution?' answer, 'No'. 'Is the visitor's employer paying lab expenses?' answer, 'No'. 'If, no, how will these expenses be covered?' Answer, 'Brindle Lab'. Mr Hadfield confirmed in evidence that this indicated that CRUK was providing resources but Robert Bielik might have brought some resources with him.

34. Mr Hadfield was also asked about the temporary access form Part Two, which appears at pages 138 to 139. In particular, there is a declaration, which was signed by Bielik on 25 June 2012, and of particular significance, are the terms at 1, 2, 3 and 7. They provide insofar as material as follows:

> '1, I accept and will abide by all applicable Cancer Research UK policies and procedures, including but not limited to the following: corporate data protection policy, Internet and email policy, smoking policy. 2, I agree to comply with the requirements of the Health and Safety at Work Act 1974, and also subordinate Health and Safety Regulations. 3, I understand that all information acquired through my work at Cancer Research UK is confidential to Cancer Research UK. 7, I accept that Cancer Research UK shall be entitled to withdraw its permission for use of its premises and facilities if I do anything which breaches the provisions set out above, or do anything which in the reasonable opinion of Cancer Research UK brings or is likely to bring Cancer Research UK's name or reputation into disrepute'.

35. Mr Hadfield agreed that Cancer Research UK were exercising a degree of control over Bielik's work. He accepted that term 7 required Bielik not to bring Cancer Research UK's name into disrepute; and attached to that was a definite sanction. He thought that Bielik was bound under the terms of the agreement to behave as people working as visitors would behave. Bielik would be required to attend health and safety induction. When pressed, he accepted that to an outside observer Bielik appeared to work for Cancer Research UK. However, he qualified that by saying in reality he worked at Cancer Research UK.

36. He confirmed that the party was advertised through the all staff email system, and maybe also by posters. Initially he said that Bielik would have to sign up to CRISES if he was to buy a ticket. However, he then said he thought that he might have otherwise been able to buy a ticket in his own right.

37. He accepted that if Bielik was working within Cancer Research UK and lifted up a female colleague without her consent, that would be inappropriate. If that had happened in the lab he would speak to the person who had been lifted, and if they felt that the matter had been inappropriate, he would then speak to the person who had done the lifting. Whether it was potentially dangerous would depend on the circumstances. It would have been inappropriate to have done the same thing in the canteen as well. He said that he would give a first warning, and would take it seriously if the matter was done again; but he would not necessarily bar from work in the lab at that stage.

38. He was asked detailed questions about his risk assessment. He confirmed that his training at John Innes would have been in his previous role where he had been until 2006. He could not recall at what stage in his time at John Innes that training had taken place, but said that it was probably in the middle or the later part of his time there. He said that he had been undertaking risk assessments for 20 years. He had received no training in risk assessments at Cancer Research UK, and specifically no training in risk assessments for events where there would be the consumption of alcohol. He explained how the process involved assessing occurrences most likely to occur; and which would have the most serious consequences; and he would then grade risks high, medium or low. He said that there had been no previous problems with alcohol. He emphasised how he considered the thought process to be the most important aspect and not simply what was written down.

39. He said that the bar was run by CRISES volunteers, and that they all had instructions in how to deal with people who had had too much to drink. The large proportion of the people at The Institute would, in any event, understand how much to drink. He said that the risk of excess alcohol consumption was not identified as one that needed to go on to the risk assessment itself, because he said it was a low risk. He relied on that from his previous experience. He, however, accepted in cross-examination that by permitting the consumption of alcohol there was an increased risk of drunkenness and inappropriate behaviour, and that with too much alcohol there was a risk of violence or people being hurt. However, again, Mr Hadfield emphasised that there had been no previous incidents at CRUK. *

40. When pressed further, that there was no written risk assessment on that issue, he accepted that he could not say whether or not he did consider the risks associated with alcohol consumption in those terms, which I have just described, but he said that it might have been so low that he did not include it. The risk assessment itself appears at 129 to 135. He accepted that it was a scientific assessment form, which he had adapted. He was taken to

various sections, which were not apposite to a Christmas party; and others which were unlikely but grave in consequence if they eventuated. Manual handling mainly related to setting up and taking down for the party. Slips, trips and falls related primarily to dancing. He was pressed on human factors, and he was not sure of what he had considered. He accepted that he should have considered the effects of the alcohol on guests. His only concern in that regard, which was written down, appears at page 131, where it is recorded: 'injuries or major accidents if scientists went back to the lab after alcohol had been consumed'; and hence, 'scientists will not be allowed back to the lab once the party has started. Security will control the flow of people in and out of the building when the party is on'. He accepted that any amount of alcohol could result in flawed judgment if back in the lab, with severe risks. He thought that was more so at a public event, but he said that did not mean that he did not consider the issue of any alcohol-related issues outside the lab.

41. He accepted that there was no written risk assessment in relation to the bar, sale of alcohol, consumption of alcohol or bringing in drink from outside.

42. He was taken to the review undertaken into the incident after its occurrence, at pages 125 to 126. In particular, the four conclusions at 4(a), (b) and (c). 4(a) was in summary amending the declaration to be signed to include guests to act responsibly, and if not they would be asked to leave. He accepted that that was not onerous and would act as a reminder to attendees. 4(b) was an advance email encouraging responsible behaviour. He accepted again that was not onerous, but said that most people would realise that anyway. With regard to 4(c), persons acting inappropriately would be asked to leave immediately, he said that that was the unwritten policy. He said that he could possibly have included these three matters in his risk assessment.

43. He explained how before the party he thanked the security and bar volunteers, and also said to them that if there were any problems they were to speak to him and he would arrange security to help. He thought he had a brief meeting with security before the party, contrary to what PJ Gurung said in his witness statement.

44. Robert Bielik had signed the CRISES rules and regulations (identified as a Declaration). That is at page 55. 1(a) to (d) concerned the sale of intoxicating liquor, and 1(e) concerned returning to the lab to work or for other reasons after consuming alcohol. Bielik then signed a confirmation of reading and understanding, an undertaking not to attempt lab experimental work. Mr Hadfield accepted that 'today' (his word) this and the risk assessment would be clearer on what to do if someone had drunk too much or was acting inappropriately. The Declaration could have prevented selling alcohol to those inebriated. He accepted that there was no mention of prohibiting those attending bringing alcohol in from outside. It could be amended to control behaviour and intoxication under the cover of 'appropriate work-related behaviour'. However, he did not believe that it was needed for the type of people attending, albeit that he accepted anybody can drink to excess. He accepted that it would be sensible to have guidance on alcohol being brought in by guests. Whilst there could be an express policy of supervision and monitoring, he said in reply that he himself was walking around for the whole time, as were others, and he indicated four or five other persons without identifying them by name.

45. It was suggested to Mr Hadfield that the bar staff should have been monitored to ensure that there were no sales to anyone inebriated. His response, though indirect, was that nobody had raised concerns that anyone was so drunk that they should not be served. He did not

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think that guidance was needed on what was or was not inappropriate behaviour. He said that if that was seen something would be done about it.

46. Finally, he was asked about Professor Brindle's email to Suzanne Rush of Human Resources on 11 December 2012. Mr Hadfield did not know anything about any other aspects of Bielik's behaviour on the night in question. He said he had no input on the number of security officers that evening, nor did he have detail of what security would do, but he understood that they would be generally looking around and helping if needed. He said that if someone was drunk he would deal with it in the first place, and security would help if the person would not leave.

47. The Risk Assessment was forwarded to Suzanne Rush by email on 7 November 2012 (page 140), and if anything was inadequate she would have said so. He did not recall what the items were that needed going through.

48. The next witness to be called was Mrs Michelle Pugh. At the time she was a Scientific Officer with the Genomics Core. She was one of the organisers of the party. Her witness statement is dated 14 February 2017, and is at pages 107 to 110. At paragraphs 8 to 10 she says that:

> 'The tickets to the Christmas party were designed and sold at lunchtimes in the canteen area. The tickets were sold to cover the costs of the entertainment. Tickets were for staff and guests and sold in the weeks leading up to the party. As well as having tickets on sale, group emails were sent out to advertise the event. The Genomics Core took it in turn to sell tickets. Anyone with access to this area and the relevant pass would be able to purchase a ticket to the event'.

49. She said that:

> 'During the evening of 7 December the Genomics Core team took it in turns to check the tickets as people entered. Guests could not enter without a ticket, and although most tickets were checked when we were busy it would have been possible for someone to gain entry without a ticket. Having said this, without a ticket food could not be obtained, as this was part of the price. Drinks at the bar were cash only'.

50. At paragraph 15 she deals with the disclaimer, which I have already referred to, and she said:

> 'I'm aware that also in place was a disclaimer which was arranged by CRISES, which had to be signed by staff to the effect that they would not enter the laboratory areas and to be responsible for their own actions. I cannot recall whether guests had to sign this disclaimer as well, and I have no idea where the forms went on completion of the party'.

51. Turning to Bielik she says as follows:

> 'During the course of the evening everyone was having fun. One of the people attending the party was a man I know as Robert Bielik. I knew

Robert Bielik from when I was based in the Genomics Core. He worked in the Wolfson Brain Imaging Centre. He was not a CRUK member of staff, but he had had access to facilities that only people in certain roles and affiliations would have access to. For instance, he could access the building as if he was a member of staff, and could use the canteen facilities if he wanted to'.

52. At paragraph 19 she says:

> 'During the course of the evening I did see Robert Bielik sharing some vodka with people. He had little shot glasses of vodka, which he would share with people. He was in very good spirits and happy, and my recollection is everyone there was having a good time'.

53. She describes the incident where she herself was lifted at paragraph 20 in the following terms:

> 'At one point during the evening after the ceilidh and during the disco I'd been to the bar and purchased two drinks and I had both hands full. I was walking back to the disco area to the company of my friend when Robert Bielik appeared in front of me. We had a short conversation. I cannot remember what was said, but it was happy and light-hearted. For some reason Robert Bielik then picked me up. At that time I weighed around eight and a half stone and I'm 5 foot 10 tall. He put both his arms around me and lifted me up and put me straight down again. He just did this once and let me go. It was quite gentle, and I did not even spill my drinks. I treated it as a laugh and I was not offended; I just carried on back to my friends'.

54. At paragraph 22 she confirmed that she did not see the claimant being lifted, but she did see the claimant on the floor.

55. When cross-examined she confirmed that she was an organiser of the event. She was given no specific training in order to do so; she was not included in the risk assessment, though she felt she would expect to be. Asked whether in 2012 it would be a reasonable and sensible precaution to address the risk of inappropriate behaviour in the declaration, she replied that she had never been invited to a party where anything like that had been required; she did not see the need for that. All would appreciate that those who were not behaving appropriately would be removed. She said that whether to include such a warning in an email would depend on what other policies, such as drinking at work, were in place. It might be that where there was disruptive behaviour, being spoken to might be the first step. It was put to her, and accepted by Mrs Pugh, that a sensible precaution would be for the declaration for staff to sign to include staff agreeing to be responsible for their own actions. She accepted that her witness statement at paragraph 15 is in fact wrong, in that the disclaimer did not include that wording. She observed that she had been to many Christmas and similar parties and never been presented with such a disclaimer. She accepted when put to her that such a declaration could be an effective tool, and it would be reasonable to include the need to be responsible for one's own behaviour.

56. She also agreed that the review recommendations were control mechanisms, which were

sensible and reasonable; but she qualified her answer by the words, 'knowing the events which happened'. Further pressed, she accepted that no advice or guidance had been given to attendees on how they should behave, and on reflection it should have been. When asked about the risk assessment she would have added, 'risks associated with alcohol consumption and inappropriate behaviour'. She did not see the assessment before the party and did not recall asking to see it. As an organiser she accepted she should know about the matters, which ought to have been included.

57. She recalled that Robert Bielik had come to the desk and asked if he could bring a bottle in, which she described as a small bottle of vodka. She did not know if he could, so she let him do so. He explained that he was going to share it among his friends. Any prohibition on bringing alcohol in had not been made clear to her, but if any such prohibition had been explained to her she would have followed it. Her description of Bielik as being 'in very good spirits' meant that he was drunk when she saw him, but in her words, 'not very drunk'. He was enjoying himself, and there was nothing that needed escalating. She said that once the party started it was not her responsibility to continue watching other staff; there was security staff to do that. She was asked about her reactions to being physically picked up at work. In the normal working environment she accepted it would be inappropriate. At a social area, such as the canteen, it would still be inappropriate. She would report it if she felt personally offended. She felt that a party environment was very different.

58. As regards the occasion when Bielik lifted her up at the party, she confirmed her witness statement evidence. She denied any gyrating, and she did not see how that could be done without drinks being spilled. Nor was it forceful. When pressed on the basis that it was unasked for, she accepted that it was something he should not have done, and hence in that sense inappropriate. However, she emphasised that she took the incident light-heartedly, did not think of reporting to security or the bar staff, or that Bielik needed keeping an eye on. She did not give it any further thought.

59. The next witness was Chandra Jang Gurung, who was referred to in evidence as CJ. He is a Security Guard at Cancer Research UK. His witness statement is dated 21 February 2017 (pages 116 to 118). He confirmed that he worked an extra shift to provide security at the party. At paragraph 7 he confirmed that the main role of security was to prevent partygoers from entering the lab areas. From time to time they would check the canteen area and make sure that everything was in order. At paragraph 9 he said:

> 'I do not recall the actual briefing about our duties for the party but our supervisor, David Maguire, informed us that our main role was to prevent partygoers and possibly drunk people going past the security barriers and into the laboratory and office areas. We were also asked to check the canteen and the party from time to time to make sure everything was in order'.

60. At paragraph 13 he said, 'At no time during the evening was any incident brought to my attention, or was I made aware that an incident had taken place'. He says that, 'In the event of any incident I would always complete an incident log in the daily logbook'. He said, 'In the event of disorderly behaviour I'd politely request the persons concerned to leave the party, and only in extreme circumstances would I call the police'. He confirmed at paragraph 22 that he had worked at The Centre since 2006, and to his knowledge there had been no incidents at any Christmas parties.

61. He was cross-examined, and in giving oral evidence it became apparent that, English not being his first language, this appeared on occasion to create misunderstanding on his part as to the questions being put to him. However, in my judgment, the following was clear from the evidence which he gave. When challenged, he repeated that he was told to go around the party by his supervisor. It was in a quick conversation; he was told to have a quick look around from time to time, and it was left to them how often to go around the party. He did go around the party, though he did not stop for long. He could not say how many times or how often he did so. He said that he just saw people dancing and laughing. He was checking for the safety of the attendees. He confirmed that the main job was to prevent anyone going through the barrier, but that was why there were two of them, so that one could also check the party. When he went to look at the party he did not see anything dangerous. He said that if he had seen someone lifting people he would have asked the person politely not to do it again, and then keep an eye on them. If done again he would ask them to leave.

62. When asked about SIA training he compared the CRUK party to what he described as a 'family party'. He said if someone misbehaved when drunk then advice would be given. Though he was not SIA trained he emphasised that he did have the relevant experience, but he accepted that with SIA training he would have new skills. However, he would have been looking for the same dangers. He would have taken the same approach to someone who was drunk, and if he was told a drunk person was lifting women he would have stopped that. He accepted that if there were three security staff they could have spent more time checking the party.

63. In re-examination he was asked what he would have done if he had seen an incident as Mrs Pugh has described in her witness statement occurring to her. He said he would first ask if both parties were happy, and, if so, that would be fine.

64. The next witness was Perendrajang Gurung, referred to in evidence as PJ. He too is a Security Officer at CRUK. I formed the impression from his oral evidence that language was more of a problem for him. His witness statement dated 9 February 2017 is at pages 112 to 114. It is in similar terms to that of CJ Guerin. At paragraphs 8 and 9 he confirmed the remit was to prevent staff and guests taking alcohol into the lab and offices. They were positioned at the security barriers, and on occasion they would walk through the party to ensure everything was in order. At paragraph 10 he stated that he had carried out security duties in previous years and there have never been any problems or trouble. He said at paragraph 12, that from the security barriers you could not see the canteen where the bar and disco were. At paragraph 15, that if there was any trouble the police would be called as a last resort. Security could also ask bar staff to stop serving alcohol to anyone. At paragraph 17 he said that he too was unaware of anything untoward.

65. In cross-examination he accepted that the main problem areas were likely to be the bar and dance area. When it was put to him that he and CJ had not gone around the party his answer was, 'Right'. I do not consider that he was answering what was being put; rather that he was simply acknowledging that a question was being put. He said later, in further cross-examination which I allowed, that they walked through quite often, but when his witness statement was then put to him he said that it was occasionally. Again, language appeared to be a problem. He agreed that they had to rely on others to say if there was a problem. He would speak to a drunk man lifting a woman. He would give a warning, and if done again he would ask them to leave. The training which he had had after 2012 would

have been relevant and helpful: training in the risks arising when people drink.

66. In re-examination he said that he could not remember how many times or how frequently they had walked around.

67. The last witness to give oral evidence was Mr John Wells, Director of Operations at the CRUK Cambridge Institute. He provided two witness statements, dated 15 August 2016 and 25 September 2017 (pages 74 to 79). He sets out the nature of the working relationship between CRUK and the University. At paragraph 6 of his statement he says:

> 'At the time of the incident Robert Bielik was employed by the University working in a unit called WBIC. He was not employed by CRUK. He held a visiting agreement to The Institute and was provided with an access card to facilitate his occasional interaction with members of one of The Institute research groups on areas of common research interest'.

68. Concerning the work which was involved, at paragraph 7 he says:

> 'WBIC and one of our research groups share a scientific interest in very advanced imaging techniques, although it applied to very different parts of the body, and there have been a number of interactions between staff in the two groups to help advance that research by sharing ideas. My understanding was that Robert Bielik's interaction was part of this exchange of ideas and techniques not part of a service relationship. One section of WBIC does have some specialised equipment that can manufacture reagents used in some of our experiments, and this portion of activity is more akin to a service relationship'.

69. He gave evidence briefly in chief, in which he said that he had attended parties in 2009, 2010 and 2011, when there had been no untoward incidents, and he was not aware of any incidents before his time at CRUK: that is in 2006, 2007 and 2008.

70. In cross-examination he accepted that as Director of Operations he was responsible for overall safety at The Institute, and he did not himself review the risk assessment. He was shown the email from Professor Brindle to Suzanne Rush of 11 December 2012 (page 202), and he said that there were no other issues relating to the party that required discussion with Professor Brindle and Human Resources.

71. The final evidence adduced by the defendant was a witness statement of Mrs Belinda Legerton, who was the PA to Mr Wells. The witness statement was admitted as agreed evidence. It is a statement dated 10 November 2016 (pages 85 to 88). In that statement she explains what a light blue pass entitled Bielik to do. It was for visiting scientists and for collaborators from other institutes. She confirmed, as indeed the form states, that his presence was expected to be less than 25% over a year. He was permitted to work in the lab under the supervision of the host. He himself was not permitted to host visitors.

72. That is the evidence that was called.

Findings of Fact

73. Before setting out my findings of fact I wish to make the following observations as to some of the witnesses who gave evidence at the trial. I am satisfied that all the witnesses were doing their best to tell the truth and assist the court. Having said that, some witnesses I feel able to rely on; whilst with regard to others I have some reservations, which I shall indicate. The claimant was a patently honest and reliable witness, and I accept her evidence without hesitation. I do not feel the same confidence with regard to the evidence of Mr Shelbourne. I shall return to the detail of his evidence shortly. I formed the impression that in giving evidence he was influenced by a natural desire to support his wife in her claim, which led on occasion to a degree of exaggeration and inaccuracy. I also have some reservations with regard to Mr Maguire's evidence. I formed the impression that Mr Hadfield was a reliable and accurate witness of fact. He gave his evidence in a measured and considered manner. I similarly found Mrs Pugh to be a reliable witness.

74. The claimant invites the court to make an inference from the failure to call Robert Bielik in the following terms: that there was a connection between the work that he did for the defendant and his wrongful conduct. That becomes relevant particularly in the context of the claim of vicarious liability. In my judgment that is not an inference the court should make. It would not be right to draw an adverse inference in relation to the omission to call Bielik on that central issue. In circumstances where he was, as accepted, not an employee, and where he was the wrongdoer who had committed a trespass to the person, it would be inappropriate to draw those inferences. Nor is a 'connection between the work that he did for the defendant and his wrongful conduct' a natural or obvious inference to make from his absence as a witness at trial. Rather, in my judgment, the connection is a matter to be evaluated on the totality of the evidence put before the court.

75. In my judgment, the factual issues can be conveniently dealt with under the following headings:

What was the nature of the relationship between the defendant and Robert Bielik?

76. It is accepted that Robert Bielik was not an employee of the defendant.

77. I accept the evidence of Mr Wells, which went largely unchallenged. Robert Bielik was employed by the University of Cambridge at the Wolfson Brain Imaging Centre. He was working at the defendant's Centre pursuant to a visitor agreement. His status at the Centre was that of Visiting Scientist. The nature of the work on which Bielik was engaged would have been in furtherance of the research interests of the University's Wolfson Centre and of the defendant. The intention was that there would have been cross-fertilisation of skills, research, and outcomes, to the benefit of both. In the words of Mr Wells, there would have been 'an exchange of ideas and techniques'. The particular research on which Bielik was working was described as a collaboration. That is in relation to the PET scanning. Bielik was essentially a visitor who was using CRUK's laboratories and technology, but he would work under the supervision of a member of CRUK, and he himself could not host visitors.

78. The position was regulated by formal agreements, and I have already referred to the temporary access pass, Parts One and Two. It is apparent from Part One that Bielik remained on the payroll of the Wolfson Centre with no contribution from the defendant; that lab expenses were met by the Brindle Lab (that is a separate laboratory within CRUK

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named after the lead professor); and CRUK's Institute was not to be Bielik's main place of work, in that he was to visit no more than 25% of his time during the year.

79. Part Two of the access pass included the declaration which governed: 1. general compliance with CRUK's policies and procedures; 2. health and safety requirements; 3. confidentiality of any information acquired; 4. physical property; and 7. CRUK having the right to withdraw permission for use of the premises if there was a breach of the foregoing provisions or anything which in the reasonable opinion of CRUK brought CRUK's name or reputation into disrepute. Also, 8 and 9 dealt with the question of intellectual property.

80. These written provisions were entered into with a view to apportioning administrative responsibility for visiting scientists, e.g. who was to pay; maintenance of rights, e.g. intellectual property; and to set out expected standards of behaviour on the defendant's premises when carrying out his role as a visiting scientist. It appears to me that the main intention in this regard was to govern the behaviour of Bielik whilst he was working at The Centre. The written provisions are consistent with CRUK maintaining a degree of control over Bielik's work.

81. Mr Hadfield accepted there was such control, and I find that there was control in a broad sense: what work was to be undertaken in the laboratory and how. That would be inevitable in collaborative research. I accept the evidence of Mr Hadfield that whilst to the outside observer without knowledge of the nature of the arrangement, it would appear that Bielik worked for CRUK, i.e. akin to an employee, the reality was that he was working at CRUK, but under a degree of direction and control on a joint collaborative project.

The Christmas Party

82. I turn then to the nature of the Christmas party. The defendant had held a Christmas party since at least 2006. The purpose of the event was to mark the season. It was not in the form of a reward to staff; all had to buy tickets. It was no doubt anticipated that the event would engender a sense of community and goodwill. The event would only take place if there was sufficient interest by way of ticket sales, and the event had to break even for it to go ahead. Attendance was entirely voluntary. The party was organised by volunteers from CRISES. The party was advertised certainly by internal emails and probably by posters around the building. Tickets could be purchased for guests, so though the main body of attendees might well be those who worked at or for CRUK, there was the possibility and likelihood that others would be present, but those people were going to be connected with staff. Bielik could have purchased a ticket directly himself, or as a guest of a staff member.

Previous experience of parties

83. I accept the evidence of Mr Wells and Mr Hadfield, and I find that there had been no previous episodes of untoward behaviour at parties. Mr Wells had been in attendance in the three previous years, and he was not aware of anything untoward having occurred on those occasions; nor was he aware of reports of anything untoward happening in the earlier years from 2006. Mr Hadfield also gave evidence, which I accept, that there had been no problems at previous events with the consumption of alcohol. I accept that evidence from Mr Wells and Mr Hadfield and so find. I find that this was the state of affairs when the organisers of the 2012 party came to arrange that event.

Risk assessment

84. I accept the evidence of Mr Hadfield as to how he went about risk assessing the proposed party. He had had no training in risk assessment at CRUK, and no training for assessment of events where alcohol would be consumed. The form that was used was not ideal for the type of event envisaged. I accept his evidence that he considered manual handling issues and risks from trips, slips and falls. I also accept his evidence that he did address the question of alcohol consumption in the context of dangers that might arise by reason of the nature of the premises and the laboratories in particular. I note his evidence that he may or may not have considered the risk of alcohol consumption giving rise to a risk of drunkenness and/or inappropriate behaviour. The reason why he cannot specifically recall this is that he would have regarded such a risk in the context of a Christmas party at CRUK as being sufficiently remote to make any express action plan in respect of the same unnecessary. I accept and find as a fact that when carrying out his risk assessment he had in mind that there had, to his own knowledge, been no previous untoward incidents of inappropriate behaviour, including alcohol-related problems. Whether the risk assessment was adequate is a matter which I shall return to.

What was the security in place?

85. The security arrangements involved employed security staff. That was in addition to the organisers themselves who, certainly in the case of Mr Hadfield, was continuing to keep an eye out as the party progressed. There were two security staff in place. I should mention here Mr Maguire's evidence. I formed the impression that he held the defendant in generally low regard. He was quick to criticise Mr Hadfield and was keen to give evidence that would support the claimant's case. At times that caused him to be, in my judgment, overly critical. He volunteered to me that he had not received training for security of this type of party, but he said earlier in his evidence that he was SIA trained and considered that his staff should have been. I find that he was asked to arrange cover for the party as he had done in the past. He was content that that should be left to him. He considered the important thing was to keep the main entrances secure.

86. There is a conflict between his evidence and that of CJ Gurung. Mr Maguire stated that he did not task anyone to go round the party. In contrast, CJ Gurung said that Mr Maguire informed them that their main role was to prevent partygoers and possibly drunk people going past the security barriers and into the laboratory and office areas; but they were also to check the canteen and the party from time to time to make sure everything was in order.

87. On balance I prefer the evidence of CJ Gurung. I find that they were tasked to walk around as well, but that was very much a secondary role to manning the security barriers. I find that they did walk through occasionally, and that no problems were seen by them or drawn to their attention. I accept the evidence of CJ Gurung that he did not see anyone being lifted or anything dangerous. I also find that there was no report to either him or his brother of any untoward behaviour. I also accept the evidence of Mr Hadfield that the bar staff, who were CRISES volunteers, all had instructions on how to deal with people who had too much to drink, and that before the event started he addressed security staff and the bar volunteers to say that if there were any problems, to speak to him and he would arrange security to help.

88. I reject the evidence of Mr Shelbourne that CJ and PJ Gurung were failing to undertake

their responsibilities. Where there is conflict in this regard, I prefer the evidence of CJ and PJ Gurung. I accept that they were working as they described, patrolling the party at intervals. Mr Shelbourne probably did not notice because he was simply participating in and enjoying the party up to the time of his wife's injury. Unsurprisingly, his attention was elsewhere, and not on the whereabouts of the security staff. Again, I shall return to whether that was an adequate system of security later.

How was Robert Bielik behaving during the course of the party up to the time of the incident involving the claimant; and what amount did he have to drink?

89. Based on the totality of the evidence I find that Robert Bielik had consumed alcohol so as to act in a disinhibited manner from an early stage of the party. Dealing with the time at the bar, I accept the evidence of the claimant that at an early stage of the evening Bielik was in the bar area with a group of others, that he seemed to be exuberant, having fun, and that he broke into operatic-style singing as she describes. It was not a matter of concern to her, and I accept her description that Bielik was giving the impression of someone having fun. Indeed, as I have referred to, the claimant made the jocular comment that she would like some of what he was having, but most importantly, in her words, she thought no more about it at that time. Mr Shelbourne also refers to singing at the bar, and I accept that evidence from him.

90. Turning to the incident in the gentlemen's toilet, I also find that Bielik encountered Mr Shelbourne in the toilet at an early stage of the party, and tried to shake Mr Shelbourne's hand at a time when that would have been inappropriate behaviour. I do not accept that at that time Bielik could barely stand and almost fell over, as Mr Shelbourne described in oral evidence. If that had been the case then I would have expected Mr Shelbourne to have stated as much in his witness statement, at or about paragraph 8. Naturally, Mr Shelbourne is concerned for his wife and wishes to do his best for her, supporting her with his evidence. My impression was that in wishing to assist his wife he was tending to exaggerate in this regard. That was true with regard to this description; and especially with regard to the question of Bielik picking up Mrs Pugh, which I shall come to.

91. Returning to Bielik's behaviour, he took his own small bottle of vodka into the party. I accept that he asked Mrs Pugh if that was all right, that he said he was going to share it with friends, and she told him that it was. It seems to me that Bielik did in fact drink more than just that. The evidence is, and I find, that he was mixing spirits, wine, and beer. That is supported by the handwritten investigation note of Suzanne Rush at page 174, which records '45% plum vodka', and the entry, 'Asked if okay to drink alc in building /drinks at bar'. It is also supported by the statement in the third person of Bielik at page 120, which refers to '45% vodka, red wine, and beer'. I am unable to make any findings as to precisely how much he had to drink, other than he was inebriated. The important issues in my judgment are how Bielik behaved; and what was seen or ought to have been seen.

92. At a later stage Bielik did lift Mrs Pugh. In my judgment, Mr Shelbourne is mistaken in his recollection as to what occurred. I reject his oral evidence that Bielik lunged at Mrs Pugh; picked her up so that she was, in his words, hanging on for dear life; and was dancing or gyrating in an inappropriate sexual manner. That description of events is entirely inconsistent with Mr Shelbourne's own witness statement, and I have no hesitation in rejecting that evidence from him. Rather I prefer the evidence of Mrs Pugh, and I find that what happened was that she had a short conversation with Bielik. She already knew him in

the work context, and she thought the conversation was happy and light-hearted. Bielik then picked her up and put her down straight away. That was done once and he then let go. Mrs Pugh had two drinks, which she had just got from the bar, and the drinks were not spilled. She laughed and went on her way and, in her words, gave it no further thought.

93. Accepting that evidence from her, I find that whilst this was inappropriate in the sense that it was an unasked for invasion of personal physical space, it was not an episode which was sufficiently untoward to put Mrs Pugh or others on notice about Bielik's behaviour. Further, I do not accept the evidence of Mr Shelbourne in his witness statement that this lift was in full view of the organisers. He accepted in his oral evidence that he did not know if the organisers, including Mr Hadfield, had seen that episode.

94. Mrs Pugh's evidence also supports my conclusion that through drink Bielik was acting in a disinhibited manner. She accepted in cross-examination that by saying he was in good spirits in reality what she meant was that he appeared drunk but not very drunk. He was enjoying himself but not so that matters required escalating. I accept that evidence from Mrs Pugh as an accurate and fair description of how Bielik must have appeared to anyone observing him.

Did Bielik lift or attempt to lift others prior to the incident with the claimant?

95. I did not hear from any other first-hand witnesses. Counsel for the claimant invites the court to make inferences from the absence of evidence from Davina Honess and Katrina Van Koek (variously described as Van Koek and Van Look). The inferences I am invited to make are (1) that they were both lifted without consent; and (2) that they failed to report it. With regard to Honess, counsel for the defendant accepts that the court may make an inference that she was indeed picked up and that she did not report the matter. With regard to Van Hoek / Look counsel refers me to paragraph 12 of Mr Shelbourne's witness statement, which on the face of it suggests that there is some witness statement from her, which the claimant or her advisers have seen and, by inference, that she was a potential witness for the claimant. He says that the failure to call her should give rise to an adverse inference against the claimant. I have in mind the handwritten Investigation Note by Suzanne Rush at pages 174 to 176. That refers to 'picking up several ladies'. It also mentions by name 'Davina'; and then at page 176, 'Katrine Van Look – lifted' (new line) 'Michelle – genomics'. The document is therefore ambiguous; does the lifting qualify Van Look or Pugh or both?

96. Having regard to the totality of the evidence and the inferences which I consider permissible to make in the absence of Van Look and Hones, I consider that on the balance of probabilities both Honess and Van Look were lifted by Bielik, in addition to the episode with Pugh, which I have already referred to. I also find that neither Honess nor Van Look reported the matters to anyone. The reason for that is that, in all likelihood, the lifts were of a similar nature to that involving Pugh. I consider that the likelihood is that they took the episodes as being light-hearted incidents to which they also gave no further thought.

Was inappropriate behaviour by Bielik seen by others?

97. I have heard no evidence beyond that from Mrs Pugh and the claimant in that regard; and I am satisfied on the evidence and find as a fact that there were no reports of bad or inappropriate behaviour on the part of Bielik prior to the incident with the claimant. I find

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as a fact that there were no reports of lifting against their will. Insofar as those incidents referred to above were witnessed by other partygoers in the vicinity of the lifts, they did not report Bielik's behaviour. The likelihood is that no reports were made because the conduct was not regarded as of sufficient nature to warrant that course. That is consistent with the evidence of Mr Shelbourne that when he saw Mrs Pugh lifted he 'didn't think anything of seeing him lift Michelle at that stage' (paragraph 10 of his witness statement). Mrs Pugh herself said she thought nothing more of what had happened when she was lifted.

98. Also, it was the evidence of Mr Shelbourne that there was nothing in Bielik's behaviour in the toilet or at the bar which required reporting to security.

99. I accept the evidence of Mr Hadfield, in his witness statement at paragraph 19, that during the course of the night he did not see any incidents and saw no one being lifted. I have already found that Honess and Van Look did not report anything.

100. As I have also already said, I accept the evidence of CJ Gurung that he did not see anything dangerous or untoward, and that there were no reports to him or to PJ Gurung of any untoward behaviour.

The circumstances of the claimant's accident

101. I am satisfied that the accident occurred as the claimant describes, and, in particular, that Bielik did not first attempt to lift Tracy Crafton. Rather Bielik went up at speed to the claimant and attempted to lift her, without giving the claimant any opportunity to protest or otherwise avoid him. He did not attempt to throw her up, but simply lost his balance and hold. He was immediately apologetic.

102. I turn now to consider the applicable legal principles and my conclusions. Both counsel assisted me with detailed submissions as to the relevant law and its application to the facts of this case, both in writing and in detailed oral submissions at the conclusion of the case. I propose to deal first with the claim of liability in negligence; then that of vicarious liability.

The Claim in Negligence

103. In addressing me on the question of the existence of a duty of care, and the scope of any duty, both parties rely on the decision of the Court of Appeal in *Everett and Another v Comojo (UK) Limited (t/a Metropolitan and Others)* [2012] 1 WLR 150. That case was concerned with a members-only nightclub; and whether it was liable in negligence for failing to prevent a knife attack by one guest on another guest, and specifically whether a waitress had been negligent in reporting her concerns about the aggressor to the bar manager rather than door staff. At first instance the judge held that a duty of care was owed, but on the facts there had been no breach of duty. On appeal it was contended by the defendant that no duty of care was owed. That was rejected by Smith LJ, who gave the sole judgment. At paragraph 26 she stated that, in considering whether a duty relationship existed between particular parties, including those where it is contented that a defendant should be liable for the acts of a third party, the correct approach was the three-fold test set out in *Caparo Industries PLC v Dickman* [1990] UKHL 2 AC 605. She stated:

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'However, it seems to me that the three-fold test is the correct starting point not only for the existence of the duty but also for its scope and extent. Not only must that test be satisfied before any duty is capable of existing, but once the possibility of a duty has been established the extent of the duty must be delineated by what is fair, just and reasonable'.

104. Applying that analysis to the present case, I am satisfied that in a case where the defendant was the organiser of the event, and the claimant was an employee and, most importantly, a paying guest, that there was sufficient proximity of relationship.

105. Turning to foreseeability of harm, there was to be eating, consumption of alcohol and dancing. There is a risk that where alcohol is consumed to excess there may be loss of self-control. There would be employees present, but also their guests. Further, this was an event taking place at or adjacent to laboratory premises, where there was a risk that guests might stray or otherwise be exposed to risks associated with that workplace. The defendant considered it appropriate to undertake a risk assessment, and concluded that there were risks to assess. Therefore, I am satisfied that there was a foreseeable risk of harm such as to impose a duty of care on the defendant.

106. Finally, a duty to the claimant should in the circumstances be fair, just and reasonable. In my judgment, in the case of an employee attending a party hosted by her employers that requirement is satisfied.

107. In my judgment, therefore, there was a duty of care on the defendant, and that duty was such that in certain circumstances it could extend to the actions of third parties at the party.

108. I move on to whether or not there was a breach. The scope of the duty was further considered by Smith LJ in *Everett* at paragraph 34, where she stated that the duty of care and the scope of that duty must be fair, just and reasonable. At paragraph 36 she went on to say:

'I think that it is appropriate (fair, just and reasonable) that it should govern the relationship between the managers of a hotel or nightclub and their guests in relation to the actions of third parties on the premises. I do not think it possible to define the circumstances in which there will be liability. Circumstances will vary so widely. However, I think it will be a rare nightclub that does not need some security arrangements, which can be activated as and when the need arises. What they need to be will vary. One can think of obvious examples where liability will attach. In a nightclub where experience has shown that entrants quite often try to bring in offensive weapons it may be necessary to arrange for everyone to be searched on entry. In a nightclub where outbreaks of violence are not uncommon, liability might well attach if a guest is injured in an outbreak of violence among guests, and there is no one on hand to control the outbreak. It may be necessary for the management of some establishments to arrange for security personnel to be present at all times within areas where people congregate. On the other hand in a respectable members-only club where violence is virtually unheard of no such arrangements would be necessary. The duty on management may be no higher than that staff be trained to look out for any sign of trouble and to alert security staff'.

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109. I need to therefore address the question of whether the defendant failed to take reasonable care in all the circumstances. The issue is not, as counsel for the defendant reminded me, what steps were reasonably practicable.

110. The claimant's case is that as organisers of the party the defendant owed a duty of care to those attending. That duty should have included adequate risk assessment. The defendant's employees who were organising the party understood in advance that the consumption of alcohol would give rise to an increased risk of inappropriate behaviour or injury. There were going to be about 200 people present. One cannot make the assumption about how people will behave. One cannot assume that people will behave sensibly where alcohol is concerned. The defendant's risk assessment did not address that sufficiently. It was described on many occasions in closing submissions as 'an obvious risk'. The defendant's error was confining consideration of alcohol-related risks to those connected with going into the laboratories. The defendant's reliance on the absence of previous incidents underlines, in the claimant's submission, the inadequacy of the assessment - the assessment was reactive where it should have been proactive. If the risk was adequately assessed there would have been closer monitoring, there would have been more security staff, and closer monitoring of the party. Bielik's behaviour would have been observed and he would have been excluded or warned before the incident involving the claimant.

111. The pleaded negligence, in the Particulars of Claim is extensive. Cut down to its essence, it is that there should have been warnings or advice to attendees about their behaviour; a policy concerning consumption of alcohol; an intervention policy where attendees became intoxicated; failure to monitor and supervise the party; and a failure to act on Bielik's behaviour and eject him.

112. The claimant pleads that the occurrence of the incident involving the claimant is itself evidence of negligence on the part of the defendant; and of the defendant's vicarious liability for Bielik's actions. Neither point was expanded in argument, and I reject that submission. The doctrine of *res ipsa loquitur* does not in my judgment apply in this case.

113. The defendant's case is that the court should have regard to the context of a party organised by volunteers where there was non-compulsory attendance and all attendees would be connected with CRUK. Particular emphasis is placed on there being no previous problems. The central question is: were reasonable steps taken? It is submitted that there was an adequate risk assessment; the organisers were present; and there were security present. The requirement to sign declarations and training volunteers in how to monitor a Christmas party is not reasonable; nor does it, in the words of counsel for the defendant, 'pass the reality check test'.

114. In my judgment, whether the defendant was in breach of duty resolves into consideration of two broad aspects: (1) the preparation for the holding of the party (which involves consideration of the questions of risk assessment, security provision and written instructions to guests); and (2) implementation on the night (including whether there was adequate supervision of the party, guests and the staff, and whether there were events which were or should have been seen, which would have resulted in Bielik being either warned or removed).

115. In my judgment, the context in which this event took place is important. It was an event that was not open to the public at large, but was rather limited to those connected with

CRUK. If this had been an event open to the public generally then different issues would have arisen in terms of planning and running the event. There would have been a large pool of potential attendees of unknown nature and propensity. That is far removed from a party in which all those attending will be connected with CRUK, either as employees or friends and family of employees. It seems to me that, insofar as relevant, this event was closer to the example given by Smith LJ of the members-only club where violence was virtually unheard of, rather than the nightclub examples.

116. The defendant also relies on this being a party organised by volunteers. That is a matter I take into account. But, in my judgment, it does not mean that where there are otherwise reasonable steps which ought to have been taken, that being a volunteer organised event will otherwise absolve them from responsibility.

117. In my judgment, where there is a limited class of invitee, as here, the history of how past events passed off becomes highly relevant. In the present case there had been no previous incidents over the last five years. That was something which was known to the organisers. In my judgment, that is an important piece of evidence, which the defendant was entitled to rely on in considering the adequacy of the steps taken, both in terms of risk assessing and the nature of the security which was put in place.

118. If there was a history of previous trouble at Christmas parties it might have been that there would have been a strong case that there should have been a different emphasis in the risk assessing; and in the type of security put in place; and, even, in obtaining written undertakings from guests.

119. By skilful cross-examination counsel for the claimant obtained acknowledgments that alcohol if consumed to excess created a risk of untoward behaviour and a risk of injury. Similarly, the witnesses were then moved on to accept that it would be a 'sensible precaution' to get staff to sign declarations. At the same time I formed the impression that Mrs Pugh, for example, was genuinely surprised by the suggestion at the outset, saying that she had never known such a party. I formed the impression from both her and Mr Hadfield that they simply would not have anticipated that such behaviour would have needed warning against, and/or that declarations should have been obtained. Mrs Pugh, notably, qualified her acceptance to what was being put to her in cross-examination with the words, 'knowing the events which happened'.

120. In my judgment, that underlines an important aspect of this case. There is a danger, knowing what has happened, and that the claimant suffered serious injury (as to which one can only have sympathy), that hindsight is then used as a basis for criticism of the steps that were taken by the defendant.

121. Turning to risk assessment. It is right that Mr Hadfield made no specific provision for monitoring guests' alcohol consumption; or to risks associated with alcohol consumption in a general sense. He and Mrs Pugh acknowledged that an increased risk of inappropriate behaviour and injury arose where alcohol was available for consumption. In my judgment, the existence of that general risk does not by itself mean that Mr Hadfield's risk assessment was wanting. This had to be seen in context. He obviously did address his mind to alcohol consumption, and therefore the arrangements for non-admission to the laboratories were put in place. It seems to me that that was a sensible step and reflects a reasonable response to risks arising from alcohol consumption in these particular circumstances.

122. There were two other factors, which he would have been entitled to take into account. First, that the party was limited to CRUK staff and guests. Secondly, and most importantly, that there had been no previous incidents at the Christmas or other parties. I reject the submission that this showed a negligent reactive approach. In my judgment, this was a reasonable approach to take. I regard the absence of express reference to general risks through inebriation by alcohol to be acceptable. The risk assessment, though using an unsuitable form, does cover a range of sensible areas, and I accept the evidence of Mr Hadfield that he properly considered potential hazards, the likelihood of occurrence, and potential harm in the event of occurrence. Mr Hadfield accepted that he had not received training in risk assessing events at which alcohol might be consumed. In my judgment, in the context of this event, that was of no relevance. The assessment which he undertook was adequate. I should make it clear that I do not make any inferences from the absence of Suzanne Rush as a witness in this regard.

123. It was appreciated that security was required. In my judgment, the risks arising out of the consumption of alcohol were adequately met with the steps that were put in place. I am satisfied on the evidence that two professional security personnel was adequate for the type of party which was envisaged. There were also the bar staff and the organisers present. I have found that the scheme of security which was in operation was to primarily guard the security barrier, but that the security staff also occasionally passed through the party area. In my judgment, that was an acceptable approach given the type of event. The fact that they did not see the risk assessment was a failing, but I do not consider that it would have made any difference to the way in which they operated on the night; or that the claimant's injury would have been otherwise avoided.

124. I was invited to infer from the absence of Mr Frohock, that he had received the risk assessment but did not provide it to security staff, and did not provide appropriate training for work-related social events despite requests. I was informed by counsel for the defendant that an application had been made by the defendant to rely on evidence from Mr Frohock, but that had been opposed by the claimant and the court did not give permission. That position was not dissented from in argument. In those circumstances, I approach with caution any suggestion that an adverse inference should be made as to failure to train, and I am not prepared to make that inference.

125. I am not satisfied on the evidence that SIA training would have made any difference to the approach taken by CJ and PJ Gurung, and, in my judgment, such training if it had taken place would not have prevented the occurrence of the claimant's injury.

126. I reject the suggestion that the bar staff themselves should have been monitored; or that there was further training or advice required to be given to them. Mr Hadfield gave evidence, which I accept, that they all had instructions in how to deal with people who had had too much to drink. He had also discussed with them at the start that if there were any problems, to speak to him, who would arrange for security to help.

127. The claimant contends that in addition to improved security and monitoring there should have been more by way of advice and undertakings from attendees, to warn as to appropriate behaviour, and reliance is placed on the recommendations in the post-incident Report at pages 125 to 126. What did take place was that non-CRISES members were asked to sign a declaration. The form in the case of Bielik I have already referred to, at page 55. That form concerns purchase of alcohol and exclusion from laboratories. The

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recommendations at 125 to 126 were for future events: requiring a declaration to act responsibly; email advice in advance to that effect; and exclusion of those thought to be acting inappropriately. I agree with the submission of the defendant, that these steps were a response to a serious event which had taken place at the party on 7 December 2012. Mr Hadfield indicated in evidence that his impression was that those attending could be expected to know what was proper behaviour. Requiring guests to sign a declaration, beyond that which was in fact required of non-CRISES members, was not something which in my judgment was reasonably required, i.e. failing to put that in place did not amount to negligence.

128. Turning to the second broad issue: implementation on the night. In my judgment, CJ and PJ Gurung discharged their duties appropriately. As I have already indicated, I consider the degree of supervision of party attendees was adequate in the circumstances prevailing. I find that they manned the barrier and kept an eye on the party. I have rejected the suggestion implicit in Mr Shelbourne's evidence that they were in dereliction of their responsibilities. Further, they did not see anything untoward.

129. I am satisfied on the evidence that the behaviour of Bielik was such that he was not reported, nor that it ought to have been otherwise picked up. The lift of Mrs Pugh was not such as to warrant concern on the part of Mrs Pugh. Honess and Van Look did not report anything. Both the claimant and her husband did not consider Bielik's behaviour was such that it should be reported to security. Mr Hadfield saw nothing untoward.

130. I am satisfied on the evidence that nothing was seen or reported concerning Bielik's behaviour which should have required him being approached, talked to or asked to leave. Nor was there a failure to appreciate behaviour on the part of Bielik, which with the exercise of reasonable care, would have been noted and acted on.

131. There remains the evidence of Mrs Pugh concerning the discussion with Bielik about his small vodka bottle. It does seem to me that this showed a degree of confusion on the part of Mrs Pugh, as to what should have taken place, in the context of a party with a cash bar. However, I am satisfied on the totality of the evidence that that did not contribute to the occurrence of this accident.

132. Overall, therefore, in my judgment, the defendant took reasonable steps in the planning and operation of this party, and I find that the claim in negligence is not made out.

Vicarious Liability

133. I turn to the second limb of the claim, namely, vicarious liability. Fortuitously, this area of law has been the subject of guidance by the Supreme Court in the complementary judgments of *Cox v Ministry of Justice* [2016] AC 660 and *Mohamud v WM Morrison Supermarkets plc* [2016] AC 677. In *Cox* at paragraph 2 Lord Reed stated:

> 'The scope of vicarious liability depends upon the answers to two questions. First, what sort of relationship has to exist between an individual and a defendant before the defendant can be made vicariously liable in tort for the conduct of that individual? Secondly, in what manner does the conduct of

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that individual have to be related to that relationship, in order for vicarious liability to be imposed on the defendant?'

134. *Cox* concerned the first question: was the prison service vicariously liable for the act of a prisoner in the course of his work in a prison kitchen? *Mohamud* concerned the second: where the defendant's employee had perpetrated a violent assault on a customer at a petrol station, whether the act was sufficiently closely connected to that employment for the defendant to be vicariously liable?

135. Lord Reed continued in *Cox* at paragraph 24:

> 'Lord Phillips' analysis in the *Christian Brothers* case [2013] 2 AC 1 wove together these related ideas so as to develop a modern theory of vicarious liability. The result of this approach is that a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question'.

136. Paragraph 29:

> 'It is important, however, to understand that the general approach which Lord Phillips described is not confined to some special category of cases, such as the sexual abuse of children. It is intended to provide a basis for identifying the circumstances in which vicarious liability may in principle be imposed outside relationships of employment. By focusing upon the business activities carried on by the defendant and their attendant risks, it directs attention to the issues which are likely to be relevant in the context of modern workplaces, where workers may in reality be part of the workforce of an organisation without having a contract of employment with it, and also reflects prevailing ideas about the responsibility of businesses for the risks which are created by their activities. It results in an extension of the scope of vicarious liability beyond the responsibility of an employer for the acts and omissions of its employers in the course of their employment, but not to the extent of imposing such liability where a tortfeasor's activities are entirely attributable to the conduct of a recognisably independent business of his own or of a third party'.

137. Paragraph 30:

> 'It is also important not to be misled by a narrow focus on semantics: for example, by words such as, "business", "benefit", and "enterprise". The defendant need not be carrying on activities of a commercial nature: that is apparent not only from *E v English Province of Our Lady of Charity* [2013] QB 722, and the *Christian Brothers* case [2013] 2 AC 1, but also from the

long-established application of vicarious liability to public authorities and hospitals. It need not therefore be a business or enterprise in any ordinary sense. Nor need the benefit which it derives from the tortfeasor's activities take the form of a profit. It is sufficient that there is a defendant which is carrying on activities in the furtherance of its own interests. The individual for whose conduct it may be vicariously liable must carry on activities assigned to him by the defendant as an integral part of its operation and for its benefit. The defendant must, by assigning those activities to him, have created a risk of his committing the tort. As in the cases of *Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd* [2006] QB 510, *E v English Provence of Our Lady of Charity*, and the *Christian Brothers* case show a wide range of circumstances can satisfy these requirements'.

138. In *Mohamud* Lord Toulson addressed the second question in these terms: 'whether there was a sufficient connection between the wrongdoer's employment and his conduct towards the claimant to make the defendant legally responsible?' (paragraph 1). In so doing he provided a detailed review of the development of the law concerning vicarious liability. That included the case of *Lister v Hesley Hall Ltd* [2002] 1 AC 215. That case concerned the warden of a school boarding house sexually abusing the children in his care. The House of Lords applied the 'sufficient' or 'close connection' test. Lord Steyn at paragraph 28 said:

> 'Employing the traditional methodology of English law I am satisfied that in the case of the appeals under consideration the evidence showed that the employers entrusted the care of the children in Axeholme House to the warden. The question is whether the warden's torts were so closely connected with his employment that it would be fair and just to hold the employers vicariously liable. On the facts of the case the answer is yes. After all, the sexual abuse was inextricably interwoven with the carrying out by the warden of his duties at Axeholme House. Matters of degree arise. But the present cases clearly fall on the side of vicarious liability'.

139. Lord Clyde at paragraph 50 said:

> 'That gave him access to the premises, but the opportunity to be at the premises would not in itself constitute a sufficient connection between his wrongful actings and his employment. In addition to the employment, which access gave him, his position as warden, and the close contact with the boys which that work involved created a sufficient connection between the acts of abuse which he committed and the work which he had been employed to do'.

140. Returning to *Mohamud*, that approach was affirmed as the correct one. Lord Toulson said of the present law:

> '44. In the simplest terms, the court has to consider two matters. The first question is what functions or "field of activities" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly...

> 45. Secondly, the court must decide whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice which goes back to Holt CJ. To try to measure the closeness of connection, as it were, on a scale of 1 to 10, would be a forlorn exercise and, what is more, it would miss the point. The cases in which the necessary connection has been found for Holt CJ's principle to be applied are cases in which the employee used or misused the position entrusted to him in a way which injured the third party'.

141. This test provides no guidance on the degree of connection which will usually be regarded as sufficient. That is inevitable given the infinite range of circumstances in which the issue may arise. The court has to make an evaluative judgment in each case having regard to the particular context and the circumstances - that is, of the employment or relationship and the tort.

142. The Supreme Court rejected the appellant's submission that the test should now be broadened to: whether the reasonable observer would have considered the employee was acting in the capacity of a representative of the employer at the time of committing the tort.

143. The defendant, in the present case, relies on *Graham v Commercial Bodyworks Limited* [2015] ICR 665, a decision of the Court of Appeal. That was a case of a deliberately inflicted injury of an employee on a co-worker. A cigarette lighter was used in the vicinity of the claimant, whose overalls had been deliberately sprinkled with a highly flammable thinning agent which was used at the repair shop. The first instance decision that the defendant was not vicariously liable was upheld on appeal. That was an example, on its own facts, of an insufficiently close connection between the risk created, requiring work with thinning agents, and the deliberate acts that caused the injury.

144. Counsel relies upon Longmore LJ's reference to the judgment of Lord Carloway in *Wilson v Exel UK Limited* [2010] SLT 671 in the following terms:

> 'But there is a crucial distinction between these cases and the situation where the employee is not doing something connected with his duties but is engaged on a "frolic" of his own, in the sense of acting purely on a private venture unconnected with his work.....As Lord Reed said in *Ward v Scott Railways Limited* there can be no vicarious liability based on a co-employee's sexual harassment where that involved "an unrelated and independent venture of his own, a personal matter, rather than a matter connected to his authorised duties" '.

145. Both parties relied on and referred me to the decision of His Honour Judge Cotter QC sitting as a High Court Judge, in *Bellman v Northampton Recruitment Limited* [2017] IRLR 124. The facts have some similarity to the present in that they concerned events following on from a Christmas party, and I take those facts from the headnote. The claimant worked for the defendant as a sales manager, the company's Christmas party took place at a golf club. All members of staff were invited along with their partners. After the party at the golf club ended just over half of the guests went on to a hotel, including the defendant's

managing directly, a Mr Major, where many carried on drinking. The company paid for some of the alcohol consumed. Discussion moved on to the subject of work, and at 3am in an unprovoked attack, the managing director, Mr Major, assaulted the claimant by punching him twice. He was knocked to the floor and suffered brain damage. The claimant sought damages against the defendant on the basis of vicarious liability.

146. Judge Cotter QC reviewed the relevant authorities. He made a number of findings of fact which were significant. Mr Major was in overall charge of the defendant's undertaking. Part of his job was the motivation of staff. The Christmas party was a reward to staff funded by the defendant. The party was organised at the direction of Mr Major, and part of his job was to oversee the smooth running of the Christmas party. He was not just an attendee. Insofar as it is submitted in argument in the present case, that the defendant in *Bellman* would have been vicariously liable for an act committed by its managing director at the Christmas party, those are relevant distinctions.

147. It was a small business where attendance at the party was expected in the absence of a good excuse. There was a temporal and substantive difference between the Christmas party and the impromptu drinks, described by the judge as 'a heavy early hours drinking session'. It was not a seamless extension of the Christmas party. Therefore, there was insufficient connection for there to be liability.

148. I turn to the present case. The first issue is, therefore, in my judgment, whether the nature of the relationship between Bielik and CRUK was such that CRUK should be made vicariously liable for Bielik's tortious acts? In so doing, and considering the activities which Bielik carried out, I bear in mind that I should not take an unduly narrow interpretation of matters such as business, benefit and enterprise. Further, it is not a requirement that any benefit which the defendant may derive from Bielik's activities, need take the form of pure profit. In the words of Lord Reed in *Cox*, 'the individual for whose conduct it may be vicariously liable must carry on activities assigned to him by the defendant as an integral part of its operation, and for its benefit. The defendant must, by assigning those activities to him, have created a risk of his committing the tort'.

149. Therefore, in the general terms what I have to consider is the nature of Bielik's job at CRUK. I have already set out my findings of fact as to the nature of the relationship between Bielik and CRUK. It is trite to say that a relationship other than that of employer and employee is capable of satisfying the first stage of the relevant test. It is necessary to consider the functions and fields of activity entrusted to Bielik. He was a visiting scientist. He was working on research which would be to the benefit of CRUK and the Wolfson Centre. There is no evidence as to how his day-to-day workload was formulated. The evidence suggests that when at CRUK his working time was essentially on research, presumably in the laboratory or related activity. However, what is apparent from the evidence is that there was a degree of control over Bielik in terms of his work, and, in particular, supervision. I consider that it is right to also look at the Temporary Passes. The fact that he was not being paid by the defendant is far from conclusive in this regard. There were the general requirements of compliance with CRUK's policies and procedures; that Bielik had obligated himself to CRUK to comply with health and safety legislation; and that he would not bring CRUK into disrepute. Most importantly, in my judgment, was that Bielik was incorporated into the business of CRUK when he was working as a visitor from which CRUK would potentially benefit in terms of advancing its research. He was part of the enterprise from which the defendant stood to benefit. Not necessarily directly in a

financial sense, but otherwise in a very real and tangible way.

150. In those circumstances, I am satisfied that Bielik was a sufficiently integral part of the business of CRUK to render CRUK potentially vicariously liable for his acts and omissions.

151. It is therefore necessary to move on to the second issue. In this respect I note the observation of Lord Reed that the assigned activities must have created the risk of the tortfeasor committing the tort. In my judgment, that is far from clear in the present case. As a starting point it seems to me that providing a mere opportunity is not sufficient to establish vicarious liability: see *Lister v Hesley Hall* and the judgment of Lord Clyde where he states that:

> 'The opportunity to be at the premises would not in itself constitute a sufficient connection between his wrongful actings and his employment.'

152. To have the law otherwise would expose persons to vicarious liability in a wide range of situations, which the policy behind the law would in my judgment deprecate.

153. The test is 'whether there was a sufficient connection between the wrongdoer's employment and his conduct towards the claimant to make the defendants legally responsible'; or put another way, 'so closely connected with his employment that it would be fair and just to hold the employers vicariously liable'.

154. As to *Bellman* it seems to me that His Honour Judge Cotter QC's observations as to the potential liability for an assault, which might have taken place at the earlier golf club function, are strictly *obiter dicta*. Having said that, the circumstances prevailing in that case are removed from the circumstances of the present: the assailant was in overall charge of the defendant's business, had organised the party, and was in charge of overseeing it, rather than being simply an attendee at the party. Those facts rendered the potential liability of the defendant in that case distinguishable from the circumstances in the present.

155. Of relevance in the present case is that attendance at the party was far from compulsory. This was a party open to CRUK staff, as well as their guests. Entry was by ticket. Bielik was not required by CRUK to attend. More importantly, Bielik's presence at the party had nothing to do with the work which he undertook either for the Wolfson Centre or for CRUK. His act of lifting the claimant had nothing to do with his relationship with CRUK. It had nothing to do with his research work, either directly or indirectly. It was not, using the old *Salmond* test, a wrongful act authorised by the defendant or a wrongful method of performing an authorised act by the defendant. Nor, in my judgment, applying the modern law, was it an act so closely connected with his employment that it would be fair and just to hold the defendant vicariously liable.

156. It is a matter of judgment to decide on which side of the line any case lies, in terms of being sufficiently closely connected with assigned activities. The cases involving assault by employees of members of the public where they are employed to engage with the public will often fall on the side of liability. The acts often take place during or immediately following on from their employed duties. In those cases it may be said to be artificial to divorce the wrongful act from what the assailant was employed to do. In my judgment, the present case falls on the other side of the line, where there is insufficient connection. In my judgment, his role with CRUK did nothing more than provide an opportunity for this

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unfortunate accident.

157. In my judgment, the present case is of the type intimated by the Court of Appeal in *Graham v Commercial Bodyworks Limited*: rather than being something connected with his duties, he was rather engaged on a "frolic" of his own.

158. What was provided was an opportunity by being at the party. However, Bielik's actions on the night were not inextricably woven with the functions which he undertook at CRUK's premises.

159. In my judgment, therefore the claimant has not established that by assigning to Bielik the functions and activities of a visiting scientist, that the defendant created a risk of his committing the tort of assault or negligence in attempting to pick up, and then drop the claimant while she was on the dancefloor.

160. In those circumstances, the case of vicarious liability on the part of the defendant for Bielik's actions fails.

161. As was said during the course of the argument, and I would wish to repeat at this stage, one can only have the upmost sympathy for Mrs Shelbourne. She was an innocent victim. However, for the reasons which I have given, I find that there was no fault on the part of the defendant, and no basis for them being held vicariously liable for the actions of Bielik. In those circumstances, the claim must fail.

End of Judgment

Transcript from a recording by Ubiqus
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com