IN THE SUPREME COURT
For hearing on 23rd March 2010

B E T W E E N:

SHELBOURNE COUNTY COUNCIL

Appellant

and

FOSTER

Respondent

Skeleton Argument on behalf of the Appellant – Ground 2

1. It is submitted that the trial judge was wrong to apply the principle outlined in ***Fairchild v Glenhaven Funeral Services Ltd*** **[2003] 1 AC 32** to an occupational stress case. The principle is a radical exception to the normal 'but for' rule and ought to be restricted.

2. The *Fairchild* principle was developed to address problems of uncertainty where a claimant develops a disease as a result of cumulative exposure to a toxic agent. Such difficulties are not replicated in the present case. Stress at work is not comparable to exposure to a toxic agent.

3. The nature of stress at work was considered by the Court of Appeal in ***Hatton v Sutherland*** **[2002] 2 All ER 1**. Stress arises from the interaction of pressure and the individual's ability to cope with that pressure. As such, pressure itself is not the cause of illness but merely one factor. Nor is pressure 'toxic'.

4. In ***McGhee v National Coal Board*** **[1973] 1 WLR 1**, from which the *Fairchild* principle was derived, the justification for imposing liability was that the creator of the risk should bear the costs. However, in this case, the Appellant neither created the risk nor was capable of removing it.

5. In any event, the Respondent is in effect seeking to recover damages for loss of a chance of not having a mental breakdown. This approach was rejected by a majority of the House of Lords in ***Gregg v Scott*** **[2005] 2 AC 176**: their Lordships declined to extend the scope of the *Fairchild* principle.

6. Therefore, it is submitted that the Respondent must be required to show on the balance of probabilities that she would not have suffered a mental breakdown but for the actions of the Appellant.

GARETH THOMAS
21st March 2010