Duty calls: Darnley v Croydon Health Services NHS Trust

December 2018

Following the recent Supreme Court decision in *Darnley v Croydon Health Services NHS Trust* [2018] UKSC 50, this article examines the duty of care that is extended to reception and clerical staff within A&E departments and other medical institutions, and the potentially fatal consequences if they fall short.

Case facts

The Claimant, Mr Darnley, had been assaulted and presented at the A&E Department Mayday Hospital in Croydon with a suspected head injury. Having informed the A&E reception staff that he had sustained a head injury and felt unwell, he was incorrectly told that he would probably have to wait four to five hours before he would be examined by a doctor. Faced with a long wait and feeling increasingly unwell, the 26-year-old left the hospital after approximately 19 minutes. He did not mention that he was leaving but the receptionists noticed that he had gone.

An hour later he had collapsed at his home and was being rushed back to hospital in an ambulance. A CT scan showed a large amount of blood had collected between his skull and his brain. This extradural haematoma was removed in surgery but it was too late to avoid severe brain damage-induced paralysis. Mr Darnley brought a claim against the hospital.

The court heard how the two receptionists on duty were both aware that standard procedure was that anyone presenting with a head injury would be seen by a triage nurse. The receptionists also accepted that such a patient would be told that they would be assessed by a triage nurse within 30 minutes, or shortly thereafter.

The trial judge, Robinson J, made the following critical findings:

- Mr Darnley's decision to leave the hospital after 19 minutes was in part made on the basis of information provided by the receptionists (that he would have to wait four to five hours to be assessed);
- It is reasonably foreseeable that someone who believes it may take four to five hours to be seen, may decide to leave an A&E Department in circumstances where they would otherwise have stayed if they believed they would be medically assessed much sooner;
- Had Mr Darnley suffered his collapse while in the A&E Department, he would have received medical treatment immediately and made a very near full recovery.

However, the court held that as a matter of law, it would not be fair, just and reasonable to impose liability upon the Defendant for harm arising as a result of the failure by the reception staff to inform Mr Darnley of the likely waiting time to be seen by a triage nurse.

The Claimant's appeal to the Court of Appeal was dismissed but the Supreme Court found that the approach of the majority in the Court of Appeal was flawed.

Citing the case of *Kent v Griffiths* [2001], in which the London Ambulance Service was held liable in negligence for its delay in responding to an emergency call, Lord Lloyd-Jones said that the present case fell squarely within an established category of duty of care and, that it had long been established that such a duty was owed by those who provided and ran a casualty department for persons presenting with illness or injury. The real issue to be determined was whether or not there had been a breach of that duty.

Breach of Duty

The Supreme Court held that the A&E Department was the first point of contact between the hospital and members of the public who seek medical assistance. It is not therefore unreasonable to require patient-facing reception staff to take reasonable care not to provide misleading information as to the likely availability of medical assistance. The standard required is that of an averagely competent and well-informed person performing the function of a receptionist within an emergency department. Lord Lloyd-Jones had no doubt that the provision of such misleading information by a receptionist was negligent.

Comment

The case clearly concerned some complex issues, particularly on the issue of causation. Fortunately, the Supreme Court had the benefit of the trial judge's critical findings and was not prepared to get bogged down in analysing whether there was a duty of care. It simply stated that the duty was well established and already there.

While this case does not change the law of negligence, it has further defined the duty of care by extending it to reception and clerical staff. A hospital or trust is legally responsible for the harm caused by their clerical staff giving misleading information, if that information is likely to cause harm.

Hospitals and medical centres should ensure that their clerical staff are properly trained and well versed in protocols such as those discussed in this article.

If you require advice on a personal injury or medical negligence claim, please contact David Jeffery, Senior Associate in Collas Crill's Dispute Resolution team who is an expert on these matters.

For more information please contact:

David Jeffery

Senior Associate* // Guernsey

t:+44 (0) 1481 734243 // *e:*david.jeffery@collascrill.com

Jack Crisp

Professional Support Lawyer // Guernsey

t:+44 (0) 1481 734837 // *e:*jack.crisp@collascrill.com