



Court of Appeal overturns decision on confidentiality in Huntington's case

May 2017

Yesterday, the Court of Appeal ruled that clinicians treating a man with Huntington's Disease (HD) may have owed a duty of care to disclose his condition to his daughter and that the case should be remitted for trial.

Those of you who attended our medical malpractice seminar in January will recall that we discussed the case of *ABC v St George's Healthcare and Others*. At that time, an appeal was pending following a decision in the High Court in May 2015 to strike out the claimant's claim as having no reasonable prospects of success.

The background to this tragic case is that in 2007, the claimant's father shot and killed her mother. He was convicted of manslaughter on the grounds of diminished responsibility and sentenced to a hospital order. He was detained at a clinic run by the second defendant, South West London and St George's Mental Health NHS Trust. He was referred to the first defendant, St George's Hospital for exploration of his psychiatric condition. Whilst resident in the clinic he was seen by a social worker employed by the third defendant, Sussex Partnership NHS Foundation Trust.

In early 2009 it was suspected that the father might be suffering from HD. This is an inherited condition in which the child of a parent with HD has a 50% chance of

developing the condition. HD is a disorder of the central nervous system which affects movement, behaviour and cognition. It typically brings about personality changes, irritability and often aggression. Onset is usually between the ages of 35 and 55 and there is no cure. Death is usually within 10 to 20 years of diagnosis from complications of the disease.

The father's diagnosis was confirmed in 2009. He told his brother of the diagnosis but did not wish the claimant or either of her two sisters to be told. During a multi-disciplinary meeting, those treating the father agreed to keep the information confidential. The claimant then became pregnant but the father remained adamant he did not want his HD status shared with her. He felt that his daughters "might get upset, kill themselves, or have an abortion" if they knew. In 2010, the claimant gave birth to a daughter and, a few months later, was accidentally informed by one of her father's treating clinicians of his diagnosis. The claimant was subsequently diagnosed with HD which puts the claimant's daughter at a 50% risk of contracting the disease.

Any comments or queries?

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Some of the key points considered by the Appeal Court were as follows:

- the extent and nature of any duty of care owed to the claimant
- whether a professional duty to override patient confidentiality translates into a legal duty to the persons in need of the information
- the public interest in preserving the doctor/patient relationship
- the conflicting duties that may arise, leaving doctors open to litigation
- the argument that if a doctor is subject to a duty of care to disclose information to third parties in some situations, it will undermine trust and confidence and may lead to patients being less candid with their doctors
- that doctors may put pressure on their patients to agree to disclosure of information to avoid the risk of the doctor being sued by third parties
- that third parties may not want to receive confidential information/may suffer damage if they receive that information
- the burden that would be placed on doctors to consider whether any of the confidential information they receive needs to be disclosed to third parties.

It is important to remember that this was an appeal from a decision to strike out the claimant's claim. At first instance, the defendants successfully argued that the claimant lacked the necessary prospects of success for the claim to proceed. The Court of Appeal's decision is simply that the claimant's case is arguable, and therefore it should be allowed to proceed to trial. Although the Appeal Court limited itself to this indication, there is a helpful commentary within the judgment that gives a steer on how the Appeal Court considers each of the arguments should be determined. The defendants, should they choose to defend this case to trial, will wish to prepare themselves for a fight!

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