The duty of care owed by hospital and its receptionists to patients

If a patient relied on inaccurate waiting time information provided by A&E reception staff and suffered catastrophic consequences, is the hospital liable?

Introduction

On 10 October 2018, the UK Supreme Court (the “Court”) in Darnley v Croydon Health Services NHS Trust [2018] UKSC 50 overruled the decisions of lower courts and held the hospital and its reception staff negligent for providing misleading information to patients.

Case background

The appellant, Darnley, was struck on the head in 2010 and suffered from head injury. His friend then drove him to the Accident and Emergency (“A&E”) Department of Mayday Hospital, Croydon, which was managed by the respondent, NHS Trust. He complained of feeling unwell and that he needed urgent attention. The A&E reception informed him that he would have to wait up to four to five hours for treatment, and failed to mention that he would be seeing a triage nurse within 30 minutes. The appellant left after 19 minutes without informing the A&E receptionists. His condition later deteriorated rapidly. He was taken back to Mayday Hospital and a CT scan identified a large extradural haematoma with a marked midline shift. He was then transferred to another hospital and underwent an operation. As a result, he suffered permanent brain damage in the form of a severe and very disabling left hemiplegia, which is also known as unilateral paralysis.

The appellant alleged a breach of duty by the non-clinical reception staff concerning the information of waiting time, and a failure to assess the appellant for priority triage.

Decisions in the High Court and Court of Appeal

The trial judge ruled that receptionists in A&E departments are not under a duty to guard patients against harm caused by failure to wait to be seen. The damage suffered was outside the scope of any duty or obligation owed by the respondent or by its reception staff. Also, there was no causal link between any breach of duty and the harm suffered since the appellant made the decision to leave. Further, undesirable social consequences would follow if a duty is imposed on receptionists not to provide incorrect information. The appellant appealed to the Court of Appeal and the appeal was dismissed by majority on similar grounds. The incorrect information was not an actionable misstatement, and such information is only provided as a matter of courtesy. Even if a duty is found, the scope of duty could not extend to liability for consequences of a patient walking out without telling the staff.
Supreme Court's decision

Duty of care

First, contrasted with the lower courts’ attempt to seek for a new head of liability on the hospital and its reception staff, the Court considered that this case fell within an established category of duty of care. Those who run a casualty department owe to persons seeking medical attention a duty to take reasonable care not to cause physical injury to the patients. Here, the duty arises once the appellant “booked himself in” the medical system of the respondent, and a relationship is one between patient and health care provider. The scope of duty extends to take reasonable care not to provide misleading information that can cause foreseeable personal injury. Since this is a case of established categories of duty of care, it is not necessary to consider whether it is fair, just and reasonable to impose a duty of care.

Secondly, the Court found it inappropriate to distinguish between medical and non-medical staff. Since the respondent has arranged non-medically qualified staff as the first point of contact with persons seeking medical assistance, such staff naturally bears the responsibility to provide accurate information. Therefore, while reception staff are not expected to provide any comprehensive medical information to patients, the respondent has the duty not to provide misinformation to patients and this duty is not omitted simply because the information has been provided by reception staff.

Thirdly, rejecting the idea that it would lead to a floodgate of claims, the Court dismissed arguments on the undesirable social consequences of imposing a duty of care on receptionists in an A&E department. The Court opined that hospitals could simply instruct their reception staff to say nothing to patients apart from asking for their details.

Standard of care

While acknowledging it will be impossible for reception staff to provide the exact waiting time to patients, the Court held that the standard of care is that of an averagely competent and well-informed person performing the function of a receptionist at a department providing emergency medical care. The appellant was told that he would have to wait for up to four or five hours to see a doctor. He was misinformed as to the true position and misled as to the availability of medical assistance. It is reasonable for patients at the A&E department to be provided the accurate information that they would normally be seen by a triage nurse within 30 minutes. The provision of the above misleading information was therefore negligent.

Chain of causation

The Court ruled that the chain of causation had not been broken since it was reasonably foreseeable that the appellant decided to leave on the basis of the inaccurate or misleading information of the receptionists. If the appellant did not leave the A&E department, he would have undergone surgery earlier and would have made a very near full recovery.
Takeaway points

In Hong Kong, most A&E departments within hospitals are extremely busy and crowded. It is no surprise that reception staff is always pressured by patients as to the time needed for them to see a doctor. While most hospitals have a comprehensive system of triaging patients, hospitals and receptionists should always be minded not to provide misleading information orally. Hospitals should also provide an estimated timeframe through leaflets or prominent notice. The application of this case may extend to all clinical settings such as walk-in clinics, ambulance hotline, etc. In particular, the Court's refusal to distinguish between medical and non-medical staff on this issue reminds staff of all levels not to undermine the influence of the information they provide to patients.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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