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## Current Issues in Cerebral Palsy and Brain Injury Claims

Ben Collins QC  
Charles Woodhouse

**Old Square Chambers**

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## **Darnley v Croydon Health Services NHS Trust**

[2018] UKSC 50; [2018] 3 WLR 1153



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## **Darnley v Croydon Health Services NHS Trust**

[2018] UKSC 50; [2018] 3 WLR 1153

- Claimant attends A&E with suspected head injury
- Receptionist tells him the wait to see a doctor is 4-5 hours
- She fails to tell him he will be triaged in 30-40 minutes
- He gives up and goes home, where he collapses
- Large extradural haematoma
- Severe left hemiplegia

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## **Darnley v Croydon Health Services NHS Trust**

[2018] UKSC 50; [2018] 3 WLR 1153

**QBD:** HHJ Robinson finds:

- Claimant was given misleading information by receptionist
  - If he had been given correct information, he would have waited
  - If he had remained in hospital, he would have avoided disability
- BUT**
- It was not fair, just and reasonable to impose liability

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## **Darnley v Croydon Health Services NHS Trust**

[2018] UKSC 50; [2018] 3 WLR 1153

**Court of Appeal:**

Jackson LJ : Receptionist did not assume responsibility. Wrong to create new liability for NHS staff.

Sales LJ: Not fair/reasonable to impose liability for information provided in spirit of courtesy/helpfulness.

McCombe LJ (dissent): It is the duty of the hospital not to provide misinformation to patients, whether it is provided by reception staff or medical staff.

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

**Supreme Court** (Lord Lloyd Jones JSC):

“The common law in this jurisdiction has abandoned the search for a general principle capable of providing a practical test applicable in every situation in order to determine whether a duty of care is owed and, if so, what is its scope: *Caparo Industries plc v Dickman* [1990] 2 AC 605”

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

- The starting point is to look for “established categories of specific situations where a duty of care is recognised”.
- No need to undertake a *Caparo* analysis if the case falls within an established category.
- This case falls “squarely within an established category” ...

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

“It has long been established that such a duty is owed by those who provide and run a casualty department to persons presenting themselves complaining of illness or injury and before they are treated or received into care in the hospitals wards. The duty is one to take reasonable care not to cause physical injury to the patient: *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428”

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

- This is a case of physical injury, not economic loss.
- Having been booked into the hospital, C entered into a relationship of patient and health care provider.
- The Trust owed a duty not to provide information which would foreseeably cause injury.
- It makes no difference which member of staff the Trust charged with providing the information.

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

So...

- The fact that information is provided by a non-clinical member of staff does not affect the question whether a duty of care exists.

But...

- The identity of the individual may be important in assessing the standard of care.

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## Darnley v Croydon Health Services NHS Trust

[2018] UKSC 50; [2018] 3 WLR 1153

The same approach applies for ambulance services:

*Kent v Griffiths* [2001] QB 36 (CA)

- Call handler gave misleading information about arrival time of ambulance. Defendant held liable.
- Lord Woolf MR: What is provided is a health service. A duty is owed by ambulance staff / paramedics as well as doctors / nurses.
- If accurate information had been given by call handler, alternative transport could have been used.

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## **Darnley v Croydon Health Services NHS Trust**

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No reason to think any of this places undue pressure on A&E staff.

- Sales LJ concerns about defensive practices on the part of NHS trusts resulting in the withdrawal of information which is generally helpful to the public.
- Jackson LJ suggestion that Trusts might instruct reception staff to say nothing to patients apart from asking for their details.

Rightly given short shrift by the SC.

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## **Darnley v Croydon Health Services NHS Trust**

[2018] UKSC 50; [2018] 3 WLR 1153

So *Darnley* is a case of misdirection - despite everything you may have read, it is not a duty of care case at all.

LOOK OVER THERE!



DID THEY FOOL YOU?

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## **PXW V Kingston Hospitals NHS Foundation Trust**

[2019] EWHC 840

- HHJ McKenna
- Cerebral Palsy
- Alleged failure to admit
- No breach of duty
- No Causation

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## **B & M v Cheshire East Council**

[2018] UKUT 232

- Young Person with Cerebral Palsy
- Appeal against local authority's refusal to maintain Education, Health & Care Plan
- Similar considerations to a special educational need assessment
- Appeal Allowed

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## **Henderson v Hillingdon Hospital NHS Foundation Trust**

[2018] EWHC 3281

- HHJ Coe QC
- Respiratory Failure & Respiratory Distress identified and treated by ambulance paramedics
- A&E Dr's failure to read PRF leading to failure to recognise severity of patient's condition
- Illogical diagnosis
- Breach of duty

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## **Clements v Imperial College Healthcare NHS Trust**

[2018] EWHC 2064

- May J
- Sudden Untoward Postnatal Collapse 1 hour after birth
- Asphyxiation by mother during skin-skin contact time?
- Not made out on facts and academia therefore no causation
- In any event no breach of duty

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## **NAX v King's College Hospital NHS Foundation Trust** [2018] EWHC 1170

- Yip J
- Child with tuberous sclerosis suffers brain injury as a result of sepsis following neurosurgery
- Delay in administration of antibiotics and intubation
- Breach of duty established but delay insufficient to materially contribute to C's condition

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## **Thank you**

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