

Creation of a new duty to provide information: **ABC v St. George's Healthcare NHS Trust and others** **[2017] EWCA Civ 336**

The Court of Appeal, reversing a strike-out ruling, has decided that it is arguable that geneticists were under a duty of care to provide information to C about her father's diagnosis of Huntington's disease.

A child has a 50% chance of inheriting this incurable disease from a parent. The disease inflicts brain cell damage causing inevitable cognitive, motor and behavioural deterioration and personality change.

The tragic history was that C's father killed her mother in 2007, afterwards being detained under a Hospital Order. He was diagnosed with Huntington's in 2009. A multidisciplinary case conference on 2nd September 2009 had considered whether to override his patient confidentiality by disclosing his condition to C, taking account of his wish not to reveal the information to his daughter so as not to cause her additional distress. They decided against disclosure. On that same day, C revealed that she was pregnant. She accidentally discovered the information about her father's condition in August 2010, five months after giving birth to a daughter. Tests subsequently revealed that she too had Huntington's disease. She would have terminated the pregnancy if she had received that information in August 2010.

The case exposes the difficult-to-resolve and conflicting tension between the duty of patient confidentiality owed to the father, and the duty owed to the daughter to prevent future harm. One similar dilemma arises in suspected sex abuse cases, where clinicians could be sued by parents for disclosing their suspicions, or by children for not doing so. In the USA, a therapist was held to owe a duty to warn an identifiable third party, that she was at risk of being murdered, upon being told by a patient during therapy of his intention to do so once he was released from custody.

The Court recognized that it was creating a new, previously unknown, duty, taking the view that this was an example of the incremental and analogical evolution so characteristic of developments in the common law. The actual decision was that this claim is arguable in principle: it remains to be seen, if the argument ultimately will succeed on its facts.

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