

A&E - How long do I have to wait? I'm going home



Nilma Shah

A lesson learnt following the Court of Appeal (COA) decision of Darnley v Croydon Health Services NHS Trust [2017] - think twice before walking out of A&E after being told the waiting time.

In this case Mr Darnley attended A&E with a head injury. Upon arrival, a receptionist informed Mr Darnley that he would wait 4-5 hours before being seen – this was incorrect.

The actual waiting time was 30 minutes. However, Mr Darnley, deciding that 4-5 hours was too long, left after 19 minutes.

Mr Darnley deteriorated and returned in an ambulance.

Due to the delay in treatment, Mr Darnley sustained an extradural haematoma and suffered partial paralysis with long-term disabilities.

Mr Darnley brought a claim against the NHS Trust on 2 grounds:

- 1) The receptionist's failure to provide an accurate waiting time was negligent; and
- 2) The hospital was negligent on the basis that he should have been seen within 15 minutes.

NICE guidelines entitled: 'Head Injury - Triage, Assessment, Investigation and Early Management of Head Injury in Infants, Children and Adults' stipulate that head injuries should be assessed within 15 minutes of arrival.

The NHS Trust denied breach of duty, accepting that had Mr Darnley been present when called to be seen, he would have avoided permanent injury.

The court held that the NHS did not breach their duty and there was no duty on the receptionist to give accurate waiting times.

The case also failed on causation as Mr Darnley decided to leave without informing the staff.

Mr Darnley's solicitors appealed the court's decision in the COA on the basis that he was told to wait 4-5 hours. He would have waited if told 30 minutes.

The COA's accepted there is no duty on the receptionist as she is solely performing her clerical function.

This case is now being appealed to the Supreme Court.

This case presents an important lesson - if you attend A&E be warned that if you are told to wait 4-5 hours this may be incorrect and you are likely to be seen sooner. Hospitals are meant to see 95% of patients within 4 hours.

That being said, in March NHS emergency departments in England recorded their lowest performance since 2004, with 88.4% of patients having been seen within 4 hours.

Author, Nilma Shah is a solicitor in the Personal Injury and Clinical Negligence department at Duncan Lewis. She is experienced in a mixed litigation caseload including fast track and multi-track claims and has dealt with a wide range of cases involving misdiagnosis, delay in diagnosis, surgical errors, and birth injury claims.

Contact Nilma on 02031141274 or nilmap@duncanlewis.com.

Duncan Lewis Clinical Negligence Solicitors

Duncan Lewis' Clinical Negligence team have extensive expertise in brain injury claims, resulting from medical negligence, including birth injuries, misdiagnosis, prescribing and surgical errors.

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