



Doctors should not cherry pick what information to give patients, court rules

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Doctors should no longer decide what information a patient should be given before agreeing to treatment, the UK Supreme Court has ruled in a historic judgment.¹

The age of “medical paternalism” is over, and healthcare is now a partnership between patients and professionals, seven justices declared unanimously in the most important UK judgment on informed consent for 30 years.

The judgment sweeps away a ruling delivered by the United Kingdom’s highest court 30 years ago in its previous incarnation as the House of Lords appellate committee. The court decided in the Sidaway case in 1985 that the “Bolam” test for clinical negligence—whether a doctor’s actions would have been acceptable to a responsible body of medical opinion—applies to the information given as well as the treatment chosen and the method of carrying it out.

The Supreme Court justices ruled in favour of Nadine Montgomery, whose son Sam is now expected to receive around £5m (€7.1m; \$7.5m) in compensation for serious disabilities resulting from complications at his birth in 1999 at Bellshill maternity hospital in Lanarkshire. Montgomery, who has diabetes and is just over 1.5 m (5 feet) tall, was not told of the risk of shoulder dystocia and the possibility that her baby might suffer serious harm.

A graduate in molecular biology whose mother and sister were GPs, Montgomery raised concerns with the consultant obstetrician Dina McLellan that she might not be able to deliver vaginally. But the consultant told the Court of Session in Edinburgh that her practice was not routinely to warn women with diabetes of the risks of shoulder dystocia. If she mentioned the risk to mothers with diabetes generally, she said in evidence, they would opt for a caesarean section, and “it’s not in the maternal interest for women to have caesarean sections.”

Montgomery lost her case at the outer house of the Court of Session after the judge decided that no warning was necessary because in most cases shoulder dystocia was dealt with by “simple procedures” and the risk to the baby of serious disability was “tiny.” Her appeal to the inner house failed.

But the Supreme Court justices said that shoulder dystocia was a major obstetric emergency and the contrast with the tiny risks to the baby and mother from an elective caesarean was “stark.” If it were left to doctors to decide what information to give to patients, the justices said, that would sanction differences in practice attributable not to different schools of medical thought but to “divergent attitudes among doctors as to the degree of respect owed to their patients.”

In more recent cases the courts of England and Wales, in line with the supreme courts of Canada and Australia, have asserted the right of patients to determine what happens to their own bodies. But the Montgomery judgment makes it clear that patients throughout the UK now have a legal right to be told of material risks before making up their minds.

A doctor has a duty “to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment and of any reasonable alternative or variant treatments,” said the justices. “The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient’s position would be likely to attach significance to it.”

The justices acknowledged that the legal requirement for a dialogue with the patient might not be welcomed by some healthcare providers and would make the outcome of litigation less predictable. But making patients aware in advance that the outcome of treatment was uncertain and potentially dangerous, and giving them the ultimate responsibility for the choice, could lead to less litigation than an approach that required patients to rely on the doctor to decide whether a risk should be incurred, they suggested.

The more fundamental response to arguments against change, they added, was that “the dignity of patients requires no less.”

1 UK Supreme Court. *Montgomery v Lanarkshire Health Board*. 11 Mar 2015. https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0136_Judgment.pdf.

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