

# SUPREME COURT OF THE UNITED KINGDOM

## JUDGMENT

### **Montgomery (Appellant) V Lanarkshire Health Board (Respondent) (Scotland)**

11 March 2015

#### **Summary of case**

A similar approach has been adopted in the UK with the landmark Supreme Court judgment in *Montgomery*, which arguably goes even further than the current Irish law in relation to consent. The General Medical Council (GMC) was granted permission to intervene in this case to provide submissions to the court on their good practice guidance on consent, which was considered by the court.

This judgment appears to mark the end of the so-called “Bolam test [4]” regarding patient consent and the disclosure of information to patients concerning risks. The Bolam test embodied a paternalistic “doctor knows best” approach and provided that a doctors’ actions should be judged by what a responsible body of medical opinion accepts.

#### **Facts of the case**

Mrs Montgomery’s baby was born with cerebral palsy as a results of occlusion of the umbilical cord caused by shoulder dystocia, a specific form of obstructed labour. According to expert evidence, there was a 9-10% risk of Mrs Montgomery’s baby suffering from shoulder dystocia if she delivered her baby vaginally, given that diabetic mothers can give birth to larger than average babies. Mrs Montgomery claimed that her treating consultant should have warned her of the particular risk of shoulder dystocia and that she was never advised of the option of a caesarean section, which would have circumvented these risks and avoided her child’s permanent injury.

#### **Decision**

The court of first instance in Scotland applied the Bolam test and dismissed the proceedings. That decision was upheld on appeal to the Inner House of the Scottish Court of Session. Supported by the GMC, the plaintiff appealed to the Supreme Court which comprehensively reviewed the law on informed consent and upheld the appeal.

The Supreme Court reasoned that the previously accepted model of the doctor-patient relationship no longer reflects reality and patients are capable of understanding medical matters. It was held that doctors have a duty to take reasonable care to ensure that a patient of sound mind is aware of material risks inherent in treatment and of reasonable alternatives. The Supreme Court found that the assessment of risk to a patient cannot be reduced to percentages but is fact-sensitive and sensitive to the characteristics of a particular patient.

It was held that a doctor must engage in dialogue with a patient and a patient should be able to make a decision about whether to undergo a proposed course of treatment, even where liable to a choice which a doctor considers to be contrary to their best interests.

The judgment confirmed that the therapeutic exception, where information can be withheld from a patient in order to protect their health, is a limited exception to the general principles.

The *Montgomery* ruling emphasises the importance of doctors and patients reaching decisions in partnership and the need for doctors to consider what risks might be important to an individual patient rather than what a “reasonable doctor” would consider important.

While the UK decision is not binding on Irish courts, it is likely to have persuasive authority when the issue of informed patient consent is considered. A copy of the judgment in *Montgomery* can be found [here](#).