

Russell-Cooke successfully represents family in £400,000 negligence claim

Lucy Wilton, senior associate in the clinical negligence and personal injury team, has obtained compensation of £400,000 for the estate and dependants of a woman who, it was alleged, had died as a result of a negligent delay in diagnosing and treating breast cancer.

AB (acting as personal representative of the estate of CD deceased) -v- The Whittington Hospital NHS Trust.

Summary of background

The deceased, 'CD', had reported symptoms in her breast to her GP and was referred to The Whittington Hospital's breast clinic. A mammogram and an ultrasound were performed, which were not reported as showing any abnormality. CD was consequently discharged from the breast clinic's care.

CD subsequently developed further symptoms and was ultimately referred back to the Whittington Hospital, where she was seen in the breast clinic approximately one year after her initial attendance. CD was then diagnosed with breast cancer.

CD underwent a mastectomy, chemotherapy and radiotherapy and initially made a good recovery from her illness. However, she relapsed with a more aggressive form of her disease and tragically, despite further treatment, passed away.

The claimant's case

CD's husband instructed Russell-Cooke to investigate whether there had been a negligent delay in diagnosing her cancer which was likely to have caused or contributed to her death. Expert evidence was obtained which advised that the mammogram taken when CD first attended hospital had in fact shown potential abnormalities which should have been reported as suspicious of breast cancer. It was also alleged that staff at the Whittington Hospital had incorrectly recorded aspects of CD's history (including the duration of her symptoms) which should have increased their level of concern.

It was alleged that, but for the negligence, that it was likely a biopsy would have been performed at the time CD was first seen in the breast clinic, resulting in diagnosis of the cancer. It was also contended that with diagnosis and treatment at that stage, (a year earlier than this in fact took place) it was likely that CD would have been effectively cured of her disease and would not have relapsed. Her life expectancy was likely to be normal.

The defendant's case

The Whittington Hospital NHS Trust denied that the mammogram had been reported negligently and that staff had been negligent in taking/recording CD's history. It argued that it was reasonable to interpret the radiology as essentially normal when she first attended and denied that any further follow-up action should have been taken. However, the defendant admitted that CD's breast cancer was likely to have been present at that time and that if this

had been picked up on the radiology it was likely that she would have been diagnosed and successfully treated.

Settlement

The claim was started at court and was fought up to two weeks prior to trial. No admission of liability was made but the parties ultimately reached a settlement with the defendant, agreeing to pay compensation of £400,000 to CD's estate and dependants, plus legal costs. An anonymity order was made by the court to prevent publication of details which could identify the claimant, CD and members of their family.

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