

# Negligent diagnosis or a reasonable interpretation? Brady v Southend University Hospital NHS Foundation Trust

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The case centered upon whether the interpretation of radiological imaging by 2 radiologists in two different sets of imaging was reasonable. The Claimant's case was not that the Defendant should have diagnosed the rare condition that she was actually suffering from (actinomycosis a rare infectious bacterial disease) but that when interpreting the imaging, malignancy should have been considered as part of a differential diagnosis

Despite Deputy Judge Andrew Lewis QC concluding that with the benefit of hindsight, the diagnosis reached by the radiologist after the first scan was unlikely to have been correct, breach of duty was not established. The Judge concluded that that the reporting radiologist acted reasonably in concluding that omental infarction (lack of blood supply to the apron-like fold that lines the abdominal cavity) was "the most likely diagnosis; at that stage in the medical history he had a proper basis and radiological appearances supporting his opinion".

Similarly, the second radiologist was not criticised for not reaching the correct diagnosis at the time of the later September 2013 scan. Although she did not identify what the mass was, she reported the appearances seen on the CT scan. She was uncertain and therefore unwilling to identify a likely diagnosis in her written report. Although her report was sub-optimal and did not identify the differential diagnoses, it did provide a clear view from a radiological perspective as to where to go in the further investigation of the case.

The Judgment sets out the importance of obtaining further opinion and the difficulty a Claimant will have in establishing that treatment is Bolam negligent in situations where second opinions are reasonably sought, considered and agreed.

The case for the Claimant was dismissed on the basis that the Court was unable to find that the actions of the clinicians fell outside of the well-established principles in Bolam and Bolitho.

The Claimant argued that in this case there was no place for the application of the legal standards set out in Bolam and Bolitho on the basis that this claim was one of "pure diagnosis", such that the principles in Penney v East Kent HA should apply; there was a question solely of whether the diagnosis was right or wrong.

Whilst acknowledging the recent case law on "pure diagnosis" cases, the Judge concluded that this was of limited relevance as there was a range of possible diagnoses on interpretation of the radiology. The allegations were also that it was the performance of a biopsy would have led to the diagnosis, not reporting of the CT scans per se.

The Judge accepted that it was a question of fact as to what the scans showed but in judging the standard of clinical interpretation of those scans, the correct approach was in line with the guiding principles in Bolam and Bolitho.

The decision provides reassurance to clinicians that even if a diagnosis that they have made turns out to be wrong, they will not be found to be negligent if the court accepts that a responsible body of their peers would support the decision they made.

The Defendant was represented by Anna Hughes of 2 Temple Gardens instructed by Browne Jacobson LLP. The Claimant was represented by Jamie Carpenter of Hailsham Chambers instructed by Gadsby Wicks.

## Contact



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