

Summary of implications of Montgomery

What is the Montgomery Test?

The Montgomery test places a **legal obligation** upon clinicians to provide information to patients about their treatment.

The Montgomery test was defined in the case of *Montgomery v Lanarkshire Health Board*.¹ Lanarkshire Health Board was found liable in negligence as Mrs. Montgomery was not adequately informed about the risks associated with a vaginal delivery and her baby suffered harm as a result of this undisclosed risk.

The Montgomery Test

An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is under 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.²

What is a Material Risk?

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 the risk**, or the **doctor** is or should be reasonably **aware** that the particular **patient** would be likely to **attach significance** to it.³

What does this mean for my practice?

The assessment of whether a risk is material **cannot be reduced to percentages**. Information must be **understood** by the patient.

Document that the patient understands:

- **Seriousness** of their condition;
- Anticipated **benefits and risks** of treatment; and
- Any **reasonable alternatives** to treatment.⁴

Exceptions to the duty to disclose information:

- Patient has made it clear that they do not want to know the risks;⁵
- Telling the patient the risks would be seriously detrimental to the patient's health. This "Therapeutic exception", should not be abused;⁶ and
- Necessity, if the patient requires treatment urgently but is unconscious or unable to make a decision.⁷

¹ [2015] UKSC 11

² [2015] UKSC 11 at para 87.

³ *Ibid.*

⁴ [2015] UKSC 11 at para 89.

⁵ [2015] UKSC 11 at para 85.

⁶ [2015] UKSC 11 at paras 85, 88, and 91.

⁷ [2015] UKSC 11 at para 88.