



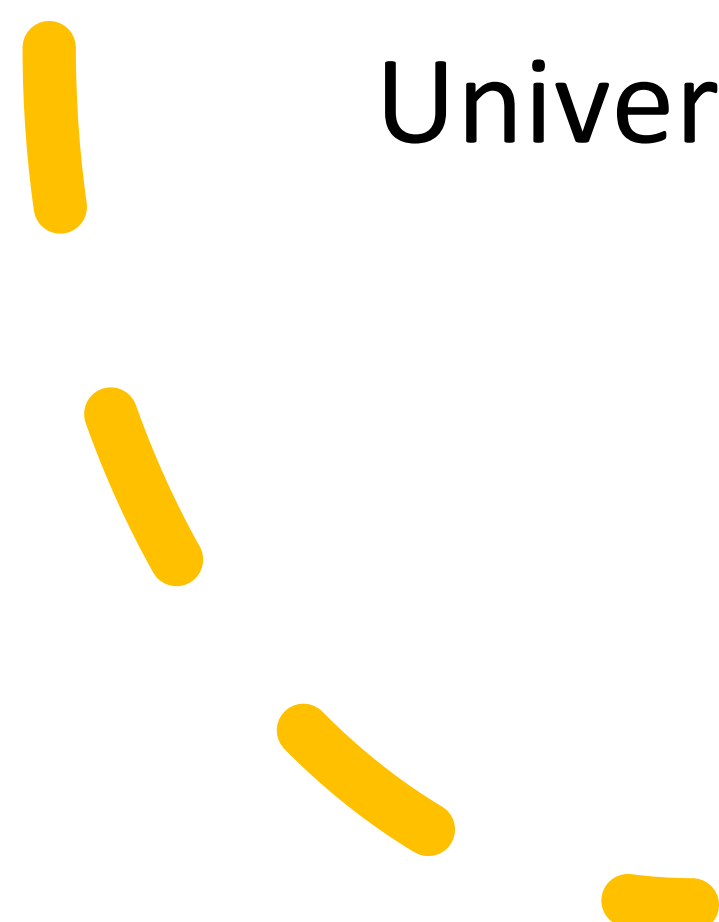
Negligence in OH Practice

Law and Ethics

Dr Chandrakant Mutalik

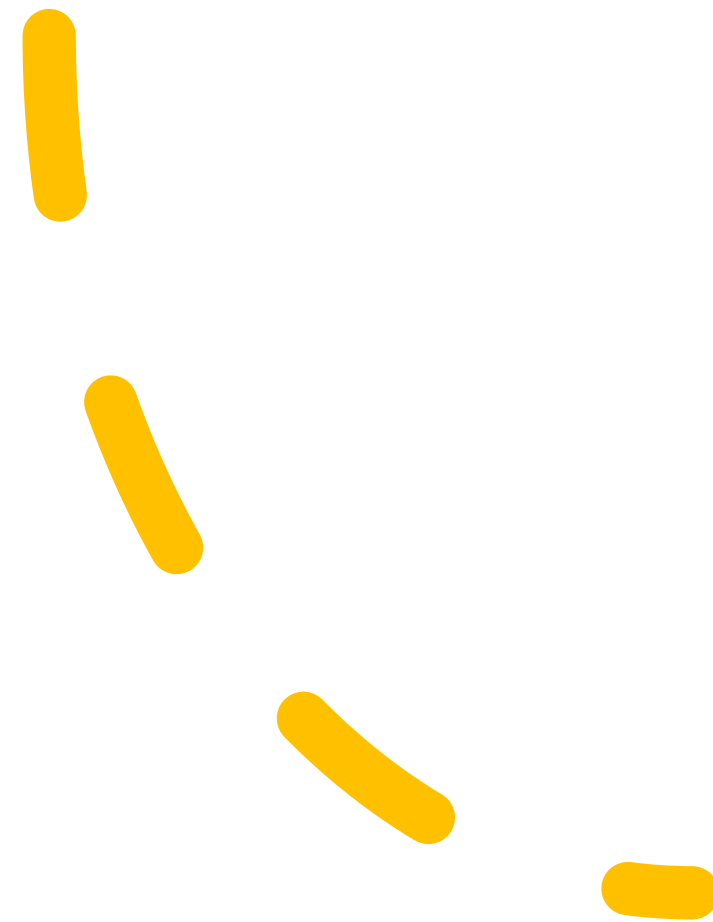
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**Did you ever face a negligence claim in
relation to your OH practice?**



Overview

Introduction

Negligence Claims

- Basics
- Applications to OH Practice
- Discussion and Q&A

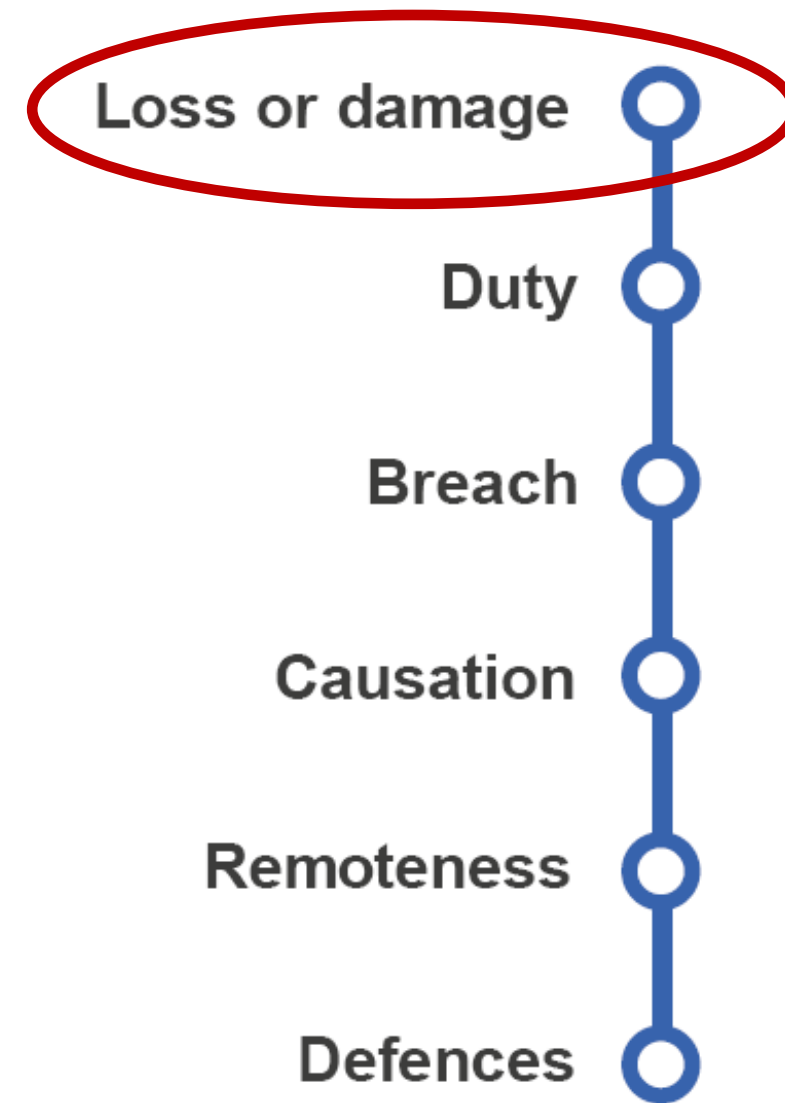
Introduction

- **Disclaimer: Not legal advice and not a lawyer**
- Objective
- Terminology:
 - Worker/employee/patients
 - We or OH professionals: doctors, nurses, and others
- Overlap between Law and Ethics
- Civil Actions in OH
 - Tort law
 - Contract law
- Criminal prosecutions, e.g. HSE prosecutions (topical)

Negligence

- **Torts:** Civil Wrongs for which there is a remedy.
- **Purpose** of remedy
- **Negligence:** Breach of a **legal duty** by the defendant to take **reasonable care**, resulting in a **loss/damage** to the claimant.
- **Who can claim against an OH professional**
 - **Workers:** Tort law + Contract law (in some cases)
 - **Employers:** Contract law
 - **OHS providers:** Contract law
 - Who pays for damages? Individual Vs Vicarious liability

Loss or Damages in OH



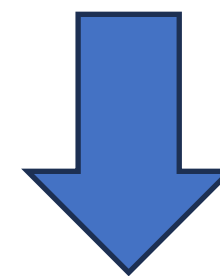
- Property damage - Unlikely
- Psychological Injury – less likely
- **Physical Injury** – Possible
- **Consequential economic loss** - Possible
- **Pure economic loss**
 - Generally, no duty of care but there are exceptions – professional advice
 - Reliance
 - Assumption of responsibility
 - Special relationship of trust and confidence

Duty of Care in OH



Check for **Precedent** or **analogy**

- *Stokes v GKN (Bolt & Nuts) Ltd* [1968] – Physical Injury
- *Baker v Kyle* [1996] – Pure economic loss



If no precedent

Three-step approach from *Caparo Industries v Dickman* [1990]

- **Foreseeability of harm**
- **Proximity of relationship**
- **Just, fair and reasonable** to impose a duty for policy reasons such as **insurance** and maintaining high standards

Breach of Duty of Care



Step 1: **expected standards** of care

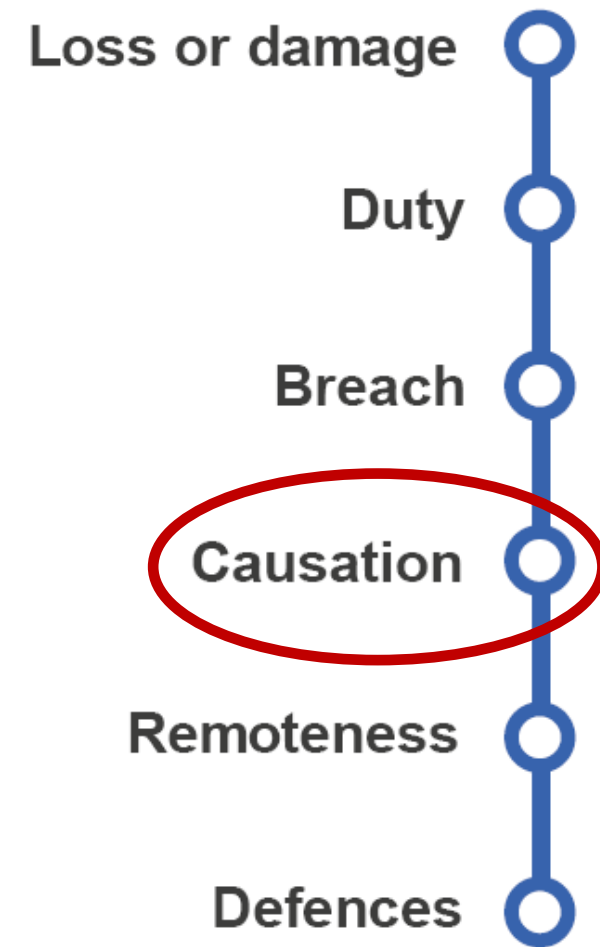
- Legislation and common law, e.g. consent and confidentiality
- National clinical standards, e.g. NICE
- Professional guidelines – GMC

Step 2: whether the conduct **fell below** that standard

- Case law – Bolam-Bolitho-Montgomery and other

The claimant has the burden of proof
Balance of probabilities

Causation link



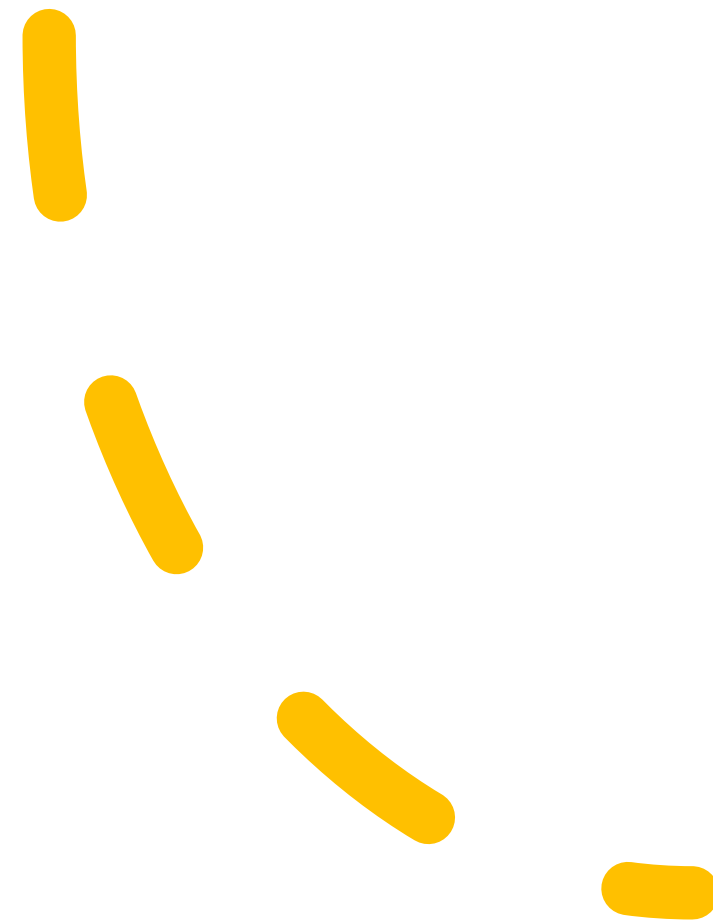
Factual Causation

- 'But for' test
- Material contribution (more than negligible)
- Material increased risk (limited application)

Legal causation



Landmark Case Law and OH Practice



Bolam Test

Bolam v Friern Hospital Management Committee [1957]

The doctor (or nurse) is not negligent:

- If they have acted in accordance with a practice accepted as **proper** by a **responsible body of medical men** skilled in that **particular art**.
- merely because there is a body of opinion who would take a contrary view.

Pure Diagnosis

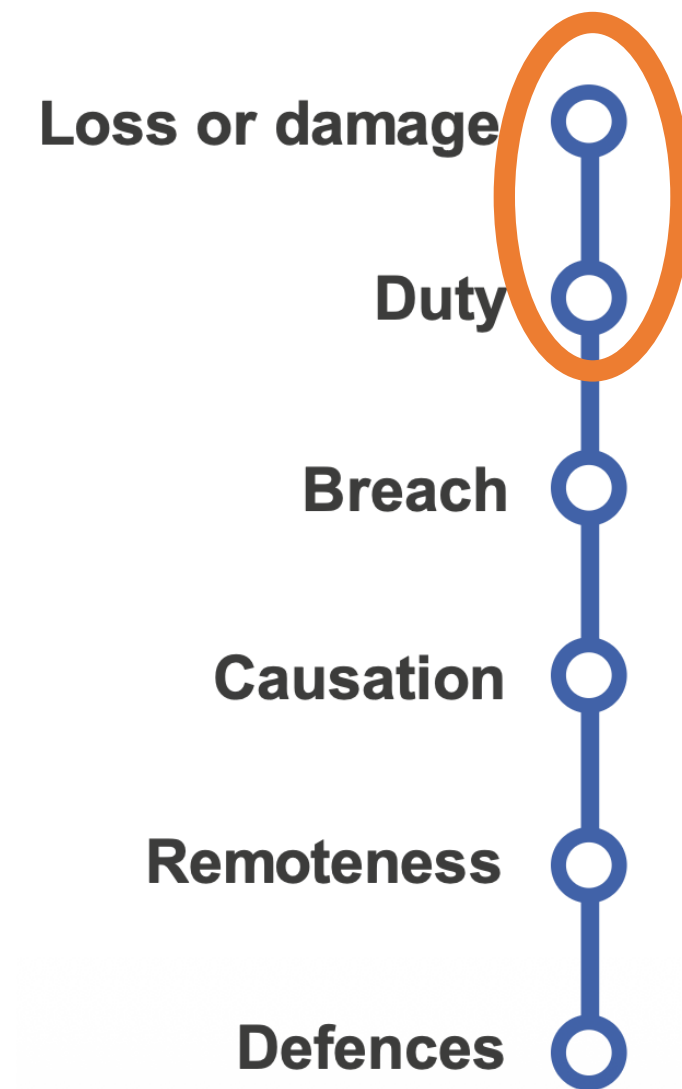
Penney v East Kent Health Authority [2000]; *Muller v King's College Hospital NHS Foundation Trust* [2017]

- Bolam **does not apply** to pure diagnosis cases.
- Objective evidence of a condition/diagnosis is either there or not.
- Whether a reasonably competent clinician could have identified the abnormality on a slide or scan etc.

Case Law Relevant to Bolam

Bolitho Gloss <i>Bolitho v City and Hackney Health Authority</i> [1998]	The court has to satisfy itself that the view of medical experts (a responsible body of medical men) has a logical basis for the opinion they are supporting.
Act not the Actor <i>Nettleship v Weston</i> [1971]; <i>Wilsher v Essex Area Health Authority</i> [1987] <i>FB v Rana</i> [2017]	• Expected standard of care is determined by the act or tasks in hand and not by the seniority, experience or qualifications. • I am a learner, inexperience or junior and did my best cannot be a valid defence.

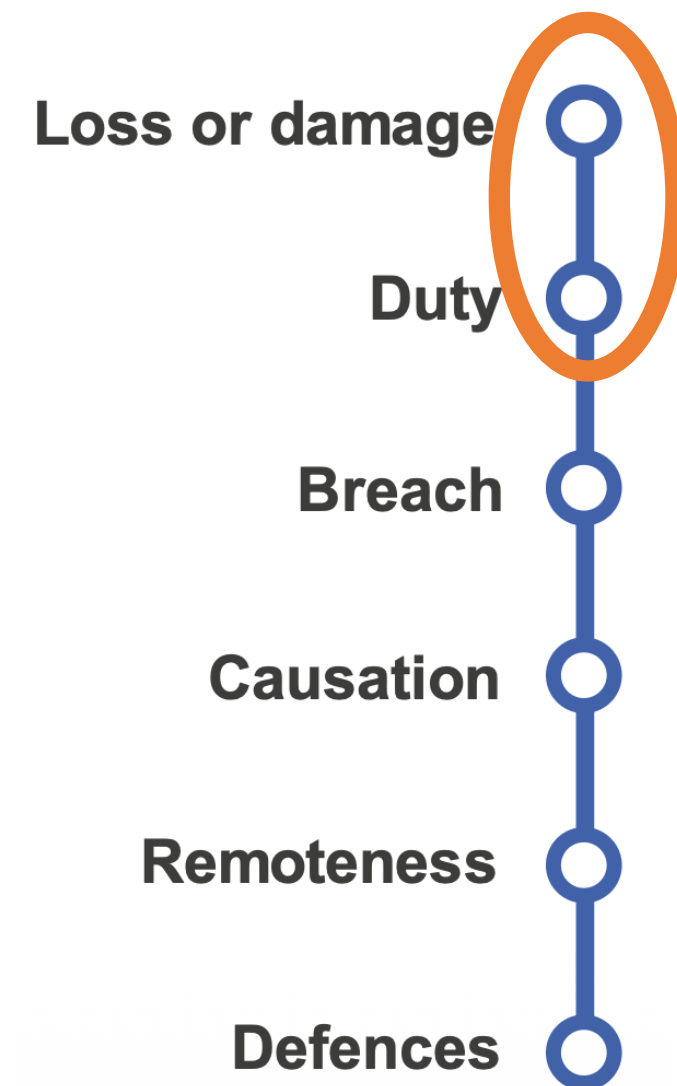
Negligence in OH Practice (1)



Health surveillance (Missed, delayed, or wrong diagnosis)

- Inadequate assessment -? remote consultations
- Lack of training/supervision: 'Act not Actor'
- Wrong advice on fitness to continue with exposure
- Not arranging relevant investigations, escalation or referral

Negligence in OH Practice (2)



Pre-employment OH assessment

- *Baker v Kyle* [1996]

Management referrals

- **Wrong advice on workplace adjustments and restrictions:** *X v Chief Constable of Gwent Police* [2025]
- **Inadequate assessment, lack of workplace knowledge and unhelpful advice:** *Lee v Mitie Ltd* [2023]
- **Divergence or conflicting advice**
 - *Heathrow Express Operating Co Ltd v Jenkins* [2007]
 - *Kitching v University Hospitals of Morecambe Bay NHS Foundation Trust* [2024]

Montgomery

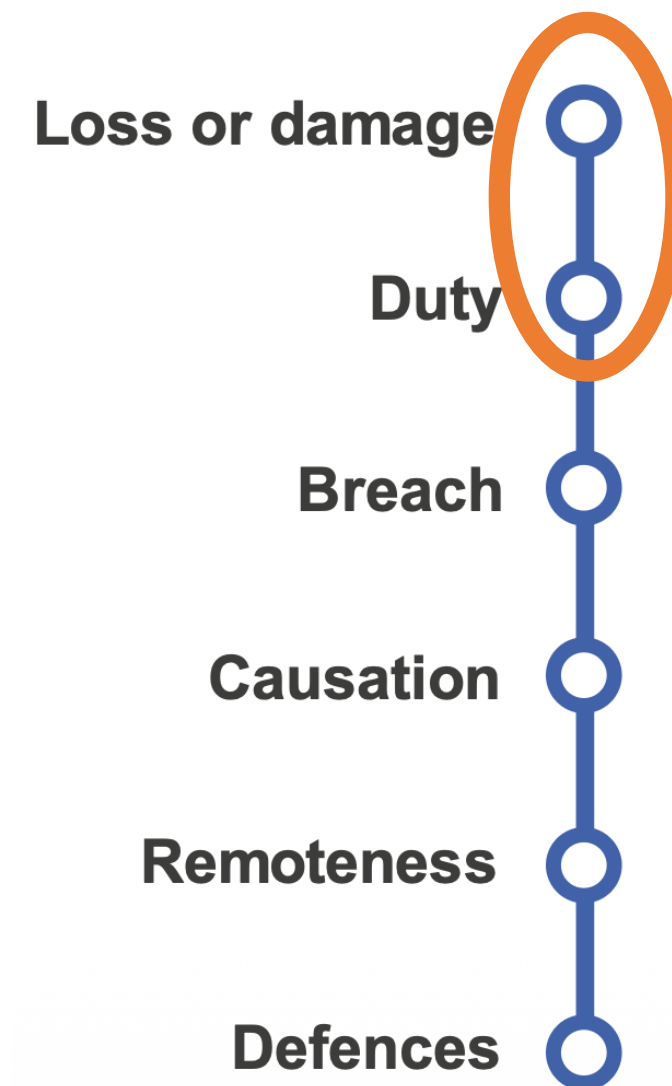
Montgomery v Lanarkshire Health Board [2015]

- Decisively endorsed the principle of **informed consent**
- Must take reasonable steps to disclose all
 - **material risks**, from patient's perspective
 - and of any **reasonable alternative** or variant treatments.
- Patient's right is to decide whether or not to accept a proposed course of treatment.

McCulloch *McCulloch and others v Forth Valley Health Board* [2021]

The doctor is only expected to inform treatment that is reasonable, and the decision on what is reasonable rests with the medical expert (**re-introduction of Bolam**)

Negligence in OH Practice (3)



Needlestick injury – acquires a BBV

- Was the assessment of the risk adequate?
- Failure to inform of material risk
- Failure to offer PEP options

Negligence in OH Practice

Other OH Activities

Fitness to Attend a (disciplinary) Meeting

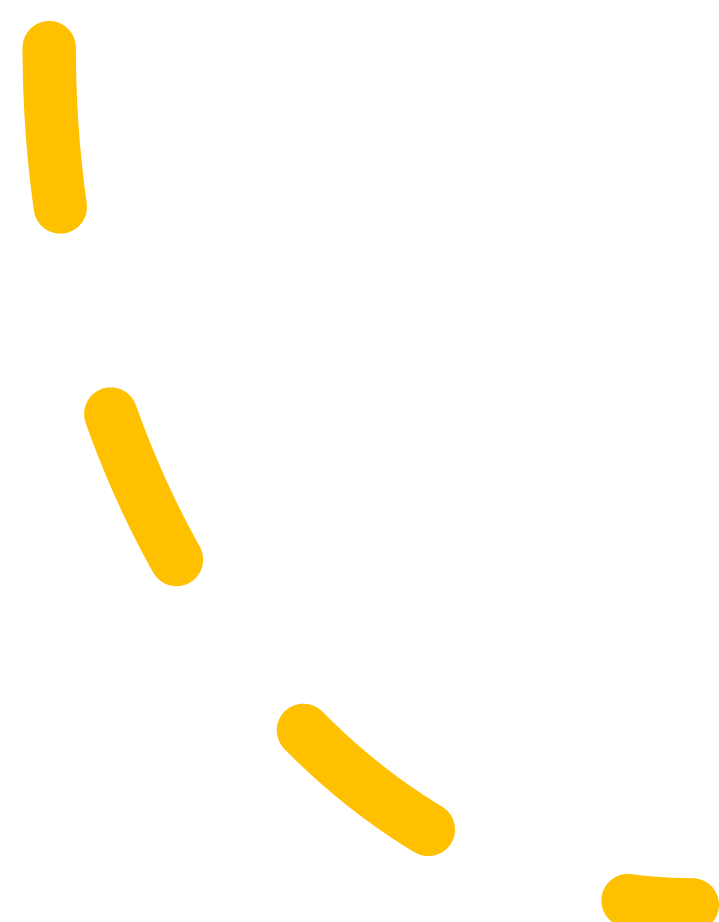
- Do we know the context?
- Do we have sufficient medical details to assess the risk of psychological harm?
- Duplication: *Woodhead v WTTV Ltd* [2025]

Follow-ups in OH – Tension between clinical indication and commercial or operational aspects
Chilton v Payne [2024]



Why are there no reported cases of negligence claims in OH?

- **Lack of awareness** – ET Vs negligence claims
- Access and cost of legal advice and representation
- Difficulty in establishing a causal link
- Out-of-court settlements via a complaints route ??



Will the circumstances change?

Closing Remarks

- OH is not immune to the risk of negligence claims
- Document reasons/evidence to support OH advice
- Where in doubt, seek advice - colleagues and a medical defence organisation

Not a lawyer - Not legal advice

