

High Court rejects anti-fluoridation case

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A significant legal judgment was delivered in the High Court on 11th February 2011 when Mr Justice Holman dismissed a claim by Geraldine Milner, an anti-fluoridation resident of Southampton, that a decision taken in February 2009 by South Central Strategic Health Authority (SHA) to add fluoride to the city's water supply had been unlawful.

Implementation of the disputed scheme, which aims to fluoridate water supplies to 195,000 people in Southampton and neighbouring areas of Hampshire, has been held up for two years pending the outcome of the case.

Ms Milner argued that South Central SHA had ignored what she alleged was a government policy that no new fluoridation schemes should proceed without the support of a majority of local people. But the judge said it was not clear that such a policy existed and, even if it had existed (which he did not accept), it would have been inconsistent with the relevant regulations approved by Parliament and subsequent guidance issued by the Chief Dental Officer.

Secondly, Ms Milner argued that the SHA had failed properly to assess the cogency of the arguments against fluoridation made by respondents to the consultation. This was dismissed by Mr Justice Holman, who said her claim was not even arguable.

In conclusion, Mr Justice Holman said the SHA had not acted unlawfully and no court could interfere with its decision. He also offered guidance to any SHA about making post-consultation decisions on fluoridation under the current legislation:

1. They need to ascertain and make a judgement or assessment as to the cogency of all the arguments (not merely the health arguments) advanced both for and against proceeding with the proposal.

2. They need to weigh very carefully those arguments which are health arguments in favour of proceeding against all the arguments (not merely any health arguments) against proceeding.
3. If they are not satisfied that the health arguments (and none other) in favour outweigh all the arguments against, then that is the end of the matter.
4. If they are satisfied that the health arguments in favour do outweigh all the arguments against, they then need to have regard to the extent of support for, or opposition to, the proposal, and decide whether, in the light of the extent of support/opposition, the health arguments in favour are still so weighty that they should prevail.

Good advice perhaps. But SHAs are due to be abolished at the end of March 2012 under the coalition government's proposals to restructure the NHS. If current indications are correct, and subject to Parliamentary approval, the responsibility for conducting fluoridation consultations is likely to shift to local authorities.

Up to 1974, local authorities used to be responsible for fluoridation. Indeed, over half the estimated 5.5 million people in England currently benefiting from water fluoridation schemes are doing so thanks to decisions made by councils such as Birmingham, Newcastle-upon-Tyne, Warwickshire and Cheshire.

For the sake of dental public health, let us hope that if and when local authorities take back the responsibilities they used to hold, they will ensure the expansion of fluoridation in parts of the country with the highest rates of tooth decay.

To view and download a copy of the full judgment see www.southcentral.nhs.uk/11/02/2011/fluoridation-judicial-review-decision

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