

The Coughlan Judgement

Pamela Coughlan is a C5/6 (complete) tetraplegic lady with no significant additional health needs. She lives in a NHS funded residential home. In 1999 her Primary Care Trust (PCT) attempted to close down the residential home and transfer Miss Coughlan to a Local Authority run residential home. She took the PCT to court in order to stop them from closing the residential home and transferring responsibility for her care to the Local Authority.

The case went all the way to the Court of Appeal. Significantly the PCT did not appeal the decision to the House of Lords. The judgement therefore represents the definitive interpretation of the law in respect of NHS Continuing Healthcare eligibility.

The key question that The Court had to decide was where the boundary between the responsibilities of a Local Authority and the NHS lies. In other words how much care does an individual need in order to qualify for NHS Continuing Healthcare?

The Court clarified that there is a legal limit to the amount of nursing services (health care) that a Local Authority can provide. It ruled that they can only provide an individual's care where the health element of that care is:

- (i) incidental or ancillary to the provision of the accommodation which a local authority is under a duty to provide and;
- (ii) of a nature which it can be expected that an authority whose primary responsibility is to provide social services can be expected to provide.

The Court then ruled that Miss Coughlan **"needed services of a wholly different category."** In other words it would be unlawful for the Local Authority to provide for her care so she was, and remains, eligible for NHS Continuing Healthcare.

SIA therefore believes that anyone who has health care needs equivalent to or greater than those of Pamela Coughlan should therefore be eligible for NHS Continuing Healthcare. Where the individual does have health care needs equivalent to or greater than those of Miss Coughlan a decision of ineligibility for NHS Continuing Healthcare would be unlawful.

Although Miss Coughlan lives in a residential home The Court ruled that NHS Continuing Healthcare can be provided in any setting.

More information

The following resources regarding the Pamela Coughlan case can be obtained by contacting our NHS Continuing Healthcare Advice Service.

- a) **Summary of Pamela Coughlan's care needs for comparison** – this summary has been produced by SIA using information in the public domain and interviews with Pamela Coughlan.
- b) **Pen Picture of Pamela Coughlan's Nursing and Care Needs** – this was produced by the Association of Directors of Adult Social Services (ADASS).
- c) **Pam's Day** – this is another description of Pamela Coughlan's care needs.
- d) The full transcript notes from the Pamela Coughlan court case.

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