

Commentary on Yvonne Watts v Bedford Primary Care Trust & Secretary of State for Health

By Stephen Whittle (16th May 2006)

The WATTS case as posted by Christine is VERY INTERESTING - but
if you were thinking of arguing that it enabled you to have surgery abroad then this is my advice:

A clinician must be persuaded to give a time within which the surgery is to be done. That time would depend on a series of MEDICAL questions, such as:

1. when might the patient's condition deteriorate seriously without the treatment, or
2. when might the patient's condition deteriorate so much, the treatment could no longer be done, or be worth doing, or
3. when might the patient's condition deteriorate so much that another treatment might be needed etc.

The decision must not be one concerned with social questions - such as

1. when might it be convenient to have the surgery
2. when not having surgery might affect their social acceptance
3. when not having surgery would no longer appear to comply with a set of guidance rules (such as the HBIGDA Standards of Care) etc.

However it MIGHT include

1. when surgery needs to be done by in order not to seriously affect a person's mental health
2. when a surgery waiting list is long that a person's long term life quality will be affected adversely

It is probably still the case that the best argument to obtain surgery in Europe and funded by the NHS, is probably the much higher standards of the surgery and its lower price

Stephen

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NHS told to fund treatment abroad

BBC News Online : Tue 16th May
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<http://news.bbc.co.uk/1/hi/health/4985190.stm>

UK patients forced to wait longer than they should for NHS treatment are entitled to reclaim the cost of being treated in Europe, a court has ruled.

The European Court of Justice said the NHS must refund costs if patients waited longer than clinicians advised, even if waiting time targets were met.

The court was ruling in the case of Yvonne Watts, 75, of Bedford, who paid Â£3,900 for a hip operation in France.

But it said in her case UK courts would have to decide if she got a refund.

Mrs Watts said the news was "wonderful" and that if she got the money back she would donate it to a medical charity.

The case, which centres on the definition of "undue delay", could have a significant impact on the NHS.

It will allow any patient facing an unacceptable delay who has the funds to pay for an operation upfront to seek treatment abroad and recoup the costs from the NHS.

The Department of Health said it did not expect the judgment to make a big difference to the numbers travelling abroad to receive hospital treatment.

But it has already said it would be issuing new guidance on the issue in June.

Mrs Watts said: "I welcome it for what it means for other NHS patients. That's why I did it.

"If other people have to have hips done and have to go abroad, they'll be encouraged."

Her solicitor, Richard Stein, said their victory would now act to regulate possible cutbacks in the NHS and increases in waiting times caused by financial constraints.

It should also help to make sure that the concept of "undue delay" was based on a medical decision, not just an arbitrary timeframe.

The European Court of Justice in Luxembourg was asked to rule on the case after the English Court of Appeal sought its guidance.

The ECJ said the UK government wrongly interpreted patients' rights to access services in other EU countries.

It said just because waiting list targets had been met did not necessarily mean that a patient had not had to wait for an undue length of time for treatment.

Instead primary care trusts must ensure a patient's waiting time "does not exceed the period which is acceptable in the light of an objective medical assessment" of clinical need.

'Flexible targets'

The court added the degree of pain the person is in and the nature of his or her disability must be taken into account.

Also waiting time targets must be set "flexibly and dynamically" and reassessed if there is a deterioration in condition, treatment was obtained, the primary care trust would be the body to decide on whether the patient was facing an undue delay.

However, the court found that it was for the British courts to decide whether Mrs Watts faced an undue delay and thus whether she should recoup her costs.

High Court battle

Mrs Watts, who is severely disabled, was told in September 2002 that she needed a double hip replacement and that she would have to wait around a year for the treatment.

But by the end of January 2003, her condition had worsened and a consultant said she should be operated on within three or four months.

The primary care trust again then refused authorisation for treatment abroad saying she could receive it on the NHS within the "appropriate time". This was upheld in the High Court.

But she decided to go ahead with an operation in the French town of Abbeville in March 2003 nonetheless.

There then followed a High Court battle between Mrs Watts and Bedford Primary Care Trust over the cost of the operation.

Changes?

Both Mrs Watts and the Department of Health then appealed to the Court of Appeal, which referred the matter to the European Court of Justice.

A Department of Health spokeswoman said: "We expect to continue with a system that requires any patient who wants to travel abroad for elective hospital treatment, paid for by the NHS, to be authorised to do this by their local healthcare commissioner before they receive treatment.

"However, we need to understand the full implications of the court's judgment before we make any changes to the systems operated by the NHS."

Bedford Primary Care Trust said it had applied "sound clinical judgement" at all times in the case of Mrs Watts and stressed the ruling did not decide whether she was eligible for a refund.

The Court of Appeal will decide whether Mrs Watts has her costs refunded.