Councillor loses legal battle over Derbyshire general practice

Owen Dyer *London*

A high court judge has ruled that a US owned health management company may take over a Derbyshire general practice, despite finding that the local primary care trust failed in its duty to consult patients who opposed the plan.

UnitedHealth Europe, a subsidiary of the Minnesota based United Health Group, beat 19 other bidders that had tendered for the contract to run GP services in the former mining village of Creswell and in the nearby branch surgery at Langwith.

But the award was challenged by a local parish councillor, Pam Smith, who sought judicial review of the decision, claiming that North Eastern Der-

byshire Primary Care Trust failed to comply with section 11 of the Health and Social Care Act 2001 in awarding the contract (*BMJ* 2006;332:1172-3, 20 May). That law stipulates that persons to whom health services are provided must be "involved in and consulted on" planning decisions concerning the service.

Scarcliffe Parish Council, which administers Creswell and Langwith, wrote three times to the trust after surveying local opinion, saying that residents believed that local doctors would best meet their needs. The council also offered land to one local GP, Elizabeth Barrett, who tendered for the Langwith branch surgery.

But the court heard that none of these letters were ever answered. North Eastern Derbyshire Primary Care Trust said "administrative error" accounted for the lack of response in two cases, while the third letter was never received.

Mr Justice Collins, who heard the application for judicial review, said that a further avenue

for public consultation was the local patients' forum. He was "unimpressed," he said, "by the contention that the claimant and, presumably, those advising her were unaware of the existence of the patients' forum."

But he rejected the argument advanced by the trust and by the Department of Health that no consultation was necessary in this case because the new contract amounted merely to "re-provision" of existing services. Summing up, the judge said: "The moral of this tale is that PCTs [primary care trusts] should assume that section 11 applies if there is any doubt."

But there was no evidence that the tendering process was unfair, Mr Justice Collins said, and he didn't believe that further consultation would have changed the outcome. The parish council's concerns about privatisation of NHS services were "not a relevant consideration," he found. He therefore rejected the application for judicial review.

A spokesman for the trust

said: "We are pleased with the decision but accept that we could have done more to consult. Now we need to go out there and convince people that we will bring them the services they need."

The health department also welcomed the decision, but a spokesman added: "We will shortly announce steps to give people a stronger voice at all levels in the health service."

But Alex Nunns of the pressure group Keep Our NHS Public described the ruling as a "crushing defeat" for the health department, "who came to court to argue against their own legislation." The attempt to limit section 11 was at odds with the rhetoric of a "patient led NHS," he said.

Ms Smith said she could not understand how the ruling had gone against her when the judge accepted her claim that consultation had been inadequate. "It's got to be political," she said. She plans to appeal. The trust will not finalise the contract until the appeal is resolved. □

Canada may be forced to allow direct to consumer advertising

Alan Cassels *Victoria, British Columbia*

The Canadian government will respond this week to a lawsuit brought by one of the country's biggest media companies. The company is claiming that it should have the right to carry drug advertisements that are aimed directly at consumers.

CanWest Global Communications, which owns most of Canada's major daily newspapers, a major television channel, and cable TV channels, launched a court case last December challenging Canadian federal law that bans US-style advertisements for prescription drugs. It says that the current law discriminates against its business interests and is ineffective.

If the company wins, Canadians may well be subjected to the same volume of drug advertising that their neighbours south of the border experience.

The Canadian government has to file its response to the lawsuit by 30 June.

Currently drug companies in Canada use two types of drug

advertising aimed at the public: reminder advertisements (which give a drug's name without mentioning what the drug is for but urge consumers to "talk to their doctor") and disease awareness advertisements (mentioning a condition such as hair loss but not mentioning a specific treatment).

CanWest claims that the current law restricts its freedom of expression under the Canadian charter of rights and freedoms and that it is being denied the ability to earn advertising revenue like its US counterparts. The Canadian drug advertising market is estimated to be worth about \$US450m (£245m; €360m) a year.

The argument that the Canadian restrictions are ineffective because so much full blown US direct to consumer advertising already pours over the border—meaning that Canadians are already subjected to US drug advertisements on a daily basis—is contentious.

Some experts are arguing for

If CanWest wins, Canadians will be subjected to advertisements for prescription drugs like this one from US Cosmopolitan

better enforcement of the current law, saying that the appearance on Canadian television of certain advertisements, including one currently running for sildenafil (Viagra), is evidence of the Canadian health department's non-enforcement of the law.

Barbara Mintzes, an expert on direct to consumer advertising at the University of British Columbia, Vancouver, says that

enforcing Canada's existing laws is of paramount importance.

She said, "CanWest's solution is to get rid of the law."

"This is like saying that if corner stores are getting away with selling cigarettes to 13 year olds, we might as well get rid of the age restrictions."

CanWest will not comment on the lawsuit, saying that the issue is before the court. □