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A challenge to NHS legality

I recently assisted the BBC in making the *Panorama* programme 'The National Homes Swindle', which focused on the NHS's attempts to make long-term seriously ill people pay for their own health care. This could be seen as another symptom of a cash-strapped NHS rationing access to services.

However, I believe it also goes to the heart of whether our public services are operated and managed ethically and with integrity.

In 1998, Pam Coughlan became quadriplegic following an accident. Told that her health care would be charged for, she took the NHS to the Court of Appeal and proved that she and several others had been denied their rights to free NHS care. Another patient, Ross Bentley, was described as being immobile, unable to communicate and doubly incontinent, a common condition for those suffering from advanced dementia.

The court made it clear that the NHS had reached a decision that depended on a misinterpretation of its statutory responsibilities under the Health Act. It ruled that the eligibility criteria adopted and applied to determine qualification for free NHS continuing care were unlawful and depended on an approach to the services that a local authority was under a duty to provide that was not lawful.

Despite this, NHS and social service departments continue to carry out private assessments on patients who are more dependent than Coughlan, concluding that they are only in need of social care, thereby saving the NHS millions of pounds.

These assessments regularly rule that most patients' medical conditions are not sufficiently intensive or unstable to qualify for free NHS care; yet the Court of Appeal determined that Coughlan's condition was neither intensive nor unstable.

By definition, those who suffer from serious long-term illness are unlikely to be in either situation. However, when the NHS, in pursuit of financial savings, has systematically closed long-stay beds and turned

hospitals into short-term treatment centres, it becomes necessary for the long-term ill to be illegally denied free NHS care to make any savings.

Law Society evidence to the Commons health select committee expressed the concern that health care had been redefined as social care without any primary legislation or debate, with the effect that the state is illegally making patients pay for their own health care.

This is one of the most important issues that the public services has ever had to face, because the NHS, in exempting itself from the rule of law, is to save money by riding roughshod over the legal entitlements of the ill.

It is an issue on which CIPFA, like the Law Society, should express a view and I would welcome members' views and comments via www.NHScare.info.

IAN PERKIN
Surrey

What hope for good value?

So as he writes about government IT, chief secretary to the Treasury Stephen Timms says that we can be assured that 'government will secure the best possible value for money' ('IT's better than expected', September 1-7). I hope he has read David Craig's article in the same issue describing the government's appalling waste on consultancy fees ('Asking for trouble').

MIKE NADIN
Brockworth, Gloucester

The folly of frozen capital

As you point out, budget-conscious NHS finance managers are indeed looking for easy targets to alleviate their financial woes ('Paying the price', August 4-17). Not only is cutting smoking cessation programmes easier than axing nurses' posts, according to Siemens Financial Services' research, so too is underspend on capital budgets.

In a recent report we showed that the NHS is not alone among western health care systems in cutting capital outlay to balance the books.

Yet, just like cutting back on public



Pam Coughlan: her Court of Appeal victory continues to cast doubt on the legality of NHS charges for long-term illness care

health programmes, this too is storing up problems for the nation's health, as acquisition of the latest technology has a disproportionate effect on improving productivity in diagnosis and treatment.

At the heart of this issue is the historical tendency in the NHS to purchase depreciating pieces of equipment outright rather than use finance over its useful working life.

We refer to this tying up of scarce capital resources as 'frozen capital' and conservatively estimate that in the UK it stands at £1.8bn. However, unlike other NHS finance issues, this problem is not intractable.

The private medical sector has long used financing techniques such as leasing to acquire the most powerful and up-to-date diagnostic and clinical equipment without tying up scarce capital.

As the payment by results hospital funding system brings additional financial pressures and opportunities, a more balanced, longer-term approach to technology acquisition is required. The nation's health could depend upon this too.

DAVID MARTIN
Head of public sector
Siemens Financial Services

NHS rationing of access to services goes to the heart of whether our public services are operated ethically and with integrity