

# Headline Bioethics Commentary: Cut out by the NHS

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Clip: 'NHS obesity surgery court bid lost'

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URL: <http://www.bbc.co.uk/news/health-14310666>

**Summary of story:** In July 2011 Tom Condliff, a 22-stone man lost his Court of Appeal case for a life-saving gastric bypass operation which had a detrimental impact on his family life and mental well-being (BBC, 2011a). The North Staffordshire primary care trust (PCT) refused to fund the procedure arguing that he failed to fulfil their IFR (individual funding response) policy and his body mass index (BMI) of 43 was below their threshold. He claimed the main reason he gained weight stemmed from drugs that he took for long term diabetes and the procedure was the best solution in order to prolong his life. In August 2011, subsequent to the events in this story, the PCT reviewed his case again and decided to fund his procedure as they now saw his case as an exceptional circumstance (BBC, 2011b). After having the operation, Condliff was reported to have lost six stone (Doward, 2012).

**Discussion of ethical issues:** The 'four principles' of autonomy, beneficence, non-maleficence and justice are widely recognised as the cornerstones of biomedical ethics. In this case, the principle of justice is brought into question. Chadwick (2008) says 'justice in allocation' is a bioethical issue since resources can be unfairly distributed and people can be discriminated against. Article 2 of The European Convention on Human Rights (ECHR, 1950) state "everyone's right to life shall be protected by law..." but also notes that this must not be interpreted in a way as to put an impossible burden upon the authorities (Foster, 2007). Tom Condliff, a man seeking a gastric bypass, had to battle against his PCT to have them fund the operation. He argued that it was a breach of his rights under Article 8 of the ECHR (right to a family life) for the PCT to restrict their decision to clinical factors, and Article 6 (right to a fair trial) for not giving him sufficient details regarding their reasoning (Alexander Thomas Condliff v North Staffordshire Primary Care Trust, 2011). The Court found against Mr

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Condliff (though, as noted above, the PCT eventually relented).

Certain ethical issues arise from their original decision. The North Staffordshire PCT's criteria of a BMI over 50 to qualify for surgery is more restrictive than the guidelines laid down by NICE (National Institute for Health and Clinical Excellence) which is a BMI of 40, or 35 if, like Condliff, you have an additional condition such as diabetes. This is an example of the so-called "postcode lottery". Condliff's case highlights the issues of equality and fairness since his geographical location was a significant factor in the unfavourable decision. Individuals living in certain regions are denied treatment that others living in different areas would receive. Adherence to a particular cut-off criteria can also lead some individuals to take actions that are contrary to their health, such as the case of Darin McCloud who intentionally put on weight to exceed the 21 stone requirement laid down by Portsmouth PCT before they would fund his surgery (Jack and Higgins, 2011).

Cookson and Dolan (2000) argue that the principle of justice is followed by clinicians when they refuse to fund some treatments as they are allocating resources in proportion to the need. Areas with a greater need will receive the most funding to carry out procedures like the gastric bypass. This is a combination of the 'need principle' and the 'maximising principle'. The aim of the PCT IFR policy is to use its budget in order to maximise the benefits for the community. In this case however, the PCT's initial refusal to fund surgery costing £5,500 left Condliff requiring medication costing over £20,000 a year. Additional need for kidney dialysis if his condition deteriorated might even have double these costs (Doward, 2011). In support of the North Staffordshire PCT, the House of Lords has made it clear that distributive justice is not a human right and this means individuals have no right to use public funds for personal gain which is supported by the NHS ACT 1977 (Foster, 2006). The judge concluded that when a "PCT decides how to allocate its resources among those who seek them, Article 8 is not engaged."

The initial decision to refuse the procedure left Condliff on a cocktail of 28 drugs, need a wheelchair and require full care from his wife, all of which contributed to reduced quality of life. Some might argue that Condliff has inflicted these illnesses upon himself through bad diet and laziness and that eating less and changing lifestyle would be an economic and a more long term solution. Treating him medically might compound the difficulties for society by sending out the message that the NHS will sort out people's problems even if they have been irresponsible. Counter to this, Condliff claimed that he had reduced his intake to 500 calories a day and blamed his weight on the diabetes which got out of control, requiring medication to maintain his health arguing that surgery was his only option (Daily Mail, 2011).

It must be remembered that, whilst they overlap, legal decisions and ethical decisions are not the same. The NHS's ultimate decision to fund his treatment can be seen as both a victory for ethics beyond the legal requirement, but also a pragmatically sensible move since it cost them less money overall.

## References

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