

# GLS Administrative Law Webinar

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## CASE REFERENCE

**R. v North and East Devon HA Ex p. Pow**  
**R. v North and East Devon HA Ex p. Metcalfe**

**Queen's Bench Division**  
**04 August 1997**

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## R. v North and East Devon HA Ex p. Pow

## R. v North and East Devon HA Ex p. Metcalfe

Queen's Bench Division

04 August 1997

### Case Analysis

#### Where Reported

(1997-98) 1 C.C.L. Rep. 280; (1998) 39 B.M.L.R. 77; [Official Transcript](#)

#### Case Digest

**Subject:** Health

**Keywords:** Community health councils; Consultation; Health authorities; Hospitals

**Summary:** health authorities; temporary closure of hospital inpatient service; duty to consult community health council

**Abstract:** P and M, hospital residents, applied for judicial review of a decision of North East and Devon Health Authority, NEDHA, to instruct the North Devon Health Trust, NDHT, to close temporarily from August 1997 a hospital inpatient service without consultation with the Community Health Council, CHC. By mid April 1997, NDHT had reached a proposal stage in the reorganisation of health care services in the area sufficient to trigger a duty to consult the CHC, but it failed to do so until the end of May when it served notice of closure without consultation under the [Community Health Councils Regulations 1996 Reg.18\(1\)](#) on the basis that time to comply with the financial constraints brought by the [National Health Service Act 1977 s.97A](#) was too short to allow consultation.

Held, allowing the applications and granting a declaration, that the decision to close was unlawful. The duty to consult had arisen in mid April 1997 but NEDHA had equivocated until a decision became so urgent that the consultation envisaged under the Regulations was pre-empted.

**Judge:** Moses, J.

**Counsel:** For the applicants: Richard Gordon Q.C. and Michael Fordham. . For the respondents: Philip Engelman and Christopher Quinn.

**Solicitor:** For the applicants: Leigh Day & Co. . For the respondents: Bevan Ashford (Bristol).

#### All Cases Cited

**R. v North West Thames RHA Ex p. Daniels (Rhys William)**

[\[1993\] 4 Med. L.R. 364](#); [\[1994\] C.O.D. 44](#); [Times, June 22, 1993](#); [Independent, June 18, 1993](#); [Guardian, June 21, 1993](#); DC

#### All Cases Citing

**Mentioned by**

L v Board of State Hospital

[\[2011\] CSOH 21](#); [2011 S.L.T. 233](#); [2011 G.W.D. 4-120](#); [Official Transcript](#); OH

**Mentioned by**

R. (on the application of Chandler) v Secretary of State for Children, Schools and Families

[\[2009\] EWHC 219 \(Admin\)](#); [\[2009\] Eu. L.R. 615](#); [\[2009\] B.L.G.R. 417](#); [\[2009\] A.C.D. 50](#); [Official Transcript](#); QBD (Admin)

#### **Mentioned by**

Virgin Media Inc v Competition Commission

[\[2008\] CAT 32](#); [\[2009\] Comp. A.R. 98](#); [Official Transcript](#); CAT

#### **Significant Legislation Cited**

[Community Health Councils Regulations 1996 \(SI 1996 640\) reg.18](#)  
[National Health Service Act 1977 \(c.49\) s.97A](#)

#### **Legislation Cited**

Circular EL 90/185

[Community Health Councils Regulations 1996 \(SI 1996 640\)](#)

[Community Health Councils Regulations 1996 \(SI 1996 640\) reg.17](#)

[Community Health Councils Regulations 1996 \(SI 1996 640\) reg.18](#)

[Community Health Councils Regulations 1996 \(SI 1996 640\) reg.18\(1\)](#)

[Community Health Councils Regulations 1996 \(SI 1996 640\) reg.18\(3\)](#)

National Health Service (Functions of Health Authorities & Administration of Arrangements) Regulations 1966 (SI 1966)

[National Health Service Act 1977 \(c.49\)](#)

[National Health Service Act 1977 \(c.49\) Part 4](#)

[National Health Service Act 1977 \(c.49\) s.97A](#)

[National Health Service and Community Care Act 1990 \(c.19\)](#)

National Service Act 1977

National Service Act 1977 s.97A

#### **Journal Articles**

##### **Consultation criteria**

Closure; Consultation; NHS trusts; Public authorities.

[N.L.J. 2006, 156\(7248\), 1706-1707](#)