

The privatised water industry and public health: back to square one

R Lowry¹ and D Evans²

No real progress has taken place in implementing new water fluoridation schemes within the UK since the ownership of most water companies passed into the private sector. A recent High Court judgement has confirmed that English water companies have absolute and unfettered discretion in deciding not to proceed with any new fluoridation schemes. Current legislation must be changed if this important public health measure is to be extended to benefit a greater number of people.

Back in 1854, John Snow arguably invented public health practice by interrupting a cholera outbreak transmitted in water supplied by a private water company.¹ From that date on, legislation was introduced to regulate the safety of water supplies, and as a result, public health began to improve. Much of the water industry was for a long period of time in the public sector, under local authority control. It was during this era that water fluoridation schemes were introduced purely for the public good (in both public and private sector). Recently, however, the water industry, now returned to the private sector, has demonstrated that it may be necessary to legislate to further introduce this public health measure. John Snow would be embarrassed how little progress we have made.

The issue which has triggered these concerns is that of water fluoridation and the lack of progress on implementing this proven public health measure. The subject has been raised again publicly recently as the failure of a water company to implement a fluoridation scheme when requested to by a health authority was the subject of a judicial review in the High Court.

Water fluoridation is a safe, effective and cheap way to prevent tooth decay²

and it is particularly effective at reducing dental health inequalities due to social deprivation.³ Despite this, at present only about 10% of the population of the United Kingdom drink fluoridated water at the optimal one part per million, some where it occurs naturally, most through water treatment. Best current estimates are that for about 25% of the population water fluoridation would be cost-effective where water treatment plants serve large numbers of people with high caries rates. These would include areas of social deprivation, which in practice means the major conurbations.⁴

The existing fluoridation schemes were implemented in the 1960s when the bulk of the water supply industry was in public ownership *ie* under the management of local government. Both private and state owned water suppliers were persuaded, at the time, to fluoridate water for the public good under a non profit making arrangement whereby the state met all the appropriate costs.

There was great optimism in public health circles when the 1985 Water (Fluoridation) Bill went through Parliament. The Bill was brought forward by the then Conservative government to rectify a lack of legislative framework to allow new fluoridation schemes to be introduced. This followed a ruling by the High Court in Scotland in 1983 that fluoridation was 'ultra vires' and that existing schemes, in Scotland at least, were found to be unlawful.

It was thus considered by public health practitioners that it would be only a mat-

ter of time before fluoridation of public water supplies would be extended throughout the UK. The subsequent Act was not only the mechanism to introduce new schemes, but also set out the respective roles for the health authority, the water undertaker and the Secretary of State.

We now know, however, that in 1985 during the passing of the Act the then Government already had water privatisation firmly in view. As Nigel Lawson (later Chancellor of the Exchequer) records in his memoirs (referring to events in 1985): 'In our manifesto, we promised to transfer nine public sector businesses to independent ownership. The transfer of water authorities, which form a natural monopoly, presents special problems, not least because of their regulatory functions. Nevertheless, my Right Honorable Friends and I will be examining the possibility of a measure of privatisation in the industry...'⁵

Thus when the 1985 Fluoridation Bill was being passed, the Government would have been concerned not to jeopardise

There was great optimism in public health circles when the 1985 Water (fluoridation) Bill went through parliament

the impending privatisation of the water industry, and fluoridation might have been seen as such an issue. As Kenneth Clarke, the then Minister for Health said: '...we took the conscious decision not to make it easier... for fluoride to be added to water',⁶ while at the same time fully supporting the extension of fluoridation and not responding to the water under-

¹Consultant in Public Health Medicine, ²Consultant in Dental Public Health, Department of Public Health, Newcastle and North Tyneside Health Authority, Benfield Rd, Newcastle upon Tyne NE6 4PF;

REFEREED PAPER

Received 26.01.99; accepted 27.04.99

© British Dental Journal 1999; 186: 597-598

takers own request to be left out of the decision-making process: 'Had we conceded the case of the water companies that they should have no discretionary power and that the responsibility should rest with the health authorities alone, the Government would have been attacked... for making fluoridation easier...'⁷ Pre-privatisation, the water company veto was less important, post-privatisation it became critical. If the water company veto had been removed (as requested by the public-sector dominated water undertakers), the privatisation prospects for the companies would have been limited by a restriction on their operating freedoms, left to the whims of the public sector.

Perhaps it should be no surprise that no new water fluoridation schemes have been introduced under the 1985 (and later consolidating) legislation, but it was only on December 15 1998, following a judicial review brought by Newcastle and North Tyneside Health Authority, that the legislation was finally proved in court to be inadequate.

Newcastle and North Tyneside Health Authority had requested a judicial review of the decision by Northumbrian Water Company Ltd following a refusal of their original request to the company to extend fluoridation in 1994 (five years after privatisation). The aim of the judicial review was to clarify the responsibility of the water company in the local decision-making process.

After an extensive publicity and consultation campaign in 1993/4, Newcastle and North Tyneside Health Authority (with all the other health authorities in the Northern health region) asked Northumbrian Water to introduce water fluoridation to a further 1.7 million people, 1 million people having already benefited from water fluoridation in the North East for over 25 years.

The Health Authority contended that Northumbrian Water was acting unlawfully in declining the Health Authority's request to extend fluoridation, and that the reasons given were illogical. The

Health Authority argued that the relevant parliamentary acts governing water fluoridation were intended to encourage it, not merely enable it to be implemented if

Current legislation is ineffective as far as new water fluoridation schemes are concerned, as the water industry itself agrees

requested to by the Health Authority. The main argument against the health authority challenge to Northumbrian Water's decision was that the water company had absolute discretion to proceed or not with new water fluoridation schemes, and that this discretion was wide and unfettered. Since privatisation of the water industry, water companies had an overriding responsibility to their shareholders, and under the current law, no other consideration (including a public interest such as health) took precedence. So the water company had a right to turn down a reasonable request, and it did not have to give a reason. The presiding judge, Mr Justice Collins, concluded that as a private company (which did not possess power solely for the public good), Northumbrian Water had unfettered discretion for the purposes of the (fluoridation) statute. The Judge concluded that, regrettable though the water company decision was, because of the existing law, the application to have the decision challenged must fail.

We are now in the situation that no new fluoridation schemes are likely to be introduced, unworkable legislation is in place and health authorities are unable to improve the health of large numbers of people when they have spent years trying

to implement the unimplementable. As the legislation was neutral (not encouraging or making fluoridation any easier), what might have been possible in the public sector becomes impossible in the private, especially when the water industries own wish not to have the casting vote on fluoridation was denied in the legislation.

Two things now follow. Current legislation is ineffective as far as new water fluoridation schemes are concerned, as the water industry itself agrees. Health professionals cannot justify any more effort under existing regulations. If the present government want improved dental health, and fluoridation is the method of choice, then new (and effective) regulation is the only route.

It is also possible that existing schemes will come under increasing threat if water companies are forced to defer to shareholders. Is it appropriate that public health should be in the hands of a private company with no redress from health experts? Surely this must be as unacceptable now as it was in John Snow's day?

The good news is that the water industry itself is working with public health professionals and politicians to try to resolve the situation. Painful as it was, the Judicial Review has crystallised many of the problems in the existing arrangements, and it may prove to be the end of the beginning rather than the beginning of the end.

References:

- 1 Donaldson RJ, Donaldson LJ. Essential Public Health. London: Kluwer, 1993.
- 2 World Health Organisation. Fluorides and oral health. Technical Report Series No 846, Geneva: World Health Organisation, 1994.
- 3 Jones C M, Taylor G O, Whittle J G Evans D, Trotter D P. Water fluoridation, tooth decay in 5-year-olds, and social deprivation measured by the Jarman score: analysis of data from British dental surveys. *BMJ* 1997; 315: 514-517.
- 4 Lennon M A, Jones S C. Fluoridation in Britain today. *BMJ* 1993; 306: 666-667.
- 5 Lawson N. The view from number 11. London: Corgi, 1993: 230-231.
- 6 Hansard. Standing Committee H. London: HMSO, January 29, 1985 column 22.
- 7 Hansard. Water Fluoridation Bill. London: HMSO, Jan 14, 1985 column 97.