LETTER FROM WESTMINSTER

Data protection: doctors and ministers disagree

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"Get things into perspective." That is the message that the BMA seems likely to get when it sees Mr Leon Brittan, Home Secretary, to put forward fresh proposals to prevent patients' records being given to the police, insurance companies, or local authorities without their consent.

Whitehall believes that doctors' fears about the effect of the Data Protection Bill are groundless. The government sees it as absolute nonsense to claim that the legislation would give health authorities control over information previously under the control of doctors: it would not. As ministers see it, the status quo would be untouched. The custom and practice is that health authorities, which in most cases control the contents and use of data because they have the last say, get a doctor's permission before disclosure and the Bill does not alter that position. What ministers are discussing with the inter-professional working group on access to personal information, chaired by Sir Douglas Black, is whether this should be formalised in some way. The code of guidance offered by Mr John Patten, the junior health minister, will simply state the position as it always has been, though it will be backed up with an instruction under the 1977 National Health Service Act placing a legal duty on health authorities to safeguard the information.

Of this offer, Sir Douglas has said that it would still leave "a massive and serious loophole in the areas outside the National Health Service." But that is to extend the argument to new grounds, and though ministers think it reasonable to issue an instruction as to how the NHS should do things, it is quite another thing to start ordering private organisations to abide by government produced codes of guidance. As to whether the fears the profession have expressed are legitimate, the answer seems to be that they are not.

This extension of ground has left the impression in Whitehall, if you can so call areas as far apart as Queen Anne's Gate and the Old Kent Road, that give the medical profession an inch and it always demands a mile. That, I hope, is a fair enough summing up of the position, which, to put it briefly, is that when the Data Protection Bill becomes law the position so far as such information is concerned will be as it is now.

Neither Mr Brittan nor Mr David Waddington, Home Office Minister of State, gave much indication of the government's thinking on the issue when they spoke in last week's second reading debate in the Commons. The issue was, however, raised by Mr Gerald Kaufman, the Labour spokesman, who reported that the BMA felt strongly about it and "rightly took the view" that it was quite unacceptable for someone other than a doctor to pass on such information held by the registered user, presumably the health authority, possibly against the wishes of the doctor or without his knowledge. He said that that was possible under the Bill, and in future patients, who often told doctors the most intimate and private details, would hesitate to do so. Doctors might also hesitate to ask or, if the information was provided, it might be withheld from the case notes. "This could have a grave effect on the patient's treatment, and the BMA and other organisations involved in health treatment are right in insisting it is essential that clause 28 be amended," he added.

Mr Tony Lloyd, Labour MP for Stretford, argued that the clause would result in a fundamental change in the relation between doctors and the police. "At the moment, the medical profession is governed by the BMA's handbook on ethics, which makes it clear that the authorisation for passing information should come from the clinician who initiates the information," he added. "Under the Bill, the initiative will pass from the initiating clinician to those who are considered to be data users. That will almost certainly not be the relevant clinician or doctor, but someone employed by the health authority."

Mr Robert MacLennan, Social Democrat MP for Caithness and Sutherland, said that the proposition in clause 28 was offensive and wholly unacceptable. "When people go to see their doctors they need to be able to disclose even the most intimate details about themselves so that they can be given the right treatment in the absolute confidence that the information will never be disclosed or used for any other purpose," he said.

On the code of guidance, it was imperative that it be extended to all personal health information. It would be unthinkable that local authorities, employers, or insurers should be allowed to make disclosures that could not be made by anyone within the NHS.

The committee stage is to come, and clearly there are going to be plenty of amendments tabled that may meet the point of view expressed by the medical profession, clearly echoed in the debate. But it will require a change of heart on the part of the government for them to be accepted. So far there are no signs that such a change will happen.

Permanent secretary has rough ride

Sir Kenneth Stowe, permanent secretary at the DHSS, had a rough ride when he appeared before the Commons public accounts committee to give evidence on the government's scheme for premature retirement in the NHS, which proved remarkably popular. The original estimate of those likely to take the government's offer was 435, but to date some 3000 staff have done so, and the cost, of course, has been substantial. The following exchange between a Conservative MP and Sir Kenneth went as follows. MP: "Do you really think you discharged your obligation to parliament as properly as you ought?" Sir Kenneth: "Yes, sir. If you ask me whether this scheme would be administered in exactly the same way if we were starting all over again the answer would be no." Which is about as near as you are ever likely to get a Whitehall Sir Humphrey to admit that the department, if it did not get it wrong, did not know what it was doing.

Finally, I have been taken to task—nicely—by Mrs Renée Short, chairman of the social services select committee, for daring to suggest that the idea of investigating the Griffiths report came from the Tory members. The idea was hers, she says. I would not like to insult her by suggesting that great minds think alike, and as she is the chairman there is no doubt that she would have had the first—and last—word. She also pointed out that the evidence so far is strongly against the proposals in the Griffiths report, and I suspect that if she has her way that is how her committee's report will turn out. But, if she does not mind my saying so, she may not.