Letter from Westminster

Justifiable criticism from the Ombudsman

WILLIAM RUSSELL

The problems facing the overseas visitor or resident seeking treatment under the National Health Service get talked about often enough in the abstract. In the third report from the Parliamentary Commissioner for Administration, by the Ombudsman, Sir Cecil Clothier, there is a case history that illustrates how easily the system can go wrong. In this instance it stemmed from an initial misunderstanding about the status of the patient—a young Italian who came here in July 1979 to find work and improve his English. In August of that year he fell in the restaurant in which he was working, cutting the tendons of his left wrist on some glass, and had to undergo an emergency operation. The problem arose, however, over his subsequent treatment—the accident required a second operation and physiotherapy. The hospital administrative staff decided he was not eligible, and their opinion was backed up by the Department of Health and Social Security. A great deal of argument took place—Mr B, the Italian, was lucky in that he had a friend, Mr A, who was able to fight his case—but with no result, and Mr B returned to Italy, where in January 1980 he had the second operation. By this time the DHSS had come to the conclusion that the work he had been doing had changed his status from visitor to worker and that, as he had paid National Insurance contributions and was receiving benefit in Italy based on his work here, he would, under Common Market regulations, be entitled to full NHS treatment if he returned to the UK.

Why did hospital not know the rules?

Mr A, who was out of the country, did not see this letter until February and wrote to the DHSS asking why hospital staff had not been aware of the rules of eligibility all along. He received no reply and wrote again in April. By mid-June, when he wrote to Sir Cecil as Health Service Commissioner and to his MP, he had still not received a reply.

Sir Cecil's inquiries showed that clear guidance was available to the medical and administrative staff at the hospital concerned, but despite that they had failed to establish Mr B's proper status. He had been recorded by the nurse who admitted him, and who could not be traced, as a student. It was as a student that he was described to the DHSS, and hence all its advice was wrong. Sir Cecil found that once the emergency was over and there was a question whether free treatment should continue greater care should have been taken to confirm the facts on which the decision was being based—especially in view of the representations made on Mr B's behalf by Mr A and the Italian Consul General.

The outcome is that the area health authority, against whom he found the complaint to be wholly justified, has agreed to pay Mr B £250 towards the unnecessary and abortive costs he incurred. As a result of the refusal of further treatment he made an unnecessary trip to Italy to consult his parents.

The DHSS does not escape unscathed. Sir Cecil found Mr A's complaint about not having had a reply to his letter justified. The DHSS admitted that it had a draft reply ready, but it was long and complicated and the Department decided not to send it. The DHSS has accepted that this was "a regrettable error of judgment," and Sir Cecil says he finds it inexcusable in the circumstances. After all the confusing and conflicting advice that had been given Mr A was entitled to a full explanation and the decision not to give him one, in Sir Cecil's opinion, merits strong criticism.

It all comes down to human error. The guidelines seem to have been available and clear and the patient not to have been lacking in friends able to put up a fight on his behalf.

Unwarranted fracas

Instructions have been given to the Department of Health and Social Services by Mr Kenneth Clarke that ministers must be consulted before any doctors are referred to the Director of Public Prosecutions for possible breaches of the abortion notification laws. The decision was taken in the light of a review of the procedures ordered after the row, which broke out earlier this year (20 February, p 603), about the wording of the new abortion form (HSA 4). That resulted in several doctors being referred to the DPP by Sir Henry Yellowlees, Chief Medical Officer at the DHSS, for a legal ruling after they had refused to fill in the new form properly. The DPP decided that no action should be taken, but that did not totally clear the air over the new form. Ministers are annoyed by the fuss that was created—unwarranted in their opinion—and Mr Clarke has decided to make clear that the fears expressed about the form's import by some doctors and the proabortion movement are groundless. It was seen as an attempt to redefine the law in a narrower sense than was intended by the 1967 Abortion Act.

Asked in the Commons by Miss Joan Lestor, Labour MP for Eton and Slough, whether any review of the notification procedure had been carried out, Mr Clarke said that he had looked at the position and planned no changes. He takes the view, it seems, that how a doctor fills in the new form should not in itself be a matter to warrant referral to the DPP. That is not to say, however, that a doctor who announces he is performing an abortion on social grounds alone would not find his actions being investigated; that might be breaking the law. But a failure to complete the notification form fully is another matter.

It seems, by the way, that the outcome of the inquiries by the DPP showed that the doctors investigated had not actually been doing what they said they were doing.