Letter from Westminster

Trouble on two fronts for Home Secretary

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Troubles for politicians never come singly, and for Mr William Whitelaw, Home Secretary, they seem to keep on coming. Even his legislation in this parliament is trouble prone. He has two Bills currently in difficulties, both arousing strong opposition. The controversial Police and Criminal Evidence Bill, now finishing its committee stage in the Commons, has had the bishops added to the lengthy list of professions against it. I suspect that the government will not respond to the clerics meddling in politics, but some of the other critics may find their objections having effect, including the BMA.

If amendments may be made to that Bill, however, there is no sign that the government intends to budge over the Data Protection Bill, Mr Whitelaw's other contentious measure. That has just finished its report stage in the Lords, where Labour peers have put up a tough fight against the provisions to permit disclosure of information on certain grounds without any judicial consent having to be sought, as is required by the Police and Criminal Evidence Bill. The battle that started during the committee stage was resumed last week over clause 28, which permits disclosure of personal data without the person doing so being liable to the penalties set out elsewhere in the Bill for wrongful disclosure. The clause permits disclosure for the prevention and detection of crime, the apprehension or prosecution of offenders, the assessment or collection of any tax or duty, and the control of immigration. The argument is that such blanket exemption may not require disclosure, but it will make it difficult for those asked, such as doctors, not to do so. The damage inherent to relations between doctors and patients is obvious.

Lord Elwyn-Jones, the former Labour Lord Chancellor, who has been leading the fight, moved an amendment designed to meet the objections raised by the medical profession. It would have required that disclosure of data would be done "under the compulsion of law." He complained that the Bill adopted a totally different policy for dealing with the same problem from that in the Police and Criminal Evidence Bill.

The seriousness and importance of the matter was reflected in a letter sent to Mr Whitelaw by Sir Douglas Black, president of the Royal College of Physicians, on behalf of an inter-professional working group that he chaired, which had been set up to advise the Department of Health and Social Security on access to personal health information under the Bill, he said. The letter—the BMA and the Royal Colleges of Nursing and Midwives were among the bodies represented—said that the clause as drafted would allow anyone who happened to have custody of health records to disclose them to a wide range of public authorities without the consent or even the knowledge of the patient or client or the health professional who had charge of his welfare, without judicial control, and without any prior or subsequent notice of such disclosure.

"My working group have asked me to tell you that they find this proposal quite unacceptable," Sir Douglas wrote. "I understand that amendments have been put down for the report stage and I would urge you either to accept these or to put forward appropriate government amendments which will meet the objections." The government did neither. The

amendment moved by Lord Elwyn-Jones was rejected by 91 votes to 81. Lord Elton, the junior Home Office minister in charge of the Bill in the Lords, denied that there was any comparison between the two Bills. They dealt with different issues and it would be wholly unreasonable to apply the same provisions in respect of both issues, he said. Clause 10 of the Police and Criminal Evidence Bill enabled the police to obtain evidence relating to the commission of a serious arrestable offence when they suspected someone had evidence but would not make it available. Clause 28 of the Data Protection Bill applied when somebody wanted to disclose information to the police in connection with, for example, the investigation of a crime and meant he could do so without fear of contravening the provisions of the Bill.

"It does not, however, oblige the data user concerned to disclose any information in these circumstances, nor does it even authorise him so to do," he said. "This clause does not affect in any way any obligation of confidence which may apply to a data user in relation to the information he holds about a data subject."

And that was that. Lord Elton said that he held Sir Douglas and his supporters in high regard, but he gave no concessions. Lord Elwyn-Jones said that he did not think that his explanation would satisfy the eminent men who had written the letter, and made clear that it did not satisfy him either. "What is voluntary and occasional is now being given statutory significance," he said. "What is voluntary will quickly become what is obligatory, or what is sought to be obligatory. The answer is quite unsatisfactory."

Fowler maintains the middle ground

The government's election manifesto will contain, if the Tory right has its way, a more radical approach to health care with greater emphasis placed on the private sector and positive encouragement to people to take out private health insurance. The goal of the far right is, it seems, to reduce the National Health Service to little more than a safety net. This is pretty much what the Think Tank report—abandoned by the Cabinet after it was leaked last year—would have achieved if implemented. The Prime Minister has, of course, insisted that she supports the NHS, but the doubts about the Tory approach to its future remain, and it is in the interest of the Labour Party at least to ensure that they thrive. Mr Norman Fowler, the Social Services Secretary, arrived at the DHSS with a rather drier reputation than he possibly merited, and certainly one that he has not sustained. Since he took the job he has from time to time made a speech setting out his philosophical approach to health, the latest being to a meeting in London of the Hospital Discussion Group. It made quite clear that the far right has a fight on its hands. Both he and Mr Kenneth Clarke, the Health Minister, are totally opposed to the introduction of new charges—"Over my dead body," said one of them. Mr Fowler is not opposed to finding out whether there are more efficient ways of doing things in the NHS—hence the recent encouragement to contract out ancillary services such as cleaning and catering. But the key word is efficiency. If it is not more efficient to do so then it will not be done.