Letter from Westminster

Ombudsman's worries on complaints procedure

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The battle to extend the powers of the Health Service Ombudsman to include matters of clinical judgment continues. Mr Patrick Jenkin, Social Services Secretary, has now told the Joint Consultants Committee to go back to the drawing board, as I suggested was likely in March (22 March, p 877). Mr Jenkin did not like the proposals submitted to him by the JCC in January for a self-policing system operated by consultants. The Ombudsman, Mr Cecil Clothier, refers to the difficulties which would arise if his powers were so extended, as many MPs want, in his latest report to Parliament. In particular, he is concerned about the risk of parallel jurisdiction between his office and the courts in respect of medical negligence, and thinks that a person with a complaint should have a choice of remedies. He could go either to the courts or to the Ombudsman. He should not be able to play one off against the other. Mr Clothier passes no judgment on whether his powers ought to be extended in this respect but points out that he has an interest in what happens because he must ensure his effectiveness and reputation are not damaged.

One obvious danger, he suggests, is that someone dissatisfied with a particular aspect of medical treatment he has received would use the Ombudsman to obtain a "free" investigation into the merits of a possible case against a health authority. A report into the complaint which came out in the plaintiff's favour might then be used as a basis for obtaining legal aid for a subsequent action—an abuse never intended by Parliament. The more serious risk he cites, however, is what would happen if an action were to go against the plaintiff, possibly on different evidence. The effect would be to diminish the standing of his reports and thus of his office. Another danger to which he draws attention is that the co-operation and frankness he has enjoyed from NHS staff in the past in his investigations could be seriously lessened if they thought his reports might end up as the basis of a legal action against them. Mr Clothier believes his either/or but not both remedies would be acceptable to most people since in many of the cases he looks into the aggrieved person is genuinely not wanting money—just a simple, factual explanation of what happened and why. He also makes the point that should his powers be extended to include matters of clinical judgment he would want to retain the discretion not to investigate a case if he did not think it desirable or useful to do so.

Mr Clothier would like his powers extended in one respect. He wants to be able to start an investigation into an administrative failure on his own initiative. The need for him to be able to do this was highlighted by a case of a bogus doctor who obtained employment in a hospital as an orthopaedic surgeon and during the latter part of 1977 carried out several operations. Following his discovery and conviction in the courts the health authority decided it would be in the best interests of the patients concerned not to tell them that their operations had been carried out by the bogus doctor. As a result the Patients' Association referred the matter to Mr Clothier. But the legislation by which he is bound—the 1977 National Health Service Act—is so drawn that

the plaintiff must have suffered injustice or hardship. The Patients' Association did not meet the legal criteria of having been personally aggrieved so all Mr Clothier could do was obtain an assurance from the authority that the patients had subsequently been seen by qualified staff. Mr Clothier suggests that the limitation on his jurisdiction conflicts with the public interest and the possibility of a change should be looked into.

Man of many causes—including kidney donors

Mr Tom Dalyell, Labour MP for West Lothian, is a man of many causes—his most recent have concerned the false nuclear alarm caused by the faulty Pentagon computer which put the United States forces on the alert and the appalling events in Afghanistan. Mr Dalyell, however, is adept at juggling his issues. One which has crashed to the ground looks like being his campaign for an opting-out kidney donor scheme. Dr Gerard Vaughan, the Health Minister, told him in the Commons that public opinion was against it, though he did politely promise to take a second look at the public opinion survey on which he had based that judgment. One possible way of testing opinion was mooted by Mr Peter Bottomley, Conservative MP for Woolwich West, who suggested the best method would be to get a sample done through GPs rather than tying the matter into a questionnaire which might be about totally unrelated subjects. Mr Dalyell had argued that casual questions from strangers on highly emotive issues were not really a proper way to determine policy in this area. Dr Vaughan politely agreed to support Mr Bottomley's proposal but it is probably the last we will hear of it.

Evidence of Mr Dalyell's determination to seize every chance that comes his way was provided earlier in the day when the Scottish Grand Committee, on which all Scottish MPs sit, held a debate on making the best use of the Health Service in Scotland. The two and a half hour debate wound a fairly predictable course until Mr Russell Fairgrieve, the Scottish Health Minister, made the mistake of sitting down at 12 59 pm, one minute before time ran out. In leapt Mr Dalyell, who had not been called to speak, to challenge the whole idea that the Marplan survey on which Dr Vaughan bases his opinion was gospel. "If one is asked about a very emotional and personal issue such as kidneys in a survey of some kind, by people who may be strangers, surely one's answers count for less than what emerges from the kind of discussion in depth which is the only thing that will give one a real public reaction," he suggested. Apart from being a demonstration of enterprise by a backbencher, the incident also says something about the effectiveness of short speeches.

Mrs Renée Short, Labour MP for Wolverhampton North-east, chairs the Social Services Committee, which has been inquiring into perinatal mortality. Her report is now finished and with the printers. Publication date has been fixed for Wednesday next, 16 July. "There will be lots to write about in it," she promised me the other day. As for what that may be, parliamentary privilege seals her lips. MPs often have rather optimistic views about their literary offspring's quality but she may be right. Watch this space.