Secrecy in the NHS

NHS chief executive wants a culture of openness

EDITOR,—The “evidence” of Stalinism in the running of the NHS presented by Naomi Craft and colleagues does not warrant the exaggerated claims made for it.¹ A manager “advised” not to publish articles critical of current policy nevertheless does so; is this Stalinism in action? Bugging of a telephone—a deplorable action—is cited, but the fact that the chief executive concerned promptly departed from her post is omitted. This collection of anecdotes does not bear objective scrutiny and has no place in a reputable journal that sets the highest standards of evidence in its coverage of clinical and scientific matters.

I am appalled at the thought that there remain in the NHS some people who feel that they work in a climate that prevents them from freely expressing their views. That is not the kind of organisation I wish to lead. I do not believe that there is any place for “confidentiality for commercial reasons” in the family of the NHS.

I want the network of public health specialists to grow in strength by increasing its direct influence over the development of policy. I want people to make a reality of our commitment to make more information available to the public through the patient's charter and the code of openness—subject only to our commitment to patient confidentiality. I want no barrier to the free flow of information supporting the development of medical science.

Doctors and managers in the NHS have a collective and an individual responsibility to help maintain a culture of openness within the service. Making sure that this happens is not a job for the “thought police”; it is a question of leadership at every level of the service.

ALAN LANGLANDS
Chief executive

NHS Executive,
Department of Health,
Leeds LS2 7UE

1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)

Wide public consultation in Cambridge and Huntingdon

EDITOR,—Naomi Craft and colleagues raise several questions that need to be addressed by the NHS Executive—sooner rather than later.¹ We were shocked and surprised at the cases highlighted as they seem to be at variance with our experience in Cambridge. Cambridge and Huntingdon Health Commission prides itself in retaining a culture in which people can challenge from within. Often the most creative people are difficult to live with; they present many challenges, but ideas that are seemingly subversive and controversial can become the informed and innovative policy of tomorrow.

We try to involve both the public and staff in our decision making and have a range of methods of doing this. We invest heavily in finding out public opinion because we believe that our public has a worthwhile contribution to make to our planning process. We have six board meetings a year, at which all important decisions are made; the public

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is welcome to attend. We also consult extensively with users and the informed lay public. Recently we took our draft purchasing plan to several groups in outlying small towns and high density residential areas so that we could have a different perspective on it. Our focus groups include people from a wide variety of backgrounds, and we have found their insight to be of particular benefit when we finalise our strategies. All those involved during the consultation period are notified of how their comments have influenced our final strategy.

Rather than gag our staff we encourage them to talk direct to the media. We promote this by providing special training to give them confidence in oral interviews and in dealing with the media.

We believe that we are pursuing an open and honest management style in which staff and the public are encouraged to make their views and opinions known. Clearly, other parts of the NHS need to follow our lead.

MARGARET SCOTT
Chairman
STEPHEN THORNTON
Chief executive

Cambridge and Huntingdon Health Commission,
Fulbourn Hospital,
Cambridge CB1 5EF

1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)

Threat of action for libel

EDITOR,—The *BMJ* is to be congratulated for its strong stand against the insidious erosion of freedom of speech in the NHS.¹ As Smith notes, one of the mechanisms by which this is being executed is the threat of action for libel, something of which I have personal experience. A recent ruling by the law lords may give some support for those who seek to foster a free and open debate about the NHS reforms.²

The judgment dealt with a local authority rather than a trust or a health authority. Nonetheless, a key part of the judgment was that “not only is there no public interest favouring the right of organs of government whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it...because to admit such actions would place an undesirable fetter on freedom of speech.” A crucial issue is the extent to which a trust or a health authority can be judged to be an organ of government, given the dubious legal basis under which trusts have been established.

The judgment, however, drew on a previous one, which had stated that those “responsible for public administration must always be open to criticism.”³ While the law as it relates to the specific situation of trusts may need to be tested, the principles seem clear.

MARTIN MCKEE
Senior lecturer

Department of Public Health and Policy,
Health Services Research Unit,
London School of Hygiene and Tropical Medicine,
London WC1E 7HT

1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)
2 Derbyshire County Council v Times Newspapers Ltd and others. [1993] 2 WLR 449.
3 Hector v attorney general of Antigua and Barbuda [1990] 2 AC 312.

Dismissal means denial of right to practice

EDITOR,—The two particular concerns expressed in the articles on secrecy in the NHS—namely, the status of public health doctors and freedom to talk to the press—are examples of bluff by the management.¹ The British government told the European Court of Human Rights that doctors were not civil servants and so could not be ordered about like civil servants (this was conceded in the case of *Damell v the United Kingdom*).² This principle had previously been established in the European Court of Human Rights in other cases involving the special characteristics of a profession.³

The NHS is a monopoly employer of hospital and public health doctors. Dismissal therefore means being denied the right to practise as a doctor. In all states in the European Union, to practise as a doctor is a civil right granted by those bodies empowered by law to issue the appropriate licences—for example, the General Medical Council. Civil rights can be removed only after a fair trial by a body appointed by law, according to article 6 of the European Convention on Human Rights.⁴ Unlike civil servants, public health doctors therefore have the legal right as well as a moral, ethical, and professional right, without threat of dismissal, to speak out on any public health matter—for example, on any action by a hospital trust that endangers the public health, be it its disposal of clinical waste or cutting of a vital clinical service.

Under article 10 of the European Convention on Human Rights everyone has the freedom of speech and expression subject to such obligations as the security of the state and the freedom and wellbeing of other individuals.⁵ This human right cannot be taken away by any employer, nor can it be a condition of employment: except where immediate threat to national security is concerned, no state or state run monopoly nor any of its branches or “trusts” can make the suspension of a human right a condition of employment. The English courts have also determined that it is legal to criticise a public body such as a health authority without fear to criticise a public body such as a health authority without fear of libel or any threat flowing from an allegation of bringing the service (or hospital trust) into disrepute. It therefore follows that anyone threatened with suspension and dismissal should take out a legal injunction to remove the threat of dismissal as being contrary to European law.

There have been a number of attempts to discipline and dismiss doctors (including one

public health doctor) for talking to the press. They have all failed: either the doctor has been reinstated or an expensive settlement has had to be paid by the health authority.

P J TOMLIN
Secretary

Society of Clinical Psychiatrists,
Downton,
Wiltshire SP5 3HJ

- 1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)
- 2 European Court of Human Rights. *Case of Damell v the United Kingdom*. Strasbourg: ECHR, 1993. (34/1992/379/453.)
- 3 Van Dyke B, van Hoof GJH. *The theory and practice of the European Convention on Human Rights*. 2nd ed. Deventer, Netherlands: Kluwer Law and Taxation, 1990.

Creeping censorship occurs

EDITOR,—I was appalled to hear the response of Alan Langlands, the chief executive of the NHS Executive, on BBC Radio 4's *Today* programme (16 December 1994) to Naomi Craft and colleagues' articles.¹ He accused the *BMJ* of sensationalism and said that there was no place for secrecy (I believe that he qualified this to commercial secrecy) within the NHS. I believe that consultants are now the only people who are still able to speak out; indeed, we must do so, otherwise we are in danger of losing our ability to do so through the fear of violence rather than violence itself. We still have freedom of speech within our contracts, and it is vital that we do not relinquish that either positively by a change of contracts or negatively by refusing to exercise that option.

My trust has a reasonably enlightened approach. It admits that consultants may speak to the press about whatever they like without prior consultation with the managers. There is, however, a sting in the tail: if the press, especially the visual media, wishes to come on to trust property for interviews then the managers decide whether they wish to talk to the press and also whether consultants can talk to the press on trust property. In a recent incident I was to be filmed in the trust's buildings (I had received a guarantee that the trust would be anonymised as I was speaking not on behalf of the trust but on national matters). My request to the managers for permission to be filmed in the hospital buildings was refused. There is, therefore, creeping censorship as consultants can be gagged on trust property. It is vital, however, that consultants retain their right to freedom of speech and, if necessary, stand outside the gates of the trust to give their interview.

STEPHEN J ROSE
Consultant paediatrician

Department of Child Health,
Birmingham Heathlands Hospital,
Birmingham B9 5SS

- 1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)

Cordial relationships restored

EDITOR,—I do not wish to detract from the main message of Naomi Craft's article on secrecy in the NHS but wish to prevent possible false inferences being drawn from the two items she discusses about which I am familiar (items 24 and 25).¹

In item 24 she says that "senior consultants . . . attempted to persuade the managers not to follow through this threat" (of disciplinary proceedings); in fact, the managers were advised not to follow through this threat and, to their credit, readily took the advice. The phrase "attempted to persuade" implies recalcitrance or resistance on the part of the managers; this was not the case.

In item 25 the phrase "were called to a meeting with the medical director" implies a directive or instruction; in fact, we were invited to meet the medical director to discuss with him the contents of the letter. The final sentence again implies that

we felt threatened. It is certainly true that when the letter was read out to Mr Kyle at the meeting of the hospital staff association (to which he had asked to be invited), and when the letter was subsequently leaked, the general atmosphere was fraught, but at no time were any of the five signatories subjected to any unpleasantness or threats from the trust managers. Since then, cordial relationships have been completely re-established and the running of the hospital by the trust has improved.

I J T DAVIES
Consultant physician

Raigmore Hospital NHS Trust,
Inverness IV2 3UJ

- 1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)

Doctors were previously the leading practitioners of secrecy

EDITOR,—Naomi Craft asks for further examples of secrecy surrounding health and the NHS in Britain.¹ May I nominate the Access to Medical Reports Act 1988 (exemptions, section 7, paragraph 1)² and the Access to Health Records Act 1990 (section 5, paragraphs 1 (a) (i) and (b))³? But these statutory restrictions on patients' already statutorily limited rights of access to their own medical records are not the result of any nefarious new trend within health service management. Secrecy in the NHS has long been the rule rather than the exception. Historically, doctors have been its leading practitioners. All that has changed in the new era is who now has the power to keep secrets from whom.

It is not clear whether what doctors are objecting to is secrecy itself or merely that fact that they now find themselves on the receiving end of it. Perhaps the nature of their complaint will be clarified by the future actions they undertake to alleviate their distress. Meanwhile, it should be recalled that, when the legislation was introduced, the then junior health minister, Stephen Dorrell, said that patients were not to be granted unrestricted rights of access to their entire medical records because it "wouldn't be fair to doctors" for people to know what doctors had written about them in the belief that it wouldn't be seen.

The metaphor of Stalinism rising may be misleading. The differential diagnosis of the current malaise surely includes the "biter bit" syndrome and "chickens returning to the roost," not to mention "monkey see, monkey do."

VICKY RIPPERE

London WC1H 9DR

- 1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)
- 2 Access to Medical Reports Act 1988. London: HMSO, 1988.
- 3 Access to Health Records Act 1990. London: HMSO, 1990.

Clinicians should not restrict access to basic information

EDITOR,—The articles on the rise of Stalinism in the NHS, which espouse liberty to facilitate transparency and accountability so that clinicians and others can blow the whistle on poor management practices, are laudable.¹ However, consistency in advocacy and behaviour is essential.

Openness for whistle blowers should facilitate public analysis and debate about all aspects of clinical practice. Thus clinicians must also be accountable and not inhibit the liberty of others who want to know how doctors use society's scarce resources. Consequently, interpretable information based on the data on surgical and anaesthetic mortality collected by the national confidential enquiry into perioperative deaths in England should be openly available for non-clinical managers and patients to blow the whistle on inadequate consultant practice. The results of

the investment of over £200m in clinical audit might also be opened up to public scrutiny to promote accountability in clinical practice and assessment of whether audit processes have been conducted with sufficient rigour and have led to appropriate change in clinical practice. The decisions about who gets distinction awards should be made in public so that the inefficient and unethical tendency to allocate over £100m to "chums" and those about to retire can be seen for what it is.

Surely it is time for free speech and more open debate about these and many other clinical topics. It is unacceptable for clinicians to restrict access to basic information. We look forward to an open and accountable 1995 in all aspects of NHS decision making.

ALAN MAYNARD
Director

Centre for Health Economics,
University of York,
York YO1 5DD

TREVOR SHELDON
Director

NHS Centre for Reviews and Dissemination,
University of York,
York YO1 5DD

Title is sensationalist and inaccurate

EDITOR,—For a journal with the influence of the *BMJ* to give any series of articles on freedom of speech within the NHS the title "The rise of Stalinism in the NHS" is a major editorial error.¹ The British establishment consistently failed to grasp the nature of socialism in Soviet Russia. But during the purges Stalin was directly responsible for the deaths of, at the very least, 15 million people. A further 20 million Soviet citizens died during the second world war, the first two years of which Stalin spent as the ally of Nazi Germany.

By all means argue with passion and attack injustice. But it seems particularly wrong for the scientific and medical establishment to abandon accuracy and devalue its argument in the fashion of the uninformed tabloid press by using allusions that could not possibly ever be valid for the sake of sensational and inaccurate publicity.

H J N ANDREYEV
Research fellow

Institute of Cancer Research,
Sutton,
Surrey

- 1 Craft N, Sheard S, Smith R. The rise of Stalinism in the NHS. *BMJ* 1994;309:1640-5. (17 December.)

Royal Devon and Exeter Hospital has policy of openness

EDITOR,—Naomi Craft gives 30 examples of secrecy in the NHS, which range widely; if these are all substantially correct there is indeed cause for concern.¹ She specifically lists 10 hospital trusts—among them the Royal Devon and Exeter Healthcare NHS Trust—which, she claims, "have inserted a confidentiality or conflict of interest clause, or both, into contracts." She implies that these have replaced paragraph 330 of the Whitley Council conditions of service for medical and dental staff and that consequently they are "gagging clauses."

In fact, at the Royal Devon and Exeter Hospital paragraph 330—as quoted in the article—is retained and our consultants have the right to speak freely. Far from restricting information, we have a clear policy of openness among all our staff and board members; we ask them to declare potential conflicts of interest in business matters. This is a proper standard of accountability in the public arena. Furthermore, we believe that public interest is best served by a clear policy requiring confidentiality about matters concerning patients. In addition, we require internal consultation about