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DEPARTMENT OF HEALTH

CONFIDENTIAL

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From the Secretary of State for Health

19th June 1990

Dear Secretary.

NHS AND COMMUNITY CARE BILL: LORDS DEFEATS

Thank you for your letter of 7 June about the timing of Royal Assent for the National Health Service and Community Care Bill in which you agree it would be useful to discuss the handling of the Lords defeats on the community care element of the Bill.

In preparation for our meeting tomorrow it may be helpful to set down the details of the Lords defeats and my proposals for handling them. At this stage the only parts of the Bill affected are those relating to community care services in England and Wales. No attempt has been made to extend these provisions to Scotland.

The Government has so far suffered four defeats at Lords Committee stage. The first three of these inserted new clauses at the start of Part III of the Bill. The first of these (clause 40) would in effect require the Government's contribution to local authority spending on community care to be ring fenced in a specific grant. The Secretary of State would also be required to publish details of sums available, details of the sums requested by local authorities, and the formula for grant distribution.

The effect of this provision would be to separate central support for community care from other central government support for local authorities. We have argued consistently against giving any special status or treatment to community care finance. This amendment therefore is unacceptable and I would wish to see it overturned in the Commons. However, there is strong support for ring fencing amongst our own backbenchers and overturning the amendment may not be straightforward. One concession which I am

considering making in this area is to offer a specific grant to cover local authority funding of voluntary agencies providing services for drug misusers and problem drinkers. Fears have been expressed in both Houses that local authorities will fail to provide services for these groups. The arguments are very similar to those which apply to the mental illness specific grant. The sums ringfenced would be small. Such a concession would be very well received in both Houses and would show flexibility on our part in being prepared to contemplate specific grants where there was a genuine case for them. I would welcome Norman Lamont's and Chris Patten's views on this proposal. If we were to introduce such a grant it would obviously be helpful if the concession could be made at CCLA rather than at Third Reading in the Lords. I consider that with this concession it would be most helpful in convincing our own supporters that we had taken on board genuine concerns and that the wider Lords' amendment relating to general ringfencing should be overturned.

The other two new clauses at the start of the Part III of the Bill are clauses 41 and 42. Clause 41 would delay the start of the community care provisions, except those relating to community care plans, until the Secretary of State made an order which he could not do until satisfied after consultation that local authorities are likely to have sufficient resources available to fund the first five years of the operation of community care services.

This clause is complemented by clause 42 which, in the first five years of the community care arrangements, empowers the Secretary of State to make grants towards community care services and requires him to have regard to the desirability of making such grants when deciding whether the resources available are adequate.

These two new clauses would effectively mean that the community care arrangements could not start until the full amount of the costs of local authority plans could be met from a combination of central and local resources and specific grants. In effect central government would be required to underwrite the full costs of local authorities' community care services during the first five years of operation. Again these two clauses are entirely unacceptable.

The fourth defeat during Lords' Committee concerned community care plans. Lord Seebohm moved an amendment, now clause 47(2), requiring local social services authorities which are also housing authorities to include in community care plans details of how they propose to meet the housing needs of people in need of community care services. Christopher Chope has written to Virginia Bottomley saying that in his opinion this provision implies that the local authorities concerned would have a duty to meet the housing needs of those in receipt of community care

services and would at least place an additional duty upon them. As Christopher says we need to avoid this. In his view no requirement should be placed on the face of the Bill beyond a requirement for housing authorities to be consulted so that the housing dimension of community care plans is always considered. This is already provided for in the Bill by clause 47(3)(c) which requires consultation when the housing and social services authorities are different. I understand it is not possible to make further provision in law for consultation, since it is not possible to require a local authority to consult with itself, which would be the case where the housing authority and social services authority were the same. Subject to confirmation by Parliamentary Counsel of these effects and the restrictions of making further provision I judge that we have no alternative but to remove this amendment in the Commons.

We sustained a further defeat on the third day of the Lords report over an amendment which adds to clause 43 by inserting further subsections into section 26 of the National Assistance Act 1948. These require any person with whom a local authority arranges residential or nursing home care to disclose any relevant criminal convictions and require the police to disclose any such convictions to the local authority. The Secretary of State would have power to specify what relevant convictions are and the person subject to police disclosure has to be informed of the details disclosed by the police. This amendment was passed even though we made it clear we intended to lay new regulations under the Registered Homes Act 1984 requiring the disclosure of convictions by applicants for registration. The amendment was carried because we had to report that we had failed to make any progress in our negotiations with the Home Office and the Association of Chief Police Officers on voluntary disclosure of criminal records by the police. In view of this failure to meet the very real concerns expressed in both Houses over this issue, the defeat is not wholly unwarranted. I am seeking David Waddington's views on ~~this issue but I~~ anticipate that he will wish to see this amendment overturned, although there are bound to be strong feelings about this in the Commons.

Although we did not suffer any further defeats in the Lords on the final day of report stage two contentious issues were taken away and are likely to appear again at Lords third reading. The first of these concerns the implementation of sections 1 and 2 and 3 respectively of the Disabled Persons (Services Consultation and Representation) Act 1986. We have announced that we will make decisions on implementation of these sections in the light of estimates of costs which we have asked if local authority associations to provide. These provisions overlap to some extent with the new community care arrangements and I do not believe

there is a case for bringing them into effect. They are likely to be costly and a requirement to bring them into effect at the same time as the community care provisions (which is what the amendments entail) would be virtually unworkable. If any amendment is put into the Bill it will need to be removed at Commons Report. This is likely to be difficult since there is wide support there for the implementation of these provisions.

The second issue is enabling local authorities to make payments to disabled people instead of arranging services for them. Both Virginia Bottomley and Oliver Henley have given public support to such moves in principle in both the Commons and the Lords. The principle is widely advocated in the field. Norman Lamont is not satisfied that we could control local authority expenditure even if local authorities were under a duty not to spend more by way of payments than they would in arranging services in a conventional way. He has therefore withheld his agreement. If an amendment is added to the Bill in the Lords we shall need to seek to remove it in the Commons although we are likely to have considerable difficulty in doing so as there is widespread support for the idea.

I am copying this letter to Tim Renton, John Belstead, Bertie Denham, Malcolm Rifkind, David Hunt, David Waddington, Chris Patten, Norman Lamont, Sir Robin Butler and First Parliamentary Counsel.

KENNETH CLARKE