

Column 865

Winnick, David

Wise, Audrey

Worthington, Tony

Wray, Jimmy

Wright, Dr Tony

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Young, David (Bolton SE)

Tellers for the Noes: Mr. John Spellar and Mr. Eric Illsley

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Question accordingly agreed to.

Mr. Deputy Speaker-- forthwith declared the main Question, as amended, to be agreed to.

Resolved,

That this House notes that since the introduction of the Government's health reforms the number of patients treated has risen, waiting times fallen and quality of care improved; welcomes independent support for the reforms from sources such as OECD; and calls upon Her Majesty's Government to continue policies which uphold the values and ethos of the NHS, further reduce administrative duplication and waste and deliver a flexible service able to respond to the changing needs of patients.

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Social Services Files (Wandsworth)

Motion made, and Question proposed, That this House do now adjourn-- [*Mr. Lightbown.*]

10.27 pm

Mr. Neil Gerrard (Walthamstow): I am grateful for the opportunity to raise a case that concerns a constituent of mine. I want to ask the Minister to consider what he might be able to do, especially about access to files at Wandsworth council. For reasons that will be obvious, I shall not name my constituent or any of the other individuals concerned with this case.

I shall provide a little of the background because that is necessary if we are to understand what has happened with regard to Wandsworth. My constituent was in the care of Wandsworth council from the age of 13 under a care order, having been voluntarily in care for some years before that. In 1981, she was placed by Wandsworth into a residential home in Gravesend called Kendall house.

Although that home is not the subject of the main substance of my remarks, I want to say a little about the conditions there because they are relevant to the question of Wandsworth council's responsibilities. It is obvious that the home's regime involved regular and exceptionally high doses of drugs, especially for young people who were regarded as problems. My constituent's dosages

included intravenous doses given while she was being held down by both male and female staff. I understand that the recommended valium dose for children and teenagers, even in exceptional circumstances, is in the range of 5 to 10 mg, yet I have been told that, in this case, doses of up to 100 mg were given intravenously. I have read copies of files that show that three or four doses of 20 mg were given in a day. High doses of valium at that age are recognised as contributing to hallucinations and to behavioural problems. By any standards, those doses and their frequency are disturbing. Most people would find the attitudes revealed in the home's files to be unacceptable. The files are among those to which access was refused by Wandsworth council but which became available through the Council for Social Responsibility in the dioceses of Canterbury and Rochester. It made them available without any difficulty and it had been responsible for running the home, which is now closed. Credit is due to the council for making the information so readily available.

In 1984, my constituent was placed with a foster parent and, shortly afterwards, she alleged that the man had raped her. The way in which that complaint was dealt with was dreadful and Wandsworth council has more or less admitted that since. A letter from the director of social services states:

"Interpretation of the events needs to be set in the context of 1984, i.e. well before the implementation of today's procedures for dealing with allegations of abuse, including sexual abuse." That amounts to an acceptance that the standards applied were not acceptable and would not be remotely acceptable now.

The rape allegation was not immediately reported to the police and, worse than that, a few days later my constituent was forced to confront the man, who she alleged had raped her, and his wife without the presence of a social worker. The files show that the social worker was away

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on holiday at the time. Shortly afterwards, the social services department agreed that, if she did not withdraw her allegation, it would write to the police and ask them to investigate. It is clear from the paper in which it agreed to do that that it had already made up its mind. The paper states:

"When we receive formal notification from them"--

that is the police--

"that the allegations will not be proceeded with, because of lack of evidence, the Department's records will need to be amended so that it is absolutely clear that her allegations were totally unsubstantiated and merely a fantasy".

Clearly, the department had made up its mind. It did not believe her and it was not going to refer the matter in any serious way to the police.

That gives rise to a number of questions. Why did Wandsworth social services allow all this to happen? Why were not the police immediately involved in investigating the rape allegation? Why will not Wandsworth council release, or even allow a local councillor to read on a "need-to-know" basis, its files relating to these events and to its investigation into the suitability of the foster parent? Over several years, my constituent has repeated her story to a number of social workers. I find it astonishing that it was only last year that a social worker in Waltham Forest, where she now lives, suggested that the matter should be taken seriously, that she should see a solicitor and that there should be an investigation into what had happened. The result of that was that Kent police reopened their investigation into the rape allegation and are investigating whether the drugs regime was legal.

The problem all along has been the refusal of Wandsworth social services to make its files openly available to the police or to the girl or her solicitor. The council initially said that it would make part of the files available to the girl and a social worker. But the Kendall house files from which I quoted earlier were not to be included. When the solicitor requested full access, not only was that denied;

the previous offer of partial access was withdrawn. There is no doubt that the council's refusal to make its files available caused serious problems for the police. Some months ago, I corresponded with the police about that and they told me the Wandsworth social services had refused to allow them access to the files, claiming client confidentiality. When the police pointed out that they had full written consent from the girl to examine the files, Wandsworth council persisted in saying that the files were confidential. When the police tried to negotiate a compromise, the council then said that it was acting on advice from its insurance company and intended to deny access on the basis of that advice. The police inquiry did not have the benefit of access to the files, which made it much more difficult to pursue the inquiry. In a letter sent to me at the time, a police officer involved in the case wrote:

"From the documents that have come into the possession of the enquiry team, I can see why Wandsworth Social Services do not wish these files to be open to external scrutiny . . . I am troubled that a public service such as Wandsworth Social Services are not open to external scrutiny and the fact that they appear able to hinder and undermine a current criminal enquiry is most unsatisfactory." Wandsworth will no doubt claim that those problems have been resolved and that social services is now co-operating with the police. In fact, a different argument to

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prevent access is now being deployed. Councillor McIsaac, a Wandsworth councillor, asked the leader of Wandsworth council specific questions about access to the files. In answer, the leader of the council said that public interest immunity, in the council's interests and in the interests of third parties to whom the file information relates, prevented access to the files. The letter from the council concluded:

"For this reason, although officers co-operate fully with the Police in being interviewed, answering questions and supplying specified documents on request, files will only be released to the Police when they have obtained a Court Order."

I am at a loss to understand how on earth the police are supposed to know what documents to specify or what questions to ask when they obviously need to look through the files to see if they contain anything to substantiate an allegation.

I hope that the Minister agrees that this is a disturbing case and that it should be possible to conduct a thorough investigation either to substantiate or refute the allegations that have been made. I hope that he will accept that the girl has the right to a proper investigation of her treatment, whatever the outcome. Evidence in the files may back up the allegation. She should have the right to find that out.

If we assume for a moment that the man accused of the rape is innocent, it is not in his interests for stories, from which he can clearly identify himself, to appear in the local and national press. He, too, would obviously be concerned about whether the files were made public.

I do not believe that it is in anyone's interest simply to hide away from investigation or to reach the point at which cases get dropped because it is impossible to obtain full information. There is no doubt that Wandsworth council is afraid of legal action against it. It is hiding behind the Access to Personal Files Act 1987, the public interest immunity argument and the argument relating to the advice of the third party, the insurers. The 1987 Act was passed because problems about access had arisen. The problem had been recognised well before that, however, and in 1983 Secretaries of State issued advice to local authorities to the effect that the Government shared the increasingly held view that people in receipt of services should be able to see what had been recorded about them. The debate on access to information had already been running for some time and it is clear that, in 1983, it was shifting in favour of open access.

May I make two points on public immunity? First, some of the documents to which Wandsworth

social services are still refusing access have become available by other means, so it seems pointless to continue to claim immunity on those. Secondly, the argument about candour, which was put forward when the Act was introduced, has shifted over the years. It was said that the frankness of social services would be inhibited if they thought that what they put on record might be disclosed later. In any case, such an argument should be outweighed by public interest. There is public interest in seeing that justice is done.

If the issue concerns safeguarding third parties, it is possible to do one's best to ensure anonymity so that, when names are mentioned, they are not released. To refuse access on third-party grounds should be extremely

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unusual. Again, I thought that that argument had been accepted. When the social services regulations were debated in 1989, the then Minister said:

"Information may be withheld because of a risk of serious harm to the health or emotional condition of the individual or a third party. We have said that withholding information on that ground would be most exceptional."--[*Official Report* , 7 February 1989; Vol. 146, c. 934.]

That was the Government's view when the regulations were introduced.

However, the continued refusal cannot but suggest that there is something to hide. Moreover, pressure has been put on my constituent to drop the case. In direct telephone conversations with senior Wandsworth social services officers, she has been told, "Forget all that stuff from years ago and just get on with your life"--sometimes in a quite unprofessional manner.

Pressure has also been put on Councillor McIsaac, who has been asking the questions in Wandsworth, to drop the case. Whenever the case has been publicised in the local or national press, she has received anonymous phone calls. They have all been abusive and from the same person, asking her to drop the case. It is clearly someone who knows precisely what it is about, because the caller has used the name of the woman involved, even though that name has never appeared in the press.

Will the Minister think seriously about what he can do to ensure not just that justice is done but that it is seen to be done? We have all seen horrendous cases of maltreatment in residential homes. Thankfully, over the years some of those have led to changes in regulations and practice. But we should consider the fact that redress should be possible for victims of past failures of the system. It is simply not good enough to shelter behind the fact that the Access to Personal Files Act 1987 was not retrospective. There may be good reasons for not making it retrospective to reassure individuals and people who had written files expecting them to be confidential, but retrospection was never ruled out as a way of protecting a public body.

I might have some sympathy for Wandsworth social services department's arguments about releasing the files if it made an effort and offered to resolve the problem in some other way. I have seen written claims by the chief executive of Wandsworth social services that they have sympathy for my constituent. Surely the department should look for a way to answer the allegations, help her deal with the traumas that she has suffered and allow her to get on with her life. To respond by simply saying, "Forget the past" is not adequate.

When the woman started to pursue Wandsworth social services, she was and, I believe, still is much more interested in an admission that things had been done wrong, an acknowledgement that she had been badly treated and some apologies than in necessarily pursuing financial redress. The continual stonewalling is pushing her towards court action and financial redress.

Finally, I would say to the Minister that if we are interested in ensuring that local authorities improve, and maintain, their performance in the care of young people, we should not try to protect

either them or the insurers who stand behind them from the consequences of disclosure.

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10.44 pm

The Parliamentary Under-Secretary of State for Health (Mr. John Bowis): I have listened carefully to the hon. Member for Walthamstow (Mr. Gerrard). Given the serious allegations that have been made, I can well understand his concerns. I am glad to have the opportunity to explain the Department's position in relation to the case and on the wider issues that it raises about access to social work records. First, I shall say something about the facts of the specific case. I shall first discuss the allegation from 1984. That was, as the hon. Gentleman has said, the allegation made by Miss X when she was 16 that she was raped or indecently assaulted by the foster father, living in Kent, with whom she had been placed by Wandsworth borough council. My information is that, when that allegation was made, the police were notified and carried out an investigation. Later, the allegation of rape was changed by her to one of sexual intercourse. I also understand that, as a result of those investigations, the police decided not to pursue the matter further.

According to Wandsworth social services department, that department carried out a separate investigation into the allegations at that time. As a result, a decision was taken that approval should be given for the foster parents to continue to be used by the Wandsworth social services department.

The hon. Member for Walthamstow has made the point, and it has been reported in the press, that the foster parent against whom the allegations were made currently runs a residential home in Kent, registered by Kent county council, which is used by various local authorities for family-based residential care for young adults with learning disabilities.

I understand that Kent social services department, which is the registering authority and which, I understand, made its own placements in the home concerned, is now fully aware of the background to the case. Decisions on the suitability of a specific carer must be a matter for the people concerned locally. Obviously, we would expect all the necessary checks on suitability to be made. I understand that Miss X raised the issue of the alleged abuse again in the autumn of last year--about 10 years after the original allegation had been made and inquired into by the social services and the police. She asked the Kent constabulary to reopen the matter and the police in turn asked the London borough of Wandsworth whether it had records that might assist the police investigation.

I understand that, at the time of the initial approach from the police, it was unclear whether they were seeking to reopen the case as such or merely seeking to respond to a complaint about the way in which the case had been handled in 1984. It is also not clear to me, from the papers that I have seen, whether, at that time, the Kent police had reviewed their own papers from 1984, relating to the way that the original allegations were treated.

It might be helpful if I now explained briefly the Government's policy on access to social work records.

For many years, all social work records were regarded as the confidential property of the authorities that compiled them. The person in respect of whom the record was compiled had no right of access to it. However, as the hon. Gentleman has acknowledged, social services are one of the leaders in the field of opening up their records to people who are the subject of them.

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The blanket restriction on disclosure began gradually to be lifted in 1983, as the hon. Gentleman said, when my Department issued guidance to all local authorities, advising them to allow people access, subject to certain necessary exceptions. Those exceptions included records relating to earlier

periods, to which contributions would have been made on the basis that they would be treated as confidential, and material that revealed the identity of a third party.

Those administrative arrangements were replaced in 1989 by the Access to Personal Files (Social Services) Regulations, which were made under the powers provided in the Access to Personal Files Act 1987. Those regulations enshrined similar principles in law, giving a statutory right of access where specified exceptions did not apply. However, as in 1983, the provisions did not apply to earlier records compiled on the basis of confidentiality.

In the case of pre-1989 records, it is for the local authority to decide whether to release the information. In some cases, the law requires local authorities to disclose records. In the case of records that the law does not require them to disclose, it is for them to consider whether they should nevertheless release the records or whether other considerations override such action. They will want to bear in mind the rights and interests of all the parties who might be affected.

I understand that the general policy of Wandsworth council is not to release such old papers. In this case, Wandsworth, on advice, decided not to make the records available. As I understand it, Miss X's legal advisers had indicated that they might be bringing civil proceedings against the council.

It is clearly right for any council to take careful advice on how to respond to the threat of litigation. If Miss X did decide to take proceedings against the council, it would be open to her or her advisers to seek an order for pre-action discovery of documents. An application of that nature would be dealt with on its merits by a court.

Similar considerations would apply with regard to possible criminal proceedings. The police could seek an order for disclosure off the record under the Police and Criminal Evidence Act 1984. Many authorities, as a matter of policy, prefer not to release sensitive documents to the police other than when a court has agreed that it is necessary.

My understanding is that Wandsworth council has, within the constraints of the considerations that I have outlined, taken steps to respond to the matters that have been put to it. I understand that it has made it clear to the police that, although it has decided not to grant access to the files without a court order, it is happy to respond to specific queries if the police would find it helpful.

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The council has also made an offer to Miss X that a member of the council's staff should go through the relevant files with her, although it is not prepared simply to hand full records over to her. As I understand it, both those offers still stand. I have also seen a letter from Kent police to Wandsworth council stating that there is no longer a problem about withheld information, and confirming that the police and council are co-operating fully with each other. I hope that what I have said has been helpful to the hon. Gentleman in explaining something of the background and the factual position as I understand it. I also understand that the case has now been referred, on Miss X's behalf, to the local government ombudsman, who has decided to exercise his discretion and look into aspects of the handling of the case even though the matters complained of go back some considerable time. I understand that the investigation is currently proceeding. I am sure that the hon. Gentleman will understand that it would be wrong for me in any way to prejudice the outcome of the investigation, which I am sure will be thorough. Let me refer to the further allegations that Miss X has made about her treatment in the voluntary sector community with education home for children with serious behavioural disturbances in Kent, where she had been living prior to her period in foster care. I understand that it was only recently that Miss X formally complained about that--again, a considerable time after the alleged events took place. The position with regard to social work records relating to those allegations is basically the same as in the case of the allegations of abuse. But those matters--both the substance of the allegations themselves and the way in which they were handled--have also been referred to the local government ombudsman. The hon. Gentleman has

confirmed that the Church authorities responsible for the home have released the files that they held.

In conclusion, as a Government, we are committed to the maximum possible openness of personal records. But obviously there will always be cases--the case raised by the hon. Gentleman is perhaps one of them--where the sort of openness that we would all like to see will, for one reason or another, raise difficulties in the personal social services sector.

There may be problems when intimate and sensitive personal information has been provided by third parties, and when events predate the current legislation. Nevertheless, the maximum openness is what we are aiming for, within the bounds of necessary protection.

Question put and agreed to.

Adjourned accordingly at seven minutes to Eleven o'clock.