INTERJECTIONS BY THE RT HON LORD OWEN IN THE COMMITTEE STAGE (15TH DAY) OF THE HEALTH AND SOCIAL CARE BILL, HOUSE OF LORDS, 21 DECEMBER 2011

Lord Owen (Crossbench)

My Lords, I shall speak to Amendment 347A, particularly the phrase,

> *"to exercise informed choice by ensuring maximum transparency of dissemination".*

The House may remember that, at an earlier stage, I raised European Community law and the need to have a great deal more information about this issue. It is all very well for the Government to initiate this rather broad guidance about publishing information and information standards; it gives the impression that they are interested in having a wider debate on transparency. However, I got a letter from the Department of Health only late yesterday telling me that an application that I made under the Freedom of Information Act was being challenged. I started a request on 26 April 2011. I went through all the procedures of internal review on 1 June. I was eventually given a judgment in November, at which point I immediately re-requested the same information. One cannot read this correspondence without getting a sense of obfuscation, of a deliberate refusal to tackle the issues that I have been raising with the department and of a spinning-out of a process during the passage of legislation of the utmost importance to the department.

It is necessary to ask the Minister whether he knows that this letter has come to me following my request on the Floor of the

House and his courteous reply that he would look at the question. I am now told that I would normally have to go through another internal review procedure, which would take, no doubt, another month or more, by which time this Bill will have gone through all its stages and probably left the House of Lords. So underneath this is a deeper question.

I also find it slightly objectionable to have received in reply to the request a more definitive statement of the ministry's attitude. I shall read out one paragraph in particular:

"Furthermore, we agree that information relating to competition in the NHS and the delivery of healthcare services attracts the public interest".

We can all agree on that. It goes on to say:

"However, there is much information already in the public domain about how competition law does and does not apply".

But that is open to serious question. Professors on competition law have been writing to me from university departments saying that this is a very cloudy area and that it is difficult to get a lot of the information. The letter goes on to say:

"This includes recently published guidance by the Office of Fair Trading on the application of competition law to public bodies and comment on the case law relating to public purchases, which suggest that these are unlikely to be considered as undertakings and therefore could not be considered under competition law".

The implication is that the public bodies that have been created

in this Bill are unlikely to be considered. That reflects fairly accurately what in broad spirit the Minister has already been saying to the House. This is the problem. This word "unlikely" is not satisfactory when the Bill is in the last stages of its examination and when a perfectly reasonable request has been put through that, under the Freedom of Information Act, the legal advice given to a previous Government-a Labour Government-in 2006 on the application of EU competition law during the process of establishing the co-operation and competition panel should now be released.

I have spoken to the Secretary of State in the previous Government, Andy Burnham, on this question and he is wholly in favour of the release of the documentation. I cannot see any logical case, in the central circumstances of this Bill, for using the word "unlikely" in the rejection of the freedom of information. Therefore there is considerable doubt that we can have this information published as I requested before the House meets on the Bill again, which I gather is likely to be in the last few days of January. The House's business has been announced and I see that the Bill will not come before it until at least 27 January, although it is reasonable to assume that it will come soon after that. That gives a full month even allowing for Christmas and new year for the matter to be reconsidered.

I ask the Minister yet again. I will not go through internal review procedures after this length of time, and I have written to the Freedom of Information Commissioner again this morning to say that I will not use that avenue. I do not believe

that I should be asked to do so since there has also been some evidence of maladministration in the actual definition of what documents we are looking for. I urge the Minister to make sure that there is publication.

I notice that the Minister has called a debate during dinner on 10 January on this very issue. Of course, it would be helpful to the House if that document could be published before the debate takes place. I hope that the Minister will look at this again and reconsider this question and will try to ensure that the department, when there is a matter under consideration and discussion on a Bill, does not close the door without his being able to be consulted. I am quite sure that he has not been consulted because his courtesy is well known to us all. A fresh look must be given to this subject and the document published in early January.

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Lord Owen (Crossbench)

May I just make a slight correction? I said that the debate on the impact of the European Union on healthcare in the United Kingdom in the name of the noble Lord, Lord Kakkar, will be held on 10 January. It will actually be held on 11 January, as the dinner-break business. I want to be quite clear about the timing of that important debate, which at the moment is limited to a maximum of one hour.

While I am on my feet, I want to stress that every word that the noble Baroness, Lady Williams, has said is wholly appropriate. This question of risk assessment is central to the judgments which will have to be made at Report. I hope very much that we do not proceed to Report until the tribunal's judgment has been heard.