

# NHS bill: keeping parliament in dark is a constitutional outrage

The government's attitude towards publication of the risk register covering the health bill reveals a growing authoritarianism

Article by Lord Owen, published in The Observer, 18 March, 2012

Constitutional legitimacy has plagued the health and social care bill. The prime minister started by breaking an election pledge not to make yet another top-down reorganisation of the NHS. There is, therefore, no electoral mandate for the bill. He also pledged that there would be no further transfer of legislative powers to the EU without a referendum, but has nevertheless introduced health legislation that paves the way for unprecedented levels of EU interference in the NHS.

The coalition government objected within the Freedom of Information Act to my request to publish the latest (2006) legal advice to government on the implications for EU competition legislation of "any willing providers" competitively tendering across the board for NHS services. It was entitled to do so and the information commissioner upheld its view.

It also objected within the Freedom of Information Act to the disclosure of the transitional risk register covering the health and social care bill, but the information commissioner, supported by the first-tier tribunal, judged that this risk assessment should be published. On Monday before the scheduled debate on the third reading, the government will be asking the House of Lords to ride roughshod over these two judgments and not even give members time to read the judgment.

A whipped vote poses a direct challenge for Liberal Democrat peers who claim a proud record of championing the Freedom of Information Act. Peers know well that you cannot, with integrity, pick and choose between judgments. It is not acceptable to deprive the House of Lords before the third reading of the opportunity to read the detailed judgment of the chairman of the tribunal, Professor John Angel. Between now and the new

parliamentary session on 9 May there is ample time for the detailed decision of the first-tier tribunal to be published, for the government to react, preferably by publishing the risk assessment, and also for debate on the third reading.

There is a growing authoritarianism associated with this coalition government. The [Conservatives](#) did not win the 2010 election, yet they seem to forget this. Both coalition parties in the health and social care bill have gone way beyond their own agreement and in the process are defying the [Liberal Democrats'](#) conference decision. Meanwhile, the Royal College of Physicians, of which I am a fellow, has voted by 69% to reject the bill and only 6% to accept. A devastating verdict on the risk of going ahead with this legislation.

For the health and social care bill to become law on Tuesday, without at least the Lords and Commons knowing why the tribunal believes this particular risk assessment should be published, is a constitutional outrage.

Peers undoubtedly have different views on publishing the risk assessment, but this is not the issue in Monday's debate. It is that members of both houses should have the opportunity to read the detailed arguments.

The way to block the bill will be to vote against the third reading, something rarely done but, in all the circumstances, fully justified.