

FREEDOM TO CARE

*Promoting Public Accountability
Protecting Freedom of Speech in the Workplace*

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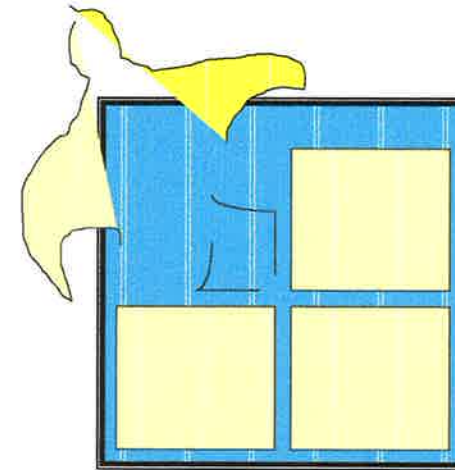
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The Freedom to Care



**Speaking Out
in an Age of
Unaccountable Organisations**

***Promoting Public Accountability
Protecting Freedom of Speech in the Workplace***

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Lord Livsey of Talgarth Austin Mitchell MP

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The Freedom to Care

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STANDING ORDER

Tear off or photocopy this page (or print off a copy from our website). Please fill in your details legibly on both sides and send it to: **Secretary, Freedom to Care, PO Box 125, West Molesey, KT8 1YE, United Kingdom.**

Please send this form to Freedom to Care. NOT to your bank

To (Name & Address of your bank)

Your Bank sort code: _____

Your account No: _____

Please Pay *Freedom to Care* the sum of £ _____ immediately* and £ _____ every year,

starting on _____ [date]

Signature _____ Name

[PRINT NAME] _____

* Delete if appropriate.

For bank information only:

Account: Freedom to Care Sort Code: 08-90-80 Account No: 50196980

Address: Cooperative Bank, 14 New Broadway, Ealing, London W5 2XL.

Financial Services *EF*

Social Services, Social Care, Social Work *SO*

Engineering *EN*

Government *GV*

Retail *RE*

Other [say what]

Subscriptions

£21 p.a. for individual membership.

£10 p.a. for students & others on low income.

£31 p.a. (minimum) for affiliation by non-profit organizations.

Tick following as applicable:

I/We wish to...

Join

Affiliate my organisation

Renew my subscription

Make a donation

I am paying by...

A cheque for the sum of _____

A standing order -

Founder's Introduction

Speaking up (and speaking out) in the public interest is now more important than ever before, and its importance will grow and grow. It is the belief of Freedom to Care (FtC), in a world dominated by giant transnational corporations, insensitive public bureaucracies and now one global superpower and its puppets, that 'public accountability' may well be the very basis of survival. In the last analysis, we are all accountable to each other – for we are members of one human family with responsibility for each other. The welfare of each is the welfare of all.

Who do politicians think they are? Politicians take it upon themselves to speak for us, to make decisions for us, and ignore us when they do not like what we have to say. Still, perhaps the question is not 'Who do they think they are?', for we already know they are no different from the rest of us. The question is who do we think we are? Do we dare to make ourselves known? Do we dare to care?

The symptoms of undemocratic and unaccountable behaviour are plain for everyone to see. In the UK, the government dragged its feet over a Freedom of Information Act for years and years. A government that is so concerned about lack of democracy elsewhere still (in 2004) hangs on to the archaic and unaccountable device of 'royal prerogative' by which war can be declared without parliament, the top echelons of the Establishment can be appointed in secret, and courts can be denied sight of documents even if injustice may result. In the USA, consecutive presidents have invoked 'executive privilege' to cover-up wrongdoing and to decide matters of great national and world interest in secret. These trends are on the increase.

Who do corporate executives think they are? The top decision-makers of global corporations and financial institutions are not properly accountable for their actions. They can make decisions that severely damage our human environment, that plunge whole economies into poverty and populations into starvation, and deeply influence and distort the processes of government. If 'human rights' means anything at all, how can we all allow this to continue? Corporations must be publicly accountable through global legislation, regulation and public involvement. Again, the real question is who do we think we are, that we allow 'them' to be who they think they are.

It is time to speak out against unaccountable behaviour on the part of governments and large corporations. Time to support those who do speak out, sometimes at great risk to themselves and their families. Time to study unaccountable behaviour, and time to study the alternatives in the values, processes and instruments of accountability. Time to move society from the bureaucratic excuse to the culture of mutual responsibility. Time to set an example, and rise above 'them and us' ideologies, whether they take an economic, political or religious form. Perhaps it is our last chance peacefully to resist all forms of manipulation, exploitation and bullying of each other.

Let us make the century that begins with 2000 and ends with 2099 the Century of Speaking Out. It may be our last chance. For whom are we waiting? As a Hopi elder said: 'We are the ones we have been waiting for.'

Geoffrey Hunt (West Molesey, Surrey, UK, 2004)

MEMBERSHIP FORM

Tear off or photocopy this page (or print off a copy from our website). Please fill in your details legibly on both sides and send it with your cheque or completed Standing Order form to:

Secretary, Freedom to Care, PO Box 125, West Molesey, KT8 1YE, United Kingdom.

Name _____

Address _____

Post Code _____

DATE _____

Telephone _____ Email _____

FTC Occupational Networks: We have created a number of occupational networks for support and campaign meetings, and will create more on demand. It will help if you could indicate here your area of work or occupational interest.

Health Care *HE*

Science & Technology *FA*

Education *TE*

secretarial and support workers, healthcare assistants, financial advisers, and many others.

FtC's Finances

FtC is run by volunteers and its policy is not to take money from governments or private corporations. It has accepted some small grants from Foundations and generous donations from individuals, but tries to work with as little money as possible. It strives to remain independent and committed to its ideals. Its accounts are published on its website: <www.freedomtocare.org>. FtC provides information on its website that has proved to be useful to professionals, students, civil servants, independent consultants, unions, professional associations, employers and managers, and - most importantly - to conscientious employees, workers and citizens in difficulty. **We aim to keep it all free.** We depend entirely on membership subscriptions and donations. If you find something useful to you in this booklet or on our website please think of joining up or sending us a donation.

A Hopi Elder speaks out

You have been telling the people that this is the
Eleventh Hour
Now you must go back and tell the people that this is
the Hour
And there are things to be considered
Where are you living?
What are you doing?
What are your relationships?
Are you in right relation?
Where is your water?
Know your garden
It is time to speak your truth
Create your community
Be good to each other
And do not look outside yourself for the leader.

Then he clasped his hands together, smiled, and said,

This could be a good time!
There is a river flowing now very fast
It is so great and swift that there are those who will
be afraid
They will hold on to the shore
They will feel they are being torn apart and will
suffer greatly
Know the river has its destination
The elders say we must let go of the shore,
push off into the middle of the river,

keep our eyes open, and our heads above water.
And I say, see who is in there with you and
celebrate.

At this time in history, we are to take nothing personally, least of all, ourselves.

For the moment that we do, our spiritual growth and journey comes to a halt.

The time of the lone wolf is over

Gather yourselves!

Banish the word *struggle* from your attitude and your vocabulary.

All that we do now must be done in a sacred manner and in celebration

We are the ones we've been waiting for.

[*Hopi Nation, Oraibi, Arizona, 2001*]

awareness of freedom of speech in the workplace.

Among the powers of the company are to:

- produce publications
- hold lectures and courses
- undertake research
- enter into co-operative ventures with other bodies
- accept subscriptions and donations
- raise funds
- make investments
- employ and pay people to work for the company
- arrange indemnity insurance for its workers
- open local branches.

FtC's income can only be used for promoting its objects and cannot be used to pay dividends to members or to pay salaries to the directors (but expenses can be covered, for which there is a set procedure). The liability of the members is limited, and should it be wound up each pays not more than two pounds to its assets. The complete Memorandum, as well as the Articles of Association that govern elections, etc. are available free of charge to members from the Company Secretary on application.

How is FtC run?

Freedom to Care has a number of Patrons, an elected Board of Directors, a Core Group of activists, and a membership. It is a company limited by guarantee. For a list of the people leading FtC (at January 2004) see inside the front cover.

General Policy and legal compliance is carried out by the elected Board of Directors, and this body co-opts active members to make up a Core Group that plans and implements FtC's activities. Membership: *Freedom to Care* members and supporters include nurses, doctors, social workers, probation officers, retail workers, accountants, teachers,

London. 1998. ISBN 0-340-65245-4.

Hunt, G. 'Nursing Accountability: The Broken Circle' in Hunt, G. (ed) *Ethical Issues In Nursing*, Routledge. London. 1994. ISBN 0-415-08145-9.

Hunt, G. (1997) 'Moral Crisis, Professionals and Ethical Education', *Nursing Ethics* (Arnold) 4 (1) 29-38. ISSN 0969-7330.

Hunt, G. (1997) 'The Human Condition of the Professional: Discretion & Accountability', *Nursing Ethics* (Arnold) 4 (6) 526.

Hunt, G. (1996) 'Some Ethical Ground Rules for BSE and other Public Health Threats', *Nursing Ethics* (Arnold) 3 (3) 263-267.

Hunt, G. 'Whistleblowing', essay entry in *Encyclopedia of Applied Ethics*, Academic Press, California, 1998, Editor-in-Chief: Prof Ruth Chadwick.

Related: Sir Michael Davies. *The Davies Report: The Great Battle in Swansea*. Thoemmes Press, 11 Great George St., Bristol BS1 5RR, UK. 1994. ISBN 1-85506-366-2.

21 Constitution of Freedom to Care

Memorandum of Association

Company Registration requires a Memorandum of Association that sets out the company's objects and powers. The objects of Freedom to Care Ltd are to:

- advise and support employees who face difficulties in raising with their employers any workplace matter of public concern
- campaign for such reforms as will protect and further the right of conscientious employees to raise workplace concerns and to make disclosures in the public interest where necessary
- engage in education and research to further public

THE FREEDOM TO CARE

"... far more, and far more hideous, crimes have been committed in the name of obedience than have ever been committed in the name of rebellion." (C. P. Snow)

".. organisation man... is not aware that he obeys; he believes that he only conforms with what is rational and practical." (Erich Fromm)

"**Because** authority, though it err like others, / Hath yet a kind of medicine in itself / That skins [covers] the vice o' the top. Go to your bosom, / Knock there, and ask your heart what it doth know / That's like my brother's fault; ..." (Shakespeare, *Measure for Measure*)

Part One

Public Accountability, Whistleblowing and 'Freedom to Care'

1 The experience of blowing the whistle

Have you ever found yourself out on a limb at work? Decisions are being made that are wrong or harmful or against rules meant to protect people, but nearly everyone else seems either unaware or prepared to turn a blind eye. If you have not yet had this experience, you might one day. It is very uncomfortable. You have outside responsibilities, and you cannot afford to lose your job, but your conscience is bothering you. Perhaps you are being bullied by a manager who has noticed that you seem reluctant to acquiesce in wrongdoing. People around you are mostly silent. Some might privately share their misgivings, but they are not likely

to support you when the going gets tough. They are afraid, they make excuses, and they lie to themselves. Maybe you have already started to raise a concern officially. But the system does not seem responsive. You had imagined that a genuine concern would be received and investigated. Instead, there is a general reluctance and a shuffling of feet. Things may get worse. You might find that procedures that were supposed to maintain fairness and welfare for staff and clients are now being used against you. *You* have become the problem! You are beginning to feel isolated, indignant, even angry. Where do you turn?

A construction engineer 'P' was being pressured by a manager to 'sign off' a new building as safe when it was known that the building had not met requirements. There was financial pressure to open the building. P refused to sign it off. He felt bullied by the manager, who was trying to turn other staff against him. P suffered many sleepless nights, simply because he took his job seriously. He was also afraid of losing his job and had children to support. He was given moral support by *Freedom to Care* and advised not to fall out with the manager, but to argue his case solely on the basis of the welfare of the future users of the building and with full knowledge of the regulations and with support from his professional body. He was also advised to consult the *Health and Safety Executive*, which eventually investigated and P was vindicated.

You may also find yourself out on a limb as a member of the public – treated coldly by a large organisation. When 'D' unexpectedly lost a loved one during a medical operation, the hospital could not offer an adequate explanation. Clearly there had been an awful mistake, but no one in the organisation would even apologise. D felt not only grief, but also anger and disappointment that a public body should treat her without the openness and honesty to which she had every right. When she complained, the hospital staff closed ranks

20 Publications

The Whistle is FtC's bulletin (ISSN 0969-2118), appears twice a year, and is deposited at The British Library.

Some books related to whistleblowing (and remaining silent)

Kelman HC, Hamilton, VL. *Crimes of Obedience: Towards a Social Psychology of Authority and Responsibility*, Yale UP, New Haven, 1989.

Vidal, J. *McLibel: Burger Culture on Trial*, Macmillan, Basingstoke, 1997.

Van Buitenen, P. *Blowing the Whistle: One Man's Fight against Fraud in the European Commission*, Politico's, London, 2000.

Dempster, W. *Whistleblowers*, ABC Books, Sydney, 1997.

Miceli, MP, Near, JP. *Blowing the Whistle: The Organisational and Legal Implications for Companies & Employees*, Lexington, New York, 1992.

Vinten, G (ed). *Whistleblowing: Subversion or Corporate Citizenship?* Paul Chapman, London, 1994.

Glazer, P, Glazer, PM. *The Whistleblowers: Exposing Corruption in Government and Industry*. Basic Books, New York, 1989.

Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering*, Polity, 2001.

Brian Martin, *The Whistleblower's Handbook: How to be an effective resister*, Jon Carpenter, Oxfordshire and Envirobook, Australia.

FtC Founder's publications

Hunt, G. *Whistleblowing in the Health Service*. Arnold, London. 1995. ISBN 0-340-59234-6.

Hunt, G. *Whistleblowing in the Social Services*. Arnold.

Charter 88. Social movement for constitutional reform in the UK: <http://www.charter88.org.uk/>

Liberty. (UK's National Council for Civil Liberties.) Promotes civil rights and lobbies for legislative reform: www.liberty-human-rights.org.uk

Advisory, Conciliation and Arbitration Services (ACAS). Information and advice around employment difficulties: www.acas.org.uk and Helpline 08457 474747.

Community Legal Service (CLS). A good place to start if looking for legal information, contacts and advice: www.justask.org.uk

Trading Standards. Let down by the standard or quality of a product or service? Then start here: www.tradingstandards.net

Department of Trade & Industry (DTI). Lots of official UK information, including around employment rights: www.dti.gov.uk/er

Campaign for Health Service Democracy. Seeking greater accountability of local providers of NHS (UK) services: www.healthdemocracy.org.uk

Dawn (Dignity at Work Now). Anti-bullying in the workplace support and campaign group: www.dignityatworknow.org.uk

StateWatch. Independent group of researchers, journalists, lawyers and activists working on civil liberties issues: www.statewatch.org

Association for Promotion of Scientific Accountable Behaviour. Swiss group concerned with integrity and defence of scientists: www.apsab.span.ch

against her. D and her family did not have the skills needed to open up those ranks and obtain an explanation and an apology, in the absence of which not only did D and her family suffer, so will other patients and their families. By failing to learn from its mistakes, the organisation will inevitably repeat them and other patients and their families will then suffer. What should D do? Her options are, in effect, largely prescribed by the legal and administrative system, but that is complicated – where should she start?

2 The unaccountable organisation

You can find yourself out on a limb in this way, even though you never intended it. You thought you were just doing your job as best you could and as the public would wish. Nobody really wants to be a 'whistleblower'. Yet people who have always regarded themselves as 'team players', as 'not wanting to make a fuss' and just wanting to 'get on with their lives' may find themselves in that situation, and with that label. Suddenly, their whole lives are turned upside down. But, typically, the situation is not the whistleblower's responsibility, it's that of the employing organisation. That is where the failure lies. Persuading others of this might seem impossible, especially when the employer is apparently respectable and believed to be serving 'public welfare'. The truth is that the *unaccountable organisation* is the problem, and it is the unaccountable organisation that must accommodate itself to the person who has the courage to speak up for the benefit of others. Where is the social progress in people having to compromise their personal standards of right and wrong in order to comply with the requirements of their sub-standard organisations?

Accountability is a preparedness to explain and justify one's decisions and actions to others who may be affected. So, an unaccountable organisation is one in which

there is very little preparedness to work in a trusting and open way with colleagues and clients. Either in principle or in practice, many organisations do not accept the need to be accountable – indeed, some organisations are vehemently opposed to the notion. Where there is no genuine accountability, then secrecy, deceit, manipulation and threat will be the organisation's modus operandi. This is not necessarily deliberate. The explanation for unaccountable behaviour can often be plain ignorance. The unaccountable organisation is often permeated by incompetence, and the habitual reactions of defensiveness, blame and denial. It just does not know any better.

Freedom to Care does its best to show the 'whistleblower', the decent person out on a limb, how to respond in a well-informed, ethically balanced and effective way. It can be done. Responding to unaccountable managers in the same bullying and vengeful way in which they treat the employee is not the right way forward: it is demeaning, and only fans the flames. It is possible to hold one's head up through it all, in a kind of peaceful resistance. Of course, some organisations will not change unless enormous pressure is applied from the outside. Public exposure, done in a responsible way, is an extremely effective medicine. FtC has developed standards of accountability for organisations, which it promotes via its website and in the advice and support which it provides to those who ask it for help.

3 Large organisations must be accountable

Freedom to Care has also, over the years, been building up knowledge of the values, processes and instruments of accountability - that is, how an *accountable* organisation would work. Organisations sometimes just need help, and some idea of how to do things differently.

It is evident that large organisations are failing us in so

APPENDICES

19 Useful organisations

Here is a list of some other organisations and their websites, related to the concerns of Freedom to Care. (They do not necessarily share FtC's core values.)

Truth Out. People who speak out with the truth, such as war as it happens: www.truthout.org

Bully OnLine. Advises those who are bullied at work and provides lectures and seminars: www.successunlimited.co.uk and www.bullyonline.org

Campaign for Academic Freedom and Academic Standards (CAFAS). For those working in higher education: www.cafas.org.uk

Whistleblowers Australia. FtC's 'sister' organisation in Australia: www.uow.edu.au/arts/sts/bmartin/dissent/contacts/au_wba/

Government Accountability Project (USA) promotes government and corporate accountability, founded 1977: www.whistleblower.org

Giraffe. An American organisation which supports individuals who 'stick their necks out': www.giraffe.org

Association for Accountancy and Business Affairs. A group that monitors and provides alternative commentary on the accountancy and auditing professions: <http://visar.csustan.edu/aaba/aaba.htm>

Community Care. Social care magazine (UK) that cares about whistleblowers: www.community-care.co.uk/home

The Ann Craft Trust. Facilitates protection of those vulnerable to sexual abuse: www.nottingham.ac.uk/sociology/act

Campaign for Freedom of Information. UK campaign for a FOI Act: www.cfoi.org.uk

not only about the law, administration, regulations and codes of ethics – they are about decent people trying to do the right thing in an organisation that is uncomfortable with decency. One conscientious social worker now active in FtC, put it this way:

‘Nevertheless, the value I can place on having my “life back” is worth far more than any monetary gain made in the courts. I no longer have a passion for social work. My experience has reinforced my passion for justice, (which I now know is arbitrary). I now feel free to speak out without the feeling that I will be punished. I do not feel I was protected within the workplace, but I will use my experience to try and protect others from the soul-destroying behaviour that they can experience within their organisations. Organisations should not be allowed to justify keeping abusers in the workplace simply because they fear litigation. The challenge for us all is to listen and better understand what the consequences of systematic and deliberate organisational abuse are; how to challenge abuse effectively and to understand better why organisational abuse is a modern day phenomenon with a massive cost to individuals and the public purse.’

Unfortunately, the UK, like many countries, has an adversarial legal system that pushes people into an attitude of conflict and defence, even if negotiation, learning and apology are the preferred and wise way forward. FtC would like to see this adversarial system softened, and there are some encouraging signs of change such as ‘pre-action / pre-litigation protocols’.

In December 1997, FtC announced in ‘The Whistle’ that, together with *Whistleblowers Australia*, it had framed an amendment to the Convention of the International Labour Organisation (ILO). This amendment, drafted by FtC patron John Hendy QC, prohibits discriminatory behaviour against employees for raising public concerns. (The amendment is to be found on the FtC website.)

many ways. In the last ten years we have seen enormous social failures of large organizations - such as environmental damage, failures to protect children in official homes, fatal transport disasters, large scale financial scandals (such as mis-selling of pensions), health-threatening industrial production of food, and widespread bullying and stress at work, medical incompetence, and undemocratic war-mongering. In each case, those in power were not properly accountable for their decision-making. Many of the decent professionals involved are often too afraid to speak up, do not listen to their conscience or are victimized for doing so. The freedom to care is necessary for a professional, indeed any worker, to do their work with integrity.

Freedom to Care...

- promotes our right to accountable behaviour from large organisations, whether public or private.
- asserts that officials and private sector executives and managers have a duty to explain their actions and omissions in so far as they significantly affect our quality of life.
- asserts that employees, professionals and all workers, have an ethical right to express serious public concerns in the workplace and to go public if necessary.

Accountability is for all of us, not just regulators

The official bodies that we might expect to keep things in order (such as industrial, commercial and professional regulators, and government checks and balances) do not always do the job. While some do make a difference, others fail to maintain public accountability effectively. Indeed, some regulators are part and parcel of the problem. Who regulates the regulators? The answer is that we all do. *Freedom to Care* is trying to bring people together to play a part in creat-

ing a culture of accountability - one in which everyone assumes that the weightier a person's role in society, the greater their obligation to give an account of their acts and omissions. *Freedom to Care* does not have unreasonable expectations. It expects:

- regulators to do their job properly, fairly and in the public interest
- employees to be respected as 'citizens at work'
- the legal system to work in a fair and accessible way to protect and empower citizens

4 The activities of Freedom to Care

Freedom to Care is (in 2004) a very small organisation, but it endeavours to ...

- support employees who speak up with a serious public concern
- lobby regulatory bodies when they appear to be failing
- campaign for legislative and regulatory reform
- arrange *ad hoc* support networks
- host instructive workshops
- promote the idea of public accountability in every way it can, including via its website
- publish a newsletter, *The Whistle*, for members
- make available occasional reports

For publications relevant to FtC's work, see the Appendices.

5 A brief history of Freedom to Care

Freedom to Care was founded by Geoffrey Hunt, a university lecturer in philosophy. After eleven years in Africa he returned to the UK in 1987 to a fellowship (lectureship) at Cardiff University and then Swansea University. In 1989 he raised concerns at the latter about academic malpractice. He

formation.

So, if, as a result of your having made a 'protected disclosure', you suffer any 'detriment' at the hands of your employer (e.g. demotion or dismissal or bullying), you will have the right to claim financial compensation against your employer, even if by making the 'protected disclosure' you had thereby broken your duty of confidentiality.

But the rules regarding when a disclosure is 'protected' are complicated and it is for the employee to prove at every stage that he or she has complied with the detailed provisions of PIDA and that he or she is acting reasonably.

The circumstances in which a disclosure to a third party such as FtC would be protected under PIDA are very limited.

If you are in any doubt about making a disclosure of information to Freedom to Care you should first seek legal advice.

Suspension

The use of suspension as an end in itself has grown in recent years. In theory suspension is a neutral act to enable allegations to be investigated, at which stage the employee should be reinstated or disciplinary procedures should be followed. In practice, especially in the Health Service, whistleblowers are often suspended following counter-allegations that are not fully investigated. Some of the suspensions have lasted many years without ever leading to disciplinary action, and destroyed the careers of the people who were suspended. In at least one case, the High Court ruled that a suspension was unlawful. (See the FtC website for specific examples of the misuse of suspension.)

The law - Conclusion

In the last analysis, whistleblowing and accountability are not only about the law, administration, regulations and codes

personal data being processed) but also the names of people who may not be aware that you have contacted us (e.g. your line manager).

Where possible, please ensure that where you want to advise us of the names and, for example, job titles of other people involved in the matter, you ask them for their written consent to their names etc. being processed by Freedom to Care. Such consent should, if possible, be sent to us when you first make contact.

We recognise, of course, that there will be some people whom you need to refer to when discussing the matter with us who would be likely to object to our processing their personal data (for example a line manager who has been bullying you), thereby potentially frustrating our ability to provide you with advice and support.

For further information on what should be done in such circumstances, please visit the document on 'Data Protection and Confidentiality' on our website or write to us requesting a copy and enclosing a stamped addressed envelope.

Public Interest Disclosure Act 1998 (PIDA)

If you are an employee wanting to disclose information about something at work, then take care. Under your employment contract (and in any event as a matter of general law) you will owe your employer a duty of confidentiality.

Disclosing information about something at work which has happened (or, indeed, is happening or may happen) to an unauthorised third party (e.g. FtC) could constitute a breach of your duty of confidentiality, thereby entitling your employer, if it was so minded, to take disciplinary action against you (e.g. demotion or, even, dismissal).

However, PIDA provides a financial remedy for the employee in respect of any 'detriment' which the employee suffers at the hands of the employer as a result of having made what is referred to in PIDA as a 'protected disclosure' of in-

was joined by three other colleagues. All were victimized. There were three internal inquiries and, eventually, two public inquiries - one headed by Sir Peter Swinnerton-Dyer and the other by Sir Michael Davies. The events were covered in a TV programme, radio interviews and extensive newspaper coverage. The inquiries finally vindicated the whistleblowers. Sir Michael Davies' Report is published as a book (*see Appendices*).

In 1990, Geoff Hunt resigned from Swansea University in protest over the affair and founded a centre for ethics in nursing, midwifery and health visiting at Hammersmith Hospital the same year. At that time, the NHS was undergoing an onslaught from 'new managerialism' and there were many whistleblowing cases. In 1991, Geoff organised the UK's first national conference on whistleblowing - focusing on the National Health Service - which took place at Nottingham University. Graham Pink, the whistleblowing charge nurse, who had become a *cause célèbre*, was one of the speakers. The conference was reported in the *Health Service Journal*, the nursing press and elsewhere. Geoff suggested to Graham that they bring together as many whistleblowers as they could find to create a support group. The first meetings of the group met at Thames Valley University, in West London, in 1991 and early 1992, and called itself the *Healthcare Accountability Network*.

In November 1992, Geoff suggested a change of name to 'Freedom to Care', and the group was launched at the House of Commons with the support of Derek Fatchett MP. Maureen Eby, Mike Cox and Karen Jennings spoke at the launch, about freedom of speech in the public services. Three days later Geoff Hunt was summarily dismissed by the health authorities that paid his salary. (Fortunately, he found considerable support and was re-employed at East London University, and later at the University of Surrey).

In October 1994, Freedom to Care registered itself as a

company limited by guarantee. It began to widen its remit to embrace all workers victimized, or in fear of victimization, for speaking up in the public interest. It gave support to a number of high profile whistleblowers, including Dr Chris Chapman, the Leeds biochemist who revealed scientific fraud in his workplace.

Freedom to Care was now beginning to attract publicity in the press and on TV and radio. Appearances included programmes such as *World in Action*, *Horizon*, *Public Eye*, and *The Money Programme*. It obtained a grant from the Joseph Rowntree Reform Trust for the period 1994-96. In 1995, Arnold published *Whistleblowing in the Health Service: Accountability, Law and Professional Practice*, edited by Geoff Hunt, and in 1998 a companion volume, *Whistleblowing in the Social Services* appeared.

Allan Levy QC and John Hendy QC became patrons of Freedom to Care in 1994, and Austin Mitchell MP became a patron of FtC in 1997. Lord Livsey of Talgarth became a patron in 2003.

From 1997, FtC's membership embraced social workers, doctors, nurses, social care workers, financial services workers, scientists, researchers, teachers and others. In 1996-7, Freedom to Care supported 23 ex-employees, trainees and current employees of the Anglo-Australian pensions and insurance company *Colonial* (then *Colonial Mutual*) in making their complaints about training and sales malpractices, regulatory breaches and poor treatment of staff. As a result of FtC's report on the matter, *Colonial* was criticized in the media and brought before the regulatory body. FtC was subsequently asked to consult with the government on a new regulatory structure for financial services. FtC framed a six-point plan to bring ethics and accountability into the UK financial services industry, which it personally put before the then UK Economic Secretary to the Treasury, Helen Liddell.

In 1997, FtC published the evidence gathered by a com-

the worker to show reasonable cause, when the onus should be put on the employer to show the falsity or unreasonableness of the worker's claim or action. Its scope of relevant matters of protected disclosure is too narrow. Our experience as a self-advocacy organisation of, and for, whistleblowers shows that the scope of the matters that may be properly disclosed under conditions of failures of corporate responsibility needs to be broadened. That is, what is a relevant matter of public concern and justifiable circumstances of disclosure should be left to the judgement of an industrial tribunal. Finally, the Act's 'reasonableness' and 'good faith' tests are quite stringent when applied to the employee, with no thought being given to the reasonableness and good faith of the employer.

Data Protection and confidentiality (abridged version)

Before contacting Freedom to Care and asking us to receive information from you, please carefully consider the implications of what you're proposing to do from the perspectives of data protection and confidentiality. For the purposes of this note, it is assumed that you are an employee or an ex-employee of an organisation and that your reasons for wishing to contact us concern your (former) employment.

FtC can only process (e.g. record) personal data (e.g. name and contact details) regarding someone when it has that person's consent or where the processing is necessary for the purposes of the 'legitimate' interests pursued by FtC (i.e. promoting public accountability and protecting freedom of speech in the workplace).

In the course of providing assistance, we will usually be told the names of other people employed by the organisation in question - e.g. a line manager. We will therefore make a note in our file not only of your name and contact details (and we will ask you to give us your written consent to your

protection laws, criminal laws covering fraud and deception, employment laws, laws covering negligence and personal injury, child-protection laws, laws against discrimination, and health and safety laws, to mention only a few. The variety of laws is bewildering. In the UK the Public Interest Disclosure Act (PIDA) and the Protection from Harassment Act are particularly relevant perhaps.

It is not always wise to go to law, unless there is a clear criminal act (such as child abuse). Civil action on grounds of libel, slander, tort of breach of confidence, etc. may be very expensive to apply. In many cases it is best to think through your other options before considering how the law can help; and it is always salutary to ask yourself why you want to go to law. Is it, for example, to protect others from abuses, or is it for revenge or monetary gain? Will going to law make things better or worse, and for whom?

One mistake that people often make is to think that 'law' and 'justice' are eternally married, when in fact they are hardly on speaking terms. Many a just case was lost in the court, and many an injustice has been perpetrated by means of the law itself. Another common misunderstanding is the belief that Human Rights legislation can be applied directly. In fact, although the UK does now have a Human Rights Act, it is really intended to provide a framework for other legislation and one may only appeal to it directly as a last resort, and with difficulty. For guidance, one can try the Citizens' Advice Bureau, and FtC may be able to make some suggestions.

Some countries have laws specifically designed to protect whistleblowers. In the UK, sometimes just mentioning the existence of PIDA to an ignorant employer who is trying to suppress public concerns is sufficient to make them think twice. On the other hand, it is not a very effective law and only applies in rather a narrow range of cases. Its main weaknesses are as follows: It places the onus (burden of proof) on

community doctor that children downwind of a power station in Wales were suffering from asthma as a result of the station's pollution. Largely as a result of FtC's campaign, the station withdrew its application to burn a Venezuelan bitumen (Orimulsion) that would have caused more pollution and more disease.

FtC has continued to keep pressure on regulatory bodies that are failing to do their job of maintaining the accountability of large organizations.

FtC gave support over a period of several years to scientific researcher Dr Chris Chapman, who blew the whistle on scientific fraud at Leeds University and Leeds General Infirmary in 1989, and on through the public inquiry and its 1997 Report. Chris became an FtC director, and when he died, FtC instituted a *Dr Chris Chapman Memorial Lecture*. The first lecture was given by Dr Keith Allen FRCPath in 2001, on the importance of speaking out in scientific research. In the same year, FtC launched its *Charter for an Accountable Society*, which sketches out the values of a culture of openness and accountability.

FtC has played an important role for almost its entire existence in supporting social care workers who speak up about child abuse in official settings. It was particularly active, behind the scenes, both in the Islington (London) inquiries and in the North Wales inquiries that culminated in the Waterhouse Report (2000). It has played its part in speaking up about corruption in Flintshire County Council (2000-2003), and their persecution of conscientious internal auditor Andy Sutton.

FtC has often worked hand in hand with other groups. For many years FtC has joined in the demands for a corporate killing (corporate manslaughter) law to make companies accountable for negligence that kills people (as in the landmark case of the sinking of the 'Herald of Free Enterprise' ferry that killed nearly 200 people in 1987). In 1999 FtC

joined in a lobby at the House of Commons, criticising government policy on BSE/CJD and on GM foods. It has always been concerned with the causes and consequences of workplace bullying, and it has also supported and promoted the case for a 'Tobin Tax' to begin to make financial speculators accountable.

FtC is no longer a group led by one or two people. In the early years, leadership and hard work were provided by Peter Baddeley, Chris Chapman, Mike Cox, Maureen Eby, Karen Jennings, Sue Machin, Liz Pattison, Graham Pink, Ron Thomson, Marlene Winfield and others. More recently, it keeps going only because of the sustained efforts of Anne Burge, Chris Clode, Janet Clode, Tim Field, Colette Hayes, Harold Hillman, Robert McGregor, Geoffrey Porter-Williams, Sheila Porter-Williams, Lawrence Smyth, Andy Taylor, Chris Thomas, Verena Tschudin and others. Everyone at FtC is a volunteer.

6 The values of FtC

It would be hypocrisy for Freedom to Care to draw attention to unaccountable behaviour and promote accountable behaviour if it were not making every effort to conduct itself in accordance with its own ideas. FtC maintains that 'accountability' is not just a legal and administrative matter, but a cultural one. It seeks to play a part in a re-orientation of society's conception of work and the workplace. It promotes values of trust, truth and reconciliation and tries to live by those values, but recognises that it sometimes falls short.

In making known and undertaking its aims and objectives *Freedom to Care* and its members endeavour ...

accountability? If so, how can it be made more accountable?', then a remedy or remedies follow.

The whistleblenic organisation?

Freedom to Care maintains that disasters such as these are inevitable where there is a deficiency in organizational accountability i.e. in the preparedness and the procedures for decision-makers to give account to stakeholders for their acts and omissions. Whistlegenic organisations - those that have a potential for generating whistleblowing situations - may be identified in general terms such as the following. There is a *laissez faire* culture, in which proper procedures and practices are not followed rigorously and nearly everyone acquiesces. This is often sustained by a kind of collective collusion: 'Don't tell on me, and I won't tell on you.' There is a climate of fear, in which there is an autocratic managerial style, usually in a closed institution (such as a prison), which allows systemic prejudice and intimidation to flourish. There is an organisational culture of corruption, in which significant power centres in the organisation are involved in conspiracy and secrecy to serve their own interests at the expense of the organisation and its clients. There is a culture of hypocrisy, in which there are two codes of behaviour: the formal and official one for the public and the informal one that operates in practice. Lip service will be paid to proper procedure, and staff take a cynical view of communications from management. Of course, things are not generally this bad, but organisations tend to have a life of their own and may deteriorate if accountability is not constantly worked for.

18 The law and whistleblowing

There are many laws that are relevant to the raising of public concerns within an organisation. There are environmental

victimised two whistleblowing engineers who had evidence for the Commission.

The Herald of Free Enterprise, a ferry making a routine crossing of the English Channel, capsized off Zeebrugge killing nearly 200 people in 1987. This was not an accident. The ship regularly left port with its bow doors open. This could have been avoided had P&O been accountable to staff and public. The Court Inquiry concluded: ‘..if the sensible suggestion [of a warning light] ... had received the serious consideration it deserved, this disaster may well have been prevented.’

A train crashed near Clapham, outside London, UK, killing 35 people in 1988. This was not an accident. It was discovered that maintenance staff were afraid to speak up for fear of being seen by management as troublemakers. A railway supervisor said of the loose wiring he had seen that he thought ‘it was their way of doing things’ and he didn’t want to ‘rock the boat’ (*Investigation report*).

Fraud was uncovered in 1991 at Bank of Commerce & Credit International (BCCI) involving £2bn over 19 years. The organisation was shot through with corruption in which many staff were too afraid to speak up. An internal auditor who expressed some concern was made redundant by BCCI in 1990. (*Bingham Report*.)

What do these stories tell us? Apologists will say things like: it is a local aberration; it was a glitch in communication; it is human nature; this field of work has peculiar difficulties; there are always ‘bad apples’ (negligent managers, incompetent workers, etc.); there’s no point in complaining - you won’t get anywhere; chronic under-resourcing is the cause – if only we had more money; ‘whistleblowers’ are just ‘difficult people’ with ‘an axe to grind’. What follows from such excuses is that there is no remedy.

If, however, following an ‘accident’ we ask ourselves ‘Do we work in an organisation lacking any real culture of

To give up all dogmatism and intolerance; this includes not using its own ideas and values in such a way as to bring more division and misunderstanding into the world.

To avoid imposing our ideas and values on others; only making them available and accessible to all, and always being prepared to listen and understand the views, practices and circumstances of others.

To deepen our awareness and understanding of, and compassion for, the suffering and anxiety of others.

To avoid the diversions and manipulations that come with the pursuit of recognition, fame, wealth, pleasure and self-aggrandisement and remain focussed on our aims, objectives and values.

To avoid hypocrisy, instead, living and working as near as possible to the ideals we are making available to others; and avoiding harmful conflicts of interest and harmful compromises.

To avoid all feelings of anger, resentment, harsh judgement, spite, envy and vengefulness; acting always in a spirit of impartiality, reconciliation and peacefulness.

To share ideas, intentions, plans and mistakes, and communicate with openness, honesty and balance; avoiding the sowing of discord in the pursuit of self-centred fixation and trivia.

To reach consensus, through the force of the better argument, on what should be a community’s common goals and the means to achieve them; no-one should impose their will, whether through taking advantage of someone’s relative lack of skill, resources or political power or otherwise.

Accountability as a social philosophy

Could ‘Accountability’ - ethics, not politics - be a social philosophy for this century? We in FtC believe that our workplaces should never hinder our freedom to care for others.

Our belief is that everyone is accountable to everyone else and to future generations) for something, somehow, to some degree. The conscientious employee is no more and no less than a citizen at work - for what value is freedom of speech if one cannot carry it into one's workplace? We do not shed our social responsibilities when we walk through the doors of our workplace; instead, we invest ourselves with even greater social responsibilities.

'Accountability' draws attention to our responsibilities, whether as employers or as employees, in organisations - of whatever size - that are our workplace. Accountability is not an entirely new idea, but it has until now been given a narrow interpretation. Many people still think of it in terms of financial accountability of public bodies such as schools and hospitals. Professionals often think of it in terms of the codes and regulations of their regulatory bodies. Non-profit and non-governmental organisations emphasise public accountability as corporate social responsibility or human rights. FtC brings these diverse senses together in the idea of the accountability of every person and group in their workplace activities; their accountability to all those affected, to varying degrees and in diverse ways, by their decision-making and actions. A culture of accountability is one in which employers and employees share their understanding that they have an obligation to explain and justify their decision-making to those affected.

The issue of accountability arises as the era of gigantic centralised organisations gradually falls into crisis and is subject to more and more questioning and challenge as civil society grows. Civil society is all those spontaneous and voluntary expressions of citizens' multifarious interests, concerns and creativity that we find in professional associations, lobbying groups, clubs, self-help and advocacy groups, campaigns, charities, churches, leisure interests and so on. FtC believes that, as the power of states and corporations frag-

sibility for this idea of harm (even if he or she does not physically implement it him/herself). A preparedness to join in harming the out-group will be seen as a test of true loyalty to the in-group. The victims are now dehumanised by the very fact that others are prepared to harm them - they appear as 'victims', as weak.

Step 4: Bystanders. As the number of victimizers grows individuals will be put in a position of 'stand up' or 'stand by' in situations of conflict and disagreement. Are you a bystander or a dissenter? There is now risk involved in being a dissenter. People say that they will help, but are afraid to do so. It gradually becomes 'abnormal' and unacceptable to be a dissenter or even a bystander.

Step 5: Elimination. The logical conclusion of the process. The victims are not worthy, not even of life itself. Abuse is normalized, sadism grows, and the 'victims' are killed by character assassination, job assassination (dismissal or redundancy) or simply assassination. Fortunately, in most private and public organisations things do not generally reach this last point.

17 Disasters and accidents

So-called 'disasters' and 'accidents' are often a symptom of gross failures in organisational accountability. The unaccountable organisation is accident-prone. The *Challenger* space shuttle exploded, killing astronauts in 1986. This was not strictly speaking 'an accident' because it could have been avoided had NASA senior managers been accountable to ground level engineers, who tried to speak up. Their concerns fell on deaf ears. The Rogers Commission - the official enquiry into the event - pointed out a 'a serious flaw in the decision-making process ... insulated top management from the substantial concerns of line engineers'. NASA even

Having said all this, it is wise to beware that one is not labelling or judging people too rigidly or prematurely. It should go without saying that people are complex, and in the last analysis not all that different from oneself. A little self-examination can go a long way. Have you found the bully in yourself; the victim in yourself? Have you honestly examined your own motives? Is it not true that one cannot transcend bullying by bullying the bully?

16 How victimisation often develops

It often appears that victimisation follows a pattern, although again one must be careful about generalisation. If one is raising a concern, especially if one belongs to a group perceived as some sort of 'minority' or 'outsider' one might expect a process like the following to develop. It is at least wise to be aware of its possibility, while trying one's best to be hopeful and trusting.

Step 1: In group/out group. In the beginning there is the perception of difference between 'us' and 'them', 'me' and 'him/her'. This creates an in-group and an out-group. Gradually the 'others' are rejected, being seen in a negative light, a threat, inferior, etc.

Step 2: Obedience. Those of a manipulative and domineering disposition in the in-group use the perception of difference to build their own influence and power, demanding obedience and loyalty. Many will obey for fear of some loss to themselves, or for fear of being put with the out-group.

Step 3: Harm. Once a sufficiently solid situation of leadership/obedience has developed, the idea of harming the out-group emerges and is promoted. This will catch on quickly if the leader or authority takes respon-

ments and fades, the long-term future will be shaped by an increasingly confident and assertive civil society in which societal governance will be predominantly citizen-based, rather than state or market-based. As this new pattern of society gradually emerges, the issue of organisational accountability will intensify at first. Then, perhaps it will recede as organisations in their current form (as independent legal entities concerned with self-perpetuation at all costs) are replaced by extensive, overlapping, fluctuating networks of smaller scale communities of work, based on trust and cooperation. That is Freedom to Care's vision of an accountable future.

they try even more force, with the long-term result that they themselves may become chronically exhausted, alcoholic or, even, prematurely dead. This person will often try to get a second person to do some of the bullying for them, making various promises of reward. This bully may be surprisingly gentle (as well as exhausted) once 'out of role'. The type is very much the creature of the unaccountable organisation trying to squeeze more out of its staff. As long as you help this person to make things work, they have no interest in bullying you. If you cannot make certain things work, because you are reluctant to do them (perhaps for ethical reasons), then be prepared. You can probably reason with this person over a drink, but they may burst into tears and tell you they cannot do otherwise. The next day things will be back to the usual.

The callous bully

This person is not motivated to bully at all. They are just very low on empathy and sensitivity. If you tell them they are bullying you they do not know what you mean, and think you are 'just saying that' to be hurtful. They have little idea what other people around them are feeling. They are surprised when others seem to feel hurt as a result of their actions or omissions. They are generally quite cheerful and inexhaustible. They act as though they will live forever. This tendentially 'sociopathic' type is of enormous use to unaccountable organisations. Some studies in organisational psychology have suggested that people who are intelligent and of a sociopathic disposition tend to rise to the top in certain large organisations. Extreme forms of this character are very dangerous, if you are raising a concern that the organisation does not wish to hear. Appealing to them is worse than useless. On the human level, as long as you are immune to this person's insensitivity, you will not feel bullied by them. However, if more is at stake, it is best to work around them.

ing you. If you have good reason to be in their way, then be prepared for bullying. If they stand between you and raising a concern, then this type may be unable to see where their interest (the object of their greed) really lies. This is because they have no loyalty to anyone but the one who helps to satisfy their greed.

The inadequate bully

These bullies are motivated by a feeling of not being good enough. They lack confidence, were probably very hurt in the past, perhaps abused or neglected. Deep down they are fearful and defensive. Like all types of bullying, the behaviour of such people can take many forms, such as intellectual bullying: I am cleverer than you are. A hatred of a perceived weakness in others will trigger them into bullying. They may be petty, nasty and vengeful and will always respond negatively to any perceived weakness in others. They are hypersensitive to what others say about them and take offence easily, but brutally insensitive about what they have to say about others. They are generally over-controlled, because they are soft inside. This sort of bully is not so useful to unaccountable organisations at higher levels because they are unreliable, but they have their uses as low-level front-line managers. As long as you do not *appear weak* in their eyes, they have no interest in bullying you. If they stand between you and raising a concern, then you must always show strength and calmness in front of them.

The pressured bully

Pressured bullies are motivated by external pressure. They really wish they did not 'have' to bully people, but they do not see any other way. They cannot cope with what they have to do, cannot motivate others to make things work for them, so constantly try force. When force does not work,

Part Two

Guidance for Conscientious Employees and Accountable Organisations

"In any non-violent campaign there are four basic steps: 1) Collection of the facts to determine whether injustices are alive. 2) Negotiation. 3) Self-purification and 4) Direct Action." (Martin Luther King, *Letter from Birmingham City Jail*)

"We advocate and practise non-violent civil disobedience as a method of causing people to know the perils to which the world is exposed and in persuading them to join us in opposing the insanity which affects, at present, many of the most powerful governments in the world." (Bertrand Russell, *Autobiography*, III, 1969, p. 139)

7 A survival checklist for the employee raising concerns

If you are an employee running into difficulties, or envisage difficulties, as a result of raising concerns about ethically unacceptable incidents, standards, practices or policies in your workplace it might be helpful to run through the questions set out below. If you feel overwhelmed, you may wish to contact us immediately. FtC may be able to offer you some assistance or point you in the right direction. Moral support may also be available through a support group.

All approaches to FtC must go through the National Coordinator, and inquiries should not be addressed to FtC's patrons, directors, international council members or other officers. The advice that Freedom to Care offers is practical in nature and is based on the cumulative experience of its members and supporters. It is not to be regarded as 'professional

advice'. Freedom to Care does not take fees for its services.

Step 1 – Evidence

- Do you have evidence?
- Is there an audit/quality assurance document to which you can refer?
- Are there others who have evidence or are witnesses?
- Do you have the evidence (letters, memos, records, etc.) in your possession?
- Are you supposed to have it in your possession?
- Could any disclosure by you of evidence put you in breach of any duty of confidentiality?
- Are you keeping a diary of events?
- Are you keeping copies of all relevant documents in a safe and accessible place?
- Is there material in which the police or similar agencies would be interested?
- Is the material covered by the Official Secrets Act [or similar legislation]?

Step 2 – Local support

- Are there witnesses?
- Do you have the support of colleagues or can you get it?
- Have colleagues expressed similar concerns in the past?
- Will colleagues help you to put the concern in writing?
- Have you raised the concern informally with colleagues and/or management?
- Could you arrange an informal workplace meeting to discuss the matter?
- Could you raise it at a grass roots meeting (e.g. shop floor, departmental)?
- Do you have an idea of which colleagues will oppose you, and which will sit on the fence?
- Do any colleagues have informal influence they could exert?

the first place. Raising a concern about bullying is almost certain to intensify the bullying. Organisations that lack a culture of accountability – an understanding of the mutual respect, trust as well as the procedures that facilitate openness and honesty – are likely to give rise to bullying. Some managers may bully staff, and some staff may bully managers if they can. In fact, people of a bullying disposition are often promoted in such organisation.

Bullying has many causes and conditions, but it is often useful to see it as a form of defensive and denial behaviour. It is important to understand that bullies do not stand alone. They are bullies in a specific context, and are part and parcel of a set of relationships. It is the bully-victim *relationship* that is the key to understanding. Certainly, a situation of bully-victim in a team does not make for good decision-making. While some organisations and organisational situations, especially at a time of crisis, give rise to bullying, it does require the presence of people of a bullying disposition or character. Maybe there is a little bit of bully in all of us. Maybe a little bit of victim too. As far as character-type is concerned, it may be helpful to think in terms of four main types. In truth, every bully is different.

The greedy bully

Greedy bullies are motivated very strongly by a desire to have more power, in order to have more of everything. This motivation comes from within, and is not imposed from outside. They are forever hungry, and driven by ambition. Desire, pride, lust, money, recognition -- all these may come together in a particularly forceful manner. It is a powerful will that causes them to bully anyone who is getting in their way. It is the object of their desire, bright and attractive in their mind, which is causing them to bully. Unaccountable organisations can make use of such a character. As long as you are not *in their way*, they have no real interest in bully-

personal conduct, your personal past, your political views, your disability, your class or ethnic origin, or your sexual orientation. These may progress to accusations of abuse of clients, theft of documents, lying, disloyalty, breach of confidentiality, and the like.

First strike

Official counter-complaints may be formulated against you in a disciplinary hearing before your own concerns are addressed or instead of addressing them. You may be made a scapegoat. Disciplinary or grievance procedures may be used as a pre-emptive or retaliatory measure. The authorities will attempt to get their revenge in first.

Made redundant

Your presence is no longer tolerable. You may be suspended and then dismissed or there may be a reorganization in which your post is made redundant. You will proceed to an industrial tribunal. If you win, you are paid a maximum of a few thousand pounds, which the authorities consider cheap at the price.

Cosmetic reshuffle

If your concerns were of a serious nature, especially if an inquiry took place, then there will be some changes at your workplace, but these may be of a cosmetic nature. Some posts may be reshuffled, but it is unlikely that policies will be revised or that managerial heads will roll. Certainly, no acknowledgement will be made that there is any connection between your raising a concern and the changes which followed.

15 Bullies and victims

The conscientious employee who raises a concern may find himself or herself being bullied by a manager or management. Bullying is the imposition of will on someone by threat and humiliation. Sometimes it is bullying management that is the subject of the raising of a concern (or whistleblowing) in

- Have you discussed the issue with family and friends and do they support you?
- Are you ready for backlash from employers and/or colleagues?

Step 3 – Internal channels

- Have you identified each level in line management?
- Might it be necessary take your concern to each level in turn?
- If so, is that possible in practice?
- Does the organisation for which you work have a 'whistleblowing' procedure (by whatever name)?
- Have you complied, or will you be complying, with it?
- Have you very carefully considered all the possible implications and consequences of not complying with any such procedure?
- Will you be making sure that any disclosure of information which you make will be in accordance with the Public Interest Disclosure Act 1998?
- Have you identified all the persons/bodies to which you are accountable, and can any of them help?
- Can you make (and if so, and have you made) a clear, well-informed, balanced and non- emotive presentation of your concern to management in a cooperative spirit, and have you done so in writing?
- Have you indicated to management how their own interests and that of the institution may be adversely affected if the concern is ignored?
- Have you made the management aware of official guidelines that require them to address your concern?
- Is there an Inspectorate to whom your concern could be addressed?
- Are there any internal bodies to which your management is accountable?
- Would the internal or external auditors be interested? Would the police be interested?

Step 4 – Disciplinary procedures

- If you have a contract of employment, have you read it carefully and, if so, are you or your employers in breach of its terms?
- Have you got a copy of the disciplinary procedure and have you studied it?
- Is your manager susceptible to discipline under a code of conduct/practice?
- Might there be grounds, genuine or spurious, for disciplinary action against you and have you taken any pre-emptive action?
- If disciplinary action is pending, have you asked management to set out dates and charges?
- Is there an appeal procedure and are you familiar with it?
- Do you have a copy of the grievance procedure (from personnel office) and can you use it to further your concerns?
- If you are being victimized, and counter-allegations are being made against you, are you keeping cool, maintaining priorities and keeping your eye on the real issue at stake?
- Have you consulted the Arbitration and Conciliation Advisory Service (ACAS) or similar body and its published guidance, and is your employer aware of such guidance?

Step 5 - Unions

- Do you belong to a union?
- Would it be worthwhile joining one?
- Is there a local agreement with a union and, if so, what are its terms?
- Have you consulted the union?
- Could your concern be raised at a union meeting?
- If your branch is unhelpful, have you considered taking the matter to the union's headquarters (e.g. national professional officer)?

asked if you are 'coping'. It emerges, unknown to you, that you have been informally diagnosed as anxious, depressed, paranoid, having a personality disorder, or as being female, a foreigner, neurotic, old or fat.

Spying

A colleague is passing on information about you and has, perhaps, been asked to do so. You are the object of close observation, fault-finding, and perhaps your mail is being opened and your telephone bugged. Some of your work goes wrong or astray and you wonder about sabotage. If you mention this, it is taken as further evidence that you are unable to cope or 'paranoid'.

Grind down

Work becomes more difficult. Your workload increases, you get the tough end of the rota, you are transferred to the most difficult work area, demotion looks more probable than promotion, you do not get your holidays when you want, you are asked to share an office or move out of the one you have, your phone line is put on 'internal calls only' or taken away.

Sticks and carrots

An intermediary, usually a union official, will call you aside for 'a chat' in which offers are made to you concerning promotion, a generous severance package or some other benefit. These will be linked in coded terminology with your concern, the suggestion being that you drop it in return for the benefit. Alternatively, or if you refuse to accept the carrot, veiled threats will be made such as 'Are you sure you wouldn't be happier working elsewhere?'. These become overt threats such as 'You are jeopardizing your future' and 'You won't be working here much longer'. If you raised concerns about colleagues, such as their abuse of patients, you may find that you receive hate mail and threats of violence.

Character assassination

Aspersions will be cast on your character, your

stantial memoranda may fly about, a meeting may be convened, and promises will be made. No action will be taken, except perhaps the most trivial. At a later date, any conversation not recorded on paper may be strenuously denied.

Send to Coventry

A change of mood comes over certain managers and colleagues. Initially this is quite subtle. Greetings, smiles and friendly banter are less frequent. At first you brush it off. Then it becomes more pronounced. Eyebrows are raised mysteriously, you are avoided and left out of events and decisions, sarcastic comments are made. If you mention it, you may find that your mental health is questioned.

Close ranks

It is clear that what you said to one colleague or manager has been passed on, and possibly distorted, to his or her peers. When you approach a manager further up the line, it is clear that they have been forewarned. Your concern has somehow created an anti-you group. You are identified as a 'trouble-maker' by most people with any authority, and any attempt to raise your concern is now pre-empted and prejudged. Some of your colleagues feel that your complaint demeans them by implication.

Stonewall

When you raise your concerns formally, you find that your letters are unanswered, the manager is never available, promises to 'get back to you' are broken, you are passed on to someone who eventually sends you a letter saying something like 'your concern has been investigated, nothing is amiss, and the matter is now closed'. You may be told directly not to send any more memos or letters.

Biomedical diagnosis

It is suggested that you have been under a 'lot of stress lately' and that you ought to visit the occupational health department, a counsellor or your GP. You are

- Would it be worthwhile changing your union or joining a second one? (Check with new union before trying to change.)

Step 6 – Professional bodies

- Do you belong to a professional association?
- Would it be worthwhile joining one?
- Have you consulted a professional association?
- If your profession is regulated by a statutory body (e.g. in the UK the GMC, NMC, CPSM, PIA), have you consulted that body?
- Have you considered reporting an offending colleague to his or her statutory body? (Not necessarily the same body that regulates your profession)
- Have you studied the relevant codes of conduct?
- Has your professional body published guidelines setting out relevant standards and policies?

Step 7 – Legal action

- Have you sought legal advice from a lawyer?
- Do you have a solicitor/attorney?
- Have you sought legal aid?
- Do you have any legal protection/defence insurance or does your employer carry such insurance cover on behalf of its employees?
- Have you been to a Citizens' Advice Bureau?
- What does your contract of employment say? Is there a 'gagging' clause in it?
- Could you embark on civil action?
- (If relevant) have you consulted the Commission for Racial Equality or the local Equal Opportunities office or similar?
- Would a Court Injunction/Order be relevant? Could your case be taken to a European court?
- If you are the victim of a bad decision by a public body, have you considered applying for judicial review?
- Have you sought advice and support from civil rights

organisations, such as Liberty and Freedom to Care?

- Have you obtained relevant information from regulatory bodies, e.g. Financial Services Authority, General Medical Council, Charities Commission, Companies House (for directors' legal responsibilities)?

Step 8 - Parliament

- Have you spoken to your Member of Parliament or other government representative?
- Have you spoken to local government councillors/officials?
- Have you spoken to your Member of European Parliament?
- Have you considered petitioning Parliament under the so-called 'Law of Parliament'? (consult your MP)
- Would a Parliamentary Question be helpful?
- Have you consulted the relevant Ombudsman or Ombudsmen?
- Have you written to the relevant Ministers?
- Have you written to the relevant Secretary of State?
- Have you considered taking the matter to the relevant spokespersons of the opposition parties?

Step 9 – Independent inquiry

- Have you sought an inquiry?
- What sort of inquiry would be appropriate (public, internal, etc.)?
- How independent an inquiry do you think you could get?
- Where does responsibility ultimately reside, and/or to whom would an appeal ultimately be made?
- Has an independent inquiry been demanded from that body? (Consider the Chief Executive, Board of Governors, Chairperson, Inspectorate, Privy Council, Secretary of State etc.).
- Could pressure be built up to demand such an inquiry and, if so, how?
- Could a petition be organised?

An air traffic controller developed insomnia and depression when he was no longer able to live with what he considered to be risky practices at his airport.

A teacher who objected to the bullying management style of the head, was then given an unreasonably heavy workload.

14 Shooting the messenger

Excerpt from Geoff Hunt, *Whistleblowing in the Health Service: Accountability, Law and Professional Practice*, Arnold (Hodder Headline), 1995, pages 155-158.

How the messenger gets shot

While one should try to be positive about the subject of accountability, emphasising what is necessary for good practice in management and health care, it is wise perhaps for the conscientious employee about to raise a concern to be aware of what they might expect in the worst scenario. While one hopes and works for the best, one needs all along to be prepared for the worst. Just as the citizen at large has lost touch with the realities of democratic decay, so the health service employee is often (even now) quite unsuspecting about the degree and scale of defensive, capricious or ignorant behaviour on the part of those entrusted with authority.

Furthermore, it is a worthwhile exercise when thinking about reforms, to ask why institutions respond in the specific, non-accountable ways that they sometimes do. A brief overview of the institutional alternatives to accountable practice would be amusing if they were not so tragic for the victims. One could roughly arrange these by the degree of defensiveness to which the authority feels driven.

Hot air

Typically those in authority will, at first, appear to share one's concern. Many words will be generated, insub-

jury disregarded his ruling and acquitted Ponting.

In the 1990s, UK national TV news carried the cases of nurse **Graham Pink** and **Dr Helen Zeitlin** (nursing shortages in care of the elderly), social worker **Alison Taylor** (child abuse in official settings), and scientist **Dr Chris Chapman** (scientific data fraud). More recently we have had the victimisation of anaesthetist **Dr Steve Bolsin** (children's cardiac operation failures), European Commission auditor **Paul van Buitenen** (fraud and mismanagement), and MI6 intelligence officer **David Shayler** (incompetence and secret assassination plots), and Flintshire County Council auditor **Andy Sutton**. Beyond Europe, in every part of the world, conscientious professionals have spoken up and drawn great media attention (see FtC website).

No less important are the trials and tribulations of every worker who speaks up for the benefit of others. Of course, for every one that comes to the attention of even local media there are hundreds or even thousands who suffer some unfair consequence for having expressed their conscience. Here are some cases with which FtC had some involvement over the last ten years or so.

When a social care worker demanded that children's complaints about abuses in a Cardiff children's home be investigated, she lost her job; but she persisted, resulting in a police inquiry that spread to 32 other homes and a series of convictions of abusive staff.

A nurse was 'sent to Coventry' by managers when she persisted in complaining that an autoclave to sterilise instruments was a hospital infection risk.

An accountant in a small business realised that fraud was taking place, and veiled threats were made against him by management when he showed his discomfort.

A doctor realised that there was incompetence in cancer screening and patients were at risk, but he was suspended for being 'insubordinate' when he pursued his concerns.

Step 10 – Press and community

- Is 'going public' justified by the public interest/welfare?
- Have you taken your concern to the community or its representatives (e.g. relevant NGOs, consumer watchdogs)?
- Have you considered the possibility of a local community campaign?
- Have you been to the local or national press, local or national radio, and local or national TV?
- Have you considered writing and distributing a pamphlet about your concern and any victimization you have suffered?
- Are you confident that any disclosure you make will be in accordance with the Public Interest Disclosure Act 1998?
- Do you understand the possible consequences of making a disclosure otherwise than in accordance with the Public Interest Disclosure Act 1998?

8 Principles of ethical management

All organisations are subject to change, and may improve or deteriorate from an ethical point of view. In those that have not deteriorated so far that senior executives and management are compromised, there is always the possibility of managerial initiative to engender openness and internal and external accountability. Staff concerns, which may lead to whistleblowing (public interest disclosure) if ignored, may be treated under certain guiding ethical principles of management. These might include:

- Above all, to consider the concern impartially and establish whether it is true, wholly or in part.
- Not to penalise the conscientious employee for raising a concern, even if it is false or misguided.

- To act on a presumption in favour of genuineness on the part of the employee. Even if malice or ulterior motive should emerge, the truth of the whistleblower's claims must remain the paramount concern.
- To create positive channels for the expression of concern, such as participatory meetings, exit interviews, rewards for employee vigilance, periodical ethical audits, and open door management.
- A readiness to explain and justify to all stakeholders, in a consensus-building spirit, their decisions and actions, for example, around resource allocation.

While from the managerial point of view, whistleblowing may be seen as a problem and a threat, from the employee and public point of view it may be unethical and secretive management that is a problem and a threat. For example, environmental dangers created by corporate disregard for public opinion, industrial regulation and law, cannot await the emergence of more whistleblowing martyrs.

Furthermore, in the long term, the promotion of ethical management is more likely to deal with the kinds of issues raised by whistleblowers, on the level of practice, procedure, policy and culture than legislation that punishes employers for victimising whistleblowers. Such 'whistleblower protection' legislation, which is now to be found, for example, at state level in the USA, Australia and in the UK, may play its part in a wider programme of cultural change. However, much of this legislation needs to be amended to shift the onus from the whistleblower, who currently has to justify disclosure (from a presumption in favour of commercial or government confidentiality), to the employer, who should have to justify non-disclosure (gagging) from a presumption in favour of freedom of speech and freedom of information.

Part Three

Speaking Out in Actual Practice

"If I am not for myself, Who will be? If I am only for myself, What am I? And if not now, when?"
(Rabbi Hillel)

"Christian heroism, and indeed one perhaps sees little enough of that, is to risk unreservedly being oneself, an individual being, this specific individual human being before God, alone on this enormous exertion and this enormous accountability." (Soren Kierkegaard, *The Sickness Unto Death*, Preface)

"'He beat me, he robbed me. Look at how he abused and injured me.' / Live with those thoughts and you will never stop hating. / Hating can never overcome hatred. / Only love can bring the end of hating. This is the eternal law." (The Buddha, *Dhammapada*)

13 Some cases of speaking out

Some cases of whistleblowing have made international headlines. Whistleblowing first trickled into the UK public consciousness perhaps in the mid-1980s. In 1984 **Sarah Tisdall**, a young Foreign Office clerk, was prosecuted under the Official Secrets Act for leaking information about the government's plans to handle the public relations aspects of the arrival of American cruise missiles in the UK. She was sentenced to six months in prison. The following year, **Clive Ponting**, a senior Ministry of Defence official, was similarly prosecuted for leaking information showing that ministers had misled parliament over the sinking of the Argentinian cruiser the *Belgrano* during the Falklands war. In his summing up the judge ruled that Mr Ponting's defence, that he was acting in the public interest, has no basis in law. The

let and/or study period what are the different kinds of confidentiality provisions, what their rationale is, and what sorts of things are confidential. Confidentiality clauses often make no distinction between confidentiality to protect patients, to protect personnel information, to protect commercial interests, and so on.

The Right to Know, the Duty to Disclose

To conclude, employees need to be told that their concerns and criticisms are welcome, that channels exist for expressing them, that these channels are protected by principles of due process and independence, and that anyone who dares take reprisals for raising concerns will be subject to disciplinary action. Staff need to understand the principle of the 'right to know' in relation to the Data Protection Act, Freedom of Information Act and similar laws. It is the duty of their employers to draw these to their attention.

9 FtC's Charter of Public Accountability

Organisations can be regarded, from a moral perspective, as nothing more than individual people arranged and trained to transform an apparently alien 'nature'. In undertaking this transformation, organisations take on a life of their own, lose direction, and begin to transform individual people and nature in unexpected and often harmful ways.

Organisations need to be accountable. **Accountability is a preparedness to explain and justify one's intentions, actions and omissions to stakeholders, and the means by which this preparedness is manifested.** Unaccountable organisations set people against nature, people against people, and ultimately set each person against himself or herself. Harm to individual people, to society, to animals and plants, and to the physical environment is the inevitable result.

The Charter assumes a distinction between the employing organisation and the individual person as employee and citizen. At the same time it represents a step towards breaking down this distinction. The Charter also acknowledges a creative tension between assuming the organisational *status quo* and challenging it.

FtC's Three Fundamental Human Claims

- Every human being has an inalienable *right* to accountable behaviour from organisations (whether public, private or independent) whose activities significantly affect their quality of life and that of future generations.
- Public officials and private sector directors and managers (whether of for-profit or non-profit organisations) have a *duty* to explain and justify their intentions, actions and omissions to all those whose quality of life is affected thereby.

- All employees have a *right* to freedom of conscience and speech in the workplace.

These rights and duties are not absolute, but are to be understood as having strong presumptions in their favour, and the onus is always on openly explaining and justifying any over-riding of them.

TRANSPARENCY

- i Openness
- ii Engagement
- iii Personal responsibility
- iv Independence
- v Non-discrimination
- vi Reconciliation

DUTY TO JUSTIFY

- vii Right to know
- viii Duty to inform
- ix Adequate information
- x Accessible Information
- xi Communion
- xii Application

FREEDOM OF CONSCIENCE

- xiii Consent
- xiv Facilitation
- xv Comprehension
- xvi Pluralism
- xvii Participation
- xviii Raising concerns

intimidates staff because they are left in the dark as to what they can say, so they say nothing. A legitimate confidentiality clause is specific in character.

Lack of balance

It presents confidentiality as an absolute. It does not balance it against other considerations. Absolute confidentiality is secrecy. Proper respect for confidentiality is only a presumption in favour of non-disclosure, i.e. good reasons have to be given for disclosing. There are always such possible reasons. Put in the most general terms, the 'public interest' may make a breach of confidentiality legitimate. There are many other good reasons for disclosing, some of them statutory. A legitimate clause spells out the other side of the balance. In an open society there should be a presumption in favour of openness, not secrecy, i.e. those who wish to maintain confidence have the onus on them to tell us why and, of course, there are some very good reasons, such as protecting patient's privacy.

Intimidating tone

It immediately associates discipline and dismissal with breach of confidentiality. In fact discipline and dismissal are no more associated with breaches of confidentiality than they are with a wide range of other wrongdoing. There is no need to emphasize them here, except that they frighten staff, which is often what they are meant to do.

Discriminatory

Staff are often given the impression that confidentiality rules apply only to them, or especially to them. They apply to everyone equally including the chief executive. This should be made clear in principle and practice.

Lack of clarity

Staff and managers need to be told in a guidance book-

If an organisation suffers from systemic maladministration, mismanagement or corruption, then it may be very dangerous for the conscientious employee to raise a concern internally. It might be tantamount to taking a concern for adjudication to the very people who are implicated in the matter of concern. More radically, even where such channels do function well, they are almost entirely negative in form. That is, they are designed to deal with complaints about what is going, or has gone, wrong, rather than with preventing wrong.

12 Gagging clauses in contracts

Sometimes employers try to intimidate a member of staff raising a concern by drawing attention to a 'confidentiality clause'. The employee does have to be careful here, because some things *are* confidential, and in different ways. Some clauses are legally worthless, and merit the term 'gagging clause'. That is, they are only meant to intimidate the employee into silence. How would you recognise one? It is best to seek legal advice before acting. In the mean time, Freedom to Care provides this spotter's guide to Gagging Clauses:

An Example: "I undertake to treat as confidential all information derived from or obtained during or after my employment at XYZ. I understand that failure to do so may result in disciplinary action which may result in dismissal".

What makes this a gagging clause?

Generality

It suffers from generality. No one can realistically treat as confidential 'all information' and, morally, no one should be required to do so. Clauses with this defect are unenforceable in a court of law. This kind of generality

TRANSPARENCY

Those who run large organisations should behave as they would wish their employees to behave, with generosity and receptivity, on the following presumptions.

Openness

That secrecy, concealment, prevarication, and deviousness should be avoided. While the legitimate privacy of individuals should be respected, neither privacy nor confidentiality should be used as an excuse for unwarranted secrecy by those bestowed with authority.

Engagement

That distancing and disengagement from the consequences of organisational behaviour (by means of bureaucratic size, intermediaries, technology, command structures, etc.) should be avoided, and steps should be taken to ensure as much engagement and closeness as possible with those who will or probably will face such consequences. Smaller scale, delegation, regionalisation, devolvement, partnerships, etc. are to be encouraged.

Personal responsibility

That discretion (judgement, creativity) is the prerogative of every individual person. Those who run large organisations must recognise and accept the especially weighty and momentous privilege they exercise as people who make decisions affecting the lives of other human beings, each of equal importance to themselves. They should not try to pass on that responsibility, nor should they try to hide behind rules, regulations, laws or the inadequacies of the organisation's structures and processes.

The mark of a true leader in any organisation is the willingness critically and objectively to question their

own motives and interests and to reach a decision only after putting themselves and their loved ones in the position of those who will, in fact, be facing the consequences of their decision.

Independence of judgement

That an honest recognition of the tendency that nearly every individual person has to promote their own welfare at the expense of, or with the neglect of, the equally important welfare of others is of special importance to those bestowed with authority.

Recognising this, and to maintain the impartiality of their judgements, those in authority should accept limitations on their authority through the separation of powers, due process, appropriate standards of proof and other consensually accepted and transparent procedures designed to resolve or remove conflicts of interest.

Non-discrimination

That an honest recognition of the potential blind spot that every individual person has to their own prejudices, preferences, reactions and preconceptions is of special importance to those bestowed with authority. Recognising this, those in authority will endeavour to treat each person - regardless of such factors as race, gender, disability, creed, age - as they would wish themselves and their loved ones to be treated.

Those bestowed with authority should be specially vigilant, in their intentions, judgements, acts and omissions, in examining their own motives and assumptions, listen to well-intentioned criticism and subject themselves to the same anti-discriminatory safeguards as every other person.

sible manner, perhaps by publicly revealing to a newspaper the names of the children.

Exhaust internal channels?

It is judicious to exhaust all channels of complaint and concern internal to the organisation, and to be seen to do so, before blowing the whistle. Public sympathy may not be very strong for someone who is seen to have acted hastily or impulsively. A preparedness to exhaust internal channels may be regarded as a test of the whistleblower's sincerity and professionalism.

But it is more importantly a moral matter. To fail to give an organisation a chance to deal with the wrongdoing, or even consider whether it is a wrongdoing, is to act unfairly. An organisation and its executives and managers, and even its employees and clients, may suffer extensive collateral damage from a disclosure about a serious wrongdoing that the organisation would have been prepared to rectify with less damage had it been informed in a timely and helpful way.

Difficulties may arise with attempting to use such channels however, and these show that this condition cannot be a necessary one, although it is consideration potential whistleblowers should always keep in mind. One difficulty is that the organisation may not have adequate channels for staff to raise concerns. Whether the channels that do exist are adequate or not will sometimes become part of the controversy around a public disclosure, for there is often a difference between management and staff about what constitutes adequacy here. Channels such as complaints, grievance and disciplinary procedures may have fallen into disuse or may be biased or perceived to be biased in favour of management. That is, such channels appear to be better designed to deal with managerial complaints against staff rather than the other way round.

make their disclosure in a responsible manner, if only for the pragmatic reason that those who object may be inclined to make an issue of the manner thereby drawing attention away from examining the matter that is being disclosed. This is one aspect of 'shooting the messenger'. Then there is the additional point that disinterested people will tend to treat the level of responsibility manifested in the whistleblower's behaviour as a test of the truth and importance of the matter being disclosed. Someone who is clearly irresponsible in handling a matter is usually less likely to be listened to and believed than someone who handles it with great care.

Putting prudential considerations aside, responsible disclosure is surely a moral requirement, and it is here that it may be considered as a condition of justifiability. In concrete terms, responsible disclosure might include:

- making sure one has one's facts right
- refraining from anger, exaggeration and distortion
- consulting colleagues
- avoiding hurt to innocent parties
- putting aside any inclination to personalise or act vindictively
- choosing the proper time
- disclosing to the most appropriate party (someone who is also responsible).

None of these can be regarded as a necessary requirement, regardless of context, however. Indeed, 'responsible manner', like the other criteria, can serve only as a general guide to justifiable disclosure for it is always possible, if exceptional, that a particular disclosure is justifiable even where the manner was quite irresponsible. Thus it is arguable that a cleaner at a child care institution who blows the whistle on serious child abuse has acted justifiably and was justified, even though, in their ignorance, they made it in an irrespon-

Reconciliation

That those bestowed with authority should personally apologise, and take action to make amends, reconcile, restore or repair, where their intentions, judgements, acts and omissions have resulted in harm to other people, whether deliberately, negligently, unwittingly or by mistake. One simple, if not sufficient, test of what is 'harmful' is whatever a person in authority would not wish to have happen to, or to have done to, themselves or their loved ones.

DUTY TO JUSTIFY

Those who run large organisations should provide explanations and justifications, with generosity and receptivity, on a presumption in favour of:

Right to know

Those who face the consequences of the intentions, judgements, acts and omissions of people in authority have a qualified right to know of these intentions, judgements, acts and omissions. The presumption is always in favour of the public's right to know – the onus being on those bestowed with authority to explain any exception publicly.

Duty to inform

The correlate of the public's right to know is the authority's duty to inform. Those bestowed with authority have personal responsibilities to inform the public, and to take necessary steps to empower their staff to inform the public. This is so wherever their intentions, judgements, acts and omissions will significantly affect the public or any individual persons.

Since individuals are unique, and implicit interests

may be at stake, those in authority cannot (except in special circumstances which they should justify) assume that they know what the public want to know.

Providing adequate information.

Those in authority should always provide the amount, kind and quality of information that the public and individual citizens need in order to evaluate the intentions, judgements, acts and omissions of those in authority.

In general, those in authority should actively provide information on anything that they themselves or their loved ones would want to know were they in the position of the public or the relevant individuals who are or might be affected.

Whether actively provided or passively made available, information should be of true value (or utility) to the recipient, and those in authority must ensure that this principle is understood and acted on by those responsible for selecting, compiling, interpreting, writing up, editing and presenting the information. A measure of the value of information is the value to the authors and providers if they themselves or their loved ones were in the position of the public or the individuals who are or might be in need of such information.

Information cannot be of true value if it brings more division and misunderstanding into the world.

Accessible information

The information actively provided should be equally accessible to all without discrimination or unfair opportunity or inopportunity. Consideration needs to be given to such factors as language, disability, location and the means of individuals and communities.

Information should also be timely. Information other than that which should be actively provided, should be

need be no inconsistency in the whistleblower being in a minority of one regarding the rightness of their act. Conversely, a whistleblower may not be comforted in the knowledge that most (or even all) people believe the disclosure was, on balance, the right thing to do when the whistleblower now perceives harmful consequences that would have been sufficient to make them refrain from disclosing had they predicted them. All that can be said with certainty is that potential whistleblowers are well advised to give thought, together with supporters and well-informed parties, to the consequences of the disclosure before making it. If they fail to do this there may be a widespread opinion that their disclosure was unjustified, even if it was justifiable.

A disclosure that could not possibly do anything to rectify the wrongdoing or prevent future wrongdoing may be regarded as unjustifiable. After all, it may be asked, what is the point of making the disclosure? In our example (above) there is the possibility of rectifying the matter that is perceived as wrong and preventing reoccurrence. Quite often, however, people disagree about what is possible and what is not. Optimistic and courageous whistleblowers sometimes find themselves isolated by their well-meaning colleagues on the grounds that, 'There is no point, the system cannot be changed'.

Furthermore, the rectification criterion is itself contestable. The whistleblower may not be concerned so much with the consequences of the disclosure as with simply making the truth known, because it is the truth. Even the most pessimistic person may blow the whistle without ill-motivation. Some may blow the whistle primarily, or only, to redeem themselves for years of complicity or collusion in organisational wrongdoing. No doubt it remains the case that most whistleblowers would appeal to rectification to justify their act, at least in part.

Potential whistleblowers are also well advised to

bly needs a stronger justification (especially if it is criminal, as opposed to contestable in a civil court) it is the ethics of the disclosure that is at issue here. In a liberal democracy in which civil disobedience is regarded as acceptable under some conditions, most would agree that an illegal disclosure may be morally justifiable. Indeed, whistleblowing and civil disobedience may be regarded as conceptually related. Of course, the position that it is never morally justifiable to disobey the law, is not indefensible.

Furthermore, each of the *prima facie* conditions given is contestable in any particular case, since every case is open to interpretation, within a reasonable range, depending on the interests and values of the parties involved.

Good and harm

A whistleblower may find it difficult, or impossible, to ascertain whether a disclosure will do more good than harm. All the well-rehearsed arguments for and against utilitarian calculation could be invoked at this point. Some would take the view that it is not unreasonable to make a disclosure simply and only because 'it is the right thing to do' even if harmful consequences are known to be more likely than beneficial ones. A whistleblower in this position might feel, for example, that they are ultimately answerable to their conscience or to a higher being who will judge them only for being virtuous or following moral principles and not for the consequences of the right act. In real situations, potential whistleblowers are very unlikely to be able to assess all, or even most, of the consequences of disclosure. Even if they could, it would always be their interpretation of harms and benefits rather than, say, the employer's.

It must be admitted that it would give rise to legitimate suspicion about motives, if a whistleblower was not disappointed or regretful if their disclosure clearly did more harm than good. But even this is problematic, since there

made available immediately on request, and the onus is on the authority to provide good reasons, publicly, if and when it is not available.

Communion

Authorities should accept that the only reason that information is important is that *achieving an understanding is fundamental in human relations. Those who are affected by the decisions of organisations wish to be understood, and wish to share their understanding of the situation. Authorities should be prepared to do what is necessary to achieve an understanding with stakeholders, and especially with aggrieved parties. Aspects of achieving an understanding are: acknowledging errors, meeting face to face, listening actively, accepting responsibility, showing concern, trying to identify with others, and apologising as soon as possible when necessary.*

Application

The beneficial application of information is of paramount importance. Those bestowed with authority have the power, resources and opportunities to obtain information that the public and citizens may not have the expertise, opportunity, understanding or power to make use of, e.g. certain public health information.

While still endeavouring to meet the requirements of quantity, quality, accessibility, and value (given in 9, 10, 11 above) those in authority should apply, implement or act upon that information in the interest of the whole society as though that society were made up entirely of their loved ones.

FREEDOM OF CONSCIENCE

Public accountability is impossible unless all those who have a stake in the activities of the organisation are allowed freedom of speech and conscience in relation to those activities.

Consent

Relations between stakeholders, including those bestowed with authority in organisations, should be guided by the principle of informed and voluntary consent. This is a recognition of the relative right of individual to determine their own lives.

Facilitation

Stakeholders should be able, or enabled, to participate in the significant decision-making through the removal of obstacles and impediments, and the organisation should contribute significantly to the costs of facilitation, encouragement and support.

Comprehension

Stakeholders, including those bestowed with authority in organisations, should always endeavour to make themselves clearly and truthfully understood to each other and third parties by self-consciously negotiating and agreeing the terms of comprehensible discussion and involving independent third party intermediaries where necessary.

Pluralism

Different stakeholders, including those bestowed with authority in organisations, must explicitly recognize the plurality of interests, attitudes, motives and perspectives involved and establish at what points this plurality lends itself to consensus-building and at what point it is appropriate to recognise in an open-minded way any blockages

that it has in fact been justified; and ‘unjustifiable’ means that there could be no justification in principle.)

Criteria of justifiability

The justifiability of a whistleblowing act revolves around issues such as the manner of the disclosure, the reasons for it, and the motives that lie behind it. Extreme positions are that whistleblowing is always justifiable and that it is never justifiable. In the former, sometimes associated with advocates of unlimited freedom of speech, the argument depends on a narrow and positive understanding of whistleblowing. In the latter, sometimes associated with advocates of organisational confidentiality, the argument depends on a narrow and negative understanding of whistleblowing. A broadening of this understanding brings both extremes into a more balanced and fruitful debate, in which whistleblowing is sometimes justifiable and sometimes not.

It would appear reasonable to claim that whistleblowing is only justifiable where certain minimal conditions have been met. A justifiable disclosure is arguably one which:

- does more good than harm
- serves some purpose in correcting or preventing the wrongdoing concerned
- is made in a responsible manner
- follows on the exhaustion of internal channels of complaint and redress

Even when these conditions are met, it is possible that, for someone, there is some other reason that makes the disclosure unjustifiable. There may be disagreement about whether this is a good reason or, indeed, whether it counts as a reason at all. Thus one may argue for including the legality of the disclosure as a condition. While an illegal disclosure proba-

Here is a simple illustration of a whistleblowing scenario: a civil engineer believes that a certain building practice is unsafe and reports this to their employer. The employer does not act on the report so the engineer takes it to their professional body. This body also does not act to the satisfaction of the engineer so they then decide to take their report to the media. The employer dismisses the engineer for gross misconduct in breaching confidentiality.

The term 'whistleblowing' probably arises by analogy with the referee or umpire who draws public attention to a foul in a game by blowing a whistle, as in soccer. Whistleblowing thus has three essential elements:

- The perception by someone within an organisation that something is morally amiss within that organisation.
- The communication of that perception to parties outside the organisation.
- The perception by at least some of those in authority in that organisation that such a communication ought not to have been made.

Conceptual and ethical difficulties arise over such questions as the rightness of the perception of wrongdoing, the justifiability of 'going public', the nature and scope of corporate, managerial, professional and employee responsibility, the conflicting claims of confidentiality and freedom of speech and of loyalty and honesty, and the openness and accountability of organisations.

When is disclosure justifiable?

When is an unauthorised public disclosure justifiable and when unjustifiable? Although perceptions will differ in a particular case, some points of clarification may be made. (Note that 'justifiable' means that an act or omission in principle has a justification, that is, that it is possible to justify it, not

which require compromise and impartial mediation.

Participation

Stakeholders have a right to participate in the decision-making of the organisation. Participation may take different forms, such as consultation, representation and direct involvement, and the stronger the impact of the organisation's activities on the stakeholders, the more direct (unmediated) that form should be. In general, organisations should aim for the strongest form of participation compatible with effective decision-making, and participation should not be abused as a means of prevarication and shedding or shifting of responsibility.

Raising concerns

All stakeholders should be free to raise public concerns with impunity. This applies especially to conscientious employees within the organisation. Those raising concerns have a duty to do so with responsibility and fairness, taking account of the real circumstances, and those in authority should be receptive to concerns, facilitate the reception of concerns, listen to the concerns and act upon them fairly and promptly.

10 Using the Charter

Without a caring attitude towards others, accountability and freedom of speech are worthless. Accountability and freedom of speech in the workplace are important because they are conditions for expressing and encouraging our care and concern for each other and for ourselves. Without accountability and freedom of speech in the workplace, the freedom to care is denied.

Ethically, there is a presumption in favour of freedom of speech in the workplace. (The presumption should not be in

favour of organisational secrecy.) Although it is not an absolute right, independent of actual circumstances, the onus is ethically always on showing why such a right should not be exercised in any particular situation.

'Presumption in favour' is about balance and avoiding extremes and absolutes. If there is a presumption in favour of freedom of speech, then in actual circumstances we start from that assumption (which shapes our general attitude) but remain alert to justifiable exceptions. There will always be exceptions, but one does not start with them; one has to argue for them with reason, fairness and evidence.

If you accept this *Charter* then you should use every opportunity to promote it and use it whenever those in authority are falling short in their public accountability. However, the Charter should be used on precisely the same foundations that it itself creates. It should not be used as an instrument of anger, blame, division, ideology, force, spite, or to gain anything other than improved human understanding and togetherness.

When an authority falls short, you may consider taking the following steps:

- Get the facts right.
- Ask the authority for an explanation and justification.
- Consider the explanation, if it is provided.
- Evaluate the explanation fairly and send your evaluation together with this *Charter* to that authority.
- If you do not accept the explanation, or parts of it, inform the authority that this is the case and that you intend to engage in passive resistance to draw public attention to their lack of accountability.
- Provide constructive ideas, information and alternatives
- Do not display anger, sarcasm, exaggeration or any form of abusiveness.

Consider the appropriateness and consequences of taking any other steps of passive and non-violent resistance such as:

- Creating alternatives and showing the way by modest example
- Withdrawal of labour
- Withholding of support
- Peaceful blockades
- Peaceful boycotts
- Non-compliance with selected rules, instructions, etc.
- Disseminating clear and truthful information as far and wide as possible about the failure of accountability. This will include any explanations provided by the organisation, your reasoned evaluation of that explanation, as well as what alternative behaviour looks like.

We should always be mindful of our own behaviour. Aggression, division, hatred, pride, dogmatism of any kind (verbal, emotional, physical) are counter-productive and not fruitful responses to organisational aggression, division, hatred and pride. Our human weaknesses can only be addressed by patiently giving our moral strengths a chance.

11 Whistleblowing – right or wrong?

A section of copyrighted 7,000 word entry on 'whistleblowing' by Geoff Hunt in Encyclopedia of Applied Ethics, Academic Press, 1997. For the whole article and related entries please obtain the book in your library.

Whistleblowing is the public disclosure, by a person working within an organisation, of acts, omissions, practices or policies perceived as morally wrong by that person and is a disclosure regarded as (or said to be, or treated as) wrongful by that organisation's authorities.