The Whistle

FREEDOM TO CARE
April 2004
No. 23
ISSN 0969-2118

Promoting public accountability - Protecting freedom of speech in the workplace

According to popular wisdom, society gets the police force which it deserves, which in 21st Century Britain is apparently a police force able, with impunity, to shoot dead or injure people who pose no threat. What sort of society deserves such a police force?

The article – 'Is no one accountable for police killings?' – by Geoffrey Porter-Williams on pages 4 and 5 of this Issue, describes the general problem, cites, as a specific example, the killing of James Ashley in 1998 by Sussex Police and offers some suggestions for how armed operations by police could be more responsibly and accountably managed in future.

On the wider question of what sort of society deserves such a police force, the easy answer, of course, is our society, you and me, all of us. Our police force is a microcosm of wider society; it is what we do, and who we are, when we organise ourselves as a para-military body with extensive powers over other people. The much more difficult question is: what sort of society is our society? More specifically, what sort of society must ours be to allow its police to kill people who pose no threat and (seemingly) get away with it?

Whatever label we use as a convenient shorthand to describe ourselves (post-industrial; post-modern; free market; welfare state etc.), the particular, relevant characteristics of our society certainly include:

- a 'public domain'* in decline;
- at the individual level, a reluctance to take responsibility;
- over-centralisation of power;
- fear of, and distance from, those 'in authority';
- unwillingness by government to share information with those it governs.

In short, a society where a critical mass of 'grown-ups' have become infantilised or, at least, are in the process of becoming so and where the tiny coterie of those 'in charge' often use a special language to speak to the infantilised grown-ups, typically referred to by those 'in charge' as 'the people', 'ordinary people' or, even, (per Geoff Hoon) the 'government's people'.

This special language, let us call it 'Spin-ease', is designed to achieve closure of any dispute as quickly as possible, leaving the organisation in the clear. A recent example, from an ongoing case (unrelated to the James Ashley killing), appears in a letter from the 'Complaints Process Manager' of a police force: ***"Any discrimination of fairness can be construed as an 'abuse of the complaints process' ".***

This sentence has no discernible meaning, but the words sound important and official (even threatening) and will therefore carry weight with the vast majority of us 'ordinary people', thereby forestalling any further discussion.

Plain English is an essential pre-requisite of accountability – a point so obvious that it often gets overlooked by those of us seeking a more accountable society.

Perhaps there should be a part of the Freedom to Care web site dedicated to examples of Spin-ease and of relevant extracts of any subsequent correspondence concerned with seeking clarification. Organisations using Spin-ease could then be exposed as the dissemblers which they are and visitors to the web site could learn to recognise Spin-ease (in all its forms) and how to deal with it.

Readers' views on this and any other aspect of accountability are always welcome. Please write (in plain English!) to Freedom to Care at the address on the back cover or email us at: *freedomtocare@aol.com.*

Robert McGregor, Editor

NOTE: the 'public domain' is used here in the sense of '... the domain of citizenship, equity and service whose integrity is essential to democratic governance and social well-being.' Cambridge: Polity. Marquand, D., (2004), *Decline of the Public: the hollowing out of citizenship.*

WHAT IS HAPPENING TO WALES?

Chris Clode, National Co-Ordinator, FtC.

Readers of *The Whistle* will know that Freedom to Care has long been pursuing what, so far, has proved to be an elusive quarry: a full and proper public accounting in respect of malpractices in local government and the NHS in Wales. The long running saga of Andy Sutton and Flintshire, the equally long battle against abuses in Cardiff and South Wales and the support given to whistleblowers in various other Welsh Councils have met with varying degrees of success, but in no case can we yet say that there has been a 'full and proper public accounting' and, if certain proposed legislation (discussed later on in this article) is enacted, then accountability in public life in Wales, already difficult to achieve, will become virtually impossible.

During its pursuit of full and proper public accounting, Freedom to Care has continually sought responses from the National Assembly for Wales and its Ministers, but has been told that the Assembly can do nothing, because any intervention by them would be an interference with the autonomy of the particular council to deal with its own employment issues. Where the cases we have pursued have criminal implications, we have raised the allegations with the police.

Particularly in North Wales, allegations of covering-up and destruction of evidence on the abuse of children were initially rejected by the police as already having been adequately responded to - despite evidence to the contrary. The publicity given to the Sutton case finally forced the police to investigate - so far, their 'investigation' has taken more than a year and the key senior officers of the council have not been suspended. Councillors decided that, despite the documented evidence against the officers, there were no disciplinary matters to address.

We wrote to the Prime Minister's office about our concerns - but our letter was simply passed back to the Assembly Minister, Sue Essex, who had already said she would do nothing.

Then, in January, FtC became aware that an apparently harmless Bill in Parliament (Public Audit (Wales) Bill) to merge the Audit Commissions of England and Wales, contained a clause (Clause 54) which provided that audit report information must not be disclosed without "the consent of the body or person to whom the information relates."

When we wrote to the chair of the Common's Welsh Affairs Select Committee, Martyn Jones, MP, querying this provision, he told us that the Government had rejected the Committee's opposition to the inclusion of the clause and that it appeared that the clause may have emerged from the lobbying of the Welsh Local Government Association, which argued that it should be open to a council to refuse consent to the publication of negative audit reports...the accused being able to decide what evidence is allowed into the public domain for electors and tax payers to make their own judgements!

The Auditor General for Wales, Sir John Bourne, said that "in the interests of accountability and openness I would argue strongly for its [the clause's] removal".

Contrary to Tony Blair's flagship commitment in 1998 to root out corruption in local government, it appears that central government is, in effect, intending to facilitate local authority corruption and the suppression and concealment of the evidence of such corruption.

Any attempt by whistleblowers to get such evidence out into the public domain would, by virtue, of Clause 54, be subject to a statutory right of veto exerciseable, in their absolute discretion, by '...the body or person to whom the information relates': thus, if, for example, an auditor's report identified named individuals involved in malpractice, those people, being the people named in the report, could prevent its publication. What criminal's charter is this?

As the Bill will apply to England as well as Wales, the Government is therefore seeking to smuggle into English public life the same degraded version of accountability in public affairs which, as we have been discovering, applies in Wales.

Write to your MPs, alerting them to Clause 54 and urging their opposition.

Stop Press

Freedom to Care welcomes the recent Government statement that it will amend Clause 54 to make it consistent with moves to make existing legislation compatible with the Freedom of Information Act. However, we would also seek reassurance that the wording of the final draft of the Bill in no way seeks to further diminish the currently frail protections available to whistleblowers under the existing legislation, the Public Interest Disclosure Act.

National Health Service Update

Sheila Porter-Williams

Ian Perkin's Employment Tribunal decision

The case of Ian Perkin, who was dismissed from his post as Finance Director of St George's Hospital NHS Trust after he revealed that returns to the Department of Health had been falsified, was covered in Whistle 21.

His Employment Tribunal decision was announced, after a long delay, on 28th January 2004. The Tribunal found that he had been unfairly dismissed and that he had made a protected disclosure under the Public Interest Disclosure Act. The Tribunal did not, however, award any compensation, accepting as valid the Trust's pretext for dismissal, that Ian Perkin had an unsatisfactory attitude and interacted badly with colleagues.

The decision not to award compensation seems perverse and we expect it to be corrected on appeal. See Ian Perkin's website (http://www.nhsexpose.co.uk/) *for a full history and further developments, and for publication details of his forthcoming book.*

Ian Perkin's experience is still far too common. A report on BBC News: http://news.bbc.co.uk/1/hi/health/3006009.stm, *on 7th May 2003 showed that one in three NHS workers who had voiced concerns about bad practice in the service had faced reprisals.*

Suspension of doctors and dentists

Freedom to Care *has campaigned for many years against the prolonged and unnecessary suspension of NHS staff.*

On 29th December 2003, in response to the scathing report on suspensions by the National Audit Office mentioned in Whistle 22, *the Department of Health published a circular:*

> *"Maintaining high professional standards in the modern NHS: a framework for the initial handling of concerns about doctors and dentists in the NHS"*
> (http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/HealthServiceCircularsArticle/fs/en?CONTENT_ID=4065697&chk=1DZoY8).

We would be interested in knowing whether the new policy framework leads to any improvement.

Patient and Public Involvement in Health

Since December 2003, each NHS Trust and Primary Care Trust has had a Patient and Public Involvement Forum. The network of forums replaces the previous network of Community Health Councils (CHCs), and there are differences. The number of forums is substantially greater. Complaints are now facilitated through a separate Independent Complaints Advocacy Service.

While some former CHC members have joined forums, most of the forum members we have seen have significant experience as patients, as carers or as former employees. About half the places on forums have still to be filled.

The forums have still to prove themselves by influencing changes in health and related services to make them more responsive to the needs of their communities.

Anyone interested in joining a forum should contact the Commission for Patient and Public Involvement in Health (*http://www.cppih.org/*).

Freedom to Care workshop

The annual Freedom to Care workshop will take place in Rugby on Saturday 22 May 2004 (please note revised date). A separate sheet is being sent out including further details and a booking form.

Is no one accountable for police killings?

Geoffrey Porter-Williams

In the UK, operations by armed police are routine. Sometimes, in this 'war on crime', metaphor becomes reality and people who are not a threat are killed or injured. However, whenever a police officer has been prosecuted for killing somebody in an armed operation, the court has invariably found that the killing was lawful.

Past examples include a man shot in the street as a result of mistaken identity and a five-year-old child shot in bed. Over a period of ten years, police officers shot 41 people who were not carrying firearms (*Guardian 23rd May 2001*). Of these, 28 were carrying either replica firearms or other lethal weapons, six (including five police officers) were shot by accident and seven were shot by mistake.

The killing of James Ashley in 1998 was one of these shootings by mistake. Subsequent enquiries have scrutinised the conduct of all the officers involved, from the Chief Constable of Sussex, who (it might be supposed) had overall responsibility, to the constable who actually fired the gun and thereby killed James Ashley. Two outside police forces investigated the Sussex force, but all that has been officially published is a brief report by the Police Complaints Authority.(*www.pca.gov.uk/investig/firearm2.htm*)

Some of the content of the report by the Chief Constable of Hampshire has appeared in the press, including recommendations to prosecute various senior officers for misfeasance in public office. Such prosecutions failed because responsibility could not be attributed to any individual officer and because no individual officer was prepared to accept any responsibility for the killing.

In the period up to James Ashley's killing, there were numerous examples of police incompetence, including armed officers deployed without formal authority. The police operation that killed him was based on false intelligence, but even if the intelligence had been valid, an armed raid would not (according to a police superintendent who assisted the inquiry) have been appropriate. Too many police officers took part in the raid, causing confusion and adding to the tension – as in war, a fatal combination which almost inevitably leads to people being killed by accident or by mistake.

A few hours after the shooting, the Chief Constable of Sussex issued a press release containing factual errors and a statement supporting his officers and he did this at a time when the investigation into the incident could hardly have started. Some may have thought that the Chief Constable, in line with established government practice, was attempting to 'spin' the incident so as to persuade the General Public that he and his officers had done nothing wrong. Indeed, the Police Authority seem to have thought that this was his purpose since they gave him a rebuke, albeit a mild one.

Another worrying aspect of the killing of James Ashley by Sussex Police is that the Hampshire investigation found that the Sussex Police solicitor who had advised the Chief Constable on the drafting of the press release had also, as deputy clerk to the Police Authority, advised the Authority in its investigation of the Chief Constable's conduct in issuing the press release. On any view, a clear conflict of interest.

It is important that lessons are learned from badly planned and executed police operations. The following suggestions should help avoid a recurrence:

- When a Police Complaints Authority investigation covers the governance of a police force (as distinct from the conduct of an individual officer), the investigating officer's report should be published in full as a matter of public interest and for the information of police forces and authorities around the country.
- Rules for the authorisation of deployment of armed officers should have the force of law, and any officer deploying armed officers or issuing firearms without properly documented authorisation should be prosecuted.
- All incidents in which police firearms are fired should be reviewed and the report published in full on the Internet, to enable all interested parties to learn from the experience and to prove (not merely assert) to the public that all such incidents are taken very seriously and that the police are not trying to hide anything or closing their minds to the possibility of making improvements.
- Armed officers should not be deployed except in situations of immediate danger.
- Uncorroborated intelligence should not be used to justify armed operations.

- No police officer should take any part in an armed operation unless fully trained in armed operations of the same type. This applies equally to senior officers, who should not command armed operations unless trained how to identify inappropriate situations for armed intervention and how to control armed operations to minimise risk.
- Operations to arrest people at home during the night or early morning should only be used if an arrest during the day would not be practicable.
- Officers of police authorities should be appointed by those authorities and be totally independent of the chief constables whom the authorities oversee. They should be debarred from doing any work for their police force. If a police authority cannot justify employing specialist officers with the requisite knowledge, skills and experience, the officers should be employees of an independent body such as a county council.

A further recommendation is that following the firing of a weapon by a police officer, any press release (or other form of public communication) issued by, or on behalf of, the police must not contain any statements of opinion and only contain the following statements of fact:

- when and where any weapon was fired;
- the identity of any person or persons killed or injured as a result of any weapon being fired (subject to next of kin having first been informed);
- the start date of the independent investigation;
- the name of the investigating authority;
- contact details of the investigating authority;
- the date and time of the press release.

By these means, hopefully, it will be possible to start rebuilding public confidence in the ability of the police to undertake armed operations responsibly and accountably.

Visit the Freedom to Care's Police Ethics pages
www.freedomtocare.org/contents.htm

Largest project to assess civil society globally now well underway

March 2004 --- CIVICUS, an international organisation dedicated to strengthening citizen action and civil society throughout the world, is now implementing what is believed to be the largest and most globally comprehensive civil society research project in the world.

The Civil Society Index (CSI) programme launched in 1999, now works with 64 prominent civil society organisations in 61 countries around the world, ranging from Costa Rica, Poland, Italy and Mauritius to Bangladesh, China, South Korea and Jordan.

The CSI programme is one of the first global attempts at self-assessment and collective learning in the civil society sector; it is the first time that civil society is participating in a research project of this scale. What is unique about the CSI is that it is not externally driven but implemented by and for civil society.

The CSI is a participatory needs assessment and action-planning tool that enables organisations to assess the health of civil society in their particular countries. It assesses and scores four different dimensions of civil society: the structure, the external environment in which civil society exists and functions; the values practised and promoted and the impact of activities of civil society roleplayers. Using such methodology, national organisations are able to develop action plans to help strengthen civil society initiatives in their respective countries.

For more information about CIVICUS, visit *www.civicus.org*
For inquiries regarding the Civil Society Index, email *index@civicus.org*

EMPLOYERS MUST SUPPORT HARASSMENT WHISTLEBLOWERS

Discrimination in the workplace on grounds of religion, belief or sexual orientation is now illegal. The regulations came into force in December 2003 and apply to all employers, regardless of their size. The process of guaranteeing equality in employment will be extended further in October 2004 as new laws against discrimination come into effect on grounds of disability. A ban on age discrimination will be introduced by the end of 2006.

Employers will have to take active steps to prevent discrimination on any grounds and ensure that employees themselves comply with the legislation. Failure to do so can have serious consequences. A managing director was recently sentenced to 18 months in prison for racially aggravated harassment - even though he was not personally involved - because he ignored a campaign of abuse by three employees against a black colleague.

Staff members who blow the whistle on harassment should be assured of confidentiality and support by employers.

ARE YOU BEING HEARD?

To receive *The Whistle*, attend meetings, receive advice, meet like-minded people, and learn to steer your way through the maze of unaccountable behaviour by organisations, join us. Send a cheque for £21 for one year membership, payable to 'Freedom to Care' (or £10 low income) to our West Molesey PO Box (*see back page*).

OXBOW Report
Nigel Nicholas – Secretary

Despite extensive correspondence between Oxbow members and Oxfordshire County Council (including a very helpful letter from Freedom To Care to the OCC Chief Executive), we have hit another brick wall.

The County Council appear to be in denial about the problems that exist within their workplaces and, it seems, continue to ignore their health and safety responsibilities with regard to bullying and stress.

Grievance/Disciplinary Procedures

A number of OCC employees/Oxbow members, who have been on the receiving end of the unnecessary invoking by management of the OCC disciplinary process have tried to use the OCC grievance procedure to challenge this and other forms of managerial bullying, but have found the grievance procedure to be grossly inadequate.

Two Oxbow members who recently blew the whistle by raising formal grievances against their bullying headteachers were both treated with contempt by groups of badly trained governors who were not prepared to take even the limited independent stance of properly examining the evidence. Both cases have illustrated the deficiency of procedures that are stacked heavily against the employee or whistleblower

Despite the best efforts of Oxbow members in recent months (with some eminently sound advice from FtC) to make constructive amendments to the OCC model grievance /disciplinary procedures, very little progress has been made.

The outcome of this review process has been to put the advantage firmly with the employer and to make it very unlikely that teachers and others who raise concerns about being unfairly treated within OCC workplaces will receive justice via internal procedures.

To compound the problem, Oxbow (trade union) members have been frustrated by the lacklustre approach of their own trade union officers who have not been willing to pursue these matters on behalf of their members with any real vigour. The lack of authentic, as distinct from merely symbolic, democracy in a consultative process (such lack being evidenced, for example, by the ignoring of valid and constructive proposals of grass root members) is very worrying and is part of a wider problem of unaccountable behaviour.

OXBOW Members' Update

All the following cases involve OCC employees and Oxbow members who have been bullied into ill- health and have been failed by their employer and trade union. All have been supported by Oxbow in their attempts to seek legal redress.

CASE 1
One bullied Oxbow member who was given 8 minutes to present her case in a grievance appeal hearing, broke down at the meeting with an LEA officer present. She subsequently left her job and later won her employment tribunal case for unfair constructive dismissal. OCC have consistently failed to investigate her case. She is still fighting for justice and has recently taken a direct route by leafleting outside her former school.

Her case has now been recognised by the DSS as an industrial injury /accident at work. She has also made professional misconduct complaints to the General Teaching Council and has been told (after several months) by a GTC investigatory committee that she has not provided the GTC with enough evidence to substantiate her allegations (where have we heard that one before?) .

They have told her that they will not refer her case to a GTC independent panel/public hearing. This is laughable and Oxbow are considering taking direct action – specifically by leafleting GTC staff outside their headquarters in Birmingham. We will attend a public hearing of a misconduct case and then ask questions about how GTC disciplinary functions are administered by their professional standards team. We will be demanding fair practice for all teachers who raise complaints about bullying behaviour as a form of professional misconduct and ask why our member:

- has been denied access to statements made about her by people she complained about; and,
- why she has been denied any appeal against the GTC decision not to refer her case to a fair and public hearing

CASE 2:
This case involves an experienced secondary school teacher and active trade union representative who was bullied into ill-health. He has been refused the due legal process of taking his grievance against his headteacher to his employers: the County Council. With support by Oxbow, this is currently being challenged and creating a host of legal problems for the Council. The teacher is now pursuing a case for personal injury against OCC.

CASE 3:
Former teacher and Oxbow member (bullied out of his job) who has been pursuing his personal injury case against OCC for 5 years was due to go to the high court in February 2004. His case has now been scheduled for hearing in June 2004: his legal team having been granted an extension to a 10-day plus hearing because of the size of the case, which could result in a landmark decision.

CASE 4:
A young teacher newly qualified, bullied into serious ill-health and out of his job in an Oxfordshire school, is currently pursuing a case for personal injury against OCC. He was originally refused legal assistance by his trade union, the NUT. With the help of Oxbow, the NUT are now reconsidering their decision.

In the meantime the OCC chief executive (already on £150,000 per annum) has recently been awarded a 15% pay rise. Money which Oxbow considers could have been far better spent on paying for the independent inquiries into OCC mismanagement and for which Oxbow and others have long been campaigning.

Anonymous or confidential whistleblowing

Sheila Porter-Williams

Most members of *Freedom to Care* joined after having suffered detriment at the hands of their employers for expressing their concerns about what was happening in their workplaces. The employers, of course, knew who they were because they had had the courage to express their concerns openly.

Many no longer work for the employer about whom they expressed concern. Only a minority have successfully changed career.

The open approach is generally the most effective at drawing attention to wrongdoing and bringing about change. Concerns expressed by a respected employee cannot be ignored as easily as anonymous allegations, which are likely to lack adequate supporting evidence. But the open approach depends on there being

.....continued from page 7

someone prepared for ostracism by close colleagues or harassment by managers. Often, nobody will blow the whistle until a major accident or other irreversible harm has taken place.

An open culture is required for people to have the confidence to blow the whistle before such harm occurs. For such a culture to become established, it needs the wholehearted support of the top management. However, even with that support, an open culture can very easily be subverted by local management. And the legal protection provided by the Public Interest Disclosure Act 1998 (PIDA) is inadequate and weaker than that provided by legislation in other countries.

There are many examples of unrelated disciplinary cases being concocted against employees after they have disclosed serious wrongdoing.

Large employers in some industries, recognising that local management may conceal unsafe practices by intimidation of employees, have set up confidential employee complaint arrangements. In their simplest form, these arrangements provide for an independent organisation to receive complaints and, if they appear to be genuine about significant issues, to pass them on to the employer or industry regulator at an appropriate organisational level to investigate and take action.

The identity of the person bringing the complaint is not disclosed. If the employer or regulator asks for supporting details with which to trace evidence within the employer's records, the independent organisation discusses the implications with the person bringing the complaint.

Where confidential employee complaint arrangements do not exist or are not trusted, an employee may feel that he or she has no alternative but to complain to the media, either anonymously or asking not to be identified. If the issue is of sufficient public interest, the newspaper or broadcaster may investigate and publish a report.

Especially in small organisations, an employee who is aware of wrongdoing may see no alternative to writing anonymously to the chief executive or an appropriate director.

In any organisation where employee concerns are not expressed overtly, the management need to consider what they need to do to develop a more open culture.

Here are some examples of confidential reporting procedures in various industries and services.

National Health Service

The NHS Plan, published in 2000, recognised the need for NHS staff to be able to report adverse events without fear of disciplinary action. Although it put too much faith in the ability of PIDA to encourage such reporting, it recognised the need for a confidential reporting route.

The National Patient Safety Agency *(http://www.npsa.nhs.uk/index.asp)* was set up in 2001 as a Special Health Authority. As well as making sure that incidents are reported in the first place, the NPSA is aiming to promote an open and fair culture in hospitals and across the health service, encouraging doctors and other staff to report incidents and 'near misses' (i.e. when things almost go wrong).

One key aim of the NPSA is to encourage staff to report incidents without fear of personal reprimand; another is to make them aware that, by sharing their experiences, others will be able to learn lessons and improve patient safety. The change of emphasis is from the 'who' (is to blame) to the 'how' (to learn lessons etc.).

Air Transport

In 1982, The Civil Aviation Authority introduced a scheme, now known as *The Mandatory Occurrence Reporting Scheme* (http://www.caa.co.uk/srg/safety_initiatives/default.asp?page=8) for employees in the aviation industry to report unsafe incidents and practices. The scheme was mentioned as a model in the *NHS Plan*.

It is fundamental to the scheme's purpose that the substance of reports should be disseminated where necessary in the interest of flight safety. Without prejudice to the proper discharge of its responsibilities in this regard, the Authority will not disclose the name of the person submitting the report, or the name of a person to whom it relates, unless required to do so by law or unless, in either case, the person concerned authorises disclosure. Employers are

encouraged to adopt a similar approach, and only to take
disciplinary action for gross negligence and not for unpremeditated or inadvertent breaches of procedures.

Railways
The Rail Safety and Standards Board set up a *Confidential Incident Reporting and Analysis System* (CIRAS) open to all 80,000 employees in the railway industry. (*http://www.rssb.co.uk/index.asp*).
CIRAS offers an independent, confidential way for staff to report safety concerns without fear of disciplinary procedures. It was developed for Scotrail and extended nationally following the Ladbroke Grove rail crash in 1999, where the investigation revealed for the first time that drivers were passing signals that they could only fleetingly see.

CIRAS is administered by a charitable trust, whose governing body includes independent members. CIRAS's function is to safeguard the confidentiality of informants while publishing and communicating to the responsible bodies the substance of its findings.

Electricity
The BBC (*http://www.bbc.co.uk*), on two occasions in the autumn of 2003, broadcast anonymous reports by employees of National Grid Transco about dangerously slow responses to reported faults in the electricity distribution network. The reports followed a major power cut in London and even more serious incidents in the eastern parts of the United States and Canada and in southern Europe.

Transco's responses seemed unconvincing and gave listeners no confidence that such incidents would not recur.

Comments
If any members have any experience of bodies set up to receive confidential reports, we would be interested to know how well they work in practice.

RECENT FtC CASES – SOME LESSONS

Chris Clode

Sadly, one of the consistent themes of recent cases with which we have been involved is the continued inability of organisations to keep a place for whistleblowers after the event.

Pat in Coventry, whistleblower against sexual grooming of girls in care by a volunteer police officer, has still had to take retirement on the grounds of ill-health, despite some attention being given to her concerns by the new Director of Social Services.

Pat would be the safest person to work protectively with vulnerable children. But because too many of those who refused to listen to her concerns or colluded at covering them up, still remain as managers in Coventry, it is Pat who has had to be disposed of, not the colluders.

New cases in East London, North Wales and West Yorkshire show the same pattern: staff working with vulnerable and abused young people who blow the whistle against unsafe practices are driven out of the organisation, rather than those who collude with abusers or those failing to carry out the protective procedures which they are employed to implement. But, despite this, whistleblowers continue to stand up, unable themselves to tolerate the malpractices and abuses they witness.

The Andy Sutton case, the internal auditor who refused to stop demanding that documents relevant to malpractice allegations should be produced, however highly placed the subject of the allegations, is continuing to its just conclusion. Two BBC programmes have outlined in detail the way in which Andy has been threatened and the breadth and quantity of the corruption allegations in Flintshire that he was trying to investigate. Now he awaits his Remedies Hearing before the Employment Tribunal

.....continued from page 9

and, thereafter, for Flintshire to pay him his just recompense.

But that will only be money. Organisations, especially in the public sector, need to face up to their moral responsibilities and retain whistleblowers, not allow them to be treated like vermin and hunted out. The Public Interest Disclosure Act has led to payments to driven-out whistleblowers. What legislation is required to force organisations to retain those prepared to uphold the mission statements that every employer feels obliged to frame on the walls of their headquarters...gathering dust?

** **The rise of the whistle-blower** **
Katharine Gun says she leaked a secret e-mail to prevent democracy at the UN being undermined. Not every whistle-blower has such lofty concerns - but that doesn't mean their actions are any less important.
<http://news.bbc.co.uk/go/em/fr/-/1/hi/magazine/3485348.stm >

Freedom to Care's International Council

Freedom to Care has created an International Council spread across five continents. The Council will have an advisory and liaison role, and assist in sharing information and expertise.

Its members are as follows: **Ms Elaine Kaplan,** USA, is a whistleblower protection lawyer in Washington DC; **Dr Brian Martin,** is Co-ordinator of FtC's sister organisation, 'Whistleblowers Australia'; **Prof. Masami Matsuda,** Japan, is a public health specialist and academic; **Prof. William L McBride,** USA, is a leading political philosopher; **Dr Árpád Pusztai,** Hungary, is a biologist and was a researcher on GM potatoes; **Prof. Tina Uys,** South Africa, is a sociologist; **Prof. Geoffrey Hunt,** UK, is the founder of FtC.

Mark Daly, a 27 year old journalist exposed racism in police recruitment, in the BBC's 'The Secret Policeman' last year. His exposures led to an inquiry by the Commission for Racial Equality. Mark was at first criticised by the Home Secretary, and then received an apology when the programme attracted so much condemnation of the police.

Hutton report, inquiry into intelligence services, and more on the lead-up to war in Iraq

Geoffrey Porter-Williams

Lord Hutton's report *(http://image.guardian.co.uk/sys-files/Politics/documents/2004/01/28/huttonreport.pdf)* on the circumstances surrounding the death of Dr David Kelly (see *Whistle 22*) was published on 28 January 2004.

While the evidence collected was wide ranging, Lord Hutton's conclusions followed the terms of reference strictly. He exonerated the Government, mildly criticised the Ministry of Defence, stated that David Kelly had acted improperly in expressing doubts to the BBC, and blamed the BBC for publishing unverified allegations.

Government ministers responded as one: that the Hutton report had endorsed the Government's actions and that, therefore, there should be an end to debate on the decisions that led to war. Other commentators, unimpressed by such a response, drew attention to the questions that Lord Hutton had not answered.

Lord Hutton mentioned on page153 of his report that he could not rule out the possibility that the intelligence services were influenced by the Government to make stronger statements than they would normally make.

The Government has therefore set up another inquiry, under Lord Butler (a former Cabinet Secretary who used to be in charge of intelligence), into the gathering and use of intelligence before the Iraq war. This inquiry will not be reviewing the Government's political judgments and it meets in private. Ministers hoped to include all the main political parties but, from the outset, the Liberal Democrats declined to take part and the Conservatives have now formally withdrawn, giving as their reason that

too narrow an interpretation has been placed on the inquiry's terms of reference – specifically, that how the politicians made use of the intelligence will not be considered.

On the 2nd March 2003, *The Observer* reported that British and US intelligence had been spying on other members of the Security Council. *(http://observer.guardian.co.uk/international/story/0,6903,905899,00.html)*

Shortly afterwards, it emerged that the source for the information was Katharine Gun, who had been employed as a translator at the Government Communications Headquarters. At the time, Government policy was to persuade the Security Council to pass a new resolution that would give authority for war against Iraq. Other countries were trying to reach a resolution that would avoid the need for war, and the British and US governments, forewarned by covert information illegally obtained, persuaded the governments concerned that there was no point in moving such a resolution.

No agreement could be reached on a United Nations' resolution specifically authorising armed intervention in the circumstances which then obtained (i.e. the continuing search for WMD being carried out by Dr Hans Blix on behalf of the UN) and therefore the 'coalition of the willing' (principally, USA President George Bush and UK Prime Minister Tony Blair) persisted with
the invasion of Iraq without such a resolution, an act which many people around the world (including experts in international law) consider to be a war crime.

At the present time, March 2004, UK Prime Minister Tony Blair is continuing to resist widespread demands that the full text of the Attorney-General's opinion that war was legal, and the briefing on which it was based, should be made public.

The General Public (the ultimate political and moral arbiter) does not yet therefore have all the information which it needs in order to be able to judge for itself, and for posterity, whether or not the war against Iraq was a legal act or whether it was a crime. But sooner or later it will have the necessary information – possibly thanks to the United States which is currently carrying out its own, more wide-ranging, inquiries and doing so in public. One way or another the truth, the whole truth and nothing but the truth will eventually emerge into the daylight.

Katharine Gun was dismissed and warned of prosecution under the Official Secrets Acts. At her trial on 25th February 2004, the prosecution offered no evidence and she was acquitted. The Attorney-General stated that the prosecution had been withdrawn for lack of evidence. Other commentators, however, suggested that his real reason for dropping the case was that he did not want her defence tested in front of a jury.

Gun has since said that she was attempting to stop the Government participating in an illegal war; according to her legal team, relevant evidence would have included the full text of the Attorney General's legal opinion and the briefing on which it was based.

Many international lawyers, including some who were employed by the Government, believed that war without a new United Nations resolution would be unlawful. Elizabeth Wilmshurst, a Foreign Officer legal adviser, resigned when the Government rejected that view.

On 29 February 2004, *The Observer* reported that the Attorney-General had originally shared that view, but changed his advice when military commanders demanded unequivocal legal sanction before they would be prepared to commit their forces to war *(http://politics.guardian.co.uk/iraq/story/0,12956,1158861,00.html)*

His legal advice has never been published in full, but its essence is to trace authority for a new war back to a resolution in 1990, before the previous Iraq war.

On 26th February 2004, Clare Short, who had been a Cabinet minister until shortly after the Iraq war, announced on the BBC Today Programme that she had seen covertly obtained intelligence reports on conversations by Kofi Annan, the United Nations' Secretary General *(http://news.bbc.co.uk/1/hi/uk_politics/3489372.stm)*. Diplomats and former weapons inspectors have since said, on record, that they knew that Britain and the US were spying on them.

Attempts to find weapons of mass destruction in Iraq have failed to date, and hardly anybody now seriously expects that they will ever be found. Published intelligence reports alleging their existence have been shown to be out of date or mistaken. Shortly before the Iraq war, Hans Blix, the chief United Nations weapons inspector, announced that no weapons of mass destruction had been found and asked for more time to complete his inspection.

.....continued from page 11

In going to war, the British and other governments acted prematurely and their legal basis for doing so is open to challenge.

Ministers have recently appealed for loyalty from Government employees and Labour Party members. This brings to mind the statement by Samuel Johnson over two centuries ago:

"Patriotism is the last refuge of the scoundrel."

It is essential for a decent society that anyone who has private knowledge of wrongdoing by someone in authority should share the information with people able to diminish the wrongdoer's influence. This applies equally whether the wrongdoer controls a workplace or a country.

It is particularly unsound to argue that members of the governing party should support ministers who, they believe, are doing wrong because if they did not, so the argument goes, they would be playing into the hands of opposition parties which also believe that ministers are doing wrong. Party politics should play no part in deciding a matter as serious as whether or not to go to war.

In the last half century at least two prime ministers (Sir Antony Eden and Margaret Thatcher, as she then was) have been made to resign as a result of their own party's disagreement over policy or method of government. It should probably happen more often.

Blowing the whistle on abuse of people with learning disabilities

Have you ever had to go outside the usual management channels at your workplace to report concerns about abuse of a person with a learning disability? Were your concerns listened to and did you feel supported? Did the abuse come to an end?

If you have had experience of this, whether positive or less so, in the area of services for adults with learning disabilities, we would like to hear from you.

The Ann Craft Trust is a national charitable organisation, based in Nottingham, which seeks to protect children and adults with learning disabilities from abuse. It does this by providing advice and training for professionals, writing and publishing resource materials and undertaking original research.

The Ann Craft Trust has received a grant from the Baily Thomas Charitable Fund to carry out research to identify the barriers to speaking out and to highlight examples of good policies and practice.

Creating an atmosphere of openness and trust is an essential part of providing 'safe services' for people with learning disabilities and enables care professionals to act with conscience and integrity.

If you have experiences that you would be willing to share (in confidence), please contact:
Rebecca.Calcraft@nottingham.ac.uk
Tel: 0115 8467611

Rebecca Calcraft,
Research Fellow,
The Ann Craft Trust,
Centre for Social Work,
University of Nottingham,
University Park, Nottingham. NG7 2RD.
www.anncrafttrust.org

Corporate Responsibility Coalition

On Friday, 30th January 2004 the Government 'talked out' Andy King MP's *Performance of Companies and Government Departments (Reporting) Bill..* Visit: *http://www.foe.co.uk/campaigns/corporates/core/index.html*

FREEDOM TO CARE is an independent, non-profit & entirely voluntary organisation. We are not lawyers. We are the UK's first whistleblower organisation, founded in 1991. We are a company limited by guarantee (Reg. 2973440).
PATRONS are John Hendy QC, Allan Levy QC, Austin Mitchell MP and Lord Livsey.
FOUNDER is Prof. Geoffrey Hunt.
WHAT WE DO: We lobby and campaign for greater public accountability of large organisations and support conscientious employees who speak up.
STRUCTURE *Board of Directors*: Harold Hillman, Geoff Hunt, Andy Taylor, Chris Clode; *Company Secretary and Data Protection Officer*: Robert McGregor; *National Co-ordinator*: Chris Clode; *Treasurer*: Geoffrey Porter-Williams; *Membership Officer*: Sheila Porter-Williams; *Meetings Officer*: Pat Conneely; Verena Tschudin; Doug Foster.
WEB SITE: http://www.freedomtocare.org
MEMBERSHIP: £21 p.a. (£10 for those on low income); £35 group affiliation.
ADDRESS: PO Box 78, Wrexham, LL11 6ZD, United Kingdom. (and PO Box 125 West Molesey KT8 1YE)
Tel/Fax/voicemail: +44 (0)20 8224 1022
Email: info@freedomtocare.org
THE WHISTLE Free, twice a year to members.
Edited by Robert McGregor