The Whistle

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Promoting public accountability - Protecting freedom of speech in the workplace

Never give up

Editing the contributions to this issue of The Whistle, I was alternately inspired by people's courage and perseverance and dismayed by the thought that despite apparent progress towards greater accountability, the scope for abusive and corrupt behaviour by those in positions of power and authority seems undiminished.

Assuming that most readers will have a similar reaction, it is therefore legitimate to ask the questions: what happens if your sense of dismay begins to outweigh your sense of inspiration? And: how, in the longer term, can you continue to strive for an accountable society if you have ceased to believe that such a thing is possible?

After all, you have a duty to account to yourself as well as to others and you should therefore ask yourself the question: why do I continue seeking a more accountable society?

How you try to justify doing so depends, I believe, on your world view. You may, for example, believe in the perfectibility of human beings and therefore in the notion of a progressively more developed and entrenched moral sense being handed down the generations, so that the next generation is morally better than the preceding one (the progressive view).

Or, you may believe that the inherent nature of the individual human being (and of human society) is such that no matter how much we appear to progress, individually or collectively, in our ability and preparedness to treat others as we would wish them to treat us, there will always be scope for abusive and corrupt behaviour (the regressive view).

Each view (the 'progressive' and the 'regressive') can sustain one's commitment to continue striving for a genuinely accountable society, but each, in my opinion, carries a risk which, being aware of, we may perhaps more easily avoid.

I suggest that those who subscribe to the progressive view of human nature are at risk of becoming disillusioned: they have a vision of how things ought to be, but the dawning realisation that this vision is unlikely to be achieved in their lifetimes (or possibly even for many generations) gradually saps their commitment.

On the other hand, those who adhere to the regressive view are at risk, over the long term, of becoming tolerant of abusive and corrupt behaviour or, at least, desensitised to it, with the result that they no longer see any purpose in continuing to hold those responsible to account.

Whatever one's world view (and, of course, they are many and varied), the ultimate motive for continuing to advocate for a more accountable society must surely be that if no-one bothered doing so, then we would inevitably descend into a nightmare world where the politically and economically powerful preyed upon the rest of humanity with impunity.

Never give up.

Robert McGregor, Editor.

Membership subscriptions

Several years ago individual subscriptions were increased to £21, or £10 for students and others on low income. While most members are paying subscriptions at the current rates, there are still many members making standing order payments of £18 or other amounts. Some SO payments are for less than the reduced subscription rate of £10. Currently FtC's expenses consume the whole of the income, so it's important that the subscription income should be paid in full.

Members whose SOs are for less than the appropriate current rate are **asked** please to amend their SOs with effect from the next payment date. After this issue of *The Whistle* it will no longer be possible to continue the membership of those members who contribute less than the reduced rate of £10. Any such amounts received will be regarded as donations.

Can Internal Audit ever really be independent?

Andy Sutton, North Wales whistleblower

Until August 2000, I was head of the Internal Audit and Consultancy Service for Flintshire County Council.

'Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.' The Institute of Internal Auditors.[1]

In May and June 2000, in my capacity as Flintshire's head of Internal Audit, I made a number of 'protected disclosures' under the Public Interest Disclosure Act 1998 (PIDA). These disclosures concerned various alleged instances of corruption at Flintshire, including the making of an illegal payment to a former manager; suspicious land and property deals; and, massive salary and overtime payments to an administrative worker servicing the Waterhouse Inquiry into Child Sexual Abuse.

For making these disclosures I was constructively dismissed. I brought a claim against Flintshire for victimisation and unfair dismissal under PIDA; my claims were upheld by the Employment Tribunal and then by the Employment Appeal Tribunal.[2] The Flintshire case raises a number of questions, including:

- How should a local government auditor operate?
- What actually happens in practice?

The word audit obviously has something to do with hearing, indeed the word has its origins in the Latin verb form: audire, 'to hear'. This is somewhat ironic. Taken literally, does this mean that an auditor ought to listen to what is going on, but not say or do anything? Of course this particular slant may appeal to certain people.

Let us start with the mass of best practice, guidelines, professional standards, corporate policies, local government financial standing orders etc. What do all of these have in common?

They all, bar none, eulogise about the independence of the internal audit function. They all say that the internal auditor should be able to operate independently. Let us consider the characteristics of independence. In a truly independent service you would look for evidence of the following:

- The auditor ought to report findings in his or her own name;
- The work of the auditor should not be unduly interfered with or influenced by any other person;
- People with executive and/or operational responsibility should not be involved in the writing of audit reports;
- The auditor ought to be able to report findings without fear (of reprisals or repercussions) or favour (without seeking to ignore or avoid reporting on matters that could affect senior people in the organisation or to downgrade or water down the gravity of true findings);
- The auditor should (in consultation with clients and structural management) determine the content of the annual and strategic audit plans;
- The auditor ought to have free access to all documents and personnel of the organisation, and key external parties such as the statutory (or external) auditor, the police and other regulatory agencies.

Most of the standards cover, to an extent, all of the above requirements of independence. However, the most fundamental one that they all miss is that the auditor must not be in the pay of the people whom he or she audits (the internal audit function ought to be an arms' length function, funded from outside of the organisation that it audits).

The same applies to the statutory or external auditor, i.e. the District Auditor or one of the big firms who supply this service. With true independence, perhaps we would not have seen the major problems with huge corporate and smaller local government organisations that we have seen in recent years.

One wonders what other time bombs are ticking away, about to explode. So we have the theory of independence. But what currently happens in practice?

The independence points mentioned above are all (bar the last) perfectly acceptable to senior corporate figures of all types of organisations when:

- Quite junior, or rank and file, personnel are on the receiving end of the internal audit findings, usually resulting in disciplinary action and often dismissal (in this way it helps feed the macho management style – internal audit provides the bullets and the macho manager(ess) fires the gun);

- When internal audit is recognised as, and used as, a tool to rid organisations of perceived problematic individuals. In this regard there is a quaint phrase that I have heard used to define what internal audit does: "They comb the battlefield and bayonet the wounded";

- They can use critical reports to "get one over" on boardroom rivals;

- The internal auditor is a low profile "tick and check" operator, who does not ask too many challenging questions.

But what happens when the auditor does challenge the high and mighty on serious issues? We then see a distinct change once the boot is on the other foot. How dare this underling auditor have the audacity to question me, the Chief Executive, over my business dealings and expenses? Typically, what happens is:

- People will move to marginalize and/or isolate the offending individual(s);

- A regime of inspection will be imposed on the offender, with an accompanying aim to get the bullets mentioned earlier;

- Reorganisation, downsizing, business re-engineering, rationalisation, externalisation may all be employed;

- Expense and travelling claims will be scrutinised closely for the most minor of errors. The penalty will far outweigh the crime;

- Privileges will be withdrawn;

- Disruptive office moves (to a poorer location) will ensue;

- Junior staff will be enticed (often with promises of promotion) to undermine the offender.

Conclusion

According to Terry Cunnington, President of the Institute of Internal Auditors:

"The problems at Flintshire could have been prevented had internal audit had the proper support, resources and access. An independent audit committee would have been a great help. This [the Flintshire case] is a wake-up call to local authorities - they must not fall behind in governance standards. If audit committees are good enough for investors, they're good enough for council taxpayers."[3]

Obviously, the existence of an Audit Committee is a step in the right direction and would certainly have been useful for myself at the time the protected disclosures were made. However, the mere existence of an Audit Committee is, in itself, insufficient. It is crucial that the people appointed to such a Committee have the necessary skills and resolve to deal with operational and system control weaknesses and any serious malpractices brought before them, even where such matters involve the management and conduct of the most senior officers of the organization.

In the case of Flintshire, in this respect, it was interesting to listen to the comments of one of the members of the newly formed Flintshire Audit Committee on the Angus Stickler 'File on Four' Radio 4 broadcast. The member acknowledged problems with the operation of the Committee, citing that the Committee had difficulty dealing with some of the cases that I had previously raised.

In addition to this, one also has to scrutinize very closely just who is brought onto the Committee and also look for any possible officer involvement or influence in this. It is a fact of life that senior officers of any organizations, particularly if they have skeletons in their cupboards, do not want people on an Audit Committee who could pose problems for them.

Rather than looking at Audit Committees as being the panacea for the problems facing internal audit, I would suggest, first, to take a step back and look more closely at organisational issues and how and where the internal audit function sits within the organisation. The current arrangements in both the public and private sector are, I am completely convinced, woefully inadequate. The big problem arises where the internal auditor discovers something that is potentially devastating (and career ending) for his or her paymaster. This is what triggered Flintshire's

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action to get rid of me. I feel this would not have happened if, instead of being employed by Flintshire, I had been employed by an outside, independent, arm's length body. I believe that this is the future organisational position of internal auditing, perhaps delivering the service via an independent National Internal Audit Service.

Notes

1. The Institute of Internal Auditors' official definition of internal auditing. The IIA's further elaboration on the role of internal auditors includes the following:

   'Internal audit may be provided by in-house staff, or an outsourced team. Either way, it is independent of the management structure, and reports directly to the audit committee. This independence gives it a unique and valuable perspective on risk management and internal control processes….'

   www.iia.org.uk/about/internalaudit/

2. For the latest update on the Tribunal proceedings, see: *'Encouraging a culture of openness - a wonderful idea, but who pays?'* www.freedomtocare.org/page330.htm

3. Extract from Institute of Internal Auditors, Press Release: '*IIA calls for Local Authorities to set up Audit Committees*' 11.06.04. www.iia.org.uk/about/presscentre/pressreleases.cfm?Action=1&ARTICLE_ID=1492

MEXICAN PRESIDENT CALLED TO ACCOUNT

Luis Echeverria (aged 82), former President of Mexico, has been charged with murder. He is at last being held to account for the killings of 25 student protesters in 1971. There is now a legal tussle, and it remains to be seen whether Echeverria will in fact be the first Mexican president to be indicted.

For FtC, it is a basic rule of accountability that absolutely no one is above the law and due process in a democracy. The same could be said for George Bush and Tony Blair. A Spanish version of Freedom to Care's 'Charter of Public Accountability' also appears on FtC's website.

ILLNESS AND WHISTLEBLOWING

Chris Clode

Having sat through a two day Remedies Hearing supporting a Freedom to Care Member who was dismissed for whistleblowing, it is clear that the arguments whether health or psychiatric harm have been caused stem from a real misunderstanding of the internal processes a whistleblower goes through.

The debate between the psychiatrists called by the two sides centred on whether the whistleblower was well or not; it was argued that the fact that he could stand up in the Tribunal and reel off all the detail and dates of his case proved that he was well. Those of us who regularly work with whistleblowers will know that it is exactly the opposite that is true. It is **the fact that the whistleblower has his mind so filled with all the detail of his/her defence that is the symptom of the illness** caused by the situation in which they find themselves. I term the illness ***Whistleblower obsessive pedantry syndrome***; it is what makes the whistleblower such a powerful opposition to organisational malpractice - grasping events and dates spontaneously out of the air, even when faced with the massed ranks of barristers and solicitors and their trolley loads of files, that a big organisation can mass against him/her.

But the obsessive command of detail has its costs. A mind filled with the minutiae of the case is a mind with room for nothing else - often no space left for family, friends (often driven off by the continual return of conversation to **that case again**) nor for sustaining alternative employment. And, all the eggs of their life in one basket, these whistleblowers are totally dependent for their mood on the unpredictable events of the Disciplinary/Tribunal/Court process they can seldom exert much power over, with its long adjournments, often with spiralling costs for distrustful legal representatives.

What sort of justice is it that requires the advocate for ethical behaviour in an organisation, to have to prove that they are mad, anyway? Or does that actually say something unintentionally deep about the craven immorality of the society and times in which we live? Wedding the upholding of ethics to a diagnosis of psychiatric illness.

Government accountability

Geoffrey Porter-Williams

Governments sometimes need to act quickly and decisively in order to respond to violent acts and natural disasters. However, because timely authority from the legislature would, in practice, be unachievable, governments need some emergency powers. But the powers for emergency action need to be set in a statutory framework that limits their scope and duration and ensures accountability. In the UK, this is not the case in respect of:

- 'The deployment and use of the armed forces overseas, including involvement in armed conflict, or the declaration of war...
- The use of the armed forces within the United Kingdom to maintain the peace in support of the police.'[1]

These, together with a wide range of other powers, are part of what is known as 'Royal Prerogative' or, more specifically, a sub-class known as 'prerogative executive powers' or 'ministerial executive'.[2]

As well as including the power to declare war, prerogative executive powers also include the making of international agreements. International agreements affecting UK law do not become effective until Parliament has approved necessary legislation. But agreements made in exercise of prerogative powers do not need parliamentary authority. Such agreements have committed the UK to go to war.

When international agreements are published, they are open at least to informal scrutiny and usually have broad public support. But efforts to resolve international problems often involve personal understandings between political leaders. Such understandings may not receive any public or parliamentary scrutiny until after a leader has committed his or her country to war, by which time it is too late for what might be wiser counsel (in the form, in particular, of public opinion) to prevail.

Emergency powers should be put on a proper statutory basis, giving ministers power to react to violent acts against the UK, while requiring prior parliamentary approval to any military operations against a foreign state or any agreement that may lead to such operations. Some states, notably Germany and Japan, have constitutional restrictions preventing non-defensive military deployments. These restrictions could be used as a model to define circumstances requiring explicit approval from the UK Parliament.

In the USA, the doctrine of Executive Privilege has evolved to curtail scrutiny of presidential decisions. The US Constitution reserves to Congress the right to declare war. But, in recent decades, US forces have often engaged in operations including the occupations of Afghanistan and Iraq without a formal declaration of war.

There have also been reports of covert operations to destabilise governments around the world, including Chile, Nicaragua and Venezuela.[3] The policies supported by such operations are unlikely to have had adequate scrutiny. Military operations and any other political or economic moves designed to achieve foreign policy aims should be put in a formal constitutional framework.

Sibel Edmonds

Shortly after airliners were crashed into the World Trade Centre in New York and the Pentagon in Washington on 11 September 2001 (9/11), Sibel Edmonds was appointed as a translator from Turkic languages for the Federal Bureau of Investigation (FBI). She found a huge backlog of untranslated intelligence material, a culture of bureaucratic empire building that involved deliberate slow working and duplication of work, individual translators who suppressed intelligence that was damaging to their personal loyalties, and officials who asked for intelligence available before 9/11 to be retranslated to seem less informative.

When she raised her concerns inside the FBI, she was ignored. Subsequently she spoke to the media and was dismissed. Later she gave evidence to the Senate Judiciary Committee and to the independent panel that investigated the circumstances leading up to 9/11.

In October 2002, when Sibel Edmonds was asked to give evidence in a lawsuit taken by victims of 9/11 and their relatives, the US Department of Justice successfully prevented her evidence being considered on grounds of "state secrets privilege", although her evidence would not threaten state security but only incompetent officials. She is still challenging, through the courts, the order suppressing her evidence. For her own account see http://www.antiwar.com/orig/s-edmonds.php?articleid=3230.

Iraq update

Lord Butler's enquiry into intelligence failings in the period leading up to the Iraq war

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reported in July 2004. It was very critical of the political use of intelligence material, of the use of intelligence material that had not been properly assessed, and of key decisions being taken without proper reports and minutes.

In looking at individual intelligence reports that underpinned the assessment that Iraq was a threat, the enquiry found that some of the sources were unreliable, and that sources were so few that normally reliable sources were passing on second hand information and reporting on matters that were outside their specialist knowledge.

The report has had no obvious effect on the government or on individuals responsible for the identified failings.

After the fall of Saddam Hussein's regime, normal standards of civilised government were not established. Local disorder from militias armed with hand weapons was countered by military operations with tanks and aircraft involving hundreds of collateral casualties. US forces repeatedly bombed Fallujah after they had abandoned attempts to reoccupy the town.

There are reports of more summary executions, which were a feature of the previous regime. In July 2004, the Sydney Morning Herald reported an allegation that Iyad Allawi, the new Prime Minister of Iraq, personally shot a group of prisoners in the head in front of Iraqi and US witnesses. Witnesses interviewed by reporters generally supported the summary executions. Neither Iraqi nor US officials would respond to reporters investigating the incident. See http://truthout.org/docs_04/071704Z.shtml.

The present Iraqi government has no democratic legitimacy and is dependent on armed forces from the US, UK and elsewhere to stay in control of most of the country. Intimidation of civilians by the Iraqi police is commonplace. The media are restricted.

Elections are due to take place in January 2005, but they are unlikely to be fair or to cover the whole country.

Notes

1. Para. 9, Select Committee on Public Administration Fourth Report, 2004, House of Commons www.publications.parliament.uk/pa/cm200304/cmselect/cmpubadm/422/42204.htm#a1

2. 'The royal prerogative itself is a notoriously difficult concept to define adequately.' Para. 3, ibid.

And see:

- 'The Dictatorial Powers of UK and USA Political Leaders' www.freedomtocare.org/noconsentnowar
- 'Paradise cleansed' by John Pilger, The Guardian, Oct. 2nd 2004: 'Last June, the [UK] government invoked the archaic royal prerogative in order to crush the 2000 judgement [of the High Court that the deportation of the population of Diego Garcia in the 1960s was illegal]'.

CHINA'S SARS WHISTLEBLOWER

In China Dr Jiang Yanyong (aged 72) blew the whistle on his government's cover-up of the SARS outbreak. He told the media (April 2003) he did not think he would be punished for sending out an open letter about the cover-up.

The retired People's Liberation Army surgeon apparently believed that because he was high up in the military, a veteran Communist Party member and a doctor discharging what he called his 'professional responsibility to protect the health of the people', he would be safe. He was wrong.

His whistleblowing helped to contain a global outbreak, which in the event killed 800. Finding that he was not being listened to, and had instead been put under constant surveillance, Dr Jiang went a step further – he wrote in early 2004 to all the senior Chinese leaders denouncing the 1989 Tiananmen Square massacre. Then he and his wife 'disappeared' on 1st June. They were in detention. While his wife was soon released, Dr Jiang was put under daily psychological pressure to recant.

In his letter about the Tiananmen massacre he disclosed that China's late President Yang Shangkun and Party elder Chen Yun privately expressed regret over the brutality. For the past 15 years the Chinese government has insisted that the demonstration was a 'counterrevolutionary rebellion' engineered by a small number of extremists and denied reports of the mass killing of innocent civilians. Jiang said that if the leaders who gave the orders had since admitted they were wrong, then it was time for the current leadership to make themselves accountable for the event. Jiang refused to recant and was held in detention. He was not formally arrested or charged with a crime.

After nearly two months, faced with growing international protests the Chinese government finally yielded and released Dr Jiang. He did not recant.

A Chinese version of Freedom to Care's 'Charter of Public Accountability' appears on the website at www.freedomtocare.org.

The Case FOR Lisa Arthurworrey

Liz Davies

Lisa Arthurworrey was Victoria Climbié's social worker from 02.08.99 until Victoria died on 25.02.00.

In April this year, I was teaching some social workers from Haringey Social Services who informed me that on the recommendation of the London Borough of Haringey, Lisa Arthurworrey's name had been placed on the Protection of Children Act List by the Secretary of State. I was aware of the serious implications of this decision, not only for Lisa but for all social workers: it set a dangerous precedent of an entry on the list being regarded as equivalent to a finding of 'poor' professional practice.

The Protection of Children Act 1999[1] (POCA) requires the Secretary of State for Health to keep a list of persons considered unsuitable to work with children. POCA specifies certain conditions, at least one of which must be satisfied in order for an organisation to be able to refer someone employed in a child care position to the Secretary of State for inclusion on the POCA List.

An example of one of the conditions which must be satisfied in order for an organisation to be able to refer someone for inclusion on the POCA List is:

'*That the organisation has dismissed the individual on the grounds of misconduct (whether or not in the course of employment) which harmed a child or placed a child at risk of harm.*' Section 1(2)(a).

POCA was a response to the report 'People like us – a review of the safeguards for children living away from home'[2] which highlighted abuse of children within the care system. The spirit of the law was to prevent and deter child abusers from gaining access to children through employment within social care. Currently, the law allows inclusion on the POCA List on the broad grounds of gross misconduct as defined above. It is important to attempt to change this law in order to clarify that these grounds should not include poor professional practice that does not involve actual or suspected child abuse. The decision to refer to the list should be made on the 'balance of probabilities' level of proof following multi agency 'Section 47' investigation[3] or after criminal proceedings and conviction for offences against children.

The appropriate route for consideration of a social worker's suitability for practice is the register of social workers which the General Social Care Council now maintains.

The POCA List should not be used for registration of professionals who are not suspected or actual child abusers, but the question might well be asked: why, given that Lisa's name (and that of one other former Haringey employee) are on the list, were the names of the social work managers, police, health professionals, councillors and others criticised by Lord Laming's inquiry not also included?

The relevant extracts from the Inquiry's findings are as follows:

'It is not enough to consider the omissions and failings of individual practitioners in Haringey without considering the context in which they were working at the time. It is also necessary to understand the extent to which the organisation in which they served and the working practices of the organisations can and must shoulder the blame for serious lapses in individual professional practice. The evidence on this in Haringey is in my judgement overwhelming. (Paragraph 6.2)

Although failings in Lisa Arthurworrrey's practice were many and serious, she was badly let down by her managers and the organisation that employed her. In particular, council members and the senior management of Haringey must be held to account for the yawning gap between safe policies and procedures and poor practice in the children and families service... '(Paragraph 6.3).[4]

Lisa now has legal representation for both the Industrial Tribunal (she won the right to a hearing after Haringey applied to strike the case out) and the POCA Tribunal. When I first met Lisa, she kept saying:

> 'Everyone said I should have known what was happening to Victoria.'

She had been through so much: the criminal trial of Manning and Koaou, the two Area Child Protection Committee 'Chapter 8 Reviews', the Victoria Climbié Inquiry and the disciplinary hearing, but most serious was the media

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vilification of her - treating her as if she herself had murdered Victoria.

Because her home address was mistakenly disclosed at the criminal trial, she was hounded by the media and had to go into hiding. She was sick for a while and unable to attend either her disciplinary hearing or her appeal against Haringey's verdict of 'gross misconduct.' Unable to obtain legal representation, her father represented her at the appeal hearing. It is to her credit that she is now seeking justice. My overwhelming impression of Lisa is of a highly professional woman, conscientious and committed.

Much of the detail of Lisa's case has already been placed in the public arena through the Victoria Climbié Inquiry. As we now plough through the evidence against her, it is clear she was working within flawed procedures devised internally and not from the Area Child Protection Committee procedures and 'Working Together' Guidance.[5]

Advice from her managers was absent or wrong, she had little supervision (four sessions with three different managers during the time of this case) and a huge caseload – ten child protection cases and nine other serious child care cases. She had never conducted a 'Section 47' child protection investigation before and had no training in how to do so. After qualifying, she worked for another London Borough for only ten months before going to Haringey early in November 1998.

A social work diploma or degree does not train a social worker to conduct child protection investigations: practitioners require specialist multi-agency post-qualifying training - sadly often lacking now in many authorities. They should also initially joint-work cases with more experienced colleagues.

The case has been debated in every forum. But Lisa's own voice needs to be heard. Although Lisa is not a whistleblower herself, the use of the POCA List for poor professional practice has serious implications for all social workers and could easily be used against whistleblowers. Readers may remember the case of Neville Mighty, the Islington whistleblower whose name was placed on the POCA List: it took ten years to appeal successfully against that decision

Messages of support may be sent via my e-mail: e.davies@londonmet.ac.uk or by post to:

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Notes

1. The full text of The Protection of Children Act 1999 is available at www.hmso.gov.uk.

2. Department of Health, 1997, 'People like us - the report of the review of the safeguards for children living away from home', London: DoH. No electronic copy available. Contact details for obtaining hard-copy: DoH publications, Department of Health, PO Box 777, London SE1 6XH.Telephone: 08701 555455.

3. Under Section 47 of the Children's Act 1989, local authorities have a duty to investigate where, for example, they '…have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm.' S.47(1)(b) http://www.hmso.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

4. The full text of the Victoria Climbié Inquiry Report, January 2003, is available at http://www.victoria-Climbié-inquiry.org.uk/finreport/finreport.htm

5. Department of Health, 1999, 'Working together to safeguard children', London: DoH. http://www.dh.gov.uk/assetRoot/04/07/58/24/04075824.pdf.

Chris Clode comments:

Whilst I believe FtC should support a change in the law to prevent what Liz Davies has rightly identified in her article: the merging of treatment for those who have actually abused or sought to abuse children and those who have been deemed to have failed to act adequately to protect children within their professional responsibilities, I am doubtful whether the Arthurworrey case (which does not involve whistleblowing) is the right vehicle via which FtC should be fighting for this change.

Press Release by Andy Sutton 30th September 2004

I can now confirm that an appeal against the Decision on Remedy has today been lodged with the Employment Appeals Tribunal in London.

The tribunal's decision contained several fundamental errors in law in respect of the proper interpretation and application of the Public Interest Disclosure Act, the Overriding Objective of the Civil Procedure Rules, the Employment Tribunals (Constitution and Rules of Procedure) Regulations and Article 10 of the European Convention on Human Rights as incorporated within the Human Rights Act.

The decision contained a number of findings of fact that will be strongly challenged as being perverse, erroneous or otherwise inconsistent. In addition, new expert evidence is now available which, had it been available at the time of the hearing, would have materially impacted on the tribunal's thought processes, decision and hence the award.

Our reason for appealing is to secure the justice that our family deserves in this matter. On a separate matter, I would call on the current government, and Mr Blair personally, to halt the silent war being waged on legitimate whistleblowers. There is an ever-growing list of such whistleblowers who have simply not received the support and protection to which they were properly entitled, for example, Elizabeth Filkin, Stephen Moxon, Katherine Gunn and, of course, Dr David Kelly, amongst others.

Given the appalling treatment, under his government, of whistleblowers who act reasonably, in good faith and in the public interest, I would like someone to tell me what makes Mr Blair any different from the so-called tyrants he seeks to remove across the world.

Editor's Notes

- A useful guide to the Public Interest Disclosure Act can be found at: http://www.dti.gov.uk/er/individual/pidguide-pl502.htm
- The 'Overriding Objective of the Civil Procedure Rules' is 'to enable the court to deal with cases justly' which includes, 'so far as is practicable, (a) ensuring that the parties are on an equal footing; (b) saving expense; (c) dealing with the case in ways which are proportionate – to the amount of money involved; to the importance of the case; to the complexity of the issues; and to the financial position of each party; (d) ensuring that it is dealt with expeditiously and fairly; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.'

  Department of Constitutional Affairs, Civil Procedure Rules, Part 1, Rule 1.1 http://www.dca.gov.uk/civil/procrules_fin/#index
- Article 10 of the European Convention on Human Rights is concerned with Freedom of Expression. See Liberty's online guide to human rights law, which provides 'comprehensive information on 18 different rights and freedoms, with particular attention to the effect on these rights of the incorporation of the European Convention of Human Rights under the Human Rights Act 1998.' http://www.yourrights.org.uk/

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*).

'The notorious United Fruit Company, which became Chiquita Brands International, dominated Latin American agriculture for nearly a century, epitomizing the exploitation of local people and resources…Beginning in the 1990s, an astonishing transformation began at Chiquita, a transformation not compelled by any government or policing agency…'Extract from Yale University Press Release 15.06.2004 www.csrwire.com/article.cgi/2803.html

Who is responsible for Iraq's science?

Nadine Woogara

Scientists of Iraq can either be judged as the creators of chaos and the infamous 'weapons of mass destruction' or as the reluctant victims of a corrupt and repressive regime. But, in the end, who is ultimately responsible for science in Iraq?

Hussain Al-Shahristani spent eleven years (May 1980 to May 1991) in the Abu Ghraib jail of Baghdad as a result of his fierce conviction that the consequences of science are inextricably linked back to the scientist. Formerly the chief scientific adviser to the Iraqi Atomic Energy Commission, when asked to head Saddam Hussein's atomic energy programme, he refused.

Arrested in December 1979 and tortured for 22 days and nights he did not break, sacrificing himself to life-time imprisonment. He even refused a place at the presidential palace offered by Saddam's stepbrother, resulting in solitary confinement for ten years. Now, in the aftermath of Saddam's reign, he is encouraging more scientists to act as he did, by taking personal responsibility for the consequences of their scientific endeavours, thereby realising their moral obligations to society.

More specifically, Mr Al-Shahristani is calling on scientists worldwide to refuse to work on biological and chemical weapons. More generally, he argues that scientists' opinions are respected and that they should not abuse this trust.

A justification often invoked by nuclear weapons scientists is that:

'if I do not work on the nuclear programme – someone else will and it is better that I carry out the work myself, knowing my own intentions – rather than leave it to someone else over whom neither I nor, more importantly, any competent, internationally recognised regulatory body has any control'.

Yet, in a recent interview with the New Scientist[1], Mr Al-Shahristani, in effect, dismissed any such justification by condemning nuclear, biological and chemical weapons research and development as indecent because it encourages international aggression.

By discouraging scientists from working on such projects, Mr Al-Shahristani hopes to realise his ultimate dream: worldwide nuclear, biological and chemical disarmament. But such an objective begs a number of questions, including:

- Can we reasonably hope to be able to return to a world with no weapons of mass destruction?
- If such a return is, in practice, impossible, what is the alternate most ethically responsible course of action?
- What of the scientists who worked in Iraq under Saddam's rule - are they to be forever condemned as morally corrupt?
- Is it feasible to believe that when they signed up to Saddam's Iraqi atomic energy commission in 1956, which then had the full support of the US government, they knew Saddam's intentions?
- Is ignorance an excuse, and does this remove all responsibility from the scientist?

Any attempt to answer these questions should begin with first principles: scientists are always causally accountable for their actions. It can be argued that if a scientist conducted process A of their own free will, they are directly responsible or entitled for the blame or praise that accompanies the result B.[2]

If the scientist is ignorant of the consequences of process A, and is not responsible for their own ignorance, then they cannot be blamed or praised for their actions or the outcomes of their actions.

Yet first principles do not help us to answer the question: how can it be proved that the scientist is or is not responsible for their own ignorance?

Moreover, in considering the case of Iraq, there is a further crucial dimension to take into account: most scientists were forced to participate in Saddam's military programmes, those that refused were tortured and kept in mental hospitals until they were persuaded to work on the weapons' programme. Most of the Iraqi scientists were not given a choice.

Knowing what happened in Iraq, other scientists now have an even greater responsibility to acknowledge and accept that they themselves have a choice, and to consider very carefully the potential consequences of their work.

Until recently, many Iraqi scientists have been in hiding and most have been investigated by the Iraqi Survey Group set up in May 2004[3], searching for weapons of mass

destruction. In a push to hire these unemployed Iraqi scientists, the US state department has initiated a recruitment programme modelled on that developed after the collapse of the Soviet Empire. The US is offering generously paid consulting positions to current and former employees of the Iraqi oil and environment ministries.

The US considers that Iraqi scientists have dangerous practical knowledge of how to create weapons of mass destruction. A foreign nuclear scientist entering Iraq would soon know the recipe, although not where to find the ingredients. Knowledge from Iraqi scientists could also easily be passed onto terrorists or rogue regimes. By employing the formerly scorned scientists of Iraq, the US are covering their own backs: a group of happily employed scientists are less likely to use what they know to harm America.

It is interesting to note that Mr Al-Shahristani has not been offered a place on the recruitment scheme: obviously, having regard to his outspoken ethical views, the US do not consider him to be a potential threat.

The case of Hussain Al-Shahristani shows that scientists are capable of standing up for their beliefs. His courageous example should encourage others, whose moral views may be compromised by their work, that it is possible to stand by their convictions despite difficult, even appalling, circumstances.

Science and its applications are inextricably linked. As science is conducted by humans, it therefore cannot be objective, neutral and value free. Scientists should realise their moral obligations and consider the consequences of their actions in the workplace.

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2 Forge, J, Moral Responsibility and the Ignorant Scientist, School of Science, Griffith University Kaye D (1998) Scientists for Global Responsibility, ' Biotechnology and the Social Responsibility of Science' Conference 'Genetics and Ethics'.

3. BBC News Pages

Just Fight On

'...a community project dedicated to helping victims of workplace abuse bullying, harassment, intimidation, discrimination, mobbing, threats, and violence.' www.jfo.org.uk

Tobin Tax legislation passed in Belgium

'After an epic legislative journey the Tobin Tax finally succeeded in becoming law on 1st July 2004. Belgian MPs voted 67 for the legislation, 42 against, with 19 abstentions. This represents a landmark victory for the campaign and a significant step towards winning the argument for its implementation across Europe. The Belgian legislation provides a blueprint of how a currency taxation system can work, showing the proposal is now entirely feasible.' http://www.tobintax.org.uk/?lid=8579

Freedom to Care is one of the signatories to the Tobin Tax declaration

National Health Service update
Sheila Porter-Williams

The judgment of the High Court in May 2004 on an attempt by the General Medical Council (GMC) to stop legal proceedings against them by Dr Rita Pal illustrates both the themes of this article:

- doctors deciding, without agreement, not to keep patients alive; and,

- diagnoses reached on inadequate evidence resulting in catastrophic consequences.

In this article, I also raise questions about the lack of funding, the lack of basic equipment and the lack of support for junior doctors just out of medical school.

Non-consensual withdrawal of treatment Dr Pal supplied information to The Sunday Times that was published on 2 April 2000[1] (http://www.esmartstart.com/ framed/esmartdesign/elderlyhelpedtodie/index.htm) alleging that in North Staffordshire Hospital, patients had been helped to die in order to free beds for other patients.

Patients had been helped to die by denial of life-saving treatment, the lack of basic equipment and care for elderly patients, the lack of support for junior doctors potentially placing patients at risk (CHI report, March 2002 http://www.chi.nhs.uk/eng/organisations/west_mid/north_staff/index.shtml) and in some cases by the administration of diamorphine, a pain killer that often accelerates death, to patients who were not always in the final stages of terminal illness. The concerns over the lack of care and basic equipment had been raised internally in 1998, but ignored. After the article was published, Dr Pal complained to the GMC on the advice of The Sunday Times journalists.

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However, following warnings from a GMC Committee member, Dr Pal subsequently withdrew the complaint. In June 2000, Dr Pal was informed that the GMC had been attempting to investigate her for 'unprofessional conduct', namely raising concerns with the media.

Following several requests under the Data Protection Act 1998, a number of memos were accidentally sent to her by the General Medical Council. The GMC memos speculated that she might be "possibly mentally ill and paranoid". However, no such complaint had ever been made against Dr Pal and her general practitioner had certified her mentally fit. In addition, the GMC never met Dr Pal before the court hearing and therefore their speculations were wholly unsubstantiated.

These memos led to the recent legal proceedings for defamation, breaches in Data Protection and Human Rights, in which the GMC attempted to argue that casting doubt on her mental health was justified. The judge was extremely critical of this approach, saying:

"It is like a totalitarian regime: anybody who criticises it is said to be *prima facie* mentally ill - what used to happen in Russia."

Dr Pal won against the General Medical Council and the case is now stayed pending mediation. Before 1993, the law on withholding life-prolonging treatment was unclear. The High Court then decided on an application from both the hospital and the family that Tony Bland, who had been in a coma for ten years, should be allowed to die by withholding drip feeds. The judgement stated that future decisions of a similar nature should only be made after application to the Court.

In practice, decisions to withhold treatment without the agreement of the patient or relatives or the sanction of the Court have been routine. The Bland decision is now being used as justification by many doctors to end life.

The decision to end life is based on very subjective decisions of doctors as opposed to using multidisciplinary views involving the patient and his or her relatives.

In 1998 David Glass, who was born in 1986 with severe mental and physical disabilities, was a patient at St Mary's Hospital in Portsmouth. As a result of infection following surgery, doctors believed he was dying, and recommended diamorphine to relieve his distress. His mother refused consent, and the doctor's notes recognised that the correct procedure would be to apply to the Court. The mother was prevented from taking her son home to die and, in her absence, he was given diamorphine and his condition deteriorated.

Three family members resuscitated David and removed him from hospital by force (for which they were subsequently sent to prison). His general practitioner supplied an antidote to diamorphine, and he is still alive six years later. After the Glass family publicised their case on their website http://members.tripod.com/davidglass1/ and failed to get redress from the English courts and the GMC, they took the matter to the European Court of Human Rights which, in March 2004, ruled that the UK had unlawfully breached David Glass's human rights, specifically, Article 8 (right to respect for private life).

Following publicity about David Glass and other patients whose death had been accelerated without consent, the GMC issued guidance on withholding and withdrawing treatment. The initial guidance emphasised the need for consultation but left the final decision with the doctor. The latest version on the GMC website, found by searching for "Withholding and Withdrawing Life-prolonging Treatments" on http://www.gmc-uk.org/global_sections/search_frameset.htm (described as a draft for consideration by Council on 21 May 2002) gives much more emphasis to second medical opinions and application to the Court and makes it clear that until disagreement is resolved, life-prolonging treatment should be started or continued.

Decisions to allow patients to die are not always made by people who are medically qualified. In the case reported by Bunny Pinnington (http://www.freedomtocare.org/page146.htm#do%20not%20resuscitate), the head teacher of a Swansea special school in 1996 gave "Do not resuscitate" orders on two children.

Recently, the English courts have been more willing to intervene to keep patients alive. In July 2004, Leslie Burke obtained an order that treatment necessary to prolong his life should continue when his brain condition degenerates (http://www.guardian.co.uk/uk_news/story/0,,1273215,00.html). Mr Burke challenged the GMC's own guidelines and won his judicial review. The judgement stated that some sections of the GMC guidelines had been unlawful.

Reckless diagnosis

The previous section includes a wrong diagnosis that David Glass was terminally ill, which could

have led to his premature death, and improper speculation about Rita Pal's mental health, based on her letters. There are numerous recent examples of medical opinions based on flimsy evidence being used in the courts.

Several parents were prosecuted for murder as a result of the deaths of their children, when the only reason for suspicion was the coincidence that more than one child had died without obvious cause. Medical evidence included inaccurate estimates of the low probability of repeated unexplained deaths, and a hypothesis explaining the behaviour pattern that depended on the argument that the accused committed an act for which there was no independent evidence. This reached an extreme when Professor David Southall argued that a father murdered his children on the basis of seeing him interviewed on television about his wife's conviction that was subsequently overturned on appeal.

The GMC's Good Medical Practice Guidelines prohibit diagnosis without examining the patient first. Many diagnoses can be confirmed by laboratory tests and monitoring of treatment. Where that is not possible, as with some mental conditions, the diagnosis cannot be regarded as reliable and should not be trusted by the courts.

Musings on accountability

Robert McGregor

Being accountable to others and being entitled to expect accountability from others are two of the key conditions for a civilised society.

Accountability, first and foremost, is an attitude of mind, an expectation, a social convention. When we pretend not to notice that we owe someone an explanation or even deny that one is owed, most of us will experience a sense of shame or, at least, some modicum of embarrassment or awkwardness.

Of course, not everyone feels this way: the sociopath, the psychopath, the confidence trickster and some politicians, for example, seem unconcerned by their actions and unable to recognise the concept of accountability or, if they do, that it might apply to them.

Liable for libel or suable for slander?

Tim Field

Whether with spoken word (slander) or by written word (libel), defamation is the Cinderella of legal action. It's also a popular and expedient means of silencing dissent, subjugating those who strive for accountability, and punishing anyone who dares to challenge and thus jeopardise the status quo of powerful but corrupt people or organisations.

Defamation must also be one of the most emotionally charged areas of law given that people, rightly, become impassioned about a threat, or perceived threat, to their integrity. Despite the tempting notion, a world without defamation laws would be a free-for-all for anarchy. That a few morally and ethically bankrupt individuals misappropriate the law for their own purposes is an unfortunate by-product of the current adversarial system of litigation.

One of the most unpleasant forms of bullying is to subject a person to a vexatious writ of defamation, and then deprive them of resources, perhaps through enforced loss of livelihood due to the person having to devote their entire life to complying with legal process. Follow this up with a sycophantic lawyer speciously complaining to the judge that "the defendant has failed to prepare a proper defence" and it would be harder to conceive a better example of bullying.

In this David and Goliath arena, and despite overwhelming odds, it is still possible for the little guy to emerge with a victory, of sorts. Sometimes, winning is an attitude of mind, and if the bullies have been given a long, hard kicking then their severely bruised egos might be more than compensation for a humble apology, especially if couched in a manner that makes the perpetrators look like bullies and the defendant look like the victim of corporate bully boys.

A defamation action, or the threat of such action, is often used as a blunt

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instrument for the suppression of free speech.It can also be used as a means of punishment for the defendant having drawn attention to the failings of individuals who would rather not have their shortcomings known and recognised by others. These can range from large-scale fraud and criminal activity to negligence, incompetence and failure to perform duties or provide services.

Those bullies with psychopathic traits are particularly prone to indulging their vindictive urge to retaliate by misappropriating their organisations' financial resources to punish anyone who encroaches or comes close to exposing that person and his behaviour, especially if he has been getting away with murder for years.

No matter how rich or powerful the plaintiff, a defamation action has inherent risks. The court battle can provide a public platform of unequalled proportions for the exposure of wrongdoing, a paradox of which those who bully are often oblivious. The richer or more powerful the people bringing the action, the greater the likelihood of the media taking an interest. More individuals are likely to join in with the defence by exposing what they see as corrupt practices.

Bullies typically have a history of abusing people and it is likely that a little digging will flush out numerous victims with unresolved grievances against the same individual or organisation. This is where the Internet comes into its own. Never before have people had the ability to find like-minded individuals so quickly or so easily, and to set up open or closed forums for the sharing of experiences, ideas, information and strategies. The bringing together of past targets also opens up the possibility of mounting a class action lawsuit.

The McLibel trial, in which MacDonalds injudiciously sued two members of the public for adverse comments, started in 1995 and ran for over two years and was a marketing and public relations disaster for the fast food chain. Nearly ten years on, legal actions are still in progress. The defamation action spawned many anti-MacDonalds groups worldwide and consequent lost business run into billions of dollars. (See www.mcspotlight.org/).

MacDdonalds' objection in 2003 to the inclusion of the word "McJob" as a "low-paying and dead-end work" in the latest edition of the Merriam-Webster dictionary had the hallmarks of repeating their earlier misjudgement.

People who bully fail to realise that the opportunity for a high-profile civil libel case provides the perfect platform for unemployed or self-employed people who are not able to call upon the Public Interest Disclosure Act to hold to account persons or organisations who may hitherto have evaded accountability for their actions. Dismissive of or indifferent to the adverse publicity, once details of the plaintiffs' activities hit the search engine databases, knowledge of their actions becomes publicly and instantly available for years to everyone on the planet.

Being the target of a vexatious legal action can, like all bullying, be an isolating and exhausting experience. Contact with others who have faced the same threats and survived, and occasionally triumphed, can be a lifesaver, for such people can provide you with the knowledge, experience and guidance to enable you to defend yourself successfully. For others, a judicious early retraction might save years of pain, and perhaps provide the opportunity for pursuing alternative and ultimately more effective approaches to accountability.

Haliburton A once secret Halliburton oil contract raked in billions of dollars long after the US Army said the work involving Iraq oil industry repairs and fuel deliveries would be competitively bid. As of September 2004, Halliburton billed over $2.5 billion. A whistleblower calls the bidding process to break up the work, "a sham." See further, www.corpwatch.org/article.php?id=11560

Raising public interest concerns: a personal account

Wayne Thomas

After contacting POPAN[1] in early 2001 and then finding Freedom to Care in the Autumn of 2001, I began what was to be a painful and drawn out process raising numerous public interest concerns against certain statutory and voluntary services in Cardiff.

Although my story is complicated, I settled a personal injury case for damages in July this year. My specific concerns related to the negligent treatment I received as a service user; in addition, I raised concerns regarding the abuse of vulnerable adults and children by health 'professionals' working within the UK's National Health Service (NHS).

One such concern, based on information I was given during the course of my dealings with voluntary and statutory bodies, was the culture of unaccountability in the NHS, whereby vulnerable children and adults under social care provision and, quite possibly, the general public were put at risk by health professionals, a number of who actually told me that they had 'political protection'.

Open admissions were made that people would collude and cover up the concerns I raised. Attempts were made to label me as psychotic, despite my being in possession of strong evidence displaying a range of very serious failings. Basically, I was treated as the problem.

However it was never my intention to damage public services as I was brought up with strong socialist values which I still hold, but I felt a responsibility to speak out about what I saw as an appalling abdication of duty by those meant to protect the public and public services.

Freedom to Care has continually raised such issues with the Welsh Assembly government, as I have myself with certain politicians.

Several years ago, extensive evidence about my case was passed to the Children's Commissioner for Wales; as far as I am aware, his office has yet to investigate the issues which I raised.

If independent regulatory and investigatory bodies do not do their jobs properly, then the problems are not being acknowledged or addressed and the scope for abuse will persist.

Solutions require an open, reflexive, forward and progressive approach that some politicians seem incapable of developing. The first step, though, is for those 'in authority' to take responsibility.

Obviously many outstanding issues remain in my case. I hope they are addressed, not just for my sake, but more importantly for the safety and future of Welsh public bodies and services, so that Wales does not reach the point where it may require a 'Truth and Reconciliation Commission', as was set up in South Africa. Labour politicians like Aneurin Bevan, who really did understand the idea of putting public service above the self-interest of the ruling party, gave Wales a proud history of socialist values that have inspired it and contributed immensely to the greater good.

Presently, however, we do not seem to be in a position where selfless beliefs of service for others and equality for others are practised in a climate where sexual abuse is yet again rationalised in public bodies in Wales.
Aneurin Bevan and other great Welsh advocates of the common good would probably not be resting easily.

Notes

1. The Prevention of Professional Abuse Network '...works with people who have been abused by health or social care workers. POPAN runs a helpline for anyone concerned about this kind of abuse and a support and advocacy service for abuse survivors. POPAN campaigns for a world in which health and social care relationships are free from abusive practice.' www.popan.org.uk/

2. The mission statement of the Children's Commissioner for Wales can be found at: http://www.childcom.org.uk/english/index.html

3. 'The South African Truth and Reconciliation Commission (TRC) was set up by the Government of National Unity to help deal with what happened under apartheid. The conflict during this period resulted in violence and human rights abuses from all sides. No section of society escaped these abuses.' http://www.doj.gov.za/trc/

My case and some of the lessons learned

Andy Taylor

Most cases that involve people taking legal action regarding workplace abuse have two separate aspects:

- the workplace abuse itself;
- the consequences of the workplace abuse including, principally, the slow recovery in health, the litigation and the financial cost.

It is this second aspect that I invite readers to consider as constituting a stress in itself. The effects of trying to understand what has happened, of seeking legal redress for what has happened and of trying to recover ones health can be as traumatic and last longer than the initial trigger, i.e. the bullying in the workplace which, in my case, lasted about six months, whereas the second part has, to date, lasted four and a half years.

This journey starts with trying to recover and make sense of what happened. In many cases, it can take up to 18 months before the individual is even able to articulate the problem to an appropriate authority (in my case it took 10 months).

The journey has taken me into the worlds of academia, NGOs, lawyers and psychology: exploring ones' own past in detail can be very distressing. However, this process of education is needed if one is to make sense of what has happened and be able to move on.

If redress is sought, then the nightmare of the legal system looms and with that comes issues of money, court procedure, witness statements and aggressive respondents with very traumatising and false assertions. These factors delay true recovery and can cause individuals spiral further into depression and despair. It is not uncommon for people to be unable to work or even leave the house. Others find it difficult to open or deal with post, bills, etc.

With these extra pressures, the journey affects family and friends to breaking point. This consequence is seldom reported and it can cause families to break up. I did not visit or see any family members for 18 months.

My journey also took me to Parliament; this is another step that can be difficult as MPs have little time and have other interests. Thankfully, I was able to get support, but others do not or are left constantly waiting.

The journey continues: employers, lawyers, representatives say they will respond, and you are still waiting for the day when you can get validation and your life back.

I hope this helps people to understand that these things are all related and are a consequence of other people's inhumanity and inability to see anything positive in others whilst, at the same time, being determined to deny that their behaviour has had any adverse consequences. What hurts is that these individuals expect us to go away and not disturb their lives, after they have caused so much damage to others.

Allan Levy

The members of Freedom to Care's core group were very sorry to hear of the death, on 26th September last, of Allan Levy, QC, a patron of our organisation since 1994. Allan's last acts as patron was to comment on the FtC handbook and to make a generous contribution to printing costs. His obituary, published in The Guardian (29th September), celebrated, as we do, his work as an advocate for children's rights.

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).

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