The Whistle

FREEDOM TO CARE

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Promoting public accountability - Protecting freedom of speech in the workplace

What is going on in Nursing and Midwifery?

Elsie Gayle

Nurses and midwives have a duty to 'act to identify and minimize the risk to patients and clients.' If they are unable to 'remedy the circumstances' then they 'must report them to a senior person with sufficient authority' [NMC Code of Professional Conduct 2004]
Further guidance from the Royal College of Nursing (RCN) highlighted the need for nurses and midwives to use the PIDA appropriately, and gives guidance to those who need to 'blow the whistle'.[2004]

Some years ago, a midwife I know was suspended from duty. She had committed the "crime" of calling attention to the poor environment in which she was working.

We all stood speechless as she was walked out of the building in disgrace.

Afterwards, some of us decided to write a letter in her support. After all it could have been any one of us, as we were all moaning about the situations in which we were working i.e. very busy a lot of the time, no time for meal breaks, late to go off duty and generally getting quite tired as there was no let up and the months dragged on.

The senior manager herself was off sick with 'stress' and there was no clear leadership for our team. To my surprise many of this midwife's colleagues declined to sign this gentle but clear letter, not because they did not believe her treatment was unjust, but they did not want to get 'involved.' They were frightened of standing up; even within a group situation which was based on the relevant professional and statutory guidance.

Eventually the midwife returned to work, without any 'conditions on her practice'.

We all thought she had been punished for 'stepping out of line' and was allowed to return to work after 'serving her time.'

The incident remained etched in the back of our minds.

Some time later I left to work abroad. Whilst away, a telephone call from a colleague, described another suspension as a result of whistleblowing, and the devastating impact on the midwife despite her later vindication.

Both these excellent midwives left the profession.

Since my return to the UK, I have recognized the marked reluctance of nurses and midwives to raise any complaint to their managers about the state of the working environment. No matter how dire. I have seen nurses and midwives walk away from the profession they to love, rather than attempt to resolve the issues. Some 'hide' behind their trade union steward to raise issues they felt unable to address.

I have also noted, the fear that colleagues exude when they are called to account for genuine mistakes; complaints from patients and clients; and failings around operational issues by their managers.

In my support for midwives who have called a bullying helpline I am shocked at how demoralizing it is for ordinary midwives and their families, going through investigations and sanctions. Some of them appeared to be doing their best, under extreme working conditions, and felt they had been let down and heavily penalized.

That some have left work damaged and a shadow of their former selves is not in doubt; but this then adds to the fewer and fewer professionals to care for women and so the cycle continues.

And we should not forget the psychological impact on those left in the

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workplace; as these incidents are then 'etched in their minds'.

Nationally, the Bristol enquiry noted the marked reluctance of staff to raise any issue around patient safety, and it appears to me, that despite it's recommendations to 'learn lessons' and adopt the relevant action plan around the incident, little has changed by way of reporting, or around lessons learnt.

Staff continue to be penalized for whistleblowing.

A recent article in the Nursing press [Nursing Standard 8th June 2006] described an NHS Trust warning staff not to speak out about the impact that staff shortages have on patient care.

On the 10th July, a national tabloid again demonstrated the use of suspension as a means of blighting the careers of NHS staff who dare to follow their code of professional conduct and whistleblow. [Daily Mirror, 2006]

Surely the regulatory body must play a part in their support of these staff who are "protecting the public".

I suspect that there are NHS staff who have been protected in this way for whistleblowing. It would be therefore helpful for them to share any lessons learnt from those, and give some balance to the problem.

It could also form the benchmark for professional practice, and play a part in preventing future personal and professional detriment.

A constant theme in the national and professional press indicate very difficult working conditions for staff, and challenging care environment for patients.

The current change climate within the NHS means that many good staff are leaving; some through compulsory and voluntary redundancies; some to to set up their own practices and engage in a more autonomous way of working. Some are taking early retirement, changing careers and some leaving to live and work abroad.

The workforce is also aging, with a large number of staff due to retire within the next 5 years. We have also yet to experience the impact of the new age discrimination laws. Many other anomalies, (including "targets to be met") impact on the working environment for nurses and midwives.

Difficult though it is each registrant needs to play their part in creating a better climate, as 'every mickle makes a muckle'.

I also hope that some of us will use these changes to grab opportunities to improve our working lives.

E.g The national mainstreaming of 'diversity' can be an opportunity to gain culturally competent counselling for employees within a Trust. Improved mental health at work eventually would lead to an improvement in patient care.

I suspect all of us who are experiencing barriers within the professions would **simply** like to get on and provide good care in a supportive environment. And I feel we all need to consider 4 things:

What is it that stops us? What can we do about it? Can it get any worse? Where are the structures that should help us?

Commercial influence on academic research

Geoffrey Porter-Williams

Previous issues of *The Whistle* and the Freedom to Care website show examples of scientists who refused to compromise their integrity as a result of commercial pressures, notably the late Dr Chris Chapman and Dr Aubrey Blumsohn.

In December 2006 by chance a contract came to light between the late Sir Richard Doll and Monsanto, which was a major chemical company. From 1979 and for many years he was paid a daily retainer of $1,500 (which for most people was more than a month's earnings). He also received substantial payments from other chemical companies.

He had established a distinguished reputation as an epidemiologist by proving the link between smoking tobacco and lung cancer, despite all the pressure the tobacco companies could exert and the plausible evidence that was presented on their behalf. This reputation made Sir Richard Doll's reports that minimised the

health hazards of products of chemical companies all the more convincing. Two such reports in particular have been identified.

Vinyl chloride is used to produce plastics including PVC, but it has other uses. Until 1974, when adverse health effects in hair salons were noticed, it was used as an aerosol propellant. It was also inhaled as an anaesthetic. According to Wikipedia in 2006 its carcinogenic potential has long been established and the prospective legal liability is comparable to that of asbestos.

In 1979 the World Health Organisation identified vinyl chloride as a cause of cancers of the liver, brain, lungs and lymphatic system. In 1984, for a fee of £15,000 shared between the Chemical Manufacturers' Association, ICI and Dow Chemicals, Sir Richard Doll reviewed the safety of vinyl chloride. When the results of Sir Richard Doll's review, showing the only cancer risk as being to the liver, were published in 1988, he did not disclose the fee or its source. Subsequently he was used as an expert witness to rebut claims for brain cancer caused by vinyl chloride, and in one such case the funding from the chemical industry was mentioned in closed court but did not become public knowledge.

Agent Orange and dioxin were weapons of war used to defoliate forests that concealed the movements of the ultimately successful Vietnamese insurgents. Academic research in Australia showed these chemicals as cancer hazards, and a judge investigated claims that they had caused cancer in veterans of the Vietnam War. In 1985 Sir Richard Doll wrote to the judge to rebut the evidence of cancer risk, using material supplied by Monsanto, and ridiculed the scientists who had produced the evidence. The conclusion at the time was that Agent Orange was not a health hazard. This affected war veterans and could also have affected Vietnamese civilians.

Both Sir Richard Doll and the chemical companies were at fault, even if he honestly believed every statement that he made.

Once Sir Richard Doll was in the pay of chemical companies his independence was impaired. Whenever he made any statement relevant to the chemical companies he should have disclosed the financial link. Then anybody receiving his statement could give it, and any contrary opinions, appropriate weight.

Whatever the motives of the chemical companies might have been, the effect of their relationship with Sir Richard Doll was that evidence of health risks of their products that could have led to liability for compensation was for a time disregarded. As further evidence becomes available they should provide full compensation, not only to the individuals affected or their dependants and heirs, but also to publicly funded health services throughout the world.

The *Charter of Accountability* on the Freedom to Care website has the following statements that are particularly relevant to the companies and people involved.

"Every human being has an inalienable *right* to accountable behaviour from organisations (whether public, private or independent) whose activities significantly affect their quality of life and that of future generations."

"Public officials and private sector directors and managers (whether of for-profit or non-profit organisations) have a *duty* to explain and justify their intentions, actions and omissions to all those whose quality of life is affected thereby."

Commentators have dismissed criticism of Sir Richard Doll and the chemical companies as applying today's standards to a different period. This is not true for two reasons.

Wrongful commercial pressure was being applied in the Aubrey Blumsohn case as recently as 2005, so it is still a serious problem.

The nineteenth century Prevention of Corruption Acts make a criminal offence of acceptance by a public official of anything of value from an organisation on which he or she must adjudicate. So a meat inspector receiving a retainer from an abattoir would be liable to prosecution. How much more important it is that academic research affecting the health of people worldwide should be clearly seen not to be tainted by corruption.

Commercial relationships between companies and universities about research are problematic enough. There can be no justification for an individual academic receiving payments from a company whose products he or she is researching with a view to publishing the results in his or her own name.

General Medical Council petition.

Dr Sushant Varma

I have set up an online petition to get the Commission for Racial Equality to investigate the General Medical Council (www.general-medical-council.com). The General Medical Council is the regulatory body for doctors.

I am asking all FtC members to sign it.

The evidence suggests that they are tougher on foreign doctors if you read this article *GMC tougher on foreign doctors* (1) written in 2003 you will see evidence of this.

Concern was raised on this issue in Dame Janet Smith's 5th report to the Shipman inquiry (2). Here the high court judge commented on the work of the policy studies institute in 1996, 2000 and 2003 finding the same

In February 2005 (3) Dr Surendra Kumar wrote an article in BIDA news (British International Doctors Association) expressing concern about the disproportionate number of overseas doctors facing hearings at the GMC. In response the president of the GMC said this is due to the fact that overseas doctors are more likely to be referred to the GMC. Whilst that may be partly true I have no doubt that there is discrimination.

Indeed if you go to www.bapio.co.uk you will see a recent story entitled BAPIO raises the issue of disproportionate disciplinary actions against ethnic minority doctors with the GMC. President Professor Sir Graeme Catto assures action. It seems that three years on nothing has changed.

Although the president- Professor Sir Graeme Catto has partially explained the problem by saying that a disproportionate number of overseas doctors are referred to the GMC (4) I have no doubt that there is discrimination.

For example Dr Peter Wilmshurst wrote a beautiful article (5) showing all sorts of issues. He has found gross inconsistencies as have I. For each time a foreign doctor gets disciplined by the GMC I can give you details of how a white doctor does worse and gets away with it.

For example if you look at (6) you will see an article showing how a final year medical student was caught cheating in her medical finals. I now have official confirmation that she faced no penalty.

If you look at my website www.examfraud.co.uk you will see that I was cheated of my medical degree due to wilful manipulation of evidence and procedures to ensure I failed exams. It reached such an extent that I was forced to have to take my exams externally. However after qualifying in medicine externally my medical school dean wrote to the GMC president alleging fraud. The president said that there were no grounds to take any action. 5 years in September 2006 on the GMC erased me from the medical register for precisely that. The GMC did nothing about those responsible for manipulating my exam results. (7).However on 21 December 2006 the GMC wrote to me after I made representations to the Information Commissioner saying that they had found memos showing that in August 2001 they knew that they could not take action against me on this matter.

In my case several facts are clear.

In 1998 a lecturer was caught manipulating evidence and procedures to ensure a non white student failed exams- an exam decision was overturned from fail to pass. The GMC did nothing. (7)

In 2000 a student at University College London was caught cheating in her finals- the GMC did nothing (6)

In 2001 a professor of medicine is caught manipulating evidence and procedures to ensure a non white student failed exams (www.examfraud.co.uk)

Instead of taking action against the professor and lecturer the GMC takes action against the student.

I would again ask that all FTC members sign my online petition.

(1) *GMC tougher on foreign doctors* 14 February 2003 http://news.bbc.co.uk/1/hi/health/2757243.stm

(2) Chapter 17 The Shipman Inquiry http://www.the-shipman-inquiry.org.uk/5r_page.asp?ID=4762

(3) President's Report *BIDA news* February 2005

(4) President looks back on a year of changes (page 4) *GMC news* June 2004 http://www.gmc-uk.org/publications/gmc_news_archive/gmcnewsjune04.pdf
(5) The General Medical Council a personal view *Cardiology news* October/November 2006 http://www.pinpointmedical.com/cardiology/article_archive/2006/ON06_gmc.pdf
(6) Cheating at medical school *British Medical Journal* 12 August 2000 http://www.bmj.com/cgi/content/full/321/7258/398
(7) Sushant Varma vs. Dr Steve Peters GMC reference FPD/1998/1234

Update on petitions

Since the preceding article was written the 10 Downing Street website has made itself available for petitions. Members of Freedom to Care are recommended additionally to sign the following petitions.

'We the undersigned petition the Prime Minister to Abolish the General Medical Council of the United Kingdom.'
http://petitions.pm.gov.uk/AbolishGMC/

'We the undersigned petition the Prime Minister to Investigate Allegations of Institutional Racism at the General Medical Council.'
http://petitions.pm.gov.uk/GMCRacism/

Update March 2007

Sheila Porter-Williams

The Government has announced that the GMC will lose the privilege of self regulation. In particular any sanctions against doctors whose fitness to practise has been investigated will be decided by an independent body.

There will also be a five-yearly independent review of doctors' competence.

As the GMC has welcomed the changes there must be doubt whether there is sufficient break with the past.

Following an approach from a doctor being investigated by the GMC, I had occasion to look at all the cases being considered for fitness to practise in February 2007. There were 44 cases in total, many of them being heard seven days a week. Half the cases involved doctors with Asian sounding names.

While most of the cases seem to be serious enough, a few cannot properly be considered to relate to fitness to practise.

One doctor is under investigation for legitimate comments he made relating to an earlier investigation. Whistle 24 reported how when Dr Rita Pal challenged the GMC her mental health was questioned. The GMC still uses this intimidatory and totally inappropriate procedure.

Another case involves a doctor whose alleged offence was to enrol on two training courses simultaneously.

Four cases arise from criminal convictions. While that is appropriate for a convicted paedophile, one might question how driving without valid insurance impairs a doctor's fitness to practise.

Freedom of Information

A Freedom of Information Act was a manifesto commitment of the Labour Party in the 1997 General Election. The Act was passed in 2000 but not actually brought into force until 2005. Clearly the provisions of the legislation were resisted as long as possible by the Civil Service and ministers were not committed to speedy implementation.

The Act confers a duty on all public bodies in response to a request to confirm or deny whether specific information is held and if held to supply that information. There are exemptions. Some, such as national security and criminal investigations, are obvious. Others, such as policy options for consideration by ministers, are part of the culture of secrecy in government that should be swept away. The exemption of information supplied in confidence or trade secrets could, as a result of the increased use of private sector contracts in the provision of public services, block access to swathes of information of public interest about public services.

The Act seeks to limit the cost of supplying information. Repeated requests from the same person may be refused, even if they relate to different matters; investigative journalists see this as a threat, not helped when ministers express the wish to curb their activities.

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Regulations allow a fee to be charged and allow the refusal of information if the cost of supplying it would be excessive (which is £600 for central government and otherwise £450).

Personal information within the scope of the Data Protection Act 1998 is excluded from the Freedom of Information Act. A data subject's rights of access to personal data under the Data Protection Act are different. In particular the Data Protection Act is not limited to public bodies but applies to anybody holding personal data. There are exemptions, but repetitious requests or the cost of supplying the information may not be used as reasons for refusing information. A fee may be charged for disclosing information.

How has the Freedom of Information Act worked in practice?

In general information held by local bodies has for many years been more accessible than information held at national level. Decisions are made in public, based on reports including policy options, and minuted. Private decisions are limited to statutory exemptions, mainly contractual and legal matters. Many local authorities meet in private only to be advised of the names of tenderers, with all other contractual matters being considered in public. Local health bodies generally interpret the exemptions more widely, but the same principles apply.

In local authorities there is also the long standing right to inspect the accounts in detail at the beginning of the annual audit and question the auditor. A citizen may also request a councillor to use his or her right to be informed to obtain information.

In the period leading to the implementation of the Freedom of Information Act, local websites were improved to assist citizens in obtaining their own information. A typical website will include policy documents, committee reports, minutes, budgets, accounts and news items, along with information on access to services. There is a major difference between elected local authorities and NHS bodies. Draft minutes of local authorities are usually on their website a day or two after the relevant meeting. NHS bodies usually withhold publication until the minutes are confirmed at the next meeting, which could be three months later, and even then may not be prompt.

Staff of public bodies were advised to be careful what they put in writing, including on emails, which are relevant to the Freedom of Information Act. If this has prevented the writing of abusive and ill thought out comments this is a good thing. To avoid putting in writing matters which ought to be public knowledge as a perpetuation of the culture of secrecy is unacceptable.

Much of the information obtained under the Freedom of Information Act would have been available in any case. Some journalists have found the Act useful, and the Campaign for Freedom of Information identified 500 press stories in the UK relying on freedom of information legislation. Most relate to waste of public money. Other examples include dumping of munitions in the Irish Sea, the former chief inspector of schools Chris Woodhead labelling a school as failing against independent advice, consultants' advice that the Government's academies policy would increase social class divisions being ignored, schools culling weaker students to improve published exam results, electoral fraud not being prosecuted, an attempt to gag the Scottish Environmental Protection Agency, wrongful denial of the presence of asbestos where houses were to be built on the site of a former asbestos factory, school meals as a source of the fatal CJD, dangerous school and hospital kitchens and unsuitable food, details on the prevalence of obesity, loss of laboratory samples in an investigation into fatal use of pesticides, disposal of most of the rifles used on Bloody Sunday shortly before they were due to be examined by the Savile enquiry, and many more. Since then more information embarrassing to the government has been brought to light, such as when the Civil Service prepared heat maps to brief the Labour Party on political risks in the NHS, and the Conservative party obtained the information, which is now accessible on the Department of Health website.

The extent to which exemptions are misused is unclear. York Hospitals NHS Trust refused personal information to a patient, citing as its reason that the request was repetitious; this

exemption does not apply to personal data accessible under the Data Protection Act. The Department of Transport cited commercial confidentiality as a reason for refusing information on a franchise contract, and then changed its mind. The Government made itself ridiculous by claiming that it would cost too much to put together Air Traffic Control records of CIA flights used for extraordinary rendition of suspects to places where they might be tortured, when the press got the information from amateur plane spotters.

On 14 December 2006 the Government published a consultation paper on proposals to reduce use of the Freedom of Information Act. The aim is to reduce the modest £35.5 million annual cost by £11.8 million. Time to be spent considering whether information can be withheld will be counted towards the limit on the cost of the information, and the cost of repeated requests from the same individual will be aggregated. Consultation ended on 8 March 2007. For more information see the Campaign for Freedom of Information, http://www.cfoi.org.uk/ .

The main fault with the Freedom of Information Act has been lack of political commitment and late implementation. The exemptions are potentially dangerous if they are widely interpreted. The Government's latest proposals should be resisted. Any examples of information being unreasonably refused need to be watched and exposed.

Victimisation of police whistleblowers

Police officers who have identified wrongdoing by colleagues have frequently been bullied by colleagues or victimised by their superiors.

The Independent Police Support Group was formed in September 2004 to support present and former police officers in such a situation. Their website http://www.ipsg.co.uk/ already has case studies where seven police forces in England and one in Scotland have been found to have treated wrongfully police officers who identified wrongdoing. Usually the police officers concerned had no support from anyone else.

Police officers are in several ways in a worse situation than the community at large.

Police officers are not allowed to belong to a trade union. The Police Federation, which is a statutory body, provides some of the functions of a trade union to officers below the rank of superintendent. But in a whistleblowing situation everybody involved is likely to belong to the Federation, which is going to be under pressure to side with the majority and provide little or no support to the whistleblower.

Each police force has a Professional Standards Department (PSD), which investigates allegations from within the force against individual police officers. As the PSD are police officers they have full police powers, including arrest and searching private property. Sometimes the PSD uses its full powers while investigating allegations that do not warrant those powers, including offences that are not arrestable or breaches of employment conditions that are not crimes at all.

Sometimes the PSD investigates a police officer who has already identified wrongdoing within the PSD and uses the investigation as an opportunity for harassment. Even when that is not the situation officers in the PSD are not impartial because they are members of the same force and subject to improper influences.

The Independent Police Complaints Commission says on its website http://www.ipcc.gov.uk/ that its job "is to make sure that complaints against the police are dealt with effectively". It should take over the investigation of all allegations against police officers, whether from the public or from within a police force. A member of staff of the Commission who is not a serving or former police officer should take responsibility for each investigation. The actual investigation should normally be done by police officers who have never served in the same force as the personalities involved, unless in a particular case such as an allegation against a chief constable a judge would be more appropriate. Some existing PSDs that have not themselves been subjects of complaints could be attached to the Commission to investigate allegations outside their own area.

Whistleblowing in the NHS

Apart from the separate articles by Elsie Gayle and Dr Sushant Varma, this is a summary of NHS whistleblowing cases that have appeared in the press. What most have in common is the lack of any accountability, other than informally through exposure, of the people who have made wrong decisions.

Consultant gynaecologist Michael Penman resigned when he faced disciplinary action after he revealed a waste of public money at Medway Maritime Hospital after an instruction was issued to make patients wait longer and treat fewer patients in order to save the relatively trifling marginal costs of working at full capacity. As was said in "Yes Minister", it saves money to run a hospital without patients.

Radiologist Dr Otto Chan was dismissed after a prolonged suspension when he revealed that at Barts and London NHS Trust some 100,000 x-rays and scans were unchecked over many years. Other reports were assigned to the wrong patients because reference numbers were reused. The dismissal was despite an independent enquiry recommending reinstatement. Six other doctors subsequently identified dangerous practices (including reckless risk of spreading MRSA) to meet government targets, lack of essential equipment, and lack of staff cover for absence.

Dr Anily Reddy resigned from a walk-in centre at Canary Wharf, London, run by a computer company under contract with the NHS, when he identified unsafe practices, including nurses making clinical decisions outside their competencies.

Ray McNally resigned as head of IT at Urgent Care 24, which is contracted to provide out of hours GP services in Merseyside. Unsafe practices included delay in recognising life-threatening conditions and calling an ambulance. He reported that performance figures were falsified; so when in only 9% of such cases an ambulance was called within three minutes the reported figure was 94%.

Colleagues of a radiologist at Trafford General hospital and North Manchester General hospital raised concerns in November 2003 about misreported mammograms. Nothing happened for eighteen months. Then 176 women were re-examined and 28 found to have been wrongly cleared. One of those has since died.

An anonymous whistleblower alerted the National Audit Office to financial irregularities and poor value for money in a joint venture between the Department for Health and Dr Foster concerning the Good Hospital Guide.

FREEDOM TO CARE

is an independent, non-profit and entirely voluntary organisation. We are not lawyers. We accept no money from corporations or government departments. We are the UK's first whistleblower organisation (1991) and the only grassroots one. It is not a charity, but a non-profit company limited by guarantee (Reg. 2973440). Freedom to Care lobbies and campaigns for the greater public accountability of large organisations & supports conscientious employees who speak up in the public interest.

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