



Whistleblowing

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CO643/CO841
Computing Law and
Professional Responsibility

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Brining experience from...

- Medical degree & Healthcare/clinical practice (NHS Hospitals)
- Masters in Medical Law LLM (University of Kent)
- Clinical Governance & Compliance (NHS East Kent Hospitals)
- Head of Risk management (Portland Private Hospital)
- Head of Quality Assurance (NHS Homerton Hospital)
- Head of Quality & Safety (NHS Moorfields Eye Hospital)
- Lecturer in Law & Prof. Responsibility (University of Kent)

Would you tell on your best friend if they ...

- Plagiarised your essay?
- Were cheating on your little sister?
- Nicked a chocolate bar from the SU shop?
- Were planning a bank robbery?
- Were being radicalised/support terrorism?

No, no, no - in no circumstance!

Looking for simple answers ...

- One can refer to Codes of Ethics?
(e.g. act with integrity & honesty).
- Failing that, the Law could help?

However...

- In reality, there are conflicting interests, goals & loyalties
- Whistleblowing is a special case that combines all above

Key Questions:

1. What is whistleblowing, what are its requirements?
2. What is the nature of the employer/employee tension in a whistleblowing situation?
3. What are the outcomes of whistleblowing (and also *not...*)?
4. How has whistleblowing theory developed?
5. How are whistleblowers protected and what are the requirements for their protection?
6. What are the ethical issues surrounding WikiLeaks?

What is it?

Whistleblowing occurs when an employee raises concerns, usually to their employer or a regulator, about a particular type of workplace danger or illegality that affects others.



Example: Social Care

- From General Social Care Council survey 2009:

“Almost 50% of respondents [...] said that when they had reported [...], their employer had not taken action.”

Is that a positive result?

“Social workers are bound by the Code of Conduct [...] they must ‘use established processes and procedures to challenge and report [...] behaviour and practice’”

Chance of victimisation or negative career impact?

Video: <https://www.youtube.com/watch?v=OVbAynPTDI4>

Famous cases

- Paul van Buitenen and several others, European Commission expenses fraud (*victimised but won*)
- Paul Moore, head of Risk HBOS (*“wouldn’t do it again”*)
- Sherron Watkins of ENRON (*reported financial fraud*)
- [Margaret Haywood](#) (*struck-off on technicality*)
- [and some more](#) (*see link*)

No IT cases in 2000-2003 UK case law – is this sign of being *an honest* or a *cowardly* profession?
(*note that applications tripled since 2003*)

Definition (informal)

- Whistleblower “alleges misconduct”
- Internal: to immediate superior or other manager
- External: to regulator, press, MP, ...
- Promotes “culture of openness”
- As opposed to inquiries etc: usually post-hoc
- Fear of repercussions!

The conflict?

- 1 in 4 employees are aware of misconduct at work, over half stay silent [Speak Up Procedures, Institute of Business Ethics, 2007]
- Optimistic line: it's an effective early warning system, good business sense [internal!]
- Pessimistic line: it's disloyal to the company [external!]

The grand failures...

Cases where somebody had concerns who did not raise them or were not taken up by the company when reported:

- Piper Alpha
- Clapham Rail disaster
- Harold Shipman
- Heart surgery of babies at Bristol RI
- Herald of Free Enterprise
- Barings Bank
- Arms to Iraq

In all cases: post-hoc inquiries showed concerns existed, but were not raised, or not taken up

Piper Alpha



Clapham Rail Disaster



NHS whistleblowers ignored, bullied and intimidated, inquiry finds

Government-commissioned inquiry documents 'shocking' accounts of the treatment of whistleblowers

Denis Campbell and
Matthew Weaver

Wednesday 11 February 2015 09:54 GMT



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The author of the review, Sir Robert Francis, led two major inquiries into failures at Mid Staffordshire NHS foundation trust Photograph: Christopher Furlong/Getty Images

NHS staff who blow the whistle on substandard and dangerous practices are being ignored, bullied or even intimidated in a “climate of fear”, according to an independent review.

A significant proportion of health workers are afraid to blow the whistle about poor patient care and safety failures in the NHS, the government commissioned inquiry, which documented “shocking” accounts of the treatment of whistleblowers found.

Sir Robert Francis QC, who led two major inquiries into failures at Mid Staffordshire NHS foundation trust, was asked by the health secretary, [Jeremy Hunt](#), to recommend how best staff can be supported to raise concerns after a series hospital scandals suggested staff warnings were quashed.

Francis [told the BBC that a “significant proportion”](#) of health workers were afraid to speak out and many who had blown the whistle had been bullied.

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lunch' delayed until tea
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Major NHS cases 1:



Mid Staffordshire public inquiry:

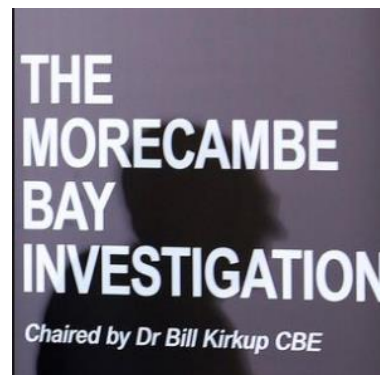
Helene Donnelley (Nurse)
raised the alarm and
Sir Robert Francis (QC)
found that poor care could
have led to hundred of
deaths



Major NHS cases 2:

Morecambe Bay baby deaths scandal:

Kay Sheldon (non-executive director of Care Quality Commission) was victimised but eventually vindicated



Results of NHS public enquiries

Freedom to Speak Up:

- 1. Put in place Freedom to Speak Up Guardians in each Trust.
- 2. Ensure that every local NHS provider provides training in raising and listening to concerns.
- 3. Review the Professional Codes of doctors, nurses and midwives and ensure that the right incentives are in place to encourage people to report openly.

Video: <https://www.youtube.com/watch?v=-AGB7QyfivM>

Solution?

In three steps:

- Exhaust internal before going external
- Having an established route to tackle issues is good for business
- Protect disclosure

UK legal solution: PIDA

- Public Interest Disclosure Act 1998 (a modification to 1996 Employment Rights Act)
- Concentrates on protecting the Whistleblower
- Provides *criteria* for protection and escalation
- Allows for compensation if protected disclosure leads to reprisals
- Malpractice needn't be in UK
- Excludes intelligence services and army
- Confidentiality; gagging orders

Definitions

Whistleblowing concern: reasonable and honest suspicion an “employee” has about a possible fraud, danger or other serious risk that threatens customers, colleagues, shareholders, the public, or the organisation’s own reputation [or the environment]

Open, confidential, anonymous, external whistleblowing

Designated officer, internal/external hotline

(some companies and organisations provide routes to whistleblowing to manage, resolve and contain)

Criteria for Protection

For a disclosure to be *protected*:

- Concerns malpractice
- ~~Is made in good faith~~ (*no longer have to prove motive*)
- Serves a public interest
- Needs to show substantive basis for belief
- *Normally* needs to have exhausted internal avenues before going external, and no personal gain. (Regulator mostly like internal.)

Confidentiality of company *towards 3rd parties* is still protected.

Developments since PIDA

- Introduction of fees in employment tribunals has created a hurdle (claims down 2013)
- Enterprise and Regulatory Reform Act 2013 (2015): public interest required, good faith weakened.
- [Code of practice](#), March 2015

The latest UK employment law changes for employers

– September 2018

The key employment related changes include requirements for:

- a board-monitored whistle blowing mechanism
- strengthening workforce engagement
- greater focus on gender, social and ethnic diversity in succession planning for both the board and senior managers

Useful links

- PIDA - Public Interest Disclosure Act:
<http://www.legislation.gov.uk/ukpga/1998/23/contents>
- BSI PAS - British Standards Institute code of practice, advice on whistleblowing policy:
<http://www.legislation.gov.uk/ukpga/1998/23/contents>
- Whistleblowing Charity - Public Concern At Work:
<http://www.pcaw.co.uk/>
And, in particular, A Guide to PIDA:
<http://www.pcaw.org.uk/law-policy/a-guide-to-pida>

Wikileaks story

Overview here, and detail in second-half of this lecture:

<https://player.kent.ac.uk/Panopto/Pages/Viewer.aspx?id=2ab5fda2-70d0-4a67-a5ed-1bbc868042a9>

- Founded in 2006 by Julian Assange
- Contains uncensored (& untraceable) leaks
- Bradley Manning info. Dump (2007) – gets 25yrs Jail
(incl. US Army manual on dealing with prisoners)
- Assange took refuge in Ecuadorean embassy (2012)
(Swedish sexual abuse case/extradition)
- Involvement in 2016 US elections (Clinton Emails)



Wikileaks Video:

https://www.youtube.com/watch?v=7xku_5V02uA

Wikileaks Timeline

- 26 May 2010 Bradley (now Chelsea) Manning arrested
- 26 July 2010 Afghan Diaries
- 30 July 2010 encrypted insurance
- Aug 10 Swedish arrest warrant Julian Assange
- 28 Nov 2010 diplomatic cables(sensitive and embarrassing documents)
- Dec 2010 Assange, arrest, bail
- Dec 2010 Amazon, PayPal, Visa, MasterCard

Wikileaks Timeline (contind)

- 2011 Assange loses appeals against extradition, ends up in Ecuador embassy
- Partisan contribution to US 2016 elections; how related to Russia or to Trump?!
- Release Chelsea Manning (✓) and I'll allow extradition to US?
- April 2019 transferred to UK Belmarsh prison- awaiting extradition to US

Wikileaks pros

- Transparency
- (anonymous) whistle blowing
- Freedom of speech
- Even reported its own data leak!
- Injustices exposed world wide

Wikileaks Downsides

- Julian Assange's personal problems/narcissism/ ego
- Scaling of “cleansing” of data (doesn't care about people in the stories)
- Difficult to write ethical programs for a technological solution
- Lack of transparency in organisation(selective)
- Scaling of publication: “Every selection process involves a kind of censorship, and every instance of censorship has a political component”
- Lost a lot of core members and supporters

Sources

- “Inside WikiLeaks”, Daniel Domscheit-Berg, Random House, 2011
- Wikileaks.org
- Various other web information

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