

What we did

Public
Concern

at work

1 January 2005 to 1 October 2007
at a glance

Helpline

- Our free confidential helpline advised on over 2500 whistleblowing concerns.
- A third of these came from referrals within the workplace and a third from the internet.
- 87% of callers say they would recommend us to someone with a whistleblowing concern.

Services

- We were commissioned to draft a best practice standard by BSI on whistleblowing.
- Eighteen organisations took our bespoke support packages.
- 40,000 copies of our guidance were sent to GP surgeries and NHS primary care providers.

Public Policy

- We got a new law repealed that made workers and employers liable on a no-fault basis if an employee failed to see or report a safety risk.
- We succeeded in getting the new Civil Service Code to refer to the whistleblowing law.
- We unpicked the flaws that led to a landmark law lords' decision under the Protection from Harassment Act.

The whistleblowing law

- We advised two non-lawyers who took and won cases under the Public Interest Disclosure Act (PIDA) that reached the Court of Appeal.
- We reviewed and flagged key PIDA appeals on our website.
- Our work monitoring PIDA claims in tribunals was obstructed by the rule which now keeps all such information secret.

Public Education

- We ran a pilot of whistleblowing lessons for 12 and 16-year-old school children.
- We inspired ITV's drama series The Whistleblowers.
- Our website is the top ranking internet source on whistleblowing.

International

- We visited 13 countries in four continents to advise on whistleblowing law and policy.
- We advised the Council of Europe, EU data protection authorities and the World Bank.
- We met the EU Commissioner to review their institutional arrangements.

Who paid?

- We were a self-funding charity, with income from our services and subscriptions covering all our activities.
- The DTI was obliged to compensate us £130,000 for wasting our time as we campaigned to uphold open justice and the public interest.
- We now hold reserves of twice our annual expenses.

The whistleblowing charity

What we do & why it matters The Biennial Review

What we do

Public Concern at Work helps to anticipate and avoid serious risks that arise in and from the workplace. Known as the whistleblowing charity, we have four activities. We

- offer free, confidential advice to people concerned about crime, danger or wrongdoing at work;
- help organisations to deliver and demonstrate good governance;
- inform public policy; and
- promote individual responsibility and accountability.

We approach these activities in the following ways:

FREE ADVICE FOR PEOPLE

We do

- ✓ explain the public interest
- ✓ help raise public concerns
- ✓ separate message from messenger
- ✓ offer practical, informed legal advice

We don't

- ✗ litigate
- ✗ investigate
- ✗ foster the victim culture
- ✗ get involved in private disputes

PRACTICAL HELP FOR ORGANISATIONS

We do

- ✓ understand governance
- ✓ make whistleblowing work
- ✓ add real value to risk management
- ✓ deliver training, reviews and surveys

We don't

- ✗ risk reputations
- ✗ make it up as we go along
- ✗ forget commercial interests
- ✗ advise on specific legal cases

PUBLIC POLICY

We do

- ✓ focus on practical solutions
- ✓ emphasise prevention over cure
- ✓ build compliance in from the outset
- ✓ work through the likely consequences

We don't

- ✗ overstate the case
- ✗ take a party political line
- ✗ forget systems are run by people
- ✗ maintain regulation is **the** answer

PUBLIC EDUCATION

We do

- ✓ get people to think of others
- ✓ explain how influence can work
- ✓ see the wood and the trees
- ✓ promote public interest whistleblowing

We don't

- ✗ duck difficult questions
- ✗ claim we have all the answers
- ✗ talk down to people or cultures
- ✗ encourage anonymous informing

Preface

Five years ago, I wrote that this charity's vision was that "whistleblowing should be recognised as an honourable aspect of human behaviour and an effective means to promote and protect the public interest". The survey on page 20 shows the welcome progress there has been across Britain in this regard and that we are somewhat further ahead than many other countries. In fact, the progress is such that today it is difficult to recall the hostility and scepticism that greeted the notion that whistleblowing could be a good thing when this charity was being set up in the early 1990s.

This change has been due to the work of business leaders, journalists, judges, legislators, policy makers, public servants and regulators and to the good sense of the British people. It has also been encouraged and assisted by the work of this small, independent charity. On the facing page you can see what we do and, overleaf, why it matters. The rest of this biennial review explains in more detail our work and approach and reports on our successes and setbacks since January 2005.

On behalf of my fellow trustees, I thank the people and organisations we work with for their support, and the staff here for their dedication, initiative and good humour.



Michael Smyth
Chairman

5 November 2007

Why it matters

1986

Space Shuttle Challenger explodes on take-off

NASA ignores a clear warning from Morton Thiokol engineer Roger Boisjoly about the impending disaster.

1987

Herald of Free Enterprise sinks – 193 dead

Judge finds that the warnings from five whistleblowers had been lost in middle management.

1988

Media tycoon sacks and silences whistleblower

Robert Maxwell sacks Harry Templeton for repeatedly challenging his misuse of the pension fund. (This only comes out in 1992 after Maxwell's theft of £400m from the fund.)

1989

First research on value of whistleblowing

Social Audit embarks on a research project on whistleblowing and self-regulation.

1990

Auditors find millions missing at BCCI

A year before the bank collapses in a £13 billion scandal, BCCI's auditors find a huge hole in the accounts. The response is to move key documents abroad.

1991

Quaker trust lays down a challenge

Joseph Rowntree Charitable Trust offers a challenge grant of £250,000 over 5 years to fund a new resource centre on whistleblowing.

1992

Matrix Churchill prosecution collapses as ministers fear whistleblower may go public

"The difficulty of course is not simply that the letter exists but that the writer of the letter no doubt exists and he may well make its existence public" – official minute to ministers.

1993

Charity to offer a safe haven to whistleblowers

Public Concern at Work (PCaW) launches after an eighteen month delay at Charity Commission which had disputed that providing advice on whistleblowing could be a public benefit.

1994

Lyme Bay disaster: First conviction for corporate manslaughter

The Managing Director of an outward bound centre is jailed for two years for his role in the death of four school children after he recklessly ignored employee Joy Cawthorne's graphic warning.

1995

Wise heads take heed

The influential Nolan Committee and Dr Tony Wright MP call for a new approach to whistleblowing.

1996

Backbench MPs hoist the flag

MPs ask PCaW and the Campaign for Freedom of Information to develop, draft, consult on and promote a law to protect public interest whistleblowers. MPs Don Touhig and Ian McCartney lead.

1997

Whistle blown on Holocaust profiteering

Security guard Christoph Meili is given political asylum in USA after exposing a scheme at Swiss banks to conceal the fact they still had US\$ billions deposited by victims of the Holocaust.

1998

UK passes ground-breaking whistleblowing law

Richard Shepherd MP and Lord Borrie's backbench Bill becomes the Public Interest Disclosure Act. It is hailed by American campaigners as "the most far reaching whistleblowing law in the world".

1999

European Commission resigns

The European Commission resigns after an inquiry sparked by whistleblower Paul van Buitenen found "it is becoming difficult to find anyone who has even the slightest sense of responsibility."

2000

Dr Harold Shipman convicted of murdering patients

A judicial inquiry later found Dr Shipman had murdered 215 patients and observed that a whistleblowing-friendly culture would likely do more to protect patients than any other reform.

2001

Whistleblower thanked

The Health Secretary tells MPs anaesthetist Stephen Bolsin is owed a debt of gratitude having been left no option but to go to the media about the death of 29 babies at a UK hospital.

2002

Time magazine makes whistleblowers Person of the Year

Americans Sherron Watkins, Cynthia Cooper and Colleen Rowley are jointly named as Time's Person of the Year for their whistleblowing on Enron, WorldCom and the failures before 9/11.

2003

WMD whistleblower unveiled

The Hutton Inquiry hears that MoD expert Brian Jones had exceptionally written to intelligence chiefs warning that the 45 minute WMD claim should not be relied on.

2004

Government rule to keep whistleblowing claims secret

The Department of Trade & Industry forces through a new rule that all information about whistleblowing claims under the Public Interest Disclosure Act should be kept off the public record.

2005

30 years on, Watergate's Deep Throat is named

FBI's former deputy director, Mark Felt, is revealed as the confidential - never anonymous - source, whose disclosures had forced President Nixon from office.

2006

Japan brings into force its whistleblowing protection law

Japan's law – like South Africa's in 2000 - closely follows the UK model developed at PCaW.

2007

Culture change taking root

A survey of multinational companies which promote whistleblowing to their staff shows that, across mainland Europe, 54% of bosses say their staff feel free to blow the whistle on fraud, corruption and bribery. The figure in the UK is 86%.



- A potentially corrupt immigration officer
- Uncontrolled spending on an NHS IT project
- Unreliable testing equipment in a nuclear plant
- Untrained carers inserting catheters in patients
- Bribing a compliance auditor about factories in China
- Unlawfully depositing toxic waste on a local dump
- Removing tissue samples from patients without authority
- Subversion by officials of a minister's pledge to Parliament
- Care home staff using residents' money to buy their weekly groceries
- Staff sewing 'Made in UK' labels on clothes imported from Hong Kong
- Invalid parking penalties to be enforced unless a formal complaint is made

A COCKTAIL OF CONCERNS

Financial adviser churning an elderly client's investments to generate commission

A manager telling staff to put refunds through to cover up cash shortages

A company forging documents to make bogus foreign VAT refund claims

Catering butchers fiddling the weighing scales to overcharge customers

A contractor lying about the cause of a gas leak to safeguard bonuses

Untrained care assistants performing medical tasks risking infection

A private nursery fiddling the books to receive government funds

Well-known football club fixing the results of a fans' prize draw

An official wilfully misleading councillors about a development

A solicitor knowingly submitting a false personal injury claim

A manager stealing thousands of pounds from his employer

A convicted fraudster appointed to a bank's IT department

Dubious selection of winners for radio show competition

Mental health patients being made to sleep on the floor

Care home re-using disposable needles to save costs

Concealing a bribe paid to a Russian businessman

Contents

- 01 What we do
- 02 Preface
- 03 Why it matters
- 05 A cocktail of concerns
- 07 Helpline
- 08 Helpline feedback
- 09 Four cases from our files
- 11 Public policy
- 13 Public education
- 15 Services
- 17 The whistleblowing legislation
- 18 Five tribunal cases
- 19 International work
- 20 Where's whistleblowing?
- 21 Money
- 22 People

Public Concern at Work
Suite 301
16 Baldwins Gardens
London EC1N 7RJ

email whistle@pcaw.co.uk
tel 020 7404 6609
fax 020 7404 6576
www.whistleblowing.org.uk

VAT no 626 7725 17
Registered charity number 1025557
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Helpline

What we do and why

When someone is in a dilemma about whether or how to raise a concern about malpractice, be it a fraud or a danger or other wrongdoing, we offer them free, confidential advice on how best to proceed. We concentrate on the practical options - looking at the risk and the wider picture, with the law and the Public Interest Disclosure Act in the background. Our aim is to increase the chances that any public concern can be raised in a constructive way, so that any danger or wrongdoing can be effectively addressed while minimising any actual or perceived risk to the client.

While we do not litigate ourselves, we are also approached for advice by employees where they have raised a whistleblowing concern and feel they have been victimised as a result. Such approaches for help on the whistleblowing law also come from the managers, union advisers and lawyers of those involved.

Between January 2005 and October 2007 we handled over 2,500 calls for confidential advice on whistleblowing or public concerns. The helpline, which is free to callers, is actively promoted by enlightened organisations which pay a modest annual subscription to the helpline.

In this section, we summarise some of the concerns raised with us.

Below we set out key data from 2005/6 about these concerns (with 2003/4 data in brackets).

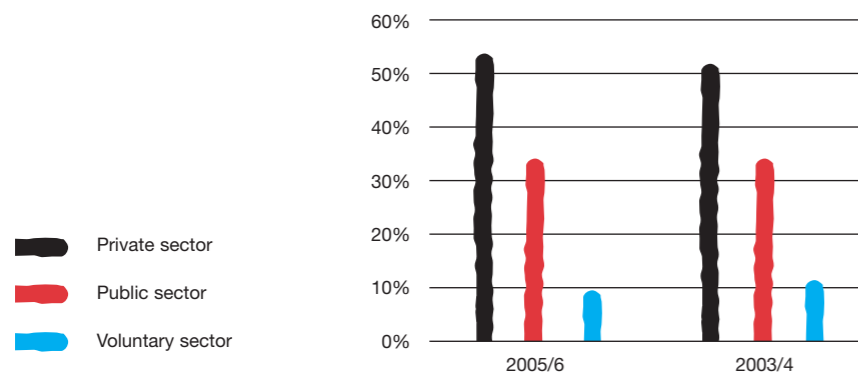
Concern Type

Safety	33%	(34%)
Financial malpractice	28%	(30%)
Miscellaneous	27%	(22%)
Abuse in care	12%	(14%)

Source of contact

Internet	34%	(31%)
Workplace	33%	(30%)
Advice agencies	13%	(17%)
Regulator	8%	(8%)
Other	12%	(14%)

Public concerns by sector



Helpline feedback

We approached all those clients in 2005 and 2006 who had left telephone details, seeking feedback on our service. We successfully contacted 450 who agreed to participate. The results were that:

- 94% said the advice was clear and easy to understand
- 87% said they would recommend the service to someone with a public concern

The following quotes are from letters and emails sent by clients:

“I was able to come to a decision which I felt totally comfortable with, based on the sound knowledge and advice I had been given.....I am very grateful to PCaW for the time they gave me and would encourage anyone who has a concern at work to contact them.”

DW, 23 Nov 2006

“I found your common sense approach to my current position very helpful – you were not there just dishing out advice ‘book verbatim’ but gave me all the options open to me in my difficult employment situation in a sensitive way.”

FC, 8 June 2006

“If I had heard of PCaW before I blew the whistle things would have been different with my case. But thanks for listening to me when I was on my own. That was very important for my wife and me.”

MM, 27 Feb 2007

“As a whistleblower (I don’t acknowledge ‘former-whistleblower’ as a useful term!) I fully expected my wider career to be somewhat curtailed by my actions. I wanted to let you know of my appointment [as Deputy Medical Director] because it illustrates how whistleblowing need not impede the further career of the individual. When asked in the interview for what I would identify as my greatest achievement in medicine I said the whistleblowing – because I acted when no-one else would and was, with supportive testimony from others, eventually vindicated. I truly believe this was in the best interests of patients and, as such, I feel I succeeded, ultimately, in the role of the doctor by safeguarding patients.

Finally I do believe that Anna’s advice and her ear at timely intervals through my experience were very important in maintaining my confidence and gave me great support.”

NH, 18 Oct 2006



Four cases from our files

Averting a fiddle

Maz was a manager for a large company that serviced equipment in the homes of a national charity. On return from holiday, her team told Maz that her boss had showed them how to fiddle the billing system so the charity would be charged for twice as much work as had actually been performed. Maz's team thought that this was wrong.

Maz called PCaW for advice. She said doing nothing was not an option, but she had no idea who to talk to or what to say and was worried about going above her boss with whom she worked well. We advised her that she was just passing on the concern of her team. We checked with her that the company had a whistleblowing policy.

Because her staff had told her their concern, Maz was expected to follow it up and, as it involved her boss, we suggested she go to the Operations Manager (OM) who was the senior contact on the whistleblowing policy. As Maz was worried that her boss might find out, we told her that she could tell him what she was doing.

The OM made clear such a fiddle was unacceptable and assured Maz that she and her team would not be at risk. After an investigation the OM accepted the boss's assurance that he had been in error and asked Maz if she could rebuild a good relationship with him. Maz thought she could, but asked us first as she said her staff would expect some sanction on her boss. We checked Maz had no suspicion such a fraud was taking place, and explained that she and her team had put down a strong marker.

Months later Maz rang to say she had rebuilt a good relationship with her boss, her team was going well and there was no suggestion of any scams. She said this was all a direct result of the advice she'd received from PCaW.

Where's the beef?

Alan delivered meat to London schools and rang to say he had been dismissed and threatened with an injunction for raising concerns that the meat was not kept in a fridge; recycled meat was delivered to schools and food was left out overnight in summer.

We drafted a reply for him to send to the lawyers:

"Thank you for your letter. I would be grateful if you could go back to your clients as it contains some important errors. First, I raised my concerns many times with managers and senior managers and I can prove this. Secondly, I honestly don't think I have said anything that was untrue - my concerns about the hygiene of the vans and the dangers they and company practices cause the food we deliver to schools are genuine and well-founded.

I have sought legal advice and I will be bringing a claim for unfair dismissal as all these disclosures are protected under the Public Interest Disclosure Act. My internal disclosures are protected under section 43C, my disclosure to environmental health officers under 43F and my disclosure to the catering company and the school under 43C and 43G. (Please note I have had no contact with the other school you mention for over eight months - maybe someone else is trying to put this problem right as well).

My understanding is that the secrecy clauses in the handbook and my contract are overridden by the Public Interest Disclosure Act. I am confident that when you know the facts you will agree that all my disclosures are protected and that if you had a child at the school you would be grateful to me for raising this matter. I hope you will not seek an injunction against me but if you do please show the court this email and refer it to section 43J of the Act."

While the letter worked in halting any injunction, Alan and all his colleagues lost their jobs when the catering company suspended orders while it investigated. Though the legal teams agreed Alan had a strong PIDA claim, the firm closed down before his claim got underway. This meant there was no way PIDA could help Alan as, under current rules, there was no-one from whom he could get any compensation the tribunal awarded.

Ghost trainer

Tim co-ordinated training for an NHS Trust. He was concerned that his boss was hiring a friend of his to deliver training on suspicious terms which were costing the Trust over £20,000 a year. More courses were booked than could be needed and the friend was always paid when a course was cancelled. Though Tim asked his boss to get a credit note as happened with other training contracts, he never did. Tim also couldn't understand why the friend was paid for training sessions delivered by NHS staff.

One day when the boss was out, Tim saw the friend enter the boss' office and leave an envelope. His suspicions aroused, Tim peeked inside and saw that it was filled with £20 notes, amounting to some £2,000. Unsure what to do, Tim called Public Concern at Work.

Tim said his boss had lots of influence in the Trust and he was unsure who to tell, particularly as the Trust was being restructured and none of the directors were secure in their posts. Tim also recognised that the cash in the envelope was so brazen that there could be an innocent explanation.

We said the options were going to a director of the Trust or to the NHS Counter Fraud Unit. Either way, we advised Tim to stick to the facts and focus on specific suspect arrangements and payments. We also said he should avoid the temptation to investigate the matter himself. Tim said he felt much better and would decide what to do over the holiday he was about to take.

On his return, he waited a few months until two key projects had been completed. Then he raised his concerns with a director at the Trust, who called in NHS Counter Fraud. Tim's suspicions were right: his boss and the trainer pleaded guilty to stealing £9,000 from the NHS and each received 12 month jail terms suspended for two years.

Making a meal of it

Jo was an award-winning manager for a well known chain. She enjoyed her work and valued the company's ethics. Then a new divisional manager (DM) arrived, who did things his own way. He told the managers they and not their teams should fill in the staff satisfaction surveys as this would boost their bonuses. Jo thought this wrong and, following company policy, reported her concern to Compliance in the US. They said they would investigate and promised Jo confidentiality. The next she heard was the DM was telling other managers she had reported him. Stressed, Jo went sick and was asked to a meeting with the Head of HR. She contacted PCaW.

We ran through how the legal protection could help, explained that blanket promises of confidentiality were undeliverable and said she had done nothing wrong.

At the meeting, Jo was told she shouldn't rock the boat as the DM was a high flyer, and it was suggested she take more time off. Jo rang the US to ask what was happening and they appointed their own investigators. They met with Jo and said her claim stood up.

Two weeks later Jo was called to a meeting to explain two incidents: one a year old and the other that occurred on her day off work. We advised Jo to stay calm, warning that they were trying to set her up. At the meeting Jo was told she would get a final written warning. As she left the meeting, the DM was outside and she gave him a piece of her mind. She was then suspended.

She asked us to put her in touch with litigation lawyers who helped her bring a PIDA claim. At the door of the tribunal, her case was settled for over £100,000.

We advised Jo to be open with her job applications and she now has another good job and is studying law in the evenings. She has no regrets and still values her former company, commenting that its ethics had been hijacked by one individual. Jo says she doubted she would have coped without the counselling and support we had provided.

Policy

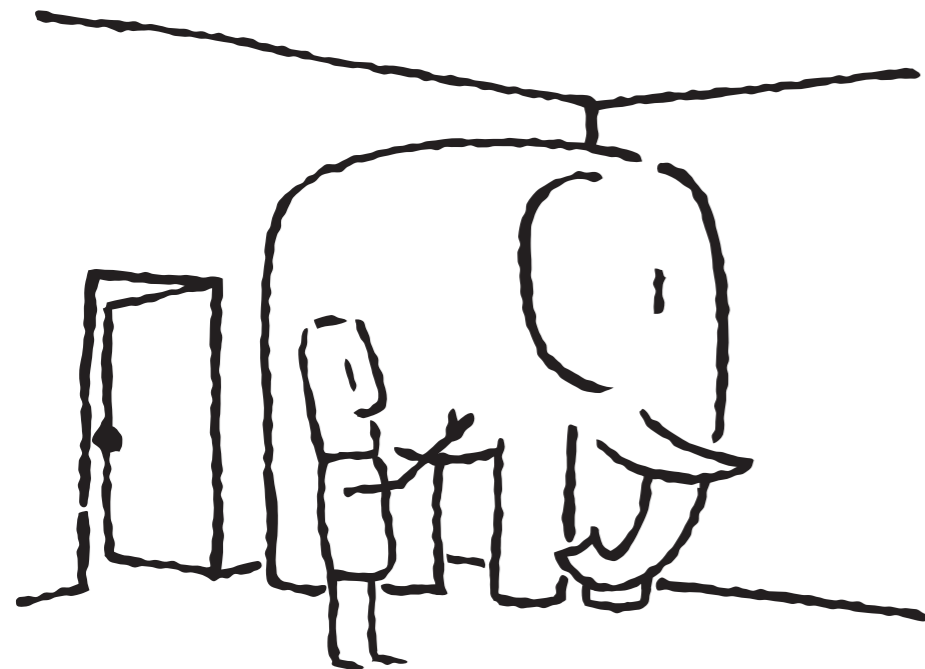
What we do and why

We encourage policy-makers in and out of government to recognise the value of public interest whistleblowing. With the volume of new initiatives, our policy work inevitably includes challenging bad proposals as well as welcoming and supporting helpful new measures.

It is our view that unless policy-makers factor into new laws the practical ways in which illegal or dangerous conduct can best be deterred and detected, the regulatory burden is likely to outweigh the public benefit.

Since 2005

- We succeeded in persuading the Government to repeal new legislation that made workers and organisations liable to pay damages on a no-fault basis where a worker failed to see or raise a safety concern.
- Following our lobbying, the new Civil Service Code – the handy guide for officials – made explicit reference to the whistleblowing legislation.
- The Parliamentary Ombudsman ruled that the DTI should compensate us for wasting our time and misleading us as we campaigned against moves to keep information about claims under the Public Interest Disclosure Act secret. (See page 17). The DTI apologised and paid us £130,000 but the rules have not yet been repealed.
- We were asked to intervene in a dispute between US financial regulators and the EU data protection authorities to help dispel the myth that confuses public interest whistleblowing and anonymous informing.
- We produced a paper for the Smith Institute on corporate responsibility and how the law can impact on the way managers and workers behave in practice. The paper also looked at a landmark House of Lords decision (Majrowski v Guy's & St Thomas' NHS Trust) under the Protection from Harassment Act which held that employers were liable to pay damages where one employee made another anxious on two or more occasions. We showed that the decision was the result of a series of accidents in the legislative and legal process.
- The Committee on Standards in Public Life emphatically endorsed our approach to whistleblowing and our recommendations on good practice and the Government then accepted four out of five of these recommendations.
- We prepared guidance for regulators on whistleblowing and have urged the Government to drop proposals that unannounced inspections should no longer be a standard tool in regulatory risk assessments.
- The Standards Board accepted our submission and overhauled the rules on whistleblowing for local government councillors so they follow the approach of the legislation that protects workers.
- We contributed to the lobby that succeeded in getting the Government to drop plans to recover the costs of officials' time spent reading and thinking about Freedom of Information requests.
- We reviewed whistleblowing policies in Whitehall departments including a league table of best and worst performers.



“Public Concern at Work, the leading campaigning charity in the whistleblowing area, provided the Committee with comprehensive evidence, which repays careful reading.....Public Concern at Work emphasised key elements of good practice for organisations to ensure their whistleblowing arrangements are fit for the purpose and integral to their organisational culture. This Committee emphatically endorses this good practice.”

Getting the Balance Right, paras 4.38 & 4.43 Committee on Standards in Public Life, Jan 2005

“As world leaders, we have no room for complacency. The legislation covers the private and public sectors and encourages employers and employees to co-operate in dealing with problems. It is a matter of good governance and good government... whistleblowing is not a matter of employment law but one of culture... In such a context, we should welcome the fact that there is agitation from outside this House. I applaud the work that has been done in civil society. Public Concern at Work has worked on the issue for many years and deserves credit for what has happened”.

David Milliband MP, Cabinet Office minister, House of Commons, 5 April 2005

“You were challenging and thought-provoking, as we hoped you would be, and got the highest ratings on the feedback forms – they all loved it – and particularly the manner in which you delivered the message, and its even-handedness too.”

Feedback on our talk on the conflict between EU and US authorities on whistleblowing to the European Business Ethics Network, Paris, Jan 2006

“Judges who rule on evidence to deliver justice, newspapers reporting events and even corporate whistleblowers are crucial to the operation of western capitalism. It is the interaction of these hard and soft processes – what I call an Enlightenment infrastructure – that allows technological progress to be exploited efficiently and relatively honestly.”

Will Hutton, Work Foundation, Prospect, Dec 2006

“A useful review that highlighted good practice in a way that enables Departments to adopt it in their own organisation.”

Sir Gus O'Donnell, commenting on our report Whistleblowing in Whitehall, August 2007



Public Education

What we do and why

Our website contains a great deal of information so people can research the wider issues and teach themselves if they want. Through our work with schools, community groups and the media, we encourage people to question suspicious or dangerous conduct in an open and constructive way. We see whistleblowing as a vital link between the consideration people have for one another, the accountability of organisations, and the wider public interest.

Since 2005

- We have been the top-rated whistleblowing resource on Google, MSN and Yahoo.
- We piloted in 9 schools a new programme to provide free teaching materials to help children consider and discuss whistleblowing as an aspect of good citizenship.
- We inspired the idea for and advised on ITV's drama series, *The Whistleblowers*.
- Our website received over 10,000 visitors (excluding spiders) a month.
- Our 4th Ethics & Accountability lecture was delivered by Dame Janet Smith, who had chaired the Public Inquiry into Harold Shipman, the doctor who murdered 215 of his patients.
- We sponsored an award for the most whistleblowing-friendly workplace.
- We published two editions of our occasional newsletter and a biennial review.
- Our website is updated twice a month with whistleblowing news stories, key cases on the legislation and other developments.
- We commented on drafts of the new OUP book, *Whistleblowing: the law*, and spoke at its launch.
- We gave two briefings to the British Retail Consortium.
- We worked with the Fraud Advisory Panel to promote the role of whistleblowing in tackling fraud, and in combating misconduct in medical research.
- Our work was covered by media outlets in and out of the UK, including BBC Radio 4, the Financial Times, the Guardian, the Daily Telegraph, the Times, the New Statesman and the International Herald Tribune.



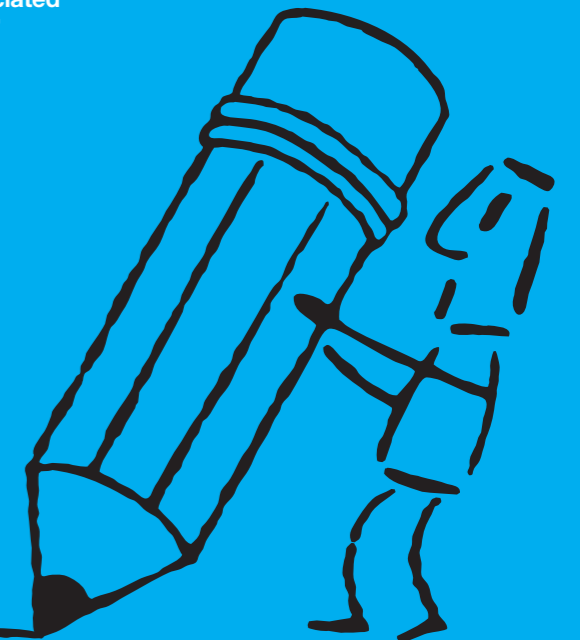
"It occurred to me that you will be unaware of much of the tremendous good you are doing and I would like to say thank you very much for helping me with your website and its information. It has saved my job."
Email from website visitor

"Changes [in culture, such as race and sex discrimination and whistleblowing] have come about because people who believed that change was needed kept talking about it and kept the issues in the public eye. That is what I think we must do. Public Concern at Work does a great deal. But it is a small organisation.....In my view, it is up to every professional who feels that a change in the culture of his profession is needed to talk about it, to make his position clear and to take on those who disagree. I do not feel that I have done much tonight because I think I am preaching to the already converted. But I talk to the unconverted as well and sometimes get a roasting; but I shall continue. I hope that you will do the same."
Dame Janet Smith DBE

"The boys continued to talk about the whistleblowing workshop over lunch so it certainly stimulated discussion. It also definitely raised awareness and made a positive link between school and the world of work. We will continue to include this issue in our PSHCE programme in future as a topic that all forms in Year 8 should do. Thank you very much for the materials – the format and scenarios all went down well."
Mrs E. Hill, Deputy Head Teacher

"The work of Public Concern at Work, and its director Guy Dehn, was undoubtedly the inspiration behind our series 'The Whistleblowers' for ITV1. PCaW may be about taking the drama out of a crisis, whereas we are hopefully attempting the reverse, but there is little doubt that this show would never have happened if we hadn't observed the charity's groundbreaking work."
Gareth Neame, Executive Producer, ITV series 'The Whistleblowers'

"Your contribution was absolutely outstanding and much appreciated and enjoyed by the audience"
Ros Wright QC, Chair of Fraud Advisory Panel



Services

What we do and why

We provide a range of support to employers, professional bodies and regulators on how whistleblowing can work as a key element in governance and risk management. This is done through (a) off-the-shelf toolkits, (b) helpline subscriptions and promotion, and (c) bespoke support for organisations to help them get all levels of management to buy in to whistleblowing. Bespoke support includes policy reviews, training, freephone helplines, reporting options, surveys and annual reviews.

We provide these services to help enlightened organisations deter malpractice and demonstrate good governance; to keep us at the cutting edge of good practice in this area; to learn from any obstacles to this practical approach to accountability; to fund our other activities; and to build on our position as an objective authority on whistleblowing.



Since 2005:

- Employers who used our bespoke support include: AIB, Argos, Bank of Ireland, BIA, Biffa, Eircom, Experian, Homebase, Imperial Tobacco, International Power, ILP, ITV, LCH.Clearnet, Lloyds TSB Group, Nirex, Severn Trent, Total and George Wimpey and we provide bespoke helplines for the Co-operative Group and the Institute of Counter Fraud Specialists.
- We developed and carried out workplace culture surveys to assess attitudes, practices and experiences of whistleblowing.
- Our helpline subscription was charged from ten pence per employee per year. Organisations that subscribe include: Audit Commission, Chartered Institute of Management Accountants, Institute of Chemical Engineers, Northern Ireland Audit Office, Maritime and Coastguard Agency, Scope, WWF, Butterfield Private Bank, Domnick Hunter, Argyll Insurance and numerous local authorities.
- We worked with leading regulators on how they can best use whistleblowing to raise and maintain high standards in their work.
- We were commissioned by the Government to draft a BSI best practice guide on how organisations should set up, run and review an effective whistleblowing scheme.
- We ran training sessions for the NHS, regulators and companies as well as for the clients of Eversheds and other leading law firms.

- The NHS in England has been the largest subscriber to our helpline since 2003 and Ministers have repeatedly emphasised the importance of this work. The Department of Health (DH) praised our work to the Shipman Inquiry which called for it to be extended and 40,000 copies of our policy pack 'Whistleblowing for a healthy practice' were then sent to GP practices and primary care providers. In early 2006, DH asked us to audit the work we did for the NHS and officials concluded that we understated the value of the support we provided.

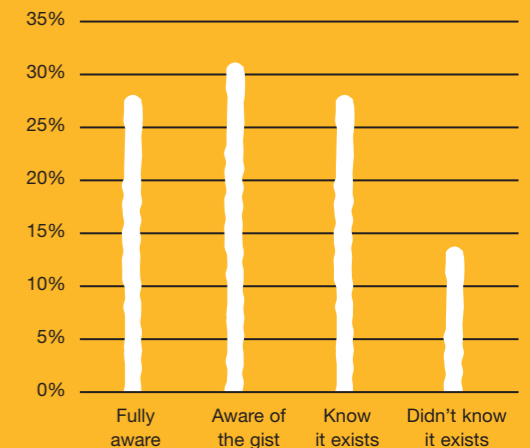
Nonetheless, in March 2006 officials gave notice on financial grounds that DH was unable to guarantee continuing to fund the use of the helpline by NHS staff but that they hoped to renew the support or set up comparable arrangements. Eighteen months later, it remains unclear whether and what whistleblowing support will be provided across the NHS from 2008.

"I am delighted to inform you that, as we see your service as exceptional value for money, we have agreed to renew our subscription."
Velindre NHS Trust (Wales)

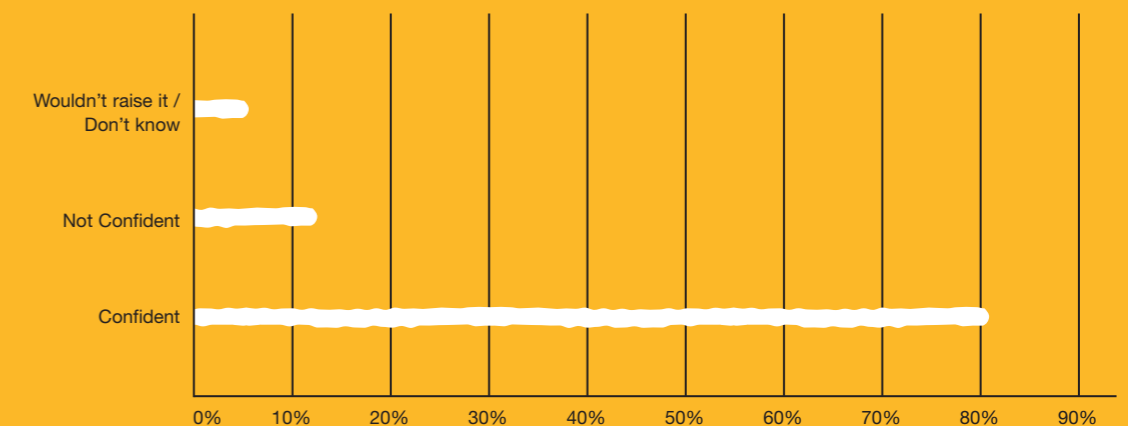
"We have a whistleblowing policy in ITV which we have messaged consistently to our staff that they can use, to let us know if they are being asked to do things that they do not think are right or if things are going on in their area which are not right, and so on. That policy has been in place since 2006 but it has been very, very useful."
Michael Grade CBE,
Executive Chairman of ITV
(evidence to Parliament's Culture, Media & Sports Committee, 24 July 2007)

These graphs show the aggregated responses from five surveys of our bespoke clients on staff awareness of their whistleblowing arrangements and staff confidence that line managers will deal with public concerns properly.

Awareness of the organisation's whistleblowing policy



Confidence that your line manager would deal with a concern properly



The whistleblowing legislation

“The purpose of the statute, as I read it, is to encourage responsible whistleblowing”.

Lord Justice Wall,
Babula v Waltham Forest College
(Court of Appeal, 2007)

We monitor and publicise the UK’s whistleblowing law, the 1998 Public Interest Disclosure Act, which we helped to devise and promote. As the Government considered the recommendations of the Shipman Inquiry to clarify a few provisions in the Act (good faith and reasonable belief/suspicion) and to better promote the Act, we sought comments from other interested parties on how the Act is working. Our informal review suggested that, while the Act retains support across key interest groups, a couple of clarifications would be helpful and that it should be better promoted, as the Inquiry had proposed. The Government said it sees no pressing need to amend the legislation, pointing out that neither business nor union lobbies have said it causes problems in practice.

Along with its impact in the workplace, the way the Act is used and applied in tribunals and courts is critical. During 2005/6 the Employment Appeal Tribunal ruled on the Act in twelve cases. Three of these were then taken to the Court of Appeal, with the whistleblower winning in two of them. Two appeals were won by the claimants without legal representation (but with some modest help from us). You can read one of their stories and the lessons to be shared at www.pcaw.co.uk/law/selfhelp.htm

Outside of the appeal courts, it is now impossible to assess how the Act works at the tribunal level. While tribunal cases

which end with formal decisions (such as the five on the facing page) are public, there is now no information about the far greater number of cases that settle. This is due to the rule introduced by the DTI at the end of 2004 in the Employment Tribunals (Constitution and Rules of Procedure) Regulations (S.I. 2004, No. 1861). Despite the criticisms of MPs and peers on all sides, the fact that no organisation publicly supported the DTI, and despite our lobbying and a scathing report by the Parliamentary Ombudsman, the rule was passed and is still in force. Its effect is that wherever a PIDA claim is brought and then settled, there is no information publicly available about the whistleblowing concern, the risks or the reprisal. The regulation means that the names of parties are also kept secret.

The rule also obscures statistical information about the number of PIDA claims brought each year. This data does not feature in the annual reports of the Employment Tribunal Service and it may be omitted entirely from the official figures as the 2005/6 ETS report states the highest compensation awarded was £984,685 in a race claim. This ignores the two awards made by a tribunal in the PIDA case *Backs & List v Chestertons* of £1,568,686 and £3,884,580 respectively.

Of more importance, this blanket secrecy means there is little to deter dangerous or dishonest organisations from using the rule to conceal their serious wrongdoing or to deter employees bringing specious PIDA claims in an attempt to extract a higher settlement.

Five tribunal cases

M worked for Medirest, a cleaning contractor, and was in charge of laundry for elderly patients at Charing Cross Hospital. In mid 2005, her bosses ordered new mops and cloths which were to be disinfected by thermal washing (i.e. without detergent) in the machines M used for the patients’ laundry. As it turned out, the mops were washed at 60° and not the 90° needed because they had been wrongly labelled. M feared these new arrangements risked infecting the patients’ clothes and padlocked her machines. When her bosses threatened her with a charge of gross misconduct, M removed the padlocks and then wrote to the hospital’s CEO. He was most concerned and launched an investigation. M was then dismissed. An employment tribunal held that M’s concerns were well founded and, entirely unpersuaded by the reasons Medirest claimed for M’s dismissal, found her letter to the CEO was the real reason and PIDA applied. Encouraged by the hospital, Medirest then agreed to reinstate M in her job and also gave her £7,000 compensation.

S had worked for many years for companies in the Tyco International group. While based in Singapore, S was interviewed by the Manhattan District Attorney who was investigating claims of fraud by Tyco. Instructed by Tyco to co-operate, S gave evidence about bribes allegedly paid in Korea and also mentioned possible tax avoidance. Shortly after the interview, S returned home to the UK, where he received a letter ‘for and on behalf of Tyco’ dismissing him for gross misconduct but with no supporting details. S then brought a PIDA claim against four Tyco subsidiaries, which all denied they were his employer and that British law

applied. The tribunal held that ADT Fire & Security were his employers and that British law did apply. S’s PIDA claim was not thereafter disputed by his employers and he was awarded £307,000.

In December 2004, six months after O became manager of a care home in Cornwall, she became worried about its financial affairs. Two months later she raised her concerns with the regulator, CSCI, who took the issues up with a director of Premium Care Homes, the owners. This angered the director who said either O or the administrator had been the whistleblower. O did not deny it and was dismissed for being too friendly with the CSCI inspector. O was awarded £12,280 under PIDA in December 2005 after the owners’ defence was struck out for their unreasonable conduct. Premium Care Homes’ appeal was dismissed by the Employment Appeal Tribunal in September 2006. In February 2007 the Revenue served a winding-up petition on the business and in April Cornwall County Council was forced to take over the running of the home to protect the welfare of 27 frail residents.

T who worked at an MoD site as a security guard was convicted of kissing a child 13 years earlier and sentenced to 90 hours community service. When the MoD said he could return to work, seven out of his seventy five colleagues objected. They said as the site was 50 yards from a nursery, T could be needed to evacuate children if there was a fire. The MoD stood by its decision that T was not a risk. After the seven did an interview for the media about their concern, they were dismissed for gross misconduct. Their PIDA claim failed as the tribunal held that (a) there was no

rational basis for their belief and (b) it was not reasonable to go to the media under section 43G. On this point, the Tribunal said it was relevant that the seven had failed to use the whistleblowing policy.

C was a National Trust (NT) warden in charge of a stretch of north east coastline, which included the site of a former quarry. Coastal erosion had created a real risk that chemicals and waste from the quarry would leak onto the beach. The NT and the local council had long been in dispute about what should be done and by whom. C was shown in confidence by the NT a report the council had obtained which highlighted the risks of further erosion. As the report was already a year old, C thought the site should be closed. Two weeks later he passed the report to the local media, who wrote it up and quoted C. As a result, he was dismissed. He made a successful PIDA claim. The tribunal found that the disclosure was protected as an ‘exceptionally serious’ concern because children played on the beach and the public, relying on the NT’s reputation, would think it safe. Award not known.



International work

“It is so impressive what you have done to improve the situation in the UK regarding whistleblower protection, especially your efforts to change the social perception about whistleblowers”

Secretary-General,
Korean Independent Commission
Against Corruption

“This is my first formal exposure to the concept and I am unreservedly a convert to the principle and practices extolled.”

Assistant Police Commissioner, Jamaica

The UK’s Public Interest Disclosure Act is increasingly seen as an international benchmark on whistleblowing and, due to our help in devising and promoting the legislation, we are regularly asked to help on similar initiatives overseas. Since PIDA’s enactment, this has included advising governments, business, unions, lawyers and NGOs in Japan and South Africa as they implemented similar legislation.

Since 2005, we have worked with the Council of Europe, the World Bank and on the UN’s anti-corruption convention. At the instigation of whistleblower and MEP Paul van Buitenen, we met with the EU Commissioner Siim Kallas to review the EC’s whistleblowing arrangements. We also spoke at a seminar in West Virginia run by our American cousins, GAP, on how best to secure the value of whistleblowing in the civil and military nuclear programmes in Russia and the USA.

We have trained many international delegates both here and overseas on our approach to public interest whistleblowing. Countries we have visited are in red, while those whose delegates we have trained or briefed in the UK are shown in yellow.

- | | |
|------------|-------------|
| Australia | Kenya |
| Azerbaijan | Korea |
| Belgium | Netherlands |
| Bulgaria | New Zealand |
| Canada | Norway |
| China | Pakistan |
| Chile | Philippines |
| Denmark | Singapore |
| France | Switzerland |
| Germany | Ukraine |
| Ireland | USA |
| Jordan | |

Where’s whistleblowing?

A survey of 2256 people across Great Britain – carried out by YouGov in May 2007 – asked about their knowledge of and attitudes to whistleblowing. Those in work (1451) were also asked whether they would blow the whistle and, if so, to whom.

Would you blow the whistle internally?
85% said if they had a concern about possible corruption, danger or serious malpractice at work they would raise it with their employer.

Externally?

When given the following seven options and asked what they would do if they weren’t confident about telling their employer,

- 32% said they didn’t know what they would do,
- 31% would most likely contact the police or a regulator,
- 17% would most likely contact the whistleblowing charity, PCaW,
- 12% would most likely do nothing,
- 4% would most likely contact the media,
- 3% would most likely contact their MP, and
- 1% would most likely contact a pressure group like Greenpeace.

Does your employer have a policy?

29% said their employer had a whistleblowing policy, 30% said it did not and 41% did not know either way.

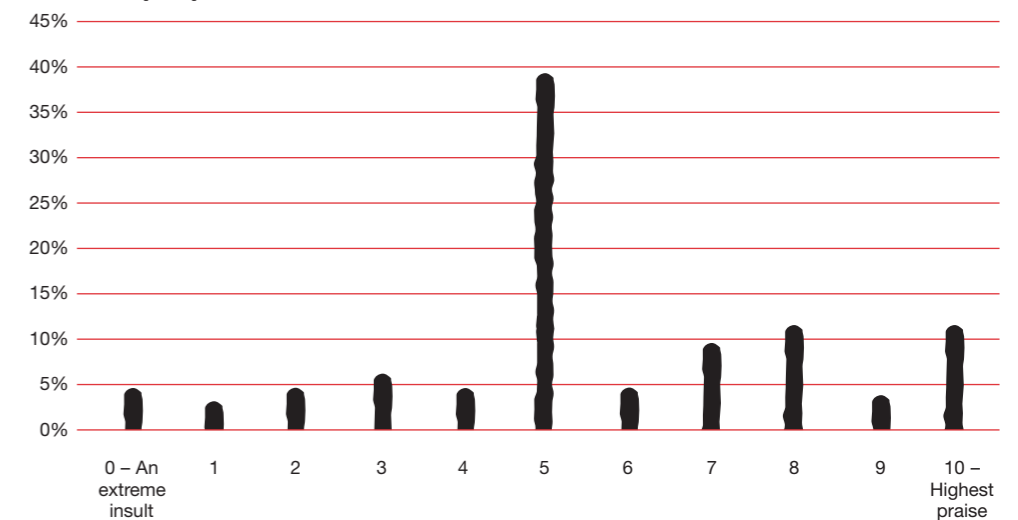
Knowledge of the whistleblowing law

22% of the respondents said that to their knowledge there is a law that protects whistleblowers, 20% said there is not and 57% say they do not know either way.

Is it insulting to be called a whistleblower?

As the chart below shows, twice as many people in and out of work think the word ‘whistleblower’ is praiseworthy as think it is insulting. (On a scale of 0-10, 40% view the word positively, 40% as neutral and 20% negatively).

How people rate the word ‘whistleblower’



An interesting comparator

In March 2007, Ernst & Young asked 1300 senior executives in 13 European countries who worked for multinationals that had promoted whistleblowing whether employees in their company felt free to report a case of suspected fraud, bribery or corruption. Across mainland Europe 54% said yes, by contrast in the UK the figure was 86%.

Behind the scenes...

Money

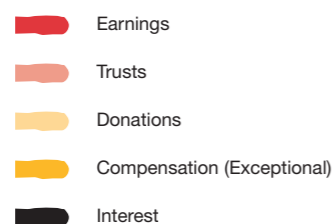
We are currently in the fortunate position of being a self-funding charity. Throughout our first decade we depended almost exclusively on the support of charitable foundations, but from 2003 the money we have earned each year from services and subscriptions has exceeded our expenditure. The charts on the right summarise our income and expenditure over the two accounting years covered in this report. Full audited accounts are available on request.

The money we earn comes in equal parts from helpline subscriptions taken by employers, professional bodies and regulators, and from the bespoke support we provide to a number of leading companies. This income now covers not only the costs of the helpline and services work but also the other activities summarised in this report.

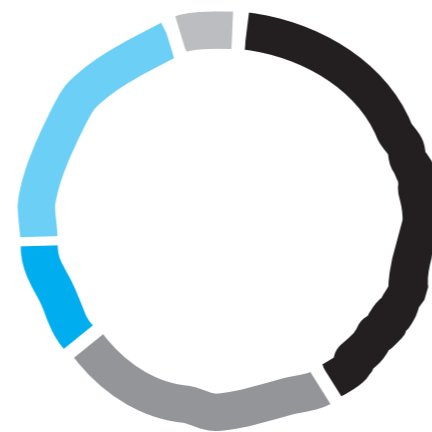
Income 2005/2006



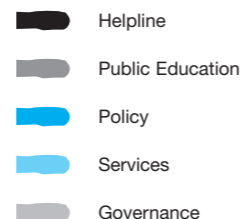
Over these two years the income we raised was £1,082,585. This included the exceptional item of £130,138 compensation from the DTI.



Expenditure 2005/2006



Over these two years our expenditure was £812,429. The work we do on the whistleblowing law is included in helpline costs. Our international work is included under public education or, where it is paid for, under services.



As we are now trying to consolidate our position as a self-funding charity, any surplus we make year on year is transferred to our reserves. At the start of 2007 our reserves stood at £625,180.

Behind the scenes...

People

At 5 November 2007 our staff were:

Director
Guy Dehn

Deputy Director
Anna Myers

Company Secretary
Evelyn Oakley

Legal Officer
Cathy James

Helpline Advisers
Sohrab Goya
Olabisi Olode-Okuta
Francesca West

Our Board members are:

Michael Smyth (Chair), Gary Brown, Peter Connor, Derek Elliott, Maurice Frankel OBE, Chidi King, Martin Le Jeune, Carol Sergeant CBE and James Tickell.

Our Patrons are:

Lord Borrie QC, Lord Oliver of Aylmerton and Sir John Banham.

Our Advisory Council members are:

Michael Brindle QC (Chair), Roger Bolton, John Bowers QC, Steve Burkeman, Gerald Bowden, James Clarke, Tony Close CBE, Ross Cranston QC, Dr Yvonne Cripps, Baroness Dean, Zerbanoo Gifford, Edwin Glasgow QC, Roger Jefferies, Rosalie Langley Judd, David Owen, Chris Price, Mike Sibbald, Dr Elaine Sternberg, Dr Marie Stewart, Stephen Whittle and Marlene Winfield OBE.

The progress that is detailed in this report would not have been possible without the help and hard work of nine people who have moved on to higher, better or more relaxed things. We were sad to see each of them go and we give them all our profound thanks and best wishes –

Jean Brown, our long-serving volunteer administrator

Shonali Routray and Fatima Shah, both legal officers

Roisin Kennedy, helpline adviser

Paul Stephenson, a civil servant on secondment from the Home Office

Oli Sweet, who developed our survey work

Harry Templeton, who ran our part-time Scottish office

Kirsten Trott, who was deputy director

Robin Van Den Hende, who was our policy officer.

Thanks to Lavish for the design and production of this review.

