

Whistleblowing: democratic accountability

**Commission d'enquête sur l'octroi et la gestion
des contrats publics dans l'industrie de la
construction**

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22nd October 2014**

The **international** scene

Public interest disclosure: Council of Europe Recommendation on the Protection of Whistleblowers; UK, Australia, Ireland, Serbia (draft), Ghana, etc.

Anti-corruption: United Nations Convention against Corruption (+ regional instruments, eg. CoE Civil and Criminal law Conventions on Corruption); US Foreign Corrupt Practices Act; UK Bribery Act...

Human rights law: European Court of Human Rights – *Guja v. Moldova*, *Heinisch v. Germany*, *Bucar et Toma v. Roumanie*

International cont'd.

Open Government: Access to information laws include whistleblower protections

Regulatory Reach: US Security & Exchange Commission – monetary rewards

The challenges

Culture

Hierarchy

Expectations

Institutional capacity

International requirements

Legal framework

Whistleblowing

The whistle was blown, but Enron never heard it

EC clears whistleblower who exposed Brussels fraud

Canoe death firm 'had been warned over safety'

Maxwell may have transferred £400 million without authority

Fraud office inquiry into pension fund

Ferry firm admits doors were open

Why I had to blow the whistle on heart unit

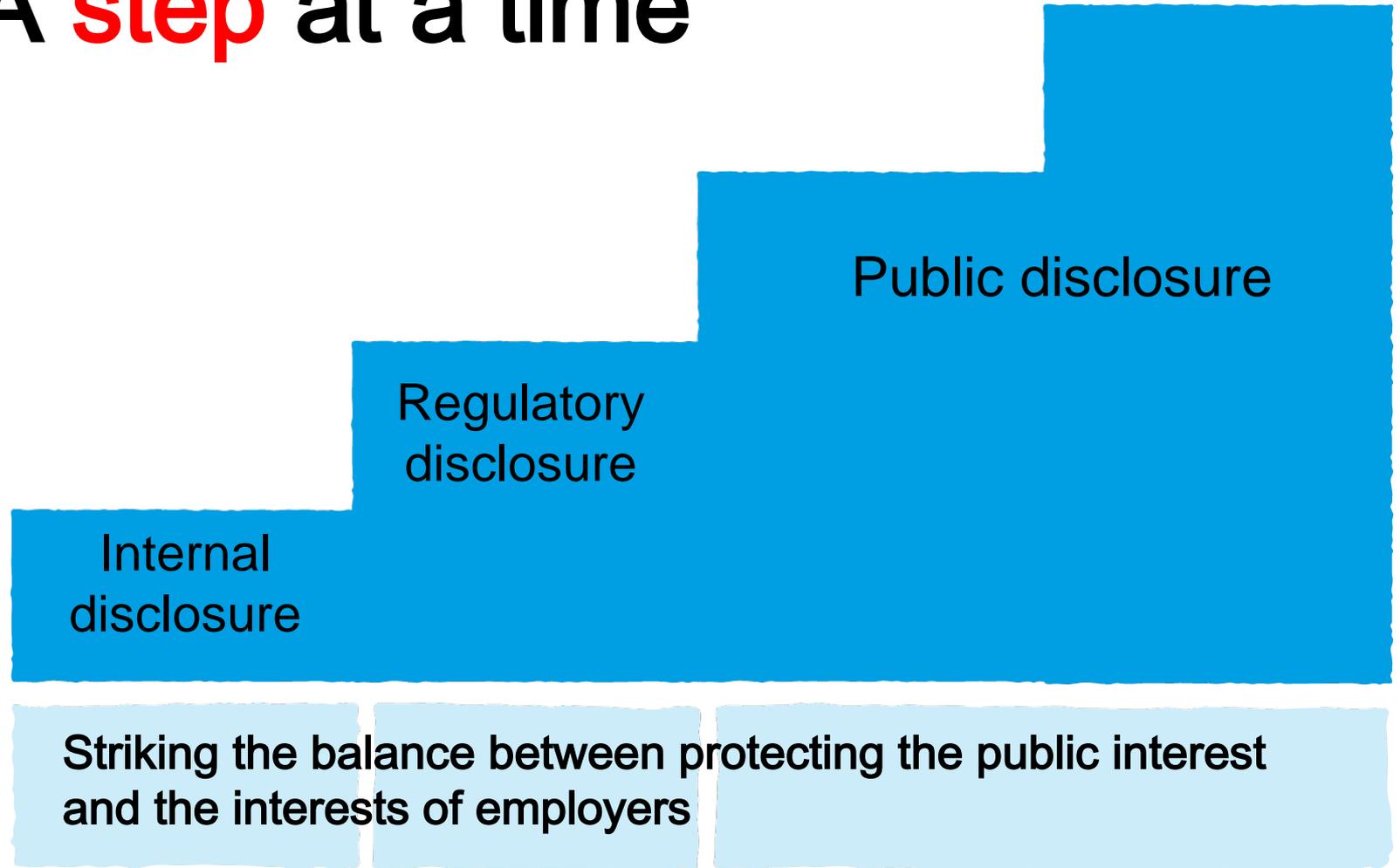
Daily Mail Reporter
A HOSPITAL heart unit died put lives

...the tragedy of Zeebrugge

The Dilemma



A **step** at a time





UNIVERSITY
of
GREENWICH

**public
concern**
at work

the whistleblowing charity

WHISTLEBLOWING: THE INSIDE STORY

A study of the experiences of 1,000 whistleblowers



The Inside Story: research headlines

- ❑ 83% of workers blow the whistle up to 2 times then stop
- ❑ 15% of whistleblowers raise a concern externally. Only 60% blow the whistle externally even on the third attempt. Only 22 individuals raised a concern four or more times. Half of these (11) went outside their organisation
- ❑ 74% of whistleblowers say nothing is done about the wrongdoing.
- ❑ 60% of whistleblowers receive no response at all from management - silence
- ❑ Newer employees are most likely to blow the whistle (39% have less than two years' service).

Whistleblowing **laws**

→ **Declaration** from society

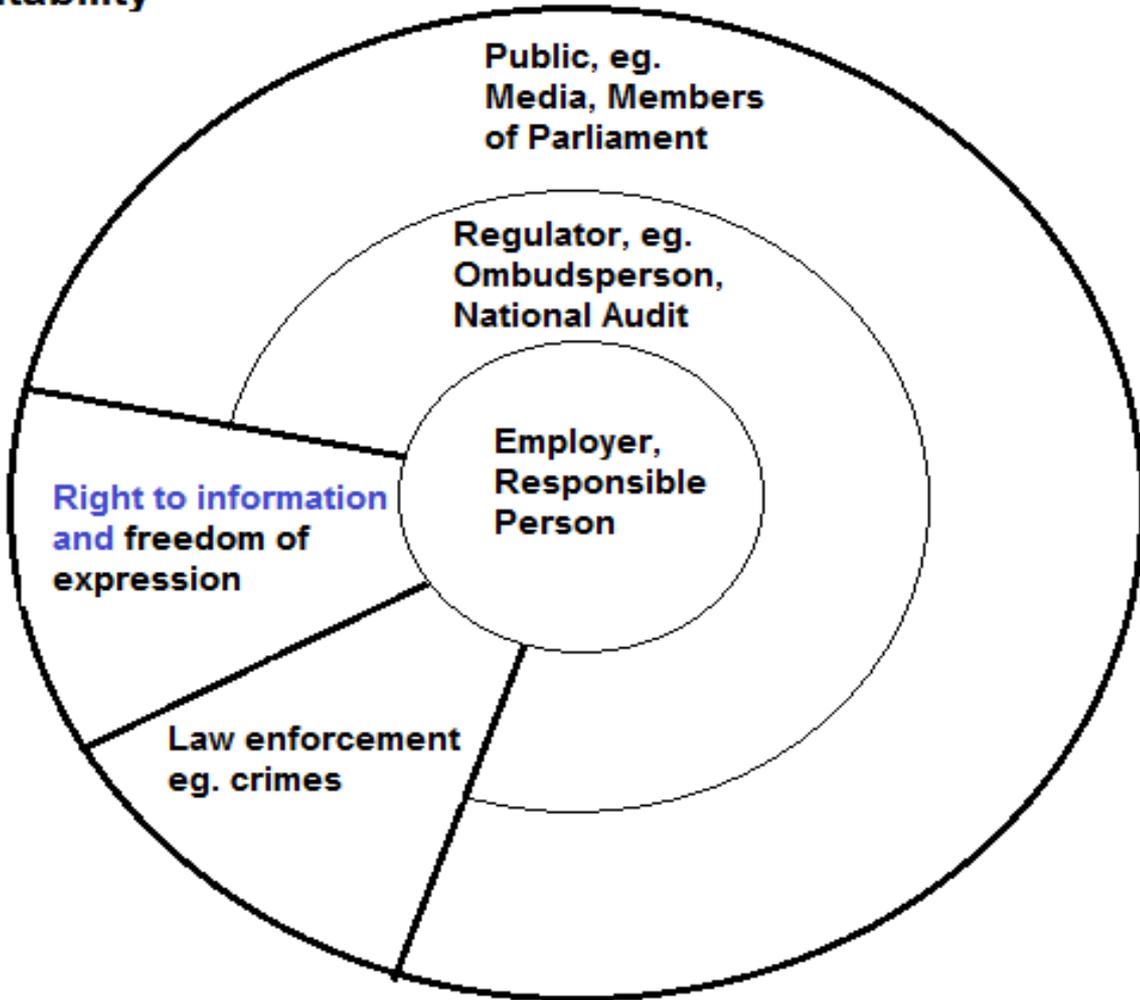
→ **Deterrent** effect on wrongdoers

The public interest

Information which *tends* to show [any of the below] is occurring, has occurred or will occur.

- corruption and criminal activity;
- violations of the law and administrative regulations;
- abuse of authority/public position;
- risks to public health, food standards and safety;
- risks to the environment;
- gross mismanagement of public bodies (including charitable foundations);
- gross waste of public funds (including those of charitable foundations);
- a cover-up of any of the above.

Accountability



Source: Adapted from the Council of Europe, Explanatory Memorandum to the CM Recommendation on the Protection of Whistleblowers, 2014

WIDER DISCLOSURES: Section 43G (3) United Kingdom, Public Interest Disclosure Act, 1998

Valid reason to go wider + reasonableness of disclosure in the circumstances having regard to:

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- (a) the **identity** of the person to whom the disclosure is made,
- (b) the **seriousness** of the relevant failure,
- (c) whether the relevant failure is **continuing** or is likely to occur in the future,
- (d) whether the disclosure is made in breach of a duty of confidentiality **owed by the employer to any other person.**

In cases where disclosure was previously made to employer or responsible person, or to a regulator

- (e) any **action** they took or might reasonably be expected to have taken as a result of the previous disclosure, and
- (f) whether in making the disclosure to the employer the worker complied with **any procedure** whose use by him was authorised by the employer.