

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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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**

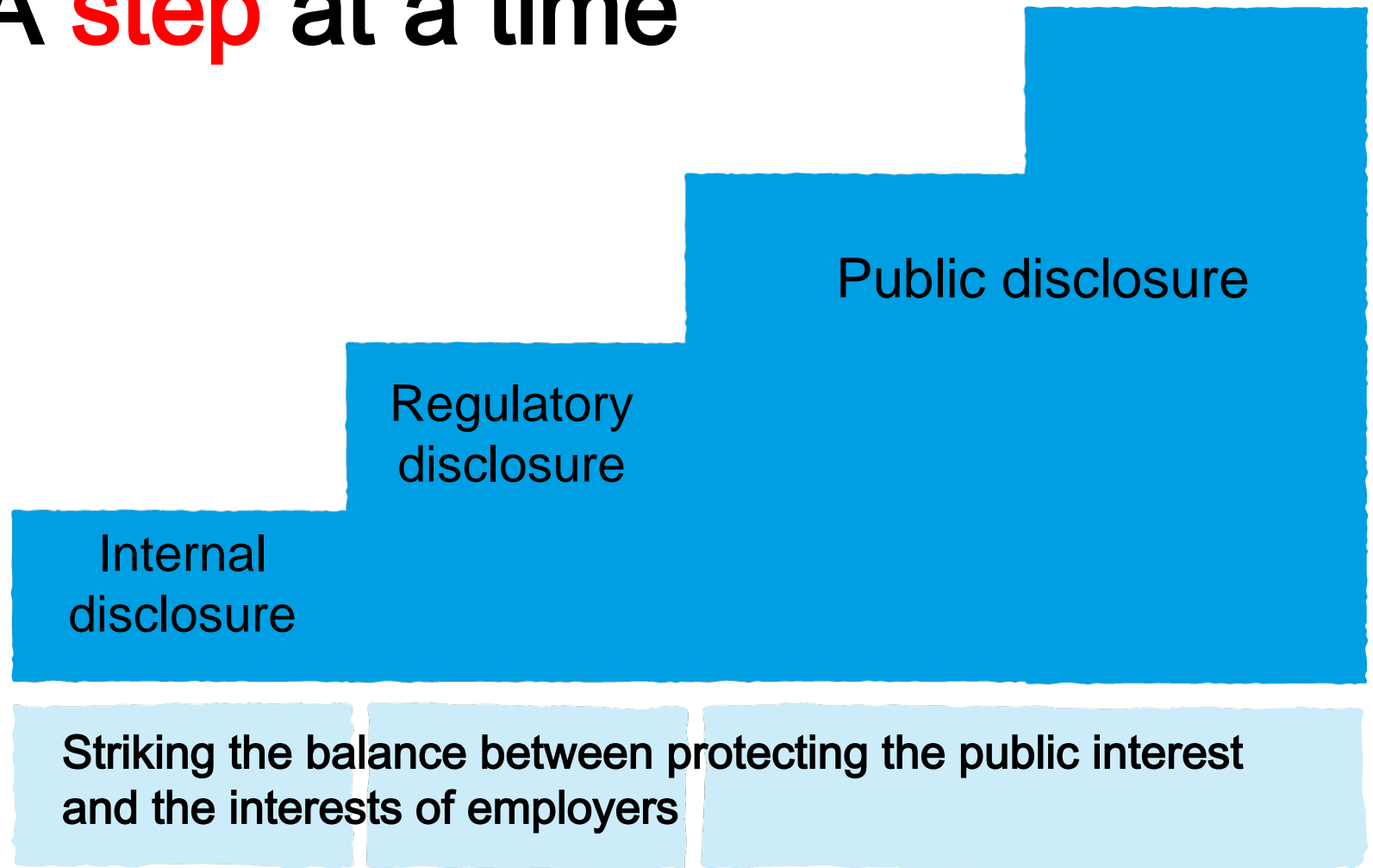
Daily Mail Reporter
A HOSPITAL heart unit
died put lives

**...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

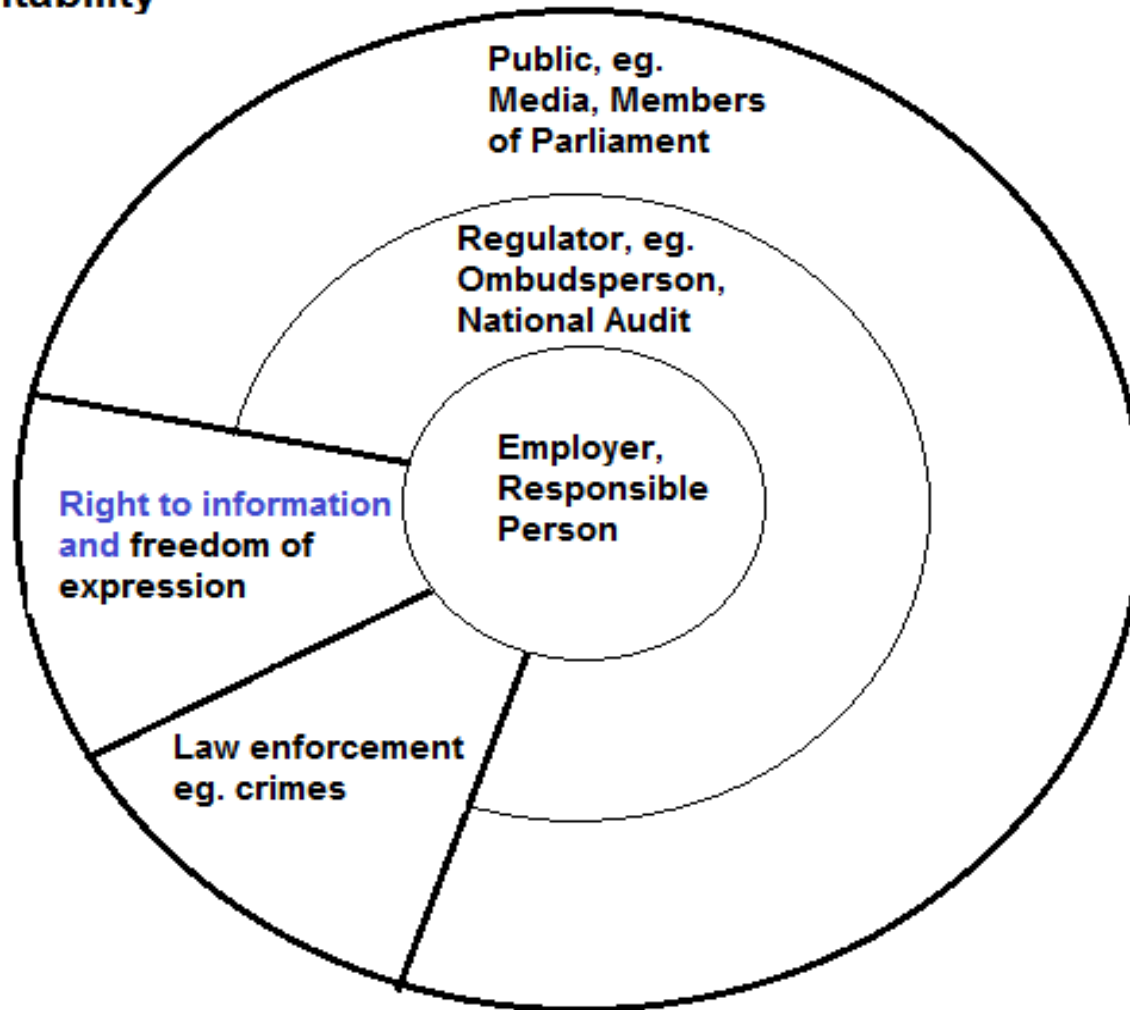
→ **Deterrent** effect on wrongdoers

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.