

# conversations with Charles

## Look after the fourth party!

*I had just returned from a formal case review, and was unhappy that we had come to no very definite conclusion, when I met Charles before he was off on his pre-season glacier ski.*

'I have just completed a formal review short of litigation. The result might be summarised as: "the notes were excellent but the patient died and no one knows why!"'

**'How come, Coe?' Charles asked, adding, 'I suspect I know what happened – the team did everything perfectly on a day-to-day basis, but something developed slowly over a longer period and they did not notice.'**

'Precisely, but how did you guess?'

**'The notes became so thick that they were overwhelming and it took a long time to look back more than a day or two! The staff naturally fell into operating in a very short timescale.'**

'I believe that is what happened, as the patient had slowly progressive right heart disease the severity of which was not noted till the end and, to my horror, there was no post-mortem in an attempt to understand what was going on.'

**'It would not have happened in your day?' was the rhetorical reply.**

'Of course not, we would have always done the *post-mortem* Charles!' *I replied in an ironical tone.* 'But seriously, the important points were easier to find in the notes in my day. I was always available night and day irrespective of duty rotas, but one of the reasons that I resisted pressures routinely to see patients daily was to ensure that I operated in a different timescale from the house staff, days rather than hours.'

**'And you have not mentioned the usual objection, the time spent in writing the notes rather than looking after patients! I am sure your point is far more important,' he replied, adding, 'We all know why the notes are getting thicker and thicker: "If it's not written down it has not happened!"'**

'Isn't that a good principle?' *I responded.*

**'Perhaps, if not taken too far by writing excessive notes! This is yet another example of the unintended consequences of the modern demand for "transparency" and the consequent vicious circle of mistrust and demand for more proof, so eloquently described by Dame Onora O'Neill in her BBC Reith Lectures of 2002. Ironically, the fat notes hid the core of the problem from the clinicians.'**

*'This reminded me that the UK government was consulting over health and safety, in the context of an increasingly risk averse and litigious society, and so I redirected the course of the conversation.*

'What advice have you for Lord Young on health and safety?'

**'It is a paradox that society has become risk averse but at the same time contemptuous of health and safety,' he replied. 'I would say "Look after the fourth party!"'**

'The fourth party?' *I queried.*

**'Yes, let me explain. The problem is that most in the field think in terms of the industrial model restricted to a defined site, where the ethical and financial cost-benefit analysis is confined to factors on that site, and the appropriate policy and measures determined solely on those considerations. This model is not appropriate for public health and safety as there is no fourth party.'**

'Who is the fourth party?'

**'The first party is the perpetrator, the second the institution or insurer who bears the cost, and the third the victim. The fourth party suffers indirectly by transfer of risk. In your example the risk of inability to defend a legal case is transferred to the risk of missing slowly progressive disease because of the fat notes. Fourth parties may also suffer from disproportionate loss of amenity. The more distant the scenario from the isolated industrial site the more likely it is for a fourth party to be involved. Circumstances are also important, disproportionate attention is paid to potential disaster as opposed to more frequent sporadic minor events. The response to the Hatfield train crash is a good example of both where, when asked to justify the disruption of services caused by the extreme safety measures taken in response, a rail official said he was not concerned how many people died on the roads provided that no one died on the railways. Ironically, that week more people died in a single accident on the road parallel to the same line further north in Yorkshire than in the train crash itself, but the impact was miniscule compared with that of the latter.'**

'I have no sympathy for that individual,' *I replied.*

**'Nor do I! But the transfer of risk may be distant in time as well as space. Can you really criticise the junior official who on pain of sacking strictly interprets the regulations despite the presence of adequate lifeguards and bans a family of three children from the local swimming baths because the proscribed adult supervision is unachievable, only for one of**

them to drown because he cannot swim when he falls into a lake 10 years later?

‘That’s a little farfetched, Charles!’

‘Yes, but both examples illustrate the point. Anyone responsible for determining a specific health and safety concern cannot reasonably be expected to put much weight on distant transfer of risk or loss of amenity. Politicians should recognise that the industrial model is not appropriate in the wider world, and impose on the Health and Safety Executive (HSE) protection of the fourth party as their prime responsibility.’

‘How would this work?’

‘The HSE would commission but not determine specific policies. They would decide whether the effects of the policy submitted might jeopardise fourth parties and, if so, require the policy to be modified. In so doing they would have the duty of defending those immediately responsible for the policy if an accident was alleged to have happened because of the changes that they required.’

‘And so take a load off the mind of the worried cautious official!’

‘Agreed,’ *adding with enthusiastic anticipation*, ‘Excuse me but I have to go as I have an orienteering course to design before I am on my way to Heathrow!’

*Sadly that was the last time I saw Charles. I thought that he had given up his regular job 15 years ago because he preferred the challenge of ‘living on his wits’. It transpired that because of severe heart disease he had been advised to do so and to take life easy, avoiding exercising in the cold. His response was to resign for the sake of his company, but otherwise to continue to live life to the full. He resumed skiing and to took up orienteering, becoming a leader in the sport. He told his wife he was not prepared to transfer the risk of dying suddenly during the exercise that he loved, to the certainty of killing himself by being a bored couch potato.*

*Two mornings after the conversation, having negotiated the notorious ridge below the top of the Aiguille du Midi cable car on Mont Blanc, Charles stood at the top of the Vallée Blanche admiring the magnificent sunlit view in anticipation of the run below. As he turned to his companions expressing his joy he collapsed and died. If there is a heaven he will be thanking God for a 15-year bonus and a death that he would have chosen. He must have chuckled in his coffin when his repatriation was delayed as the circular Gallic argument raged: he cannot be certified dead until we know the cause, we cannot know the cause until we have performed a post-mortem and he cannot have a post-mortem until he is certified dead!*

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