

# **Whistleblowing: the role of trade unions**

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## General Declaration

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## **Abstract**

Whistleblowing occurs predominantly within the workplace by individuals seeking to raise a concern. Trade unions seek to support their members in the workplace and more broadly in society. As such, we might expect that trade unions engage by supporting members who wish to blow the whistle. However, there is little prior research on the role trade unions have in the field of whistleblowing. This thesis seeks to explore this topic. It considers both the internal role within the workplace, namely advisory, supporting, collective bargaining and engagement in policy, and the external role within society, specifically focused on engagement with other organisations, collective bargaining and political lobbying. Drawing on interviews with trade union representatives and whistleblowing experts, document and website analysis, parliamentary debates and a dataset from a whistleblowing advice line, the thesis takes a pragmatic approach to investigate the phenomenon. While the thesis focuses on the United Kingdom, it draws on data from Norway and the Netherlands to highlight where differences in approach and engagement might exist. The thesis finds that trade unions currently play a limited role in supporting whistleblowing and sets up four paradoxes that arise in relation to their engagement. This thesis makes a theoretical contribution to the wider whistleblowing literature by identifying an alternative approach to addressing the victimisation whistleblowers face. It also questions the linear three-tier approach to trade unions and whistleblowing suggested in the literature. Finally, it develops our understanding of the voice literature and how whistleblowing fits into this by suggesting that the collective voice of trade unions needs to be considered as a mediating factor in individual voice processes.

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# CHAPTER 1 - INTRODUCTION

## 1.1 Introduction

It has been over 50 years since whistleblowing research first began (Brown et al., 2014), however, our understanding of this phenomenon is still somewhat limited. The focus of much of the work has been on defining what whistleblowing is and what whistleblowers look like (Vandekerckhove and Phillips, 2019). Within that, research has explored the demographics and motivations of whistleblowers, alongside the consequences they face when speaking up about concerns they have. More recently, there has been a move to understand other influences, such as looking at governments and regulators, who are both empowered to deal with whistleblowing concerns (e.g. Phillips and Lewis 2013, Kierans 2019, Van portfliet 2020).

Whistleblowers have been seen to make disclosures to external agencies that are able to act upon the disclosed wrongdoing, such as the Financial Conduct Authority (U.K.), Health and Safety Executive (U.K.) and the Securities Exchange Committee (U.S.). In other cases, whistleblowers have gone to the media<sup>1</sup>. Whilst media and external agencies may receive and highlight disclosures publicly, most whistleblowing occurs privately within the organisation in the first instance<sup>2</sup> (Miceli and Near 1984, Public Concern at Work and University of Greenwich 2013, Vandekerckhove and Phillips 2019). External disclosure is often the result of retaliation or inaction by an employer after an internal disclosure (Rothschild and Miethel 1999, Miceli and Near 1985). Legislation has been implemented in various countries, but could, judging by the increased publicity of whistleblowing be seen as ineffective (Vandekerckhove et al 2016). In some countries, institutions such as the Merit Protection System Board<sup>3</sup> have been put in place to investigate and resolve

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1 See for instance media campaigns over WikiLeaks, Edward Snowden and NSA, Michael Woodford CEO of Olympus and Terry Bryan at Winterbourne care home.

2 A well known case in the UK is that of Terry Bryan, who disclosed criminal abuse on residents at a care home. He made his disclosure firstly to the employer. This was followed by two attempts to disclose to the Care Quality Commission. When this failed he went to the BBC who sent in an undercover reporter. This led to a panorama documentary and later criminal convictions for many of the care workers.

3 Based in the USA the MPSB is a Quasi-Judicial independent organisation whose sole aim is to ensure implementation and compliance with merit system principles.

whistleblowing concerns. Other organisations have a role in determining whether there has been a disclosure and/or victimisation as a result of the disclosure<sup>4</sup>. Some organisations are there to provide advice<sup>5</sup>. Whilst these organisations have a role to play, none of them makes the disclosure on the whistleblower's behalf or protects a whistleblower as they make the disclosure.

A lacuna in the whistleblowing research exists around our understanding of actors that might support whistleblowers. One such actor is a trade union. They are uniquely placed in that they are within organisations, where they support individual members and their collective membership through representation. Trade unions are, however, separate from their members' organisations. Trade unions often have external obligations, which they fulfil by collective bargaining at sectoral or national level, lobbying governments, and engaging with wider society on issues. In light of this, it has been suggested that trade unions have the potential to support whistleblowers in organisations alongside whistleblowing in wider society, more precisely through a three-tiered model (Lewis and Vandekerckhove 2016). However, there is currently no research addressing whether trade unions fulfil this role or have any inclination to do so.

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Principle 9 relates to employees rights to disclose wrongdoing and be protected from any reprisal.

4 For instance the Employment Tribunals in the United Kingdom

5 See for example Protect formerly Public Concern at Work a non-government organisation charity in the U.K.; in the Netherlands there was the Adviespunt Klokkenluiders which was an organisation set up by government to provide advice. This is now part of the House for Whistleblowers.

## **1.2 Research aims and questions**

This thesis aims to provide insights into the role that trade unions play in the UK around whistleblowing. Further, this study recognises that trade unions in different social contexts may have a different perception of their role, and therefore the study draws on information from the Netherlands and Norway to highlight where some of these differences exist. This study investigates the overarching question of

‘what role do trade unions play in supporting whistleblowers?’

It does this by posing four sub-questions, which address the social context, the law, victimisation and voice. The four sub-questions are:

1. ‘How do national contexts affect union engagement in supporting whistleblowing?’
2. ‘How does the law affect trade union engagement?’
3. ‘How does the type of victimisation affect union engagement?’
4. ‘How do trade unions use their voice to support whistleblowers?’.

By answering these four questions, and, in turn, the overarching question, this study moves the whistleblowing literature and research forward. In doing so, it gives fresh insight into our understanding of trade unions. The study finds that TUC affiliated trade unions have limited engagement with whistleblowing. One justification for this from those who participated was that they see whistleblowing as an individual act and see their role as collective.

### **1.3 Personal motivations**

I was first introduced to whistleblowing while studying for my undergraduate degree in law. During an employment law lecture, whistleblowing was discussed. After completing my law degree, I was employed by the university to support the law department, where I was approached by a professor to take part in a whistleblowing project. At the same time, I was undertaking my master's in employment law. In that research project, we investigated the availability of information around the prescribed persons under the UK whistleblowing law. That project inspired me to do a follow-up study for my master's dissertation. That study found that these prescribed persons – who have a regulator function – were not particularly effective in carrying out their whistleblowing role. These two studies developed my interest in whistleblowing and, specifically, in pursuing an academic career researching whistleblowing.

During my undergraduate studies, I held a part-time job in a local supermarket. Many colleagues knew that I was studying law and would often seek my help with issues that they were facing in the workplace. As such, I was approached by the union to become a lay representative so that I could help their members in the workplace. In performing that role, I would often raise concerns or tackle issues that may now be considered whistleblowing issues. Having this background, and my understanding and research interests, alongside the lack of trade union literature, this seemed like the ideal project to undertake for a doctoral study.

The following section addresses how the thesis is structured and what the reader can expect from each chapter.

## **1.4 Structure of the thesis**

This section gives a brief overview of each chapter. It identifies the key elements that will be covered alongside discussing the structure of that chapter.

### **1.4.1 Chapter two - Literature**

Chapter two forms the literature review. It starts by addressing what whistleblowing is. It then explores trade union's and the social contexts focusing on membership and ways in which unions support members through collective bargaining. The legal context of whistleblowing is then considered, asserting that a significant purpose of legislation is the protection from victimisation, with victimisation being the next discussion. The final three sections of the literature review all relate to expressions of voice. Firstly, there is a discussion of organisations that support whistleblowing and how they interact with each other. Secondly, there is an exploration of how the voice literature views whistleblowing. Thirdly there is a review of specific voice mechanisms trade unions may utilise. The purpose of these discussions are to identify areas that trade unions may participate in in supporting whistleblowing thereby enabling research questions to be posed. Therefore, the chapter concludes by drawing these elements together showing how the research questions mentioned previously are drawn from the discussion within this chapter.

The focus of trade union engagement in this chapter is on the United Kingdom. However, to enable the thesis to explore some of the different factors that may affect union engagement, the chapter draws on the Netherlands and Norway at relevant points throughout.



### **1.4.2 Chapter three - Methodology**

Chapter three considers the methods adopted for this study. It commences with a discussion of the paradigm of pragmatism that has been adopted for this study. This paradigm was adopted as it has an emphasis on truth building and follows the thought that what is important is knowledge and validity of that knowledge as opposed to other epistemologies which focus on the nature of the knowledge. Pragmatism requires exploration of multiple sources of data from across the qualitative and quantitative spectrum, the focus being on identifying the best available sources of data for investigating the problem.

The chapter then explores how the data was collected. Building on the pragmatist approach the chapter discusses several qualitative sources of data used in this research; interviews, website analysis, parliamentary reviews and document analysis alongside a quantitative data set based on a study of 500 cases from a whistleblowing advice agency<sup>6</sup>. The chapter then explores how the data was analysed and then proceeds to discuss the ethical issues of the study as well as offering a brief reflection on the difficulties faced throughout this research. The chapter concludes by identifying the limitations of the methodology adopted for this study.

### **1.4.3 Chapter four - Findings**

Chapter four presents the analysis of the data. This is structured by first reviewing the data related to how trade unions perceive whistleblowing and their role. Recognising that whistleblowing is predominantly an internal act, the data related to the internal environment is analysed next, focusing first on the individual and then on the collective. The chapter then moves to analyse the data relating to the external environment trade unions engage with. The chapter ends with a table that summarises the key findings that have been made throughout this chapter and signals which research question they address.

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<sup>6</sup> The advice line belongs to a charity called Protect. When this study commenced and during data collection they were known as Public Concern at Work. For consistency this thesis uses the charities former name throughout.

#### **1.4.4 Chapter five Discussion**

Chapter five discusses these findings in light of the aims of this study. It starts by providing a general answer to the overarching research question. It also highlights four paradoxes that have emerged from the findings. The study identifies four paradoxes in trade union thinking and action around whistleblowing. The four paradoxes are:

1. Trade unions want to support whistleblowing, but they do not understand what whistleblowing is.
2. Trade unions want to advise members, but do not engage in policy creation to provide themselves with a role.
3. Trade unions want to collectivise whistleblowing, but do not put whistleblowing on the collective bargaining table.
4. The law is weak and lacks credibility for trade unions, but they do not engage in lobbying effectively to change it.

While the study identifies these paradoxes the strength of data for each of them varies. Paradox two, three and four are exhibited in the data sufficiently to enable the paradox to be claimed, however, paradox one is where this study makes its strongest arguments. There is a co-dependency in the paradoxes. This is because without a true understanding of what whistleblowing is trade unions are unlikely to be able to advise, support, create policy or lobby for change effectively. Further, it is through the data showing a lack of advising, policy creation, collective bargaining and lobbying that we are able to identify those trade unions reviewed in this study lack an understanding of what whistleblowing is. By providing these insights, it makes an original contribution to whistleblowing knowledge.

Furthermore, the study makes three contributions to theory. Firstly, it provides an alternative approach to understanding the victimisation that whistleblowers face. It finds that whilst previous studies have sought to group types of victimisation, categorising victimisation into work or social retaliation may provide greater insight

for stakeholders to focus their engagement. Secondly, it develops our knowledge of the application of the three-tiered approach of trade union engagement. It does this by questioning the linear approach the three-tiered model adopts. It further suggests adopting an alternative approach from literature namely looking at the function undertaken as a way to identify engagement. The third contribution is to develop a model of individual voice. This third contribution speaks to the paradoxes, specifically paradox one by identifying how trade unions could use their collective voice as a mediating factor within the individual voice process. It provides new avenues for further research and future understanding of whistleblowing. This contribution to voice is considered the strongest contribution as it directly connects to the paradox and the golden thread of this study namely how unions use their voice to perform their key functions of supporting members and improving working conditions.

#### **1.4.5 Chapter six Conclusion**

Chapter six concludes this thesis. It reminds the reader of the overarching aims of this study and how these have been addressed. There are personal reflections on the findings. Finally, limitations and further research areas are discussed.

#### **1.5 Summary of chapter**

This thesis presents a mixed-methods study of how trade unions engage in whistleblowing processes. The premise of this study is based on the development of whistleblowing research which is showing a need for a greater understanding of organisations that may engage in whistleblowing support. There is currently a lacuna in this area. This study attempts to address this lacuna by looking into one such group trade unions. Trade unions have been suggested from a theoretical perspective as a group that could do much to support whistleblowing but as yet there is no empirical understanding of whether they do undertake a role. This chapter has set out the foundation and structure of this thesis. The next chapter as already highlighted goes on to provide insight into our understanding of whistleblowing and trade unions in the form of a review of literature which leads to the research questions.

## CHAPTER 2: LITERATURE REVIEW

### 2.1 Introduction to literature

The purpose of this chapter is to review the literature around trade unions and whistleblowing. From this, we can identify the research questions and parameters for study for the rest of this thesis. The thesis adopts Near and Miceli's definition of whistleblowing, namely:

*"the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to affect action" (Near and Miceli 1985 p4).*

As will become clear, very little is known about how trade unions engage in whistleblowing. Therefore, this chapter seeks through the literature to identify areas that this study can research which may provide us insights into trade unions. The chapter is structured in the following way. It commences with an exploration of the definition mentioned above and explores why it is appropriate for this study. There is then a discussion on trade unions, which first explores the different types of unions and then looks at the membership and role of trade unions. The focus will be on the United Kingdom (UK), but, recognising that trade union engagement varies in different countries, it will use Norway and the Netherlands as two countries that provide some contextual differences.

Having explored trade unions, the chapter will look at the role of legislation in the field of whistleblowing. This will also draw out differences between the three countries. As will be demonstrated, legislation seeks to protect whistleblowers from victimisation, and thus an exploration of victimisation will follow the legal section. The three sections after that focus on 'voice'. First an exploration of organisations that may enhance whistleblowing as voice. The reason for including this is that trade unions may interact with these organisations. Second, there is a discussion on how whistleblowing is situated within the voice literature. The third section on voice

focuses specifically on how trade unions may utilise their voice. It identifies six types of voice that unions could utilise to support whistleblowing.

Each section of the literature can be seen as a discrete area of investigation. Therefore, at the end of each section, the reader is shown how the section fits into the thesis. It does this by drawing out the relevant research question/s that emerge from the section, along with any expectation that has been highlighted. There is a recapitulation at the end of this chapter of each question and expectation, highlighting where the thesis aims to make a theoretical contribution.

## **2.2 Definition**

This section discusses the definition of whistleblowing that will be used in the thesis in terms of the three aspects of whistleblowing: namely who can make the disclosure, what types of wrongdoing fall within the scope of whistleblowing, and who receives the disclosure. Near and Miceli have defined whistleblowing as:

*“the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to affect action” (Near and Miceli 1985 p4).*

There are other definitions (for an overview see Jubb 1999), however, the above definition has become widely accepted within the research community (for example see Brown et al 2014, Mesmer-Magnus and Viswesvaran 2005).

Before evaluating the definition further, it is important to recognise the background and context in which its authors worked. Near and Miceli have research backgrounds in social and organisational psychology. They put this definition forward with the aim of creating a consistent research framework. While whistleblowing research was in its formative years, it was recognised that a consistent framework was required (Near and Miceli, 1985). The research had mainly been case studies, but Near and Miceli had sought to widen this by

undertaking novel methods such as surveys, although these too have limitations<sup>7</sup>. Due to the recognition of the different research methods and perspectives, Near and Miceli purposefully made the research framework definition wide.

To understand this definition in the context of looking at trade unions and how they may engage, it is necessary to look at some of its constituent elements. The first element is the term 'organisational member (former or current)'. Legal frameworks at the country level often limit who a whistleblower may be. For instance, in Norway, it is limited to employees (S 2.4 Working Environments Act 2005), whereas in the United Kingdom it is limited to workers (Part IVA Employment Relations Act 1996). The use of 'organisational member' enables a much wider group of people, such as contractors or volunteers, to fall within the whistleblowing definition.

The next element is the type of practices that can be classified as wrongdoing. Illegal practice is easy to define; it can be said to be anything that contravenes legislative provisions within a country. Some countries such as the UK are common law jurisdictions and, therefore, illegal could also refer to a breach of a common law duty. Immoral and illegitimate are, however, more difficult to define. Skivenes and Trystgad (2014, p97) suggest that immorality is about 'what is good and right for people and society', whereas illegitimate is about breaching what society deems as 'fair'. An example of an immoral act is tax avoidance. Whilst it is not illegal, it is not something a business or an individual should be doing; however, it is not illegitimate, as people are employed to provide advice on limiting tax liabilities and society allows such a sector to exist thus providing it with a form of legitimacy.

A third element to focus on is that of the receiver of the disclosure. The definition specifies them as 'persons or organisations that may be able to affect action'. Miceli and Near (1985, p4) have left this deliberately wide to cover disclosures to people both inside the organisation and those external to it. Jubb (1999) however,

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<sup>7</sup> For a detailed discussion on the limitations of research methods in whistleblowing research see Miceli et al 2008, p26. They argue that ethical considerations make field study difficult. Other studies asking hypothetical questions do not truly explore how a person would act in the given situation, as they may be affected by social desirability bias or experimenter demand bias. In-depth case studies also have limitations as often participants are non-random and lead to questions of representativeness.

expressly states that for a disclosure to fall within a whistleblowing definition it must be made public and to an external recipient. His reasoning for such a restricted definition was that whistleblowing is an ethical dilemma, because it necessitates a breach of trust and may involve disobedience. It creates a serious moral conflict. By making an internal disclosure, he argues, there is no breach of an organisation's confidence, nor does it disturb the hierarchy and command structure. Therefore, in Jubb's view, an internal disclosure is about dissenting from one's peers, whereas external disclosure is dissenting from the organisation. In his view, to truly be whistleblowing, there must be this organisational dissent (p91).

Miceli and Near (1985) address this differently by looking at the characteristics around the discloser. So, rather than seeing it as a breach of trust or organisational dissent, they view whistleblowing as constituting a prosocial behaviour. A prosocial behaviour 'is positive social behavior that is intended to benefit other persons. But unlike altruism, prosocial actors can also intend to gain rewards for themselves' (Staub 1978). This link between prosocial behaviour and whistleblowing was addressed by Dozier and Miceli (1985), who looked at aspects of people's choices and behaviours to disclose wrongdoing in various situations, such as reporting shoplifting. They highlight that a decision to disclose will be influenced by the locus of control. They suggest that internal persons are more likely to say something as they feel their behaviour makes a difference, whereas external persons did not feel they could effect change (p829). This theoretical construct of whistleblowing as a prosocial behaviour has been confirmed by empirical research. Miceli and Near (1988), in an analysis of a survey of public sector workers in the USA, found that a positive association between prosocial characteristics and whistleblowers existed. This classification of whistleblowing is important as will be shown later in the section on voice, because voice scholars do not see whistleblowing as prosocial. This conflict of how whistleblowing is to be viewed in terms of voice may affect trade unions' responses to whistleblowing.

Miceli and Near's position of including internal whistleblowers appears to be more in line with the reality of the whistleblowing process. Research suggests that whistleblowers make their disclosure internally before going external (Miceli and Near 1984, Brown 2008, Vandekerckhove and Phillips 2019). In a study of United

States legal cases relating to dismissal after disclosure, they found that, of the 33 cases they studied, only 10 went externally without using internal channels (Dworkin and Baucus 1998). In the public sector in Australia, 97% of whistleblowers who participated in an employee survey made their first disclosure internally, with a small minority (1.8%) approaching a union (Donkin et al 2008 p90). In the UK a study of 1000 users of the charity Public Concern at Work (herein PCAW) advice line had similar findings. Vandekerckhove and Phillips (2019) found that of the 849 calls where a concern was raised, at the first attempt 91% raised it internally whilst only 7% went externally; interestingly, they also found that 2% went to their trade union. These percentages of external disclosure and to trade unions increased the more attempts were made to raise a concern. Of the 849 calls, over half (477) made the disclosure a second time, of which 73% remained internal, and trade union disclosure went up to 4%. At the third attempt, 140 continued to make a disclosure of which 60% were internal. Twenty-one persons persisted to a fourth disclosure. 47.5% of those continued with an internal disclosure and 4.8% were to trade unions (Vandekerckhove and Phillips 2019). On each disclosure step, apart from the fourth time, a clear majority favoured internal disclosure. However, only a very limited number of whistleblowers go to the union as part of this internal process. Nevertheless, the more attempts a whistleblower made, the more likely a trade union was to be approached. This leads to the question of why trade unions do not engage, or why whistleblowers do not choose them as a point of contact. Taking into consideration that most whistleblowers go internally first, it is important for this thesis to use a definition that has scope to cover this. A further benefit of using this definition is that it allows this research to look at trade unions as recipients.

With the chosen definition, each of these three aspects have a wide margin of interpretation.

### **2.2.1 Whistleblowing and trade unions.**

The literature on trade unions' engagement with whistleblowing is limited. What is known within the UK is that whistleblowers do go to trade unions, usually as an attempt to make a disclosure or as a source of advice (Lewis et al. 2015, PCAW 2013). This is often done after having made an initial disclosure (Lewis et al.2015). While this is suggested to be due to a lack of trust in internal whistleblowing (PCAW



2013) the result is often a feeling of disappointment from whistleblowers (Vandekerckhove and Romyantseva 2014). From a theoretical perspective, Lewis and Vandekerckhove (2018) posit a model to suggest how trade unions could engage in both supporting whistleblowers in the workplace while also providing a societal benefit in having wrongdoing addressed. This model will be discussed further later in section 2.8. However, at this stage, if the literature suggests trade unions have a role supporting whistleblowers as they go to trade unions albeit they end up disappointed, this begs the question what then is the role trade unions have or could have in supporting whistleblowers. Thus, this is posed as the overarching question this study looks to address.

The next section of the literature review focuses on trade unions themselves, It will explore the different approaches trade unions take to engaging with members, organisations and how they exist within the social context. While focusing on the UK, it will draw on the Netherlands and Norway to identify some differences which may impact union engagement.

## **2.3 Trade union context**

The preceding section explored the definition of whistleblowing adopted for the thesis alongside highlighting the very limited knowledge we have on trade unions and whistleblowers in the UK. This section sets out to explore trade unions. As the focus of this thesis is the role trade unions play in whistleblowing, this section does not seek to set out the detailed historical development and contextual factors one would normally expect in an analysis of Industrial relations. Rather, it draws out some of the key factors that may influence trade union engagement in the specific context of whistleblowing. Skivenes and Trygstad (2014) suggest that different national contexts create different frameworks for whistleblowing. So while the focus of the thesis is the UK, it recognises that trade unions may act differently based on national factors. Therefore, this section will draw on some of these differences based on the Netherlands and Norway which may affect trade unions' engagement in supporting whistleblowing.

### **2.3.1 Membership**

Trade unions have existed for a long time (1867 in the UK) and have been recognised to perform a valuable function in supporting their members within the employment context. Such recognition within the UK has been embedded in the law since 1871 through different pieces of legislation e.g. Trade Union Act 1871 and Trade Union and Labour Relations (Consolidation) Act 1992. One specific provision which highlights the supporting function is that of Section 10 of the Employment Rights Act 1999. This enables a union official or recognised lay representative to attend and represent a member at a grievance or disciplinary hearing. If supporting members in the workplace is the overarching role of a union, it is important to understand who the membership of the union is.

Trade unions are made up of individuals who are, for the most part, employed. Individuals join the union as a protective measure within their workplace (Holgate 2011). Historically, unions were strong: In 1970 in a study of 24 countries and the EU, union membership covered at least a third of the workforce (Visser 2006). However, since then unions have seen their membership decline. Some countries have seen a greater decline than others. Between 1970 and 2014, the UK saw a

decline of 18.8% (Gamwell 2014)<sup>8</sup>. Just like individuals join a union to gain a collective power over the employer, trade unions also collectivise. This is done through affiliating to a federation. The federation will provide advice, support and guidance to individual trade unions but also seek to engage with policymakers and business for the good of its members. In the UK, there are four federations. The Irish and Scottish trades union congresses are connected to the United Kingdom Congress and most of the affiliated trade unions also affiliate with Trades Union Congress (TUC). The fourth federation is the General Federation of Trade Unions (GFTU). However, as can be seen from table 2.2, the TUC covers over 6 million workers whereas the GFTU covers 215,000. This study will therefore focus on the TUC as the dominant federation.

While the study focuses on the UK, at various points Norway and the Netherlands will be considered to see if differences between countries may have an impact on how trade unions engage in supporting whistleblowers. Membership is one area where we can identify a difference. The Netherlands has seen a similar decline to that of the UK (Van Het Kaar 2104), but in terms of membership, Norway, much like other Scandinavian countries, has not seen a significant decline in membership. As of 2014, it retained a membership of over half the workforce (Nergaard 2014a). While this can be explained for most Scandinavian countries who follow the Ghent model, where out-of-work benefits are the responsibility of the unions, Norway does not subscribe to this model. Table 2.1 highlights these differences.

<b>Year / Country</b>	<b>United Kingdom</b>	<b>Norway</b>	<b>Netherlands</b>
1970	44.8%	56.8%	36.5%
Post 2010	26%	52%	17%
Percentage change	-18.8%	-4.8%	-19.5%
<i>Table 2.1: Trade union membership</i>			

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<sup>8</sup> This decline has continued, according to the UK Government UK membership is 23.7% in 2020.

In relation to federations, much like the UK, Norway and the Netherlands have multiple federations. In all three countries, the federations compete with each other for union affiliation. Table 2.2 sets out the membership of each federation.

United Kingdom			The Netherlands			Norway		
Union	Members	Affiliated unions	Union	Members	Affiliated unions	Union	Members	Affiliated unions
TUC	6 million	51	FNV	1.1 Million	-	LO	900,000	24
GFTU	215,000	21	CNV	350,000	-	Unio	330,000	12
			VCP	-	50	YS	222,000	18
						Akademiekerne	18,753	13

*Table 2.2: Union Federation affiliation<sup>9</sup>*

Trade unions have sought to reverse this decline through re-organising and changing the way they engage with members and wider society. The various approaches have been well documented, but three notable ones are Social Movement Unionism, Partnership, and Collective Bargaining.

Social Movement Unionism (SMU) is not a new approach to organising; it has existed for several decades. Its greatest success has been found in developing countries where, historically, there had not been a trade union model. One example is that of South Africa, where SMU was used to engage people during the apartheid with significant positive results (Hirschsohn 1998). SMU has continued to be the model for South Africa (Hirschsohn 2007, Dibben et al 2012). However, it is difficult to define what SMU actually is (Martinez Lucio and Perrett 2009). There has been much critical debate on this (Moody 1997, Dibbens et al 2012, Umney 2011 and Fairbrother 2008). From these debates some key elements can be identified:

1. A sense that the union belongs to its members and not its hierarchy
2. That the union takes collective action on local issues that extend past the employment sphere

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<sup>9</sup> All data compiled from the federations website on 16/06/15

3. The union is not working on its own but seeks to build alliance and collaboration with other organisations
4. Engages in the political sphere to develop its cause

There is strong criticism of this model due to it not engaging the state – a necessary aspect of trade unionism (Upchurch 2012), and the ambivalence it causes (Martinez and Perrett 2009). It has also been noted that UK trade unions lack the commitment to the model needed to make it work (Wills 2001, Wills and Simms 2004). However, it has been noted that it works at a local level and thus can have a significant impact on individuals and local issues (Wills 2001, Wills and Simms 2004). Others also highlight the benefit of collaboration that this model creates (Baccaro 2003, Moody 1997).

Partnership models of unionism have developed since the recession in the 1980s. Rather than taking a militant approach to business, trade unions started to look at cooperating with employers (Moody 1997). Due to the gradual development of this model, it has been difficult to define what a partnership involves (Heery 2002). Several attempts have been made at identifying key elements (Kelly 2004). Within the UK, the TUC has advocated this approach through the TUC principles of partnership (TUC 1999). However, there has been suspicion of this approach from individual trade union leaders (Heery 2002). This suspicion potentially stems from some of the other negative aspects of partnership. Some partnerships are based on management goodwill and are entered into as an alternative to having no union presence (Terry 2003). Terry also highlights that it can lead to a loss of autonomy and independence for the union when representing union members. This has a knock-on effect on the trust between the union and its members (Danford et al 2005), which inevitably has an impact on union membership. As these partnerships are created by the union away from the membership on the floor, it has been suggested that it reduces the role for shop stewards (Heery 2002). One of the larger criticisms of Partnership is that it does not necessarily mean more for the unions (Danford 2005). In fact, evidence suggests that, where partnerships exist, there is limited benefit to union members and that where the partnerships are led by employers rather than being a truly joint effort there is a greater impact on jobs and more job losses are evident (Kelly 2004).

Having highlighted some of the concerns, there are some reported benefits to the Partnership model. Whilst Kelly (2004) noted job losses, he also observed that where partnerships were union-led, or a joint effort existed between union and employer, there was a greater job creation rate, compared to non-partnership places. Whilst a reduction in work for shop stewards was noted by Heery (2002), he also suggested that partnership increased union representatives on consultative boards or committees. Partnerships enable a greater discussion between union and employers on other aspects that affect membership, such as learning, training and development (Heery 2002). Partnership offers greater flexibility and enables discussions and agreements on work-life balance (Lucio and Stuart 2002), thereby increasing and extending employee rights and achieving stronger commitments from the employers (Danford et al 2005). Because the TUC promotes this strategy (Lucio and Stuart 2002) it, in turn, means there is more support for the unions taking this approach. The move of Partnership away from sector-based negotiation has a positive impact on consultation (Terry 2003) and improves communication, which makes the atmosphere far less adversarial and more cooperative (Heery 2002).

The Collective Bargaining Model is found where a company consults with a trade union over certain specified actions with a view to establishing a collective agreement. Collective bargaining usually covers pay, health and safety issues, and redundancies, often limiting itself to its legislative functions. The discussions between trade unions and employers are usually rather militant and adversarial. A union that comes under this model will limit the role it plays in the workplace to discussing the issues that fall under collective bargaining and dealing with members disciplinary and grievance issues. The trade union in this case is often shaped by the leadership (Frege and Kelly 2003) because it is they who will take on the role of negotiating the collective agreement. The union will often take the lead in organising itself to increase membership, as this is what enables the collective bargaining (Frege and Kelly 2003). The fact the union take the active role means that membership on the ground is left with a limited role: calling on the union in times of need, which is often a reason for joining the union in the first place (Holgate 2011). However, Holgate also found that people often believed the role of the union was to be there for a collective aim rather than merely the individual.

These different approaches to union renewal suggest that we cannot consider trade unions as a homogenous group that will engage with whistleblowing in the same way. Social movement unions may engage with other organisations as part of their support (engagement with other organisations is discussed in section 2.6 of this chapter), whereas those who engage in partnership may be better placed to work with the employer to develop a role for trade unions within policy. Trade unions that focus on a collective bargaining model may look to the law to identify a role and influence policy as part of a collective bargaining agreement. The role of law will be addressed later in this chapter. One character that appears in each of these models is the collective nature of unionism. This collective nature is most evident in the role of collective bargaining. Thus, the next section will explore collective bargaining in more detail.

### **2.3.2 Collective Bargaining**

Collective bargaining is the ability of trade unions to negotiate on behalf of their members around the terms and conditions of their employment. Skivenes and Trygstad (2014) highlight that collective bargaining as part of institutional arrangements can counterbalance the impact of individual power resources that organisations have. Collective bargaining can occur at several levels, namely national, sectoral, and local. As identified above when discussing the model, it covers specific elements.

At a local level, unions engage with a specific organisation to negotiate terms. The local agreement will only cover that organisation, or, in some cases, a specific work site or group of individuals. In the UK, the majority of collective bargaining occurs in this way. There are two forms of bargaining depending on whether the union and employer voluntarily engage, or whether the union has had to invoke the statutory recognition procedure. Under the statutory recognition procedure, a union can seek recognition from the court if an employer has refused to recognise the union. This approach limits the bargaining to cover pay, hours and holiday only (Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992). Where an employer recognises the union, collective bargaining can cover much more, including physical working conditions, terms and conditions of employment, discipline (s178 Trade Union and Labour Relations (Consolidation) Act 1992).

At sectoral level trade unions often negotiate with representatives for that sector over terms that will become industry standard. These may be broad agreements that lead to individual organisations negotiating with unions at the local level over how they should be implemented. An example of this in the UK can be seen in the Higher Education sector. In this sector, five trade unions come together and negotiate with the Universities & Colleges Employer Association (UCEA) under the umbrella of a Joint Negotiating Committee for Higher Education Staff. This sectoral agreement is then implemented through localised agreements between the union/s and the local employer.

In some countries, there is national bargaining. This involves the federation negotiating a basic agreement with the business federation or government. These agreements often define principles and procedures which regulate the relationship between market parties. These issues usually look at addressing employee participation, information and consultation and the roles of shop stewards (Stokke et al 1998).

Collective bargaining provides us another contextual difference in the way trade unions work. As previously highlighted, there is some sectoral bargaining in the UK, but in the main, it is done at a local level. In the Netherlands however, collective bargaining is undertaken at sectoral level. While it addresses legal requirements, the arrangements set out to address areas where government policy is lacking (Yerkes and Tijdens 2010). Once the sectoral agreements are in place, the unions implement them at local level. The sectoral agreements take local factors into account and thus they have elements of decentralisation. This allows employers and employees to agree on certain elements within the individual contract, whilst still meeting the overarching agreement requirements. This has been referred to as “à la carte” as employees get to choose aspects such as holiday entitlement (Delsen and Poutsma 2005). This has been seen to provide individuals with a sense of identity and greater opportunity to tailor policies that suit workers (Valkenburg 1995). This decentralisation is providing unions with more leverage at the local level. Previously the shop floor local level was organised by works councils (Goodijk and



Sorge 2009) with the union's agreement as works councils have greater statutory power (Albeda 77 and 85).

In Norway, there is national bargaining where the LO federation works with the NHO (the federation for business) to form a basic agreement. Once this has been agreed there is then a sectoral negotiation which encompasses the basic agreement. This is usually undertaken by the four federations as opposed to individual trade unions. These agreements are then fed down to the local level where further negotiations on agreements can occur. These local agreements must include all aspects of the national and sectoral agreements.

Once an agreement is approved, it is then enforceable by the trade union and will cover individuals in the relevant workplace. The coverage of these agreements is an important factor to consider in understanding the impact they may have. In the UK an agreement at a local level will usually cover both union and non-union members that come within the staff levels as part of the agreement. According to Gamwell (2014), 29% of the UK workforce are covered by a collective agreement. A collective agreement has no legal force in its own right. However, in some cases, a collective agreement may become part of an individual's employment contract, but only where this is expressly stated (McMullen 2006).

Collective bargaining is important in the Netherlands, as coverage of collective bargaining is 80% of the workforce, as highlighted in Table 2.3. This coverage occurs either through negotiation or by the principle of extension (Van Het Kaar 2014 and Hartog et al 2002). The extension principle means that if an employer does not enter into a collective agreement with a union, they could still be bound by one due to legislation that requires it in some sectors. The agreement would cover both union and non-union workers. In Norway, 70% of the workforce is covered by collective bargaining (Nergaard 2014a). However, these agreements do not cover non-union members. Table 2.3 summarises the collective bargaining discussion above.

<b>Collective Bargaining</b>			
<b>Level / Country</b>	<b>United Kingdom</b>	<b>Netherlands</b>	<b>Norway</b>
<b>Coverage</b>	29%	80%	70%
<b>National</b>	No Role	No Role	Federations create basic agreement
<b>Sector</b>	Limited negotiations by unions for some sectors	Federations support unions who negotiate sectoral arrangements	Federations negotiate an agreement that develops the national basic agreement
<b>Local</b>	Unions negotiate agreements	Unions implement sectoral agreements with some localised negotiations	Unions negotiate local agreements which build on the national and sector agreement.

*Table 2.3: Collective bargaining summary*

Collective bargaining could be an important factor in the way trade unions choose to engage with whistleblowing support. We can see that collective bargaining is an important way trade unions engage with improving working conditions by seeking to set out agreements on the working relationship between the employer and employees. These agreements look to law but also seek to cover areas that government policy does not cover. With whistleblowing being covered by employment legislation, discussed later in this chapter, we would expect a trade union to use collective bargaining as a way of ensuring that employers have suitable provisions for whistleblowing.

### **2.3.3 Relationship with government and business**

Having considered membership and collective bargaining, it is important to consider that these are potentially impacted by the relationships trade unions have with business and governments. These relationships are evidenced differently in the three countries, which provides us with a further difference that could affect how trade unions support whistleblowing.

The United Kingdom trade unions and federations have an adversarial relationship with business and government. Since the 1970s, trade unions have seen their rights and powers reduced. Margaret Thatcher decentralised collective bargaining and

gave businesses the green light to take a hard line with trade unions (Pendleton 1997). This reduction in union power has continued and the Trade Union Act 2016 further limits union power, by introducing minimum strike rules as one example.

The TUC does not sit on government or business committees but instead seeks to lobby government and advise its members. The Confederation of British Industry (CBI) is the UK's main business federation. Rather than working with the unions, it seeks to lobby government for pro-business policy. There is little collaboration between the two groups. However, unions, businesses and independent members chosen by the government do sit on the council of the Advisory Conciliation and Arbitration Service (ACAS). The council's purpose is to set the strategy for ACAS and oversee development of codes of practice and guidance for the workplace.

In the Netherlands, trade unions and federations have a more cooperative relationship with other social actors. The federations have taken a proactive role in engaging with government and the business federations to make sure that the Netherlands has a stable economy and good working conditions. One example of this occurred in the late 1970s while the country was in a recession. The head of the FNV met with the head of the Confederation of Netherlands Industry; together they agreed the Wassenaar agreement 1982. Whilst this agreement led to a fall in real wages by 9%, it was seen by commentators as beneficial for the country (Visser and Hemerijck 1997:101).

Further to this informal cooperation, the federations are engaged at a national level with advising the government. The federations sit on two consultative committees. The first is the Labour Foundation (Stichting Van De Arbeid). The foundation consists of the three union federations and the three business federations. Its purpose is to negotiate, consult and advise on issues the country is facing. The government also commissions the foundation to undertake research, as in 2010, which led to a code of practice in relation to reporting wrongdoing being implemented in collective agreements (Labour Foundation 2010).

The second committee is the Social and Economic Council (De Sociaal-Economische Raad). This is made up of the Labour Foundation members and the so-called Crown members who are usually professors specialised in economics,

law, finance, and sociology. It is a legislative body and has the primary purpose of advising the government and parliament on social and economic issues.

Like the Netherlands, Norway has a cooperative approach to its industrial relations. The LO and Business Federation have had a cooperation agreement since 1966. This enabled committees to be formed in the public sector and later in the private sector (Loken and Stockke 2009). These committees have enabled the multi-levelled bargaining system discussed above to be effective at local, sectoral and national level due to fluid movement of information (Dolvik 2000).

Norwegian federations, like in the Netherlands, sit on national committees. The contact committee is an informal one, where the government is able to discuss income policy and wage formation with the unions and business federations. The second committee is a government-created body called the technical calculation committee for wage settlements. This committee exists to ensure federations from both union and business sides and the government have a shared understanding of the Norwegian economy. The information from these two committees is used in the collective bargaining discussions around pay. The final committee is the Labour and Pension Policy Council (Arbeitslivs-og Pensjonspolitisk). This committee evaluates and discusses pension and labour reforms.

By contrast to the cooperative systems of employment relations found in the Netherlands and Norway, the UK has a much more adversarial nature to relations with government and business. However, it should be noted that within this generalisation, trade unions themselves may have very different approaches to relationships such as militancy or partnership.

From this discussion, we have seen that trade unions provide two core functions that is, supporting their members and improving working conditions. How they do this is contextual as membership has declined leading to trade unions taking different approaches to renewing membership. Secondly, the power of collective bargaining, which is one of the more prominent ways of improving working conditions, varies depending on legislative provisions for trade unions and their relationship with government and business. These different contexts could impact the role trade unions see themselves as having and thus in addressing the

overarching question looking at these national contexts appears important. This leads us to ask the first sub-question 'how do these national contexts affect union engagement around whistleblowing'?

Further, we have identified that trade unions use collective bargaining systems to create agreements around employment issues. We can, therefore, expect that, as whistleblowing is an employment issue, trade unions will use collective bargaining systems to influence policies that support whistleblowing. Having identified different levels of bargaining and coverage of those agreements, we could thus expect greater influence on policy where bargaining occurs at a higher level with greater coverage.

This section has discussed, in a limited way, the role and position of trade unions in society. It has been identified that trade unions have a role in the workplace which is partly defined by the law. As such, the next section looks to address this by identifying how whistleblowing is categorised in law, specifically focussing on the UK but also drawing on Norway and the Netherlands.

## **2.4 The legal context**

This section seeks to explore the legal context of whistleblowing. It starts with some background to the UK legislation. Having done this, It considers the background to the Netherlands and Norway. It will then draw on research to highlight features required of effective legislation. The section will then draw out the pertinent features for the study highlighting how the three countries' laws map against them.

### **2.4.1 Background to whistleblowing legislation in the United Kingdom**

Whistleblowing protection is found in the Public Interest Disclosure Act 1998 (herein PIDA). Prior to the implementation of legislation, individuals rarely had protection for speaking up due to the overriding duty of fidelity to an employer<sup>10</sup>. PIDA was the third attempt to provide legislation for the protection of whistleblowers<sup>11</sup>. The bill came to parliament through a private member's bill introduced by Richard Shepherd MP in 1997 with the support of the government and both sides of industry. It became an Act of Parliament in 1998 and was effective from the 2<sup>nd</sup> July 1999. Whilst the Act is a standalone piece of legislation, it is implemented and made effective through its incorporation into employment legislation, namely part IVA of the Employment Rights Act 1996 (herein ERA '96). The need for this legislation came to a degree out of some significant tragedies such as the Alpha Piper and Herald of Free Enterprise Ferry Disasters and the subsequent public enquiries that highlighted whistleblowers were ignored, which resulted in people losing their lives (See the Cullen 1990 and Sheen 1987 Enquiries respectively).

The legislation remained unchanged until 2013. S18 of The Enterprise and Regulatory Reform Act 2013 had the effect of removing the good faith requirement from the test of making a protected disclosure. The good faith test required the employment tribunals to consider the motives of individuals. If the ulterior motive or predominant purpose was something other than rectifying the wrongdoing, it would not be considered good faith and the whistleblower would not be protected under

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10 The courts rarely went behind the duty of fidelity, however in *Gartside V Outram* (1856) 3 Jur NS 39 and later in *Initial Services V Putterill* [1968] 1 QB 396 a small exemption of an overriding public interest was acknowledged at the common law to protect whistleblowers, but this was very restrictive.

11 There had been other attempts to amend the Official Secrets Act 1911 and 1989 to provide a public interest defence to protect those who spoke out.

the law (*Street v Derbyshire Unemployed Workers' Centre* [2005] ICR 97). It was not removed from the legislation completely, and a tribunal can reduce an award by up to 25% if it believes the whistleblower acted in bad faith when making a disclosure (see S49 subsection 6A ERA '96). S17 of The Enterprise and Regulatory Reform Act 2013 introduced a public interest test into the legislation, requiring a whistleblower to show that, on top of having a reasonable belief in the truth of the disclosure, that it was also in the public interest to make the disclosure. One purpose of this amendment was to overturn the court's decision in *Parkins v Sodexho* [2002] IRLR 109, in which they decided that an individual could make a disclosure about a breach of their own personal contract of employment, which did not affect a wider number of persons. Two other smaller changes brought in were a further extension of the term worker (S20 Enterprise and Regulatory Reform Act 2013) and making an employer liable for the acts of its workers, in relation to retaliation by them against a whistleblower because of making a disclosure (S19 Enterprise and Regulatory Reform Act 2013).

#### **2.4.2 Background to Norway and The Netherlands**

This section provides a background to the legislation of Norway and the Netherlands, and how it came to be in both countries.

Norway does not have a standalone piece of whistleblowing legislation. Whistleblowing in Norway gained traction in 2001 after the Enron scandal when the media gave whistleblowers attention, highlighting how communication, freedom of speech and whistleblowing interacted in the workplace (Skivenes and Trygstad 2010). Protection for whistleblowers existed prior to the Enron scandal in the form of S100 of the Norwegian Constitution. This provided an individual with freedom of speech. However, this did not go far enough to protect whistleblowers, so in 2006 the Working Environment Act 2005 was amended to include section 2.4 which provides individuals with the right to disclose wrongdoing.

In the Netherlands, whistleblowing protection is found in the Whistleblowers Centre Act 2016<sup>12</sup>. Whilst this legislation is recent, whistleblowing has been discussed in

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<sup>12</sup> Also translated and known as The House for Whistleblowers Act 2016

Netherlands for a significant period of time. It commenced in the early 1990s when Mark Bovens published his PhD (Bovens 1990). In his doctoral work, he translated the word whistleblower into the Dutch 'Klokkenluider' which translated back means bell ringer. After this, the Netherlands have taken small steps to get a national whistleblowing law. The first could be said to be the report on integrity of public governance which made recommendations to strengthen integrity in government (MBZK 1999, cited in Vandekerckhove 2006; 244). In 2000 Amsterdam city government and the labour unions signed a collective labour agreement which included the requirement that the city government should develop a whistleblowing procedure. This was done in 2002 (Bureau Integriteit 2002, cited in Vandekerckhove 2006; 245). From 1999 the largest federation Federatie Nederlandse Vakbewegingen (FNV) had been putting forward an argument for legislation on whistleblowing. Following this, the Stichting Van De Arbeid (Labour Foundation) issued a paper (SVA 2004) at the request of the minister of social affairs and employment in which it sets out how a whistleblowing policy should look.

Prior to 2016, there had been several unsuccessful attempts to legislate. Many of these efforts were put forward by the Dutch federation the FNV (Vandekerckhove 2006). However, in 2012 the Ministry of the Interior and Kingdom Relations and the Minister of Social Affairs and Employment established the Adviespunt Klokkenluiders (advice centre for whistleblowers). This centre provided advice and support for whistleblowers, although it did not investigate potential wrongdoing. From July 1<sup>st</sup>, 2016 the centre merged with other organisations to make the Huis Voor Klokkenluiders (house for whistleblowers) which was established under the Whistleblowers Centre Act 2016 to provide advice, support and investigate wrongdoing.

In considering the background to the legislation in the three countries, both the UK and Norway enacted legislation in part as a result of significant disaster or scandal, increased publicity by the media and public outcry. This is in stark contrast to the Netherlands who spent time considering and discussing legislation. From a trade union perspective, the Dutch Union Federation FNV had a significant role in pushing for whistleblowing legislation over the years (Vandekerckhove 2006) as opposed to the UK and Norway where the unions, whilst supporting the legislation, was not



leading the calls for legislation. Here we can see evidence of the national contextual differences mentioned earlier in section 2.3.

### **2.4.3 Criteria for effective legislation**

Lewis and Trygstad (2009) in a textual comparative analysis of whistleblowing provisions between Norway and the UK found four key aspects to legislation: What is the purpose of the legislation; who is able to use and rely on the legislation; what are the rights around disclosure; and what remedies are available? Another perspective to consider is that of Robert Vaughn<sup>13</sup> (2012) and his analysis of the USA's Civil Reform Service Act 1978. He identified eight key provisions for whistleblower protection. These eight characteristics are: Who is able to receive a disclosure; is there a prohibition on disclosure; who is covered and able to make a disclosure; what information can be disclosed; does the individual have a reasonable belief in the disclosure they are making; what types of wrongdoing are covered; does the law specify actions an employer cannot take against a whistleblower; and what protection is afforded against reprisal? In considering these different criteria, we can see that there is considerable overlap between the two lists. This crossover can be seen in Table 2.4 below which shows the identified legislative provisions and sets out what the criteria cover. The significant crossover between the two lists suggests that these features are important and should be addressed in the legislation. The combined nine criteria can be assigned to five clear categories as shown in Table 2.4: legislative purpose; who is the whistleblower and receiver, restriction; the wrongdoing; and remedy.

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<sup>13</sup> Robert Vaughn is a Lawyer and Professor of Law at American University, Washington College of Law. He worked with Ralph Nader in the 1970's in highlighting and promoting the need for whistleblowers to receive protection. He has continued to work on issues around whistleblowing as it has evolved, so is well placed to undertake an analysis of good whistleblowing provisions.

<b>Vaughn 2012</b>	<b>Lewis and Trygstad 2009</b>	<b>Summary</b>	<b>Feature</b>
	Purpose	What is the purpose behind the legislation	Legislative Purpose
Disclosure to whom	Right to disclose	To whom can a whistleblower make a disclosure?	Who is the whistleblower or receiver?
Prohibition on disclosure		Is there a provision that prohibits making a disclosure that breaks the law?	Restriction
Agencies and Employees Covered	Who can use the legislation?	Who is entitled under the law to make a disclosure?	Who is the whistleblower or receiver?
Information disclosure	Right to disclose	Does the law require the disclosure to be relating to information?	Restriction
Reasonable belief	Right to disclose	What type of belief must the whistleblower have when they make the disclosure to the receiver?	Who is the whistleblower or receiver?
Type of wrongdoing	Right to disclose	What types of wrongdoing can be raised?	Wrongdoing
Covered personal actions	Remedies for infringement of statutory rights	Does the law require the employer to refrain from doing certain acts after a disclosure has been made?	Remedy
Reprisal	Remedies for infringement of statutory rights	Does the law provide protection to the whistleblower where reprisals occur?	Remedy
<i>Table 2.4: Overlapping features of whistleblowing laws</i>			

### **2.4.3.1 Cross-country comparison**

As identified, each of the three countries has some form of whistleblowing legislative provision. As the purpose of this study is to explore trade unions' roles around whistleblowing an in-depth analysis of the legislation is not called for. Therefore, Table 2.5 provides a comparison of the three laws against the five features and each other. There is a lot of similarity which will not be discussed below. Where Table 2.5 suggests a difference but this is not discussed it should be taken as meaning the difference is not significant<sup>14</sup> or relevant<sup>15</sup> for this study. The discussion will focus instead on the important differences for trade unions looking to the legislative provisions to understand the role they may have.

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14 For example Norway and the Netherlands only protect employees, but these terms are wider than the UK definition of employee and would capture a UK worker.

15 For example what the law provides in terms of remedy.

Feature	United Kingdom	Norway	The Netherlands
1. Legislative Purpose	Protect individuals in employment from negative treatment	Protect individuals in employment from negative treatment and provide healthy and meaningful workplace	Create a centre to advise and investigate wrongdoing and victimisation
2a. Who is the: Whistleblower	Employees and workers	Employees	Employees
2b. Who is the: receiver	<ol style="list-style-type: none"> <li>1. Employer or appointed person</li> <li>2. Legal advisor, minister of the crown, prescribed person</li> <li>3. External source</li> </ol>	<ol style="list-style-type: none"> <li>1. Employer</li> <li>2. Supervisory and public authority</li> <li>3. Trade unions and the media</li> </ol>	<ol style="list-style-type: none"> <li>1. Employer</li> <li>2. House for Whistleblowers</li> </ol>
2c. Type of belief required	<ol style="list-style-type: none"> <li>1. Reasonable belief that the disclosure is in the public interest and tends to show</li> <li>2. Believe it to be substantially true</li> </ol>	The legislation is silent on the required belief	The whistleblower must have a reasonable belief
3. Restrictions	The disclosure must be information and the whistleblower must not make the disclosure if doing so will break the law	Not specified	Not specified

4. The Wrongdoing: Types	<ol style="list-style-type: none"> <li>1. Criminal offences</li> <li>2. Breach of legal obligation</li> <li>3. Health and safety of an individual endangered</li> <li>4. Environmental damage</li> <li>5. Miscarriage of justice</li> <li>6. Cover up of the other five</li> </ol>	Censurable conditions	Suspected abuse
5. Remedy	Right not be subjected to detriment including dismissal and action short of dismissal	Right not be subjected to detriment including dismissal and action short of dismissal	Right to request the House for Whistleblowers to investigate any retaliation
<i>Table 2.5: Legislative overview of the features for each country</i>			

The first difference to be noted is the purpose behind the Dutch legislation. The preamble specifies its purpose as the creation of a whistleblowing centre to provide legal protection for whistleblowers. As the law applies to employees, the Dutch law can also be said to focus on the employment relationship. Although rather than a focus being on the individual, the Dutch law looks more at process and investigation. One significant difference, however, is that the Dutch legislation looks at the front end of the process. It seeks to provide a statutory framework for disclosure and investigation of wrongdoing and reprisals. This differs to both the UK and Norway where the focus is on the employment legislation and within that, it seeks to provide protection from victimisation. There is no requirement in either law to investigate the wrongdoing.

Looking at the process of disclosure, In the UK the legislation provides for a three-tiered approach. The whistleblower is expected to go internally<sup>16</sup>, before going externally. When a whistleblower goes external they should go to a prescribed person<sup>17</sup> or another specified person<sup>18</sup> before they can go to any other person<sup>19</sup>. At each tier, the test for the belief a whistleblower has in the disclosure becomes more stringent. Trade unions are not mentioned in the legislation at all. Lewis and Vandekerckhove (2014) highlight that they could nonetheless be covered in the legislation where they could be involved through an employer policy (see section 43C (2) ERA 1996) or as a disclosure in other cases (See section 43G or H<sup>20</sup> ERA1996.)

The Norwegian act does not set out the specific order of disclosure or the belief a whistleblower must-have. It does, however, specify that individuals have the right to notify supervisory authorities or other public authorities. Whilst the act is silent on other organisations in the proposition (Ot.prp.84, 2005-06) which led to the whistleblowing amendment to the Working Environment Act 2005 (WEA 05), it does

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16 See S43(C) ERA 1996

17 See S43(F) ERA 1996

18 Such as lawyers or MP See S43 D and E ERA 1996

19 See S43(G) ERA 1996

20 Section 43(H) allows a disclosure to be made otherwise than the tiered model when it is a disclosure of an exceptionally serious failure

specify that trade unions would be suitable alternative organisations and protected under the act.

The Whistleblowing Centre Act 2016 for the Netherlands allows for disclosure to an inspectorate or supervisory body where they are mentioned in the employer's procedure (s2.3.a WCA16). A whistleblower can also make a disclosure to the House for Whistleblowers who can investigate, but they may refuse to investigate where there has not been an internal disclosure (s6.1.e WCA16). A whistleblower must have reasonable grounds to support their suspicion. Like the UK there is no mention of trade unions in the legislation despite them being at the forefront of bringing the legislation about. By being less restrictive and providing for the most reasonable supervisory authority, as in the Norwegian act, whistleblowers have greater control over how they make their disclosure.

In the UK, S43B.1ERA '96 defines a qualifying disclosure as one that shows any of the following as having happened, currently happening or about to happen:

- a. Criminal offence
- b. Failure to comply with a legal obligation
- c. Miscarriage of justice
- d. Health and safety of an individual endangered
- e. Environment damage
- f. Concealment of any of the above

This prescriptive list provides some clarity and guidance to individuals as to whether their disclosure will be protected. However, the defined list does mean that disclosure of potential wrongdoing such as unethical behaviour may go unprotected because it does not fit within the clearly defined list.

Unlike the UK and the Netherlands, Norway does not provide a list of types of wrongdoing. Instead, individuals have a right to disclose censurable conditions (2-4.1WEA05). What is a censurable condition is not defined however Lewis and

Trygstad (2009; 378) suggest that the Norwegian word “Kritikkverdige” could be translated as wrongdoing as an alternative to censurable conditions. This suggests a wide range of behaviours that could qualify for protection. Whilst the legislative proposition sets out what may amount to 'censurable wrongdoing', Lewis and Trygstad (2009, p 382) highlight this is not easily accessible when compared to the legislation. This means that an individual may believe their disclosure is protected but when a court interprets the law in line with the proposition, the individual is not protected. Therefore, none of the laws here stands out as good practice in providing whistleblowers with clear guidance as to whether their disclosure will be protected.

#### **2.4.4 Legislative overview**

This section looking at the law has highlighted that whistleblowing provisions have been embedded within legislation and in the three countries reviewed this is in the employment context. We saw that only in the Netherlands did the trade unions push for the legislation. In reviewing the legislation, we saw that trade unions are not expressly mentioned as having a role, despite the fact as previously mentioned a trade union's role is to support its members and improve working conditions. Trade unions may look to the law to help provide advice as to what amounts to whistleblowing and this section has shown that it is not simple for trade unions to identify this and thus this may impact the role they play in supporting their members. This leads us to pose the second sub-question of this study namely ‘how does the law affect trade union engagement?’ As trade unions look to legislation to identify what rights they and their members have we can expect to see trade unions looking at the law to provide them with the mandate to act.

Having identified that the predominant purpose of legislation is to protect whistleblowers from victimisation, the next section goes on to look at the nature of victimisation and how it affects whistleblowers.



## **2.5 Retaliation**

Victimisation has been highlighted as a key aspect of the whistleblowing legislative regimes. Victimisation occurs when others undertake retaliation against the whistleblower for making a disclosure. Trade unions exist as has previously been identified to support their members and improve working conditions. We have seen that while the purpose of the law is to protect whistleblowers from victimisation in the UK it is reactionary and so only steps in once a whistleblower has faced adverse treatment for making a disclosure. Therefore, it becomes more important to identify the actors like trade unions that can engage in the whistleblowing process and potentially support whistleblowers and how they might reduce the adverse impacts of making a disclosure. This section will, therefore, start by showing that retaliation is not as widespread as expected. The subsection after that will discuss whether there are any characteristics of a whistleblower that may make them more or less likely to suffer victimisation. It will then look at the forms retaliation takes, splitting them into two categories. Through this, it will seek to understand retaliation and highlight the role of trade unions in reducing retaliation or supporting whistleblowers when they do face this victimisation.

### **2.5.1 Levels of retaliation**

Retaliation has been defined as "undesirable action taken against a whistleblower – in direct response to the whistleblowing – who reported wrongdoing internally or externally, outside the organisation"(Rehg et al 2008, p222). Malin (1983, p286) writes that the "whistleblower must expect employer retaliation and weigh the consequences in deciding whether to act". This suggests that retaliation is an expected outcome flowing from a whistleblowing disclosure. Smith (2014 p232) looked at rates of retaliation and found that the true picture is not really known as some research suggests very high rates of retaliation, whereas others show much lower rates. He emphasises that this is due to the research methods; the larger, more systematic studies which give the lower rates are more likely to give a true picture in his view. Miceli and Near (2013 p438) have compared several research papers from the US, Australia and Norway and they highlight that perceived negative treatment or retaliation varies between countries: 22% Australia, 4% to 8% in Norway and 17% to 38% in the US. In Australia, public interest whistleblowers did

not suggest they were treated badly. In an employee survey of public sector whistleblowers, 78% felt they were treated well or the same by managers and co-workers as a result of reporting the wrongdoing (Smith and Brown 2008, p123). In a US study of Directors of Internal Auditors, only 6% of the sample who completed the questionnaire reported facing some form of retaliation (Near and Miceli 1996 p517). The PCAW study (from the UK) noted that 40% of the callers reported receiving a response by management. Seventy-nine percent of the 40% actually experienced a response, whilst 7% had been threatened and 19% feared or expected a response (PCAW and University of Greenwich 2013). Fear of retaliation is considered a reason that people do not make disclosures (Teo and Caspersz 2011). It has also been suggested that whilst whistleblowers will be aware of, and may even expect, retaliation as part of disclosing, they do not accurately anticipate the amount of retaliation and its form (Rothschild and Miethe 1999). This suggestion is supported by the PCAW study, which found that whilst many expected dismissal, the actual behaviour of the employer was different. It found that informal, blocking and formal mechanisms were more common forms of retaliation (PCAW and University of Greenwich 2013).

### **2.5.2 Demographic predictors of retaliation**

Whistleblowing retaliation may be affected by gender and age; however, extant research does not provide consistent findings on particular correlations (Mesmer-Magnus and Viswesvaran 2005). In Australia, it has been highlighted that those individuals who have no obligation to disclose wrongdoing within their job role are likely to be young females with low levels of tenure, and in non-managerial posts (Wortley et al 2008). However, in a meta-analysis, Mesmer-Magnus and Viswesvaran (2005) found that although female employees were more likely to report, these females tended to have higher seniority. In the US, seniority was a factor connected to whistleblowing; however, Near and Miceli (1996) found that men – regardless of seniority – were more likely to report. Rehg et al (2008) hypothesised that the higher up in an organisation, the less likely retaliation will occur for male employees, but the power and organisational position did not appear to affect the rate of retaliation for women. It has also tentatively been suggested that the older a whistleblower is, the more likely they are to be retaliated against, as are those that

have greater value to the organisation (Mesmer-Magnus and Viswesvaran 2005). Smith (2014 p237) suggests that whilst most research on whistleblower characteristics around victimisation is patchy and inconsistent, occupational class is consistently evidenced as a factor. Hence, with regard to this research thesis, it could be expected that if more senior persons are less likely to be retaliated against, trade unions could work with those persons to promote effective whistleblowing. They could also use the individual's seniority to engage in policy discussion and implementation, which may reduce retaliation of those organisational members that do not hold senior positions.

Whistleblowing retaliation will usually be initiated by the organisational management (Mesmer-Magnus and Viswesvaran, 2005, p 281). In the Australian study, six factors were identified as increasing the likelihood of retaliation by management. These factors were established by looking at those who reported mistreatment by management. They found the greater risk existed when the investigation of wrongdoing was external to the organisation, a lack of positive outcome, where the wrongdoer was at a higher level, where wrongdoing was perceived to be serious or frequent and finally if the wrongdoer was the receiver of the disclosure (Brown and Olsen 2008)

Sometimes retaliation can be isolated acts by the supervisors or co-workers, with or without sanctioning by management. It has been suggested that supervisors or co-workers may do this out of fear that a whistleblower's claim may signal an inability to maintain order or have restrictions or cessation of their own operations or influence within an organisation (Mesmer-Magnus and Viswesvaran 2005). Retaliation by co-workers is limited. In Australia, an employee survey found that of 913 responses only 32 of those responses said they were treated badly by co-workers (Smith and Brown 2008, p123). The research found that those individuals who expected low levels of support from co-workers were more likely to report bad treatment from the co-worker (Brown and Olsen 2008). The study also found four key risk factors relating to mistreatment by co-workers. An individual's likelihood of facing retaliation by a co-worker was greater when the wrongdoing was serious, when the whistleblowing did not have a positive outcome, where more than one

person was involved in the wrongdoing, and, finally, if the workforce was less than 20 (Brown and Olsen 2008 p147).

In the PCAW findings, only 20% of respondents mentioned specific responses from colleagues, of which 58% was informal retaliation in the form of bullying, ostracisation or harassment (PCAW and University of Greenwich 2013). Smith (2014 p240), in his analysis of the current literature surrounding organisational characteristics of whistleblowing retaliation, concludes that where managers from all levels are positive and supportive, suffering is considerably lower. There is no certainty, however, over the role of co-worker support. Most research suggests that co-worker support was unrelated to retaliation (Miceli et al 2008). One study did find a link in the MSPB data for 1992 as the survey enables a more comprehensive measurement of retaliation. This correlation was found by adding four additional variables to those used in previous studies of the data<sup>21</sup> (Rehg 1998, cited in Miceli et al 2008, p111).

The whistleblower may face repercussions in the form of retaliation at any stage in the disclosure process, from informal suggestions of wrongdoing through to actually making a disclosure. Retaliation is less likely if making such a disclosure is part of their job role (Casal and Zalkind 1995). If, however, it is not part of the job role then retaliation becomes more likely. When a whistleblower has strong evidence, and, or is able to get the wrongdoing stopped then it would appear that they are less likely to be retaliated against (Mesmer-Magnus and Viswesvaran 2005). Retaliation is more likely to occur where there is serious wrongdoing, or the wrongdoing is systematic and central to the operation of the agency (Rothschild and Miethel 1999, Near and Miceli 2008).

Based on the extant literature, a number of expectations can be formulated for this research thesis. As retaliation is less likely to occur where it is part of the job role, this may allow trade unions to target resources for support towards those who are not required to make disclosures. Trade unions could work with employers to engage and support whistleblowers. The trade union could make efforts to show the

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21 These four variables were verbal harassment/intimidation, denial of award, being fired and being shunned by co-workers.

organisation is supportive of whistleblowers, where this is the case. This may then lead to an increase in disclosures and trust in both the policy and its potential output of change from those who have no obligation to disclose. However, there is no literature which currently addresses this point and is worthy of investigation.

This section has identified that there are very few clear demographic predictors of retaliation other than occupational class. It has identified that most retaliation starts with management, especially where the wrongdoing was higher up in the organisation. However, where managers are positive and supportive, retaliation is less likely to occur. In relation to co-workers, retaliation is limited but is more likely in smaller workplaces. Having seen the limited predictors of retaliation and the suggestions that trade unions can work with employers to support whistleblowers it will be important to understand what form of retaliation occurs. This should then help engage in those policy discussions and the advice and support they provide individual members.

### **2.5.3 Forms of retaliation**

Retaliation comes in many forms, and whistleblowers might experience multiple forms of retaliation throughout and after the disclosure period. One problem in identifying different forms of retaliation is that researchers have not developed a consensual approach to categorising retaliation. This observation has been highlighted by Smith (2014 p234) who looks at how researchers have attempted to categorise retaliation. He looks at the Australian 'Whistling While They Work' Questionnaire which detailed a list of types of bad treatment, and then looks at how others have developed and added to the list. The formation of this list enables us to see whether one type of retaliation is more or less common than another. This, however, is problematic. As Smith points out types of retaliation will affect people in different ways (2014 p234). The standard approach has then been to treat all forms of retaliation with the same weight but to sum them up (Miceli et al 2008, p105). This has, however, moved research away from analysis of specific types of retaliation (Smith 2014). Whilst an analysis of specific types of retaliation may be too difficult, as one type might be covered within another, the list of negative treatment could be

categorised more effectively. This could be done using Cortina and Magely's Work Retaliation Victimization (WRV) and Social Retaliation Victimization (SRV) model (2003). Such a suggestion was made by Miceli and Near (2008, p13), However, in the book, they did not go on to do this and so far whistleblowing research has not sought to take up this suggestion. To be able to categorise the retaliation, it is important to understand what the two types involve. From this point, we can then consider the various types of retaliation specified in the whistleblowing literature, and identify which of the two categories they fit in. This classification will enable us to identify how trade unions could be involved.

Work Retaliation Victimization is defined as:

*“work retaliation victimization (WRV) involves adverse work-related actions that have the purpose or effect of negatively altering the target's job and that are intended by the instigator or perceived by the target to be a reprisal for the target's behaviour” (Cortina and Magely 2003 p248).*

They suggest this includes actions that can be documented in employment records. Actions that are documented will often be as a result of disciplinary action or the lodging of a grievance. To be involved in either of these processes, one would normally expect a breach of the law, a company policy or an employment contract to have occurred. As such, things occurring within these boundaries make for a good indicator of WRV. With this in mind, we can look to whistleblowing retaliation research to identify recognised retaliation that we can classify as WRV.

Rothschild and Miethe undertook a survey of whistleblowers in the USA from various manufacturing type companies, administrative staff, nurses and non-profit organisational staff followed by interviews from 'every kind of workplace across the country' (1999, p109). They also re-analysed data from the U.S Merit System Protection Board data (1993 survey). Forms of WRV they found included 69% who lost their job or were forced to retire and 64% that had negative job performance evaluations (p120). The PCAW research found that only 40% of those who made a disclosure received a response from management. The responses (not including support) were categorised in four ways, three of which can be classed as WRV:

blocking resources, formal reprisal and dismissal. Blocking resources included actions such as preventing access to emails or training which may amount to a breach of an employment contract or company policies. Formal reprisal and dismissal are more clearly WRV as they include job loss, demotion and suspension (PCAW and University of Greenwich 2013 p16). Other studies have had similar results, as listed in Table 2.6 which sets out various types of WRV.

Trade unions engage in supporting workers and thus could play a valuable role here, but whether they do is a question yet to be answered in the literature. The scope of support will depend on the level of organisation or institutional resources they have. For grievances and disciplinary action, a trade union can be involved through representation rights, where these exist<sup>22</sup>. Where trade unions are recognised by the employer, be it through collective agreements or shop stewards, they may be able to use this power to apply pressure on an organisation to keep, change or create policy. They may be able to negotiate with an employer to be classified as a recipient of internal disclosures. Where trade unions have no recognition but have an internal membership, different forms of pressure such as legal action, use of media or community engagement may be used to empower and protect the whistleblower. Whilst these appear to be important factors, whistleblowing literature has not yet explored these and, as such, this research will look to address this gap.

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22 Under section 10 of the ERA '96 an individual is entitled to a union representative for certain employment issues regardless of whether the organisation officially recognises a union or not.

<b>ACTION</b>	<b>REFERENCED</b>
Loss of Employment	Rothschild and Miethe 1999, Smith and Brown 2008, Rehg et al 2008, Soeken and Soeken 1987
Forced Retirement	Rothschild and Miethe 1999, Soeken and Soeken 1987
Suspension	Smith and Brown 2008, Rehg et al 2008
Demotion	Cortina and Magely 2003, Svensson and Van Genugten 2013, Smith and Brown 2008, Rehg et al 2008, Soeken and Soeken 1987
Denied Promotion	Svensson and Van Genugten 2013, Smith and Brown 2008, Rehg et al 2008
Put on Probation	Smith and Brown 2008
Unfairly Disciplined	Cortina and Magely 2003, Smith and Brown 2008
Unfair Job Appraisal	Cortina and Magely 2003, Rothschild and Miethe 1999, Svensson and Van Genugten 2013, Smith and Brown 2008, Rehg et al 2008
Less Favourable Treatment	Cortina and Magely 2003, PCAW and University of Greenwich 2013, Svensson and Van Genugten 2013, Parmalee et al 1982, Near and Jensen 1983, Rehg et al 2008
Relocation	PCAW and University of Greenwich 2013, Smith and Brown 2008, Rehg et al 2008
Forced to Take Leave	Smith and Brown 2008
Denial of Training	Cortina and Magely 2003, PCAW and University of Greenwich 2013, Svensson and Van Genugten 2013, Smith and Brown 2008, Rehg et al 2008



Restricting Access ( security access, phones, email etc)	PCAW and University of Greenwich 2013, Smith and Brown 2008, Rehg et al 2008
Loss of Benefits (company car, phone, parking privileges etc.)	Parmalee et al 1982, Near and Jensen 1983, Smith and Brown 2008
Received Less Work	Smith and Brown 2008, Soeken and Soeken 1987
Received Heavier Workload	Parmalee et al 1982, Near and Jensen 1983, Smith and Brown 2008
Unsafe or Humiliating Work Provided	Smith and Brown 2008
Denial of Award	Rehg et al 2008
Salary Reduction	Soeken and Soeken 1987
Made to Work with Wrongdoer	Smith and Brown 2008
Made to see Psychiatrist or Counsellor	Smith and Brown 2008, Rehg et al 2008, Soeken and Soeken 1987
Denied or Given a Poor Reference	Smith and Brown 2008
Blacklisting	Rothschild and Miethe 1999
<i>Table 2.6: Forms of Work Retaliation Victimization</i>	

Alternative to WRV is Social Retaliation Victimization which is defined as:

*“Social retaliation victimization (SRV) involves antisocial behaviors that have the purpose or effect of negatively altering the interpersonal relations with other organizational members and that are intended by the instigator or perceived by the target to be a reprisal for the target’s behaviour” (Cortina and Magely 2003 p248).*

SRV is different from WRV in that it is not related to a breach of policy or law or evidenced in someone's employment file. Rather, SRV is about the unwritten communication between individuals. This will often affect individuals psychologically.

The Rothschild and Miethe study found 68% of whistleblowers were more closely monitored by supervisors and 69% were criticised or avoided by co-workers (1999, p120). We can classify this as SRV. They also found that 64% were blacklisted within their field (p120). Blacklisting is a complex phenomenon and can be seen as both WRV and SRV. It can be considered WRV as the current employer puts them on the list, thus doing an act which is detrimental to the whistleblower. This may prevent them from seeking a role change within the employer's business, which may also be in breach of a legal obligation or right. Blacklisting will also prohibit individuals gaining employment in the chosen career field. This will have a downstream effect of making the individual unable to build relationships and ostracising them from their profession of choice. This social element means that blacklisting can also be considered SRV. In the PCAW study, the fourth category of victimisation 'informal reprisal' can be placed in SRV. This is because it covers ostracising, monitoring and verbal harassment (PCAW and University of Greenwich 2013 p16). Several types of SRV are documented in the literature. These are set out in Table 2.7, which lists forms of social retaliation victimisation.

At this level, it may be harder for trade unions to have an impact on protecting whistleblowers. However, if trade unions take whistleblowing seriously, they may, at this level, seek to inform and educate members about the benefits of whistleblowing. If trade unions also get shop stewards or local representatives to take an interest in and support whistleblowers throughout the process it could lead to a reduction in SRV.

<b>ACTION</b>	<b>REFERENCED</b>
Shunned by Co-Workers	Cortina and Magely 2003, PCAW and University of Greenwich 2013*, Svensson and Van Genugten 2013, Smith and Brown 2008*, Rehg et al 2008**
Excluded by Co-Workers	Cortina and Magely 2003, PCAW and University of Greenwich 2013*, Svensson and Van Genugten 2013, Parmalee et al 1982, Near and Jensen 1983, Smith and Brown 2008*, Rehg et al 2008**
Slighted by Co-Workers	Cortina and Magely 2003, PCAW and University of Greenwich 2013*, Svensson and Van Genugten 2013, Smith and Brown 2008*
Ignored by Co-Workers	Cortina and Magely 2003, Rothschild and Miethe 1999, PCAW and University of Greenwich 2013*, Smith and Brown 2008*, Rehg et al 2008**
Gossiped About	Cortina and Magely 2003, Svensson and Van Genugten 2013
Considered a Troublemaker	Cortina and Magely 2003, Svensson and Van Genugten 2013
Closer Monitoring by Supervisor	Rothschild and Miethe 1999, PCAW and University of Greenwich 2013, Rehg et al 2008, Soeken and Soeken 1987
Criticised by Supervisors and/or Co-Workers	Rothschild and Miethe 1999, PCAW and University of Greenwich 2013, Svensson and Van Genugten 2013, Parmalee et al 1982, Near and Jensen 1983
Threatened	Cortina and Magely 2003, Svensson and Van Genugten 2013, Smith and Brown 2008
Blacklisting	Rothschild and Miethe 1999
Verbal Harassment by Supervisor and/or Co-Workers	PCAW and University of Greenwich 2013, Rehg et al 2008, Soeken and Soeken 1987
Was Blamed	Svensson and Van Genugten 2013

Pressured to Drop Disclosure or Law Suit	Parmalee et al 1982, Near and Jensen 1983, Rehg et al 2008
Authority Undermined	Smith and Brown 2008
Motives Questioned	Smith and Brown 2008
Harassment of Family and/or Friends	Smith and Brown 2008
Assaulted or Physical Harm	Smith and Brown 2008
* the study uses the word Ostracise which could encompass all these elements ** term used is 'not socializing' which would encompass these elements	
<i>Table 2.7: Forms of Social Retaliation Victimization</i>	

Previous studies have sought to group different types of retaliation under umbrella terms such as formal or informal, however, none of these studies have undertaken to map all types of recognised retaliation from the literature against a framework. These groupings have often been as a result of analysis of the data such as the University of Greenwich and PCAW study which did not start out with the formal, informal classification. Tables 2.6 and 2.7 provide an overview of how the extant literature maps onto these two categories. What remains unanswered is if the WRV/SRV can be useful in analysing data from a specific actor, i.e. here trade union representatives. Can the WRV/SRV be used to understand how participants perceive retaliation? This research attempts to do that.

#### **2.5.4 Retaliation after an internal or external disclosure**

As whistleblowing disclosures may be made internally or externally, it is important to look at when retaliation is likely to occur. Internal disclosure is a method used frequently by whistleblowers. Dworkin and Baucus (1998) suggest female employees would appear to favour this route, especially those with long service. This could be because female workers are often in more precarious working

environments. Dworkin and Baucus (1998) analysed 33 legal cases of people who had been fired. From the small sample, they found that managers in the US, when dealing with internal disclosure, having decided to take retaliatory measures against the whistleblower, tend to act quickly. This was especially the case in relation to dismissal or expulsion. Whilst they may briefly attempt to discredit the whistleblower, dismissal would come very soon after disclosure. Therefore, applying the Dworkin and Baucus study to the classification of retaliation discussed earlier, would suggest that internal whistleblowers are at greater risk of receiving WRV and this will often occur without SRV. Where SRV does occur, WRV will follow very quickly.

A person making an external disclosure will often see retaliatory action that takes time. The delay in being dismissed from employment will be pre-empted by being discredited (SRV), seeing the destruction of evidence and having performance management showing poor performance (WRV) (Dworkin and Baucus 1998). Those who go externally are likely to receive both WRV and SRV before the final act of WRV being the dismissal. This slow process has been suggested to be because the organisation may interpret external disclosure as a threat to its structure and authority (Near and Miceli 1986). However, the PCAW (2013) study shows that this is not the case in the UK. This study of advice line data suggests that in certain sectors such as financial services and health, dismissal is frequent for a first disclosure but if a second attempt at disclosure is made the risk of dismissal reduces. The study also highlights that using specialist channels internally led to informal reprisal and blocking resources. This was also the case where whistleblowers went straight to an external regulator (PCAW and University of Greenwich 2013). In a Dutch study of complaints to the Equal Treatment Commission regarding inequality at work, they found no difference in the type or level of retaliation. This was between those who made an internal disclosure first, compared with those who went straight to the Commission (Svensson and Van Genugten 2013).

The risk of external disclosure is increased where retaliation occurs after an internal disclosure is made (Rothschild and Miethe 1999). This has been highlighted as more likely in the case of female whistleblowers (Rehg et al 2008, p236). Although the risk of retaliation is increased by an external disclosure, the whistleblower's

perception of that retaliation is that it occurs prior to them actually making the disclosure (Rehg et al 2008.) An employer may seek to limit whistleblowing by making threats. The threat of retaliation is likely to lead the whistleblower to undertake more whistleblowing not less (Miceli and Near 1985). Having said that, an increase in whistleblowing will occur. This must be weighed against the fact that an organisation's treatment of a whistleblower will have an effect on a whistleblower's intentions and whether they will make a disclosure in future (Casal and Zalkind 1995, Liyanarachchi and Newdick 2009). The more retaliation employees are aware of, the greater the likelihood that employees will remain silent in future.

### **2.5.5 Victimisation overview**

This section of the chapter has reviewed what is known about victimisation. It identified that whistleblowing is not as widespread as anticipated. The section also addressed the demographics of whistleblowers, showing that co-worker retaliation is more likely to occur in smaller organisations, whereas managers are more likely to retaliate against whistleblowers based not on the size of the organisation, but rather how high up the organisation the wrongdoing is said to occur.

It identified that the research to date has not explored the types of retaliation in a manner that enables an effective understanding of how whistleblowers might be supported based on the type of retaliation they face. It suggested a different way of classifying victimisation, namely Work and Social Retaliation Victimisation may be better. The literature on victimisation was analysed and Tables 2.6 and 2.7 categorised them into WRV and SRV. This study will use this classification to analyse the trade union's role in the whistleblowing process. This may provide wider insights into our understanding of retaliation.

It was also highlighted that little is known about how trade unions help victimised whistleblowers. It was suggested that, due to the employment contractual elements of WRV and the role of trade unions, trade unions would be better at tackling WRV as opposed to SRV, which is rather subjective. This has not been dealt with in the literature to date and thus this expectation will be explored in the study. However, a wider understanding of the unions' engagement in supporting victimised

whistleblowers is needed and this leads us to ask the question, 'How does the type of victimisation affect union engagement?'

Further speculating for the purposes of this research, drawing on the previous sections of this literature and mapping with this discussion on retaliation. With internal disclosures being an important process, trade unions could have an important role to play. What role a trade union may have will depend, to an extent, on resources or voice (discussed later) it has within an organisation. Trade unions that have strong resources within an organisation might be considered an internal receiver of a disclosure. However, if a whistleblower goes to a regional representative, this may be considered as external. Where a trade union is involved in collective bargaining, they may be able to secure the right to be a receiver of disclosures. Having this will provide an extra level of distance between the disclosure and the whistleblower which may reduce the likelihood of retaliation. Where there is a cooperative relationship between the organisation and the trade union it would be anticipated that the union will also be able to hold the organisation to account and make sure the policy is complied with. By doing this, it increases trust in the policy and may reduce the likelihood of an external disclosure where the organisation does not agree with the original disclosure. Where the trade union is unable to secure a right to receive a disclosure, or does not have a collective bargaining arrangement, they could make sure they have a communication channel to senior management and have open discussions with them. By having this open communication, trade unions can make sure that senior organisation members are aware and are acting on any disclosure that may be made. They can also apply pressure on senior managers to protect the whistleblower, where lower managers or colleagues are seeking to take retaliatory action. Where this is not an option for trade unions, such as when they have no recognition, they should, at a minimum, be able to support their members through attendance and representation at any meetings around the disclosure. This will provide the whistleblower with some support and the trade union can make sure that the organisation does not try to apply pressure on the individual or take action that may increase the likelihood of the disclosure being withdrawn or the whistleblower being retaliated against. By taking these steps, whistleblowers may have more trust in the systems and policies, which could lead to a decline in external disclosures and reports of retaliation.

However, as the literature on the role of trade unions and whistleblowing is limited, the above only exists as expectations drawn from the whistleblowing literature. These expectations around how trade unions can fulfil the role of supporting whistleblowers will be considered as part of this research.



## 2.6 Organisations

The context within which trade unions exist is an important factor, as highlighted earlier in the social and legal sections. Trade unions do not work in a vacuum, and there are other organisations that exist and provide a function in supporting whistleblowers. Until recently little attention has been placed on these other organisations that may support whistleblowing. This study has identified that there are three main overarching roles that can be done by organisations when supporting whistleblowers namely advisory, investigatory and adjudicatory. Loyens & Vandekerckhove 2018 have developed this by suggesting that there are eight functions external agents could participate in, these map effectively against the three broad categories used in this study<sup>23</sup>. This study does not seek to explore these functions necessarily, but rather to identify more generally which organisations exist in the space of each role. In doing so we become more aware of the potential for conflicts and alliances between these different actors. Vandekerckhove and Dentchev (2004) suggest that focusing on conflicts and alliances between stakeholders in relation to a specific issue provides greater opportunity for a consensus in moving forward in that given situation. The study aims are limited to exploring whether trade unions fit in the role they appear to have and their interactions with others. Therefore, there is little value for this study in exploring in greater depth distinctions between groups that sit within a group such as between a government agency or an NGO. Furthermore, greater depth into Loyens and Vandekerckhove's eight functions adds little to the study. It is important in the context of this thesis to understand these other groups, as they may affect how trade unions choose to utilise their voice, for example through cooperation or avoidance of the groups or the whistleblower themselves. This section explores these organisations. It addresses the position within the UK. As identified at the beginning of this chapter, differences between countries may affect union engagement. Thus, the section goes on to identify whether there are alternative

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23 While the three groups approach has not been published, it was developed early in the researchers' studies for this doctorate. Based on discussions with Dr Wim Vandekerckhove the principal supervisor of this study the idea was more formalised. This was then presented By Dr Vandekerckhove to the House of Whistleblowers in the Netherlands in 2016. This then formed part of a wider project to which the researcher was not involved which led to the more defined perspective in the research publication referenced.

groups in Norway and the Netherlands which may impact on the union's engagement.

### **2.6.1 Advisory**

The advisory-type organisations seek to support whistleblowers by providing advice around whether an individual has information which may be suitable for a disclosure under the relevant legislative scheme. Alongside this, they will advise on how to make any disclosure and the processes to be undertaken. In some cases, the organisations may provide advice on how to receive appropriate support whilst going through the process. In the context of Loyens and Vandekerckhove's functions legal support, advice, prevention and psycho-social support would fit. Below is a brief description of various groups in the UK that seek to provide whistleblowers with advice.

#### **2.6.1.1 General advisory organisations**

There are organisations that provide wide-ranging levels of advice to individuals where whistleblowing is merely a single element. They will, in general, provide overarching advice or refer individuals to more specific advice-giving organisations. Trade unions can provide general advice to their members around the employment position. So, although not discussed below, trade unions are part of this group of organisations.

In the United Kingdom, there is an organisation called the Citizens Advice Service. It was started in 1939. The main focus of any advice it provides is the employment relationship and it seeks to maintain the working status of the individual through advising on employment rights or contacting employers on an individual's behalf. As it seeks to provide advice on the employment position, its focus for advice is not on rectifying the alleged wrongdoing. Individuals will attend the advice service when a problem already exists, such as after a disclosure has been made and the individual is facing retaliation. The organisation will often refer whistleblowers to the more specific whistleblowing advice charity Public Concern at Work<sup>24</sup> (CAS16).

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24 Now known as Protect

Solicitors or legal advisors will provide advice to individuals about any legal issues an individual may have within their specialisation. Employment lawyers will be able to provide advice to individuals on whistleblowing concerns. However, people tend to approach a solicitor after an employment issue has arisen and has not been rectified or resolved to the individual's satisfaction. Therefore, a whistleblower is only likely to seek a solicitor's support once the disclosure has been made. Furthermore, a solicitor will only be able to advise on the legal aspects of whistleblowing so will not always be able to advise on how to stop the wrongdoing.

Individuals may also choose to go to the Advisory, Conciliation and Arbitration Service (ACAS) in the UK. This is a government formed organisation set up to provide help through a national advice line for individuals with employment-related issues or questions.

#### **2.6.1.2 Whistleblowing-specific advisory organisations**

Some organisations are created with the specific purpose of advising or supporting whistleblowers. Public Concern at Work is a UK-based charity established in 1993 to provide advice to whistleblowers. The charity provides a phone advice line. All advice is provided free of charge and confidentially. As the organisation employs legally qualified persons and is regulated by the Solicitors Regulation Authority, the advice provided is subject to legal professional privilege. This means it can be withheld by the relevant parties from disclosure to third parties and the courts. Thus, the advice is truly confidential. The charity believes that every employment tribunal claim is evidence of a failing (PCAW2016a) and therefore early intervention is better for individuals, employers and society. Whilst they aim to assist whistleblowers before they make a disclosure, a significant number of the calls received are from individuals who have already disclosed wrongdoing and are looking for advice on the next step or law (PCAW and University of Greenwich, 2013). Since 2011 they have seen a 25% increase in calls to the advice line with a yearly average of 2000 calls (PCAW 2016b).

Whistleblowers UK another group seeks to provide support through encouragement and support from the point of contact. Where necessary, they refer individuals to

solicitors for help with claims having formed relationships with solicitors who will provide an initial free consultation.

## **2.6.2 Investigatory organisations**

Some organisations exist with the power to investigate. In general, this power is provided through legislation, but in some situations, it exists through an organisation's public profile. Trade unions may be able to investigate concerns raised by whistleblowers, but this is dependent upon the relationship and recognition a union has within any organisation. Loyens and Vandekerckhove have two functions that fall within this category investigate wrongdoing and investigate retaliation.

The media will often be interested in cases of wrongdoing. The media get involved in various ways. In some cases, they will investigate wrongdoing by sending in undercover agents and then produce a newspaper article or do a documentary. In 2010 Terry Bryant disclosed to the BBC that there was abuse at a care home. BBC Panorama investigated and aired a programme highlighting the abuses, leading to many criminal convictions (The Guardian 2012). In other cases, they may just print the story to highlight the issue. There are often intermediary companies involved in introducing whistleblowers to the media. This can help, as it enables a whistleblower to maintain anonymity, but at the same time, these companies may be involved in order to procure a financial benefit which may later restrict whistleblowers' legal options.

As highlighted in the legal section, a whistleblower can make a disclosure to a prescribed person in the UK. Prescribed persons are appointed by legislation and a list of these organisations is maintained by the government. When receiving a report of wrongdoing, a prescribed person can choose whether to undertake an investigation or not. In some cases, where a prescribed person undertakes regular reviews of organisations e.g. Care Quality Commission for care homes or Ofsted for Schools, they may use the information as part of their next review. Some prescribed persons may also ask the organisation to provide a report about the issue, or they

may undertake an investigation. The choice as to what action is undertaken is for the prescribed person and not the discloser.

### **2.6.3 Adjudicatory organisations**

Specific organisations, such as courts, exist to make legal determinations around disputes. However, some organisations adjudicate on issues prior to it going before the courts. In Loyens and Vandekerckhove's model, the final two functions namely protection and corrective actions would fall within this group.

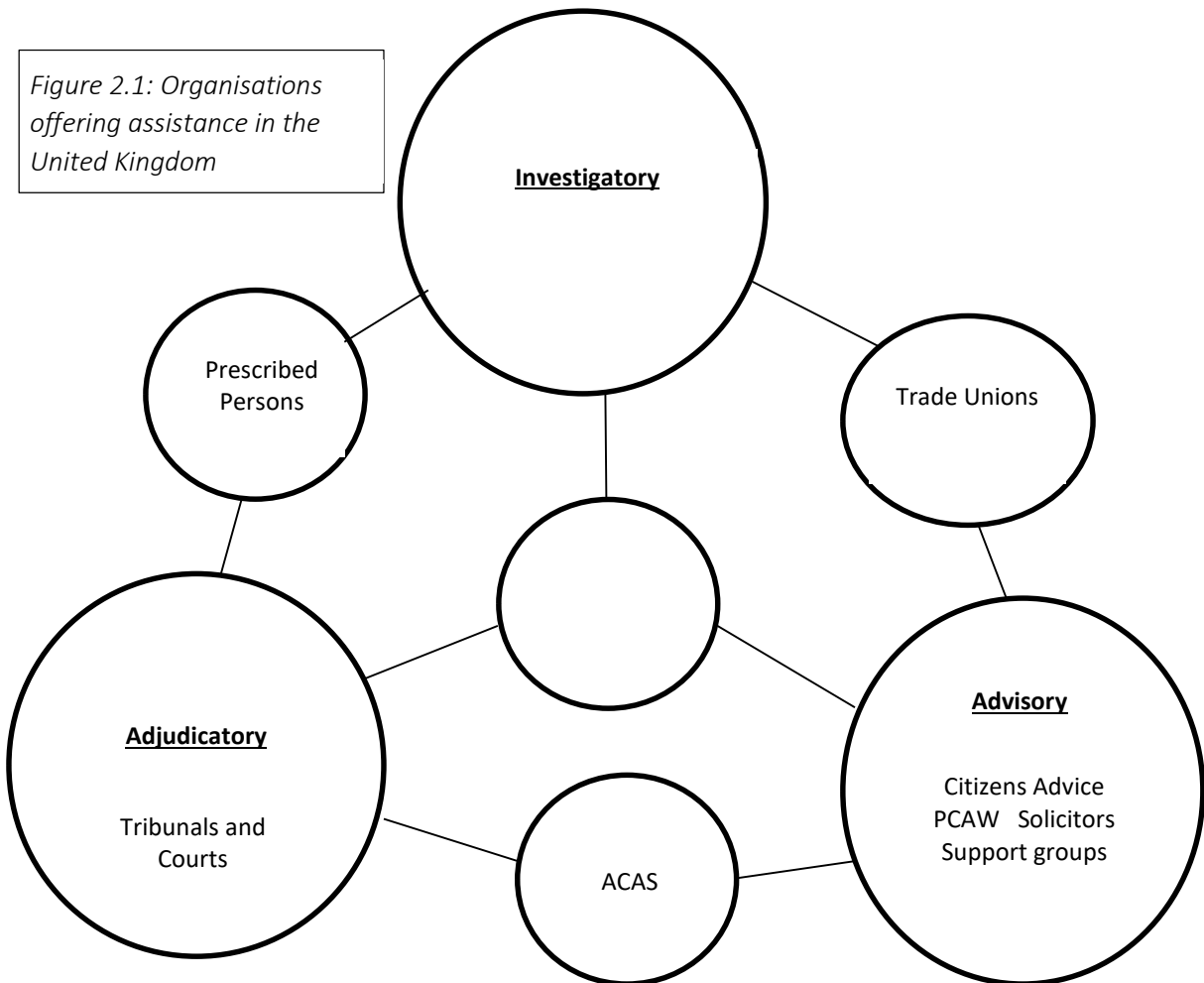
Some prescribed persons in the UK oversee a specific sector and sometimes have the power to enforce action against an organisation where they act contrary to the law or standards set by the regulator. ACAS also provide an adjudicatory function in that prior to lodging an employment tribunal claim there must be a period of conciliation or mediation which is overseen by ACAS. The purpose is to seek an agreement between the parties in a way that may retain a working relationship between the parties (ACAS 2013). Any agreement that ACAS secures is legally binding on the parties.

Tribunals and courts are organisations involved often at the end of the process when things have gone wrong for the whistleblower. The role of a court or tribunal is to identify the facts and then apply the law to them. In the UK the Employment Tribunal is where a claim by a whistleblower will be brought. However, a tribunal will only be looking at the legal protection provided, namely protection from victimisation or harassment. They do not investigate whether the facts surrounding the disclosure are true and have no power to compel the organisation to rectify any wrongdoing. The Employment Appeals Tribunal, Court of Appeal and Supreme Court will only become involved if an appeal is made based on the fact the lower tribunal or court made an error of law. As in the Employment Tribunal, these courts have no role in addressing the alleged wrongdoing.

### **2.6.4 Mapping the UK**

Having identified the types of groups in the UK, we can see there are many advisory organisations, several of which have dual functions such as the prescribed persons. However, no organisation provides all three functions. This can be seen in Figure

2.1 which plots the UK organisations in line with the above discussion. Where an organisation falls into a dual role, they appear in the bubble between the two roles. The central bubble means they undertake all three roles.



### 2.6.5 Norway

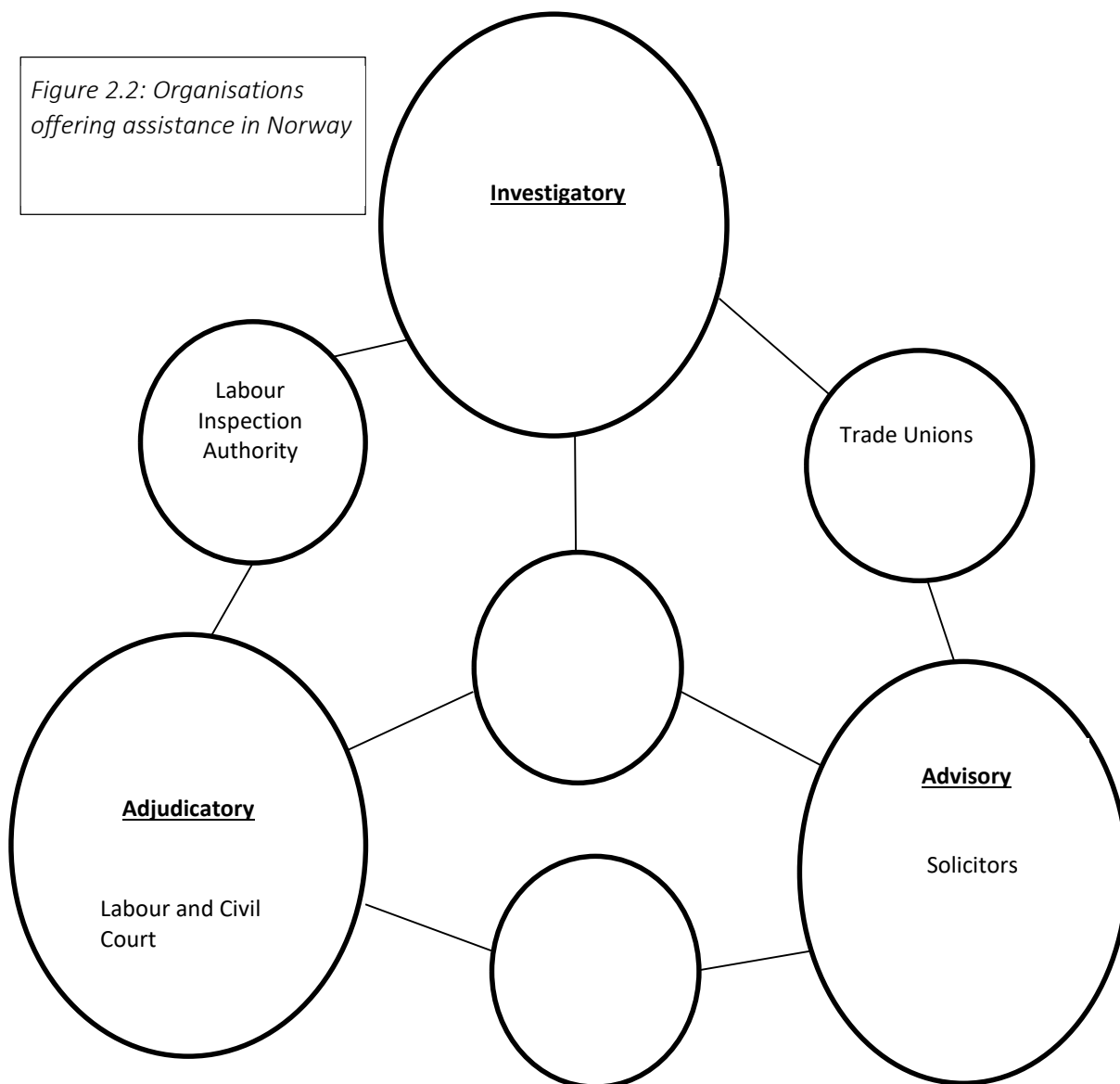
In Norway, we see a difference in that there are fewer organisations available to whistleblowers. While there are some similarities with the UK, there are a few important distinctions. At the advisory level, there are only trade unions and solicitors. Thus, the space for trade unions to engage in advising members is greater. In terms of investigation, the labour inspection authority has the power to investigate any concern raised which involves a breach of the Working Environments Act 2005, providing it is not an individual dispute. The authority decides what action to take. This can include inspection, or it can order the organisation to provide a report. The Labour Inspector can also adjudicate in that it

can order an organisation to undertake certain actions to rectify breaches of the Working Environment Act 2005.

Unlike in the UK, where a whistleblower must go to an employment tribunal, individuals in Norway may take a claim to one of two courts. Firstly, there is the labour court. The labour court, however, will only investigate issues surrounding collective agreements (Arbeidsretten, 2016). Therefore, if whistleblowing is not part of a collective agreement, the labour court has no jurisdiction. When it is part of an agreement, the labour court will seek to interpret the agreement to provide the parties with the meaning of any section. However, the labour court is not entitled to consider individual disputes and is, therefore, unlikely to get involved in a whistleblowing case; a whistleblower would have to go the regular civil court. In the first instance, a case would go to the district court (Domstol 2016). Again, the court will be only be concerned with the legal rights of the individual rather than correcting any wrongdoing. If an appeal is raised to the court of appeal, the case is reheard. Thus, the whistleblower has two opportunities to prove their employer breached the law. The supreme court does not rehear a case but looks to ensure the legal process was complied with.

As can be seen from Figure 2.2, which draws on the different groups in Norway, much like the UK, no one organisation performs all three functions. The important difference is that there appear to be fewer organisations in Norway to support whistleblowing, which provides trade unions with a greater opportunity to support whistleblowers, especially at the advisory level.

Figure 2.2: Organisations offering assistance in Norway



### 2.6.6 The Netherlands

In the Netherlands, we see a similar picture to the UK around advisory functions, namely that there are several. One such group is the Expertgroup Whistleblower, which was established in 2010 by a number of whistleblowers. These had been operating informally as a network for supporting and advising individual whistleblowers. The formal organisation 'Expertgroup' serves to lobby policymakers. In the lead up to the law introducing the House for Whistleblowers, the Expertgroup had a formal role in advising lawmakers on par with the Foundation of Labour.

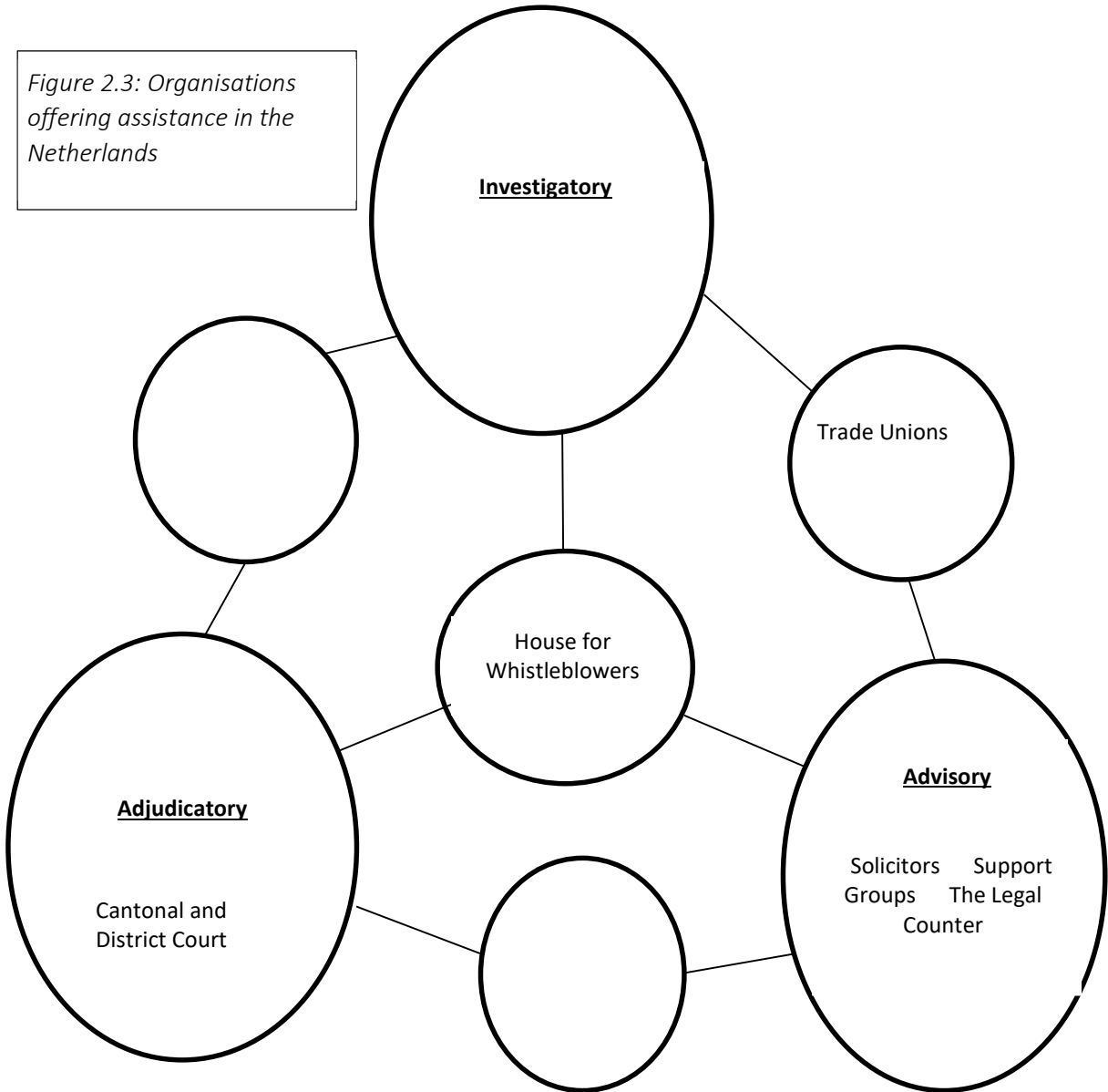


At adjudicatory level, much like Norway, the Netherlands do not have a specialist employment tribunal or court (Burgess et al, 2011). An individual would need to use the civil system. In the first instance, an individual will apply to the district court. Some employment issues are dealt with by the canton court, which is a subdivision of the district court. The district court's decision is final. The court of appeal can only be called upon where vital evidence was missed or on a point of law. The supreme court can only be used on a point of law. Whilst the Dutch legislation on whistleblowing is different to that of the UK and Norway, the whistleblowing law does not provide the courts with an opportunity to investigate wrongdoing.

Where the Netherlands is different to both the UK and Norway is that there is one organisation that can provide all three functions. Under the Whistleblower Centre Act 2016, the Dutch government created the House for Whistleblowers. The house subsumed the Adviespunt Klokkenluiders (advice centre for whistleblowers), which had existed since 2012. The advice arm of the house undertakes to provide advice on whether something is work-related malpractice, or how to raise the disclosure within the law. They also seek to familiarise individuals with their workplace rights. Individuals who are conflicted between raising a concern and remaining loyal to their employer can receive psychosocial support from the house (House for Whistleblowers 2016). The advice is free and confidential.

The House can also investigate any concerns raised with it. The concern can either relate to suspected wrongdoing or to the fact an individual is facing retaliation for making a disclosure. Any investigation undertaken by the House is done by a separate part of the House and so is independent of the advice section. Having investigated, the House will file a report. In that report, they provide a determination on the concern raised, and, if wrongdoing is found, they make non-binding recommendations and thus have an adjudicatory function. The position in the Netherlands can be seen in Figure 2.3. With one organisation providing all three roles, trade unions could be well placed to engage with that organisation to support whistleblowers.

Figure 2.3: Organisations offering assistance in the Netherlands



Trade unions are uniquely placed in the intersection between advisory and investigatory roles. However, this is not as clear as it appears, as consideration must be paid to the fact that trade unions do not exist in every organisation and some organisations recognise a trade union but do so for legal reasons rather than a desire to engage and have a mutually beneficial relationship. Having identified that there may be avenues which may affect trade unions both negatively, through too many organisations, and positively, a singular organisation which performs all three functions, we can see that this may affect the trade union's response. Having a better understanding of if and how trade unions view these organisations and interact with them, which is currently unknown, will help us address the overarching

question of this study namely, 'What role do trade unions play in supporting whistleblowers?'. Furthermore, as engagement with these groups will involve trade unions utilising their voice, looking at these relationships will help address one of the underlying questions namely, 'How do trade unions use their voice to support whistleblowers?'.

Having identified this connection to union voice, the next sections of this chapter will go on to explore this in more detail.

## **2.7 Employee and trade union voice**

This section of employee voice looks at employee voice in a general context before Section 2.8 explores specific voice mechanisms connected to trade unions. This section will discuss the failure of the literature to consider whistleblowing within the context of voice. From this, it will then draw the various streams of voice scholarship together. This will provide a better way of viewing whistleblowing as a way of expressing voice. The second aspect of this section will be to understand how voice is utilised and where trade unions currently do or potentially could have a role. Addressing whistleblowing as a voice mechanism and then unions as having a role in 'voice' will help in the formulation of a framework for whistleblowing and trade unions. This will then enable this research to understand how trade union voice affects how unions undertake the role of supporting whistleblowers, which is one of the research questions posed by this research.

### **2.7.1 Voice literature**

Following Hirschman (1970), Mesmer-Magnus and Viswesvaran (2005: 280) suggest that organisational members have three options when deciding whether to blow the whistle: to exit the organisation, voice discontent, or remain silent. For individuals to express voice, they require an avenue to do this; therefore, it is important to understand how organisations allow this to occur. Within the literature, on human resource management (HRM), employee relations (ER) and organisational behaviour (OB) there are various strands of employee voice that seek to understand how voice is utilised. Human resources management and employee relations considers in-role voice mechanisms, differing between direct and indirect voice channels respectively, whereas organisational behaviour looks at extra-role voice.

### **2.7.2 Organisational behaviour (OB)**

Barry and Wilkinson (2015: 2) highlight that voice in the context of organisational behaviour (OB) is seen as "an expression of the desire and choice of individual workers to communicate information and ideas to management for the benefit of organisations." This is formed from various definitions, including that by Van Dyne

and Lepine (1998; 109) which defines it as "promotive behavior that emphasizes expression of constructive challenge intended to improve rather than merely criticize." This definition led to a split in the OB literature into two domains, namely that of prosocial and justice-oriented voice. Prosocial voice is about an individual using their voice for the benefit of another individual, the organisation, or society. Justice-oriented voice, on the other hand, is related to how the individual voices their concerns about being mistreated and the fairness of the work environment. With the OB scholarship, whistleblowing is considered as justice-oriented voice rather than prosocial (see for example Seifert 2006, Van Dyne et al, 1995). This is problematic as an individual whistleblower will often be disclosing a concern about something that does not directly affect them, but rather affects another individual, the organisation or society.

As part of the OB voice literature, Van Dyne et al (1995: 218) sought to understand employee voice through the lens of extra-role behaviours. Extra-role behaviours were defined as "behavior which benefits the organization and/or is intended to benefit the organization, which is discretionary and goes beyond existing role expectations." They look at four types of behaviours, two of which were whistleblowing and prosocial behaviours. By creating this distinction within the OB employee voice literature, further research has continued to treat prosocial and whistleblowing separately. Van Dyne et al (1995: 247) argue that whilst whistleblowing and prosocial behaviours have similarities, whistleblowing does not meet their definition of prosocial as they favour a much more fixed definition where prosocial is helping individual persons. This is contrary to the whistleblowing literature which has argued it is a prosocial behaviour because whistleblowing does not usually benefit the individual whistleblower but will benefit persons or organisations (Dozier and Miceli 1985).

Since then, the OB prosocial voice view has continued to develop, and the definition has been refined. Morrison (2011: 375) summarises the need for three factors to exist for voice to be prosocial. Firstly, she argues that it must be a verbal expression where messages are conveyed from one person to another. Secondly, it is discretionary, so an individual makes an active choice to engage based on surrounding factors. Thirdly, it must be constructive. It should, therefore, be made

with the intention of bringing about positive change. It is an assertion of this research thesis that whistleblowing meets these criteria, as an individual will voice to a person in the organisation with the intention of bringing about change. This disclosure will usually be done outside of their employment contract. Hence, contrary to the OB prosocial voice literature, the whistleblowing literature sees whistleblowing as being a prosocial voice behaviour. Seeing whistleblowing as prosocial is important, as it moves the focus of the disclosure away from the whistleblower onto the wrongdoing and the organisation. Having said this, we must now look into the justice-orientated literature to see whether there is justification for considering whistleblowing as a justice-orientated voice.

A justice-oriented voice within OB revolves around how individuals view aspects of work that may lead to a perception of being mistreated and how they then voice that (Olson-Buchanan and Boswell 2008). Olson-Buchanan and Boswell (2008: 78) conceptualise a framework for a justice-orientated voice. This involves an individual going through a process of sense-making, which involves speaking with someone who is not involved in the issue to decide whether they have been mistreated. From this, the individual then decides whether to use the relevant voice mechanisms or not. Thus, the justice-oriented voice strand looks at how individuals react to situations that directly affect them (Bies et al 1988). In the whistleblowing context, Seifert (2006) found that there was a high likelihood of reporting when the circumstances of the whistleblowing were deemed fair. By circumstances, she considered three aspects namely whistleblowing procedures, interactions with management and the resolution of the 'complaint'. When these were deemed unfair, the likelihood of reporting diminished.

Whilst whistleblowers must have trust in the policy and its fairness, this research thesis asserts that whistleblowing does not sit well within the justice-oriented voice stream. Whistleblowers will often not be the recipient of mistreatment other than retaliation after having made a disclosure. They are often third parties within the organisation who merely observe wrongdoing and decide to disclose it to someone who may bring about change. As the perceived wrongdoing is not against the whistleblower, they will not be seeking a personal remedy by disclosing. Therefore,

a justice-orientated voice is not the only appropriate forum for whistleblowing in the context of employee voice.

Having considered the OB literature related to employee voice, we can see that whistleblowing is currently considered as something it is not, at least not in resonance with findings and approaches found in the whistleblowing literature. It seems that there is a better resonance with the assumptions of the prosocial 'employee voice' literature. However, this remains problematic as this stream of literature considers whistleblowing and prosocial voice as an extra-role behaviour. Whilst extra-role behaviour can occur in the workplace, it is outside of the organisational norms. It is, therefore, necessary to consider how whistleblowing is viewed within the workplace structures that exist such as policies. This next section will go on to address this by looking at 'employee voice' within the human resource management and employee relations literature streams.

### **2.7.3 Human resources management/employee relations (HRM/ER)**

Barry and Wilkinson (2015: 3) define human resource management and employee relations (HRM/ER) voice as "institutionally embedded in ways that structure and limit the choice to voice". Van Dyne and Lepine (1998) view this form of voice as in-role behaviour; in other words, something one does within one's job role within the organisation. The distinction between ER voice and HRM voice is the mechanism used. ER puts its focus on indirect voice. By this, we mean individuals using non-personal channels such as trade unions or works councils. On the other hand, HRM voice is much more focused on direct voice mechanisms. Direct voice means individuals in discussion with line managers, or individuals personally using policies and procedures that are in place (Barry and Wilkinson 2015). As whistleblowing has been considered as an extra-role behaviour by the OB voice literature, it has not been considered as an in-role behaviour and, therefore, the HRM and ER voice literature does not discuss it. The whistleblowing research discussed earlier in section 2.5 suggests that whistleblowers will often use internal mechanisms such as dialogue with managers or policies. It is therefore of importance to understand the process of in-role voice used by whistleblowers. Do whistleblowers use direct or indirect voice channels, or both, and in what order? By having a clearer understanding of the in-role voice mechanisms whistleblowers use, this research

will consider where trade unions are currently engaged, and how that may be developed to improve outcomes for whistleblowing disclosures. This research will also seek to enhance the conceptualisation of whistleblowing as a form of voice, and vis-à-vis the OB and the HRM/ER scholarship.

The voice literature above has not considered whistleblowing as an expression of voice due to it not fitting within the framework of the given area. Burke and Cooper (2013) in discussing why voice matters highlight many examples of whistleblowers raising their voices to express concern. However, their book makes little time for understanding whistleblowing as an expression of voice. The most comprehensive chapter on whistleblowing by Miceli and Near compounds this distinction by noting that while some whistleblowing could be seen as voice a lot is not and vice versa some voice is whistleblowing, but much voice is not whistleblowing (Miceli and Near 2013, chapter 7). They suggest that there are four key distinctions that set whistleblowing and voice on different paths. Firstly, they argue that whistleblowing is much more limited in scope as to what triggers an individual to raise a concern. Secondly, the channels for voice are distinct as voice is internal compared to whistleblowing which can be external. Thirdly, the voice should be constructively perceived by the organisation whereas whistleblowing is often not seen as constructive by the organisation but maybe by wider society. Finally, they highlight that voice is focused on employee expression whereas whistleblowing is broader to encompass organisational members.

While these four differences may exist, they do little to undermine this thesis position that whistleblowing is fundamentally an expression of voice. The idea that whistleblowing is more restrictive than voice is to suggest that voice is of itself a clearly defined thing. As the previous discussion has highlighted this is not the case as you have various streams of voice such as in role and extra role. Thus, viewed in this way voice is an overarching term that encompasses many ways individuals share information with others. Whistleblowing is merely one area in which an individual or group can use their voice.

Secondly, the idea that voice channels differ as voice is internal whereas whistleblowing has the potential to go external is to create a meaningless distinction.



As discussed earlier the majority of whistleblowing is internal (Vandekerckhove and Phillips 2019), and thus would likely use channels that other expressions of voice engage with such as management dialogue. Furthermore, voice can and is expressed externally. For example, in the United Kingdom schools are inspected regularly to check they are maintaining standards. As part of these checks, the inspectors who are external will speak to staff about a myriad of things. Staff engaging in these discussions clearly utilise voice. The inspector may draw on or quote the staff in their reports which are publicly available.

Thirdly they suggest that voice should be constructively viewed by the organisation and as whistleblowing challenges wrongdoing and norms it is often not viewed this way. They argue that whistleblowing should be viewed as constructive as it brings about benefits for the organisation. However, not all voice within an organisation is constructive for example two colleagues who raise grievances against each other is individual voice but is unlikely to be constructive for an organisation. The fourth distinction is a valid one but as it relates to the individuals' position it has little bearing on the question of whether it is voice. These distinctions do little to justify whistleblowing being excluded as an expression of voice.

While the streams of literature posit whistleblowing as outside of voice or justice based voice, this study takes the view that whistleblowing is an expression of voice and can fit easily within the structures of individual voice as advocated in more recent whistleblowing literature (Kenny, Vandekerckhove and Irfan 2020). To further prepare the theoretical contribution of this research, the next section discusses a recent attempt to integrate the various strand of voice scholarship.

#### **2.7.4 Framework for viewing voice**

Mowbray et al (2015) have sought to reintegrate these various streams of 'employee voice' within the literature, advocating a common three-stage framework for understanding voice. The three stages consist of motive and content, mechanism and target, and channel. The three-stage model can be seen in Figure 2.4, which is an adapted version to show how whistleblowing and trade unions can be part of the voice process. Trade unions do not feature in Mowbray et al's model, as in their

integrative review of the literature, which led to the model they considered trade-unions to part of indirect voice. They recognise this shortfall in their analysis of the literature but highlight that their focus was on identifying a model for employee-management interaction (p394). However, as previously identified S10 of the Employment Rights Act 1999 gives trade unions representation rights in specific employee-management interactions, so this distinction is questionable.

In considering the first stage, motive and content, Mowbray et al (2015) identify that each aspect of voice is a motive in its own right. Motivation can be prosocial or justice-based, as derived from organisational behaviour literature, or dissatisfaction from the ER/HRM literature. In relation to content, this is considered as the issue that provides the motivation to voice. This will either be a personal issue or an organisational issue, this being something done by the organisation as a whole, which causes an individual reason to voice.

The second stage of the framework addresses the mechanism and target. The mechanism enables a view of how a person uses voice. There is a wide range of mechanisms which can include informal discussions, emails, policies and using work councils. The target refers to who receives the information. This can range from a line manager to human resources (HR). Once the individual has chosen how and to whom, the third stage begins, where it is determined whether the information is disclosed formally or informally. If an individual chooses to use a suggestion scheme (mechanism), which is controlled by a line manager (target), this is likely to be considered as an informal channel. An example of a formal channel would be using a policy through HR.

There are two further aspects to consider to Mowbray et al's model. Firstly, they suggest that between stages one and two there is the potential for mediating factors. Mowbray et al (2015: 392) identify from the literature that the role of leadership in an organisation can impact an individual's voice choices. They suggest that a supervisor may be able to influence what mechanism or target an individual uses. The more open and positive the relationship between an individual and their supervisor, the greater the likelihood that the supervisor will have an impact on the individual's voice channel, although this may be limited, depending on the

relationship of the supervisor and their superiors. The second aspect of the model is that it enables operation both sequentially and in parallel. Therefore, if an individual voices a concern and it is not dealt with, they can go back to stage two and re-voice. This can occur as many times as an individual feels necessary. The individual may also choose to voice to two people at the same time. They may informally speak to their line manager, whilst also invoking a policy with human resources within the organisation.

While to date it has been discussed that whistleblowing does not sit well within voice according to the voice literature, This, model provides an opportunity to re-evaluate that. Kenny, Vandekerckhove and Irfan (2020) seek to do just that. Without, seeking to undermine the voice literature they use Mowbray et al's 2015 structure to explore how whistleblowing fits into the model theoretically. In doing so they suggest that at stage one rather than focusing on motive we should look at the impetus which leads to voicing such as 'doing my job'. They further identify our knowledge of whistleblowing as a continuing process and the escalation to more powerful recipients when feedback is not forthcoming, or the concern is ignored as important factors which fit within this framework. These contributions are useful and set the context then for acknowledging whistleblowing as voice. Alongside adapting the framework to specifically cater for trade unions' involvement in the individualised voice process.

### **2.7.5 Adaptions to the framework for whistleblowing and unions**

The framework provides a way of understanding how voice is used by an individual. However, one of the contributions of this research stems from considering voice through the lens of whistleblowing and trade unions. Some adaption is thus necessary to take into consideration aspects raised in this literature review and to – in the following chapters – enable an analysis of some of the expectations raised through the literature discussed in this chapter. The adaptions can be seen in Figure 2.4 (underlined).

In stage one of the framework, whistleblowing has been added as a motive, as, whilst it is a prosocial act, some whistleblowers may make a disclosure for multiple reasons such as prosocial and dissatisfaction. While Kenny et al (2020) suggest

adapting to impetus for the whistleblowing context this study does not do so recognising that whistleblowing is only one aspect of voice and this model itself seeks to integrate the field of voice as opposed to creating more divides. In terms of content, whistleblowers may disclose something that is about an individual that affects the whole or only a part of the organisation. Mowbray's framework does not capture that in its analysis, which classifies the content as either a personal or an organisational issue. Therefore, the category individual has been added to capture this alternative position.

While trade unions are generally considered as a collective voice it is important to look at how they could be part of the individual voice. This is because they perform a specified role of supporting members and representing members in individual situations as has been previously highlighted. At stage two, trade unions have been added as both mechanism and target. As a mechanism, unions could be used to make the disclosure. An individual member could request the union to approach the organisation on their behalf to create some distance between them and the disclosure. The union then provides the organisation with the information, and the organisation decides what action to take. This will be easier where the union has resources within an organisation, but could also be achieved where a union's only relationship with an organisation is the member working for it. Trade unions may already be a part of a target through membership of works councils or joint consultative committees; however, they are added here as a single separate entity. They could become a target. Where they have resources within an organisation, they could work to be classified as a recipient of a disclosure. As a target, they receive the disclosure, and, if necessary, go on to investigate or oversee an investigation in accordance with a policy. As has been highlighted previously, the role of the union will be determined by the recognition they have within an organisation. The greater the recognition, the greater opportunity there will be for the union to be a mechanism or target. It is to be expected that, where a trade union has the resources within and support of an organisation, being a mechanism, a target, or both, will reduce the levels of retaliation, as it will create a greater distance between the whistleblower and the disclosure. Where resources are limited or non-existent, a union may only be able to provide a mechanism role, and even this will be limited. Although not mentioned in the model, trade unions may also provide a

mediating effect. If a trade union has the resources within an organisation, it is expected they will have an understanding of how the organisation functions and what avenues an individual should take to get the best results for any given situation. Thus, trade unions are added as a potential mediating factor in the framework.

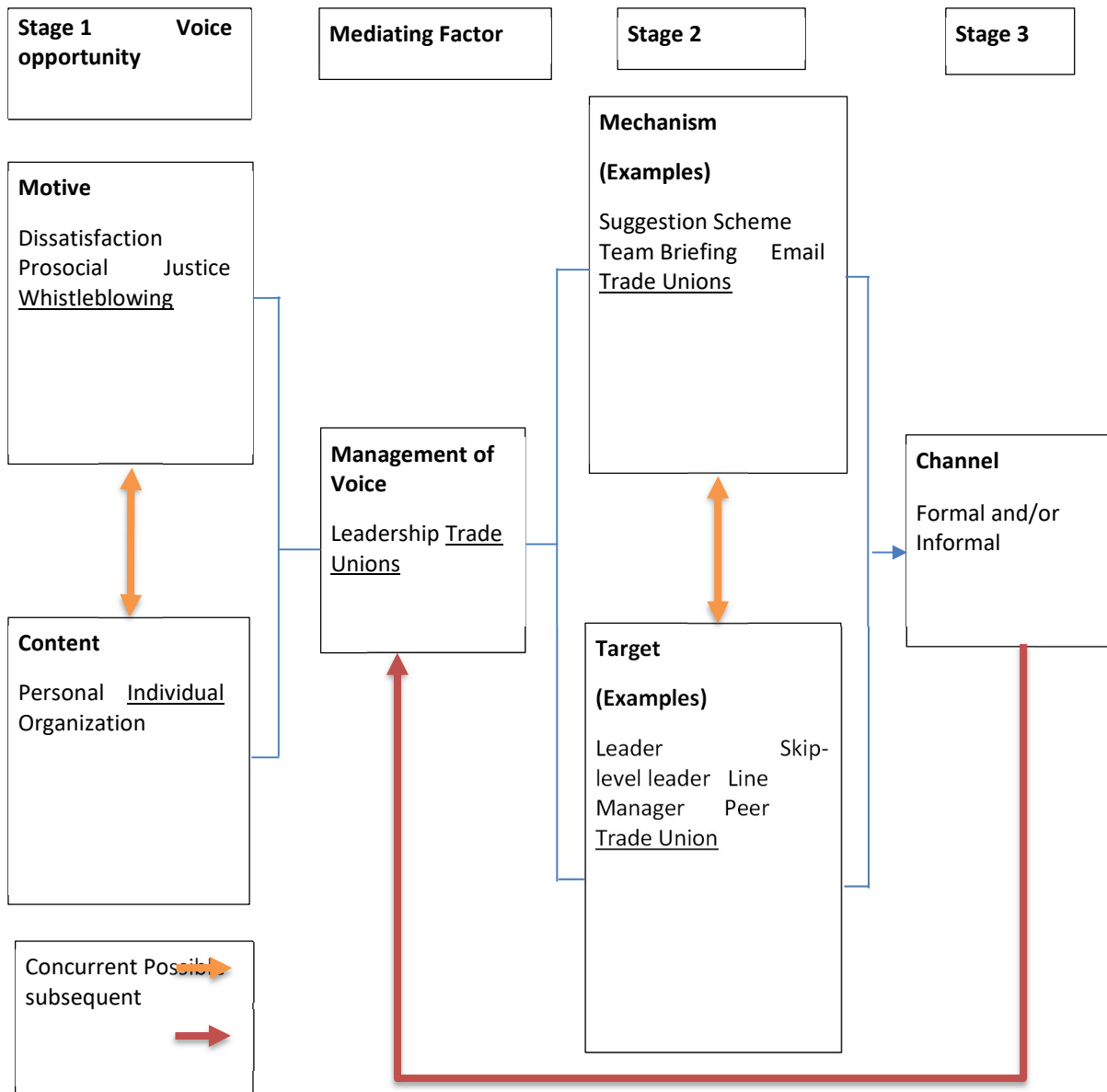


Figure 2.4: Conceptual model: employee voice and the management-employee interaction adapted for this research from Mowbray et al (2015)

Figure 2.5 seeks to show the conceptual model discussed in the context of how a whistleblower might use their voice. The whistleblower will see something that concerns them (content) and decide they must disclose it (motive). They may then seek guidance on how to disclose (mediating factor). This may occur on a second disclosure attempt (see orange line in Figure 2.5) but is unlikely to be engaged if a

third or subsequent disclosure is made. They will then decide how (mechanism) they will make a disclosure and to whom (target). There is a wide range of targets, both internal to the organisation and external, such as those discussed in the organisations section of this chapter.

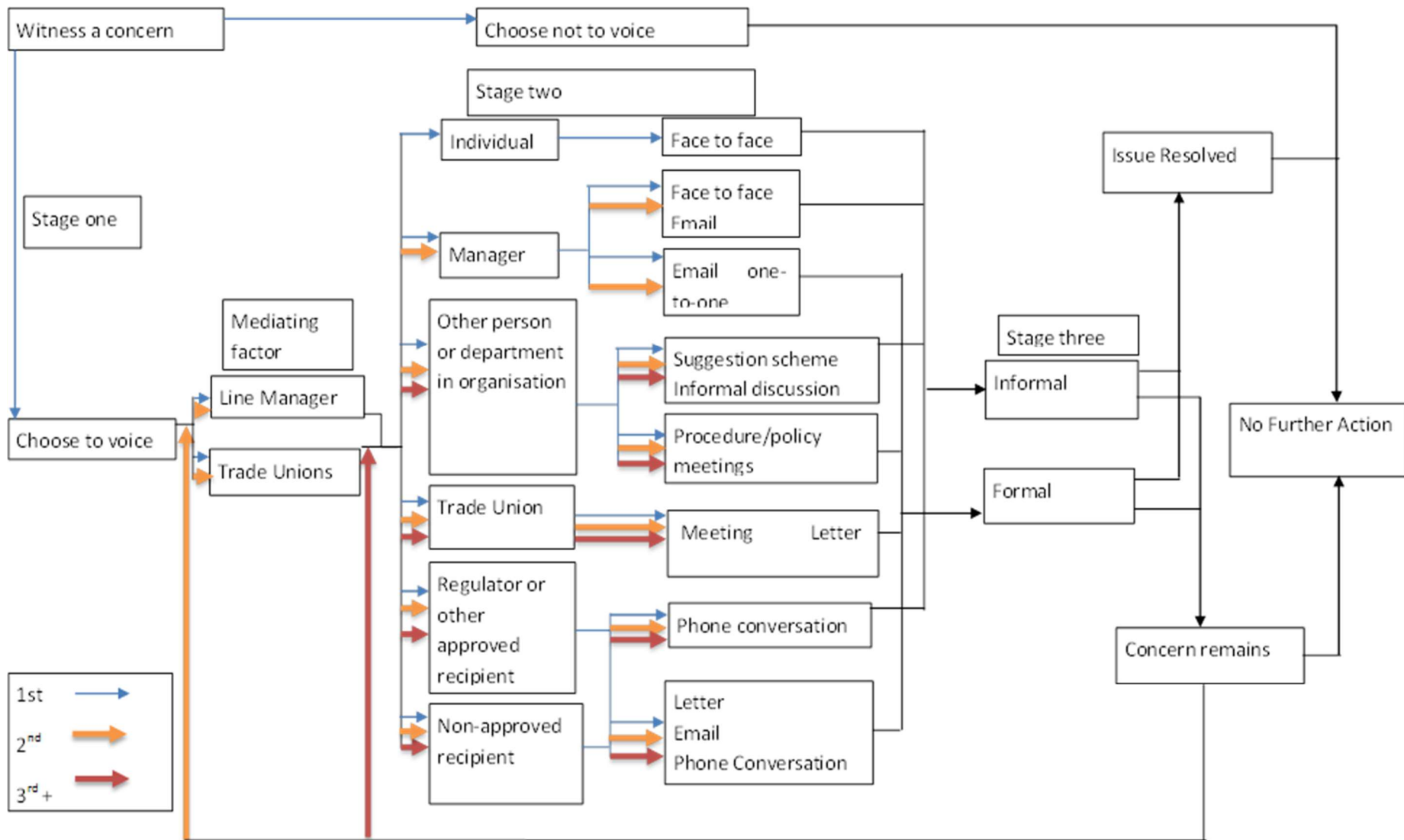


Figure 2.5: Flowchart of a whistleblowing voice process

### **2.7.6 Overview of voice literature**

This section has sought to explain how the literature on employee voice has approached whistleblowing. It has identified that whistleblowing is seen as a justice-orientated voice process through the OB literature, contrary to the whistleblowing literature, which sees it as a prosocial act. It identified that HRM/ER voice literature considers whistleblowing as an extra-role behaviour and thus does not address it. The section discussed how the approaches to whistleblowing taken by these various strands remain problematic, as whistleblowing voice starts with in-role processes before moving to extra-role processes. This thesis does not adopt any singular perspective of where whistleblowing should sit within the voice literature. Rather, it recognises that Mowbray et al's (2015) model seeks to integrate scholarship rather than splinter even further.

The study recognises that whistleblowing scholars have theoretically identified whistleblowing as fitting within this model. This study seeks to take this further by understanding how in whistleblowing situations trade unions involve themselves in that process of individual voice. Thus, providing a more practical review of the model. This will in turn provide evidence of union voice and thus can be explored through the fourth sub-question namely, 'how do trade use their voice to support whistleblowers?'



## **2.8 Trade union voice**

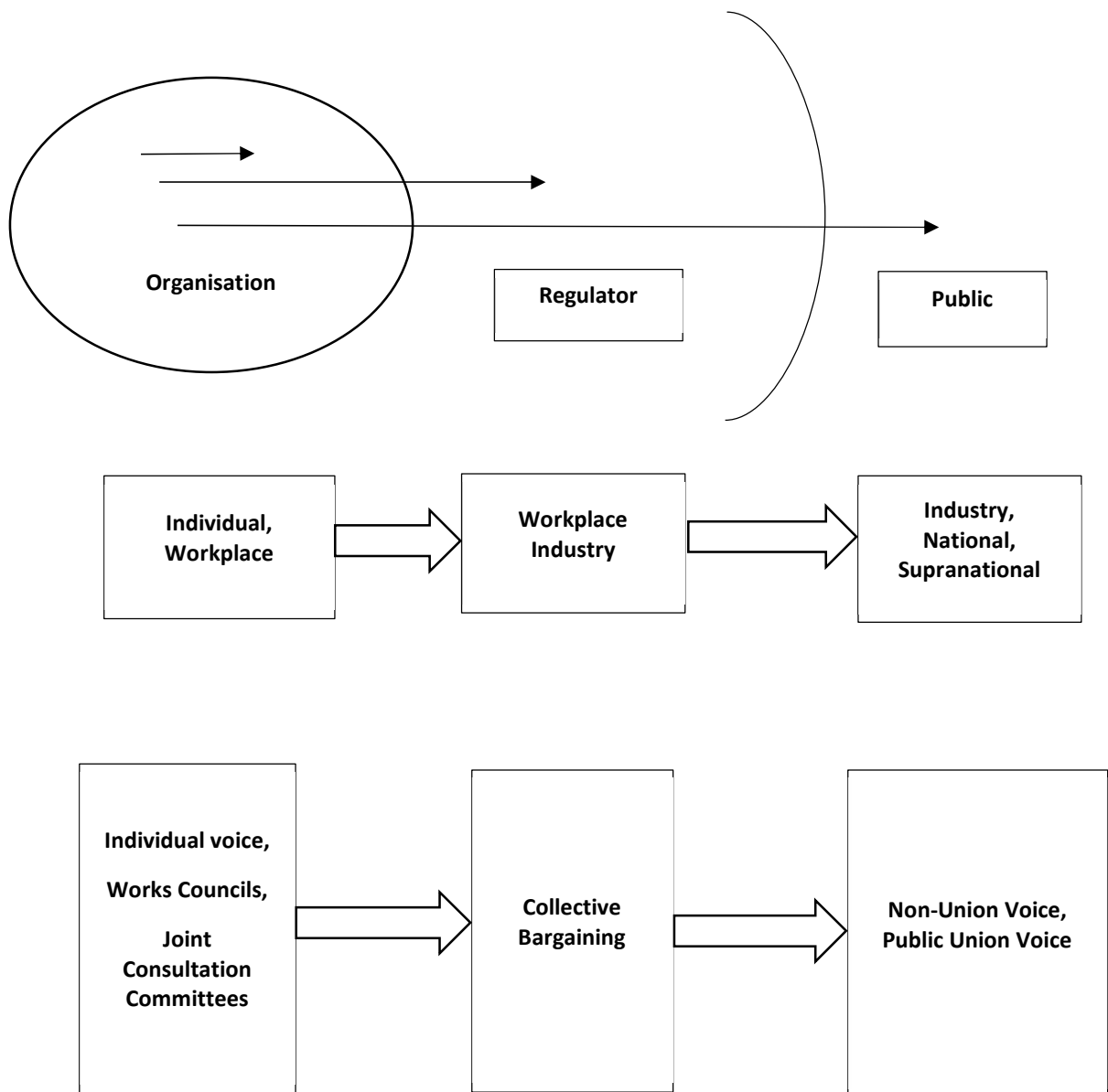
Having previously considered the voice scholarship and where whistleblowing sits within that, this section further develops the idea that trade unions can be engaged in the voice process to support whistleblowers. An important factor in all the previous discussions is that unions will use their voice to either engage in collective bargaining, advise whistleblowers, or other supporting functions. However, it has also been identified that these factors are dependent on the union's level of recognition within an organisation. Therefore, it is necessary to discuss here how recognition may be evidenced in terms of voice mechanisms. This section will identify different types of voice mechanisms that exist within organisations, distinguishing the union voice mechanism from the non-union voice mechanisms.

### **2.8.1 Trade union and voice mechanisms**

Hirschman (1970) looked at the role of voice through consumers. He suggested that consumers had the options of voice, exit and loyalty. Freeman and Medoff sought to apply this theory to employee voice, and define this as 'providing workers as a group with a means of communicating with management' (1984, p 8). They saw voice as a collective tool, which led them to suggest the trade unions were best placed to be the vehicle for this. Freeman (2005) recognises, however, that voice is much wider than this collective discussion and a non-union voice has a role. With the decline in trade union collective bargaining (Kaufman 2008) and membership (Visser 2006), non-union voice mechanisms have increased (Wilman et al 2014, p62). Due to this change, it is important to understand where trade unions currently participate and where they could, in future, participate in voice mechanisms. Lewis and Vandekerckhove (2016) suggest that trade unions could play a more significant role in whistleblowing. They take Kaine's (2014) overview of union voice levels and apply this to Vandekerckhove's (2010) three-tier whistleblowing regulation model. In doing so, they identify how trade unions might engage in activities for members' benefit at various levels.

Phillips (2017) takes this suggestion of union engagement and identifies how we could use the three-tier system to view these various mechanisms. Phillips (2017)

argues that at tier one the key requirement of Lewis and Vandekerckhove (2016) is that mechanisms are internal to an organisation. They suggest that Kaine's (2014) four levels of union voice mean that unions can engage in both individual and workplace voice. Phillips (2017) therefore, argues that individual voice (representation), works councils and joint consultation committees would fall within this. The next tier in the model addresses the regulator level. Lewis and Vandekerckhove (2016) identify this as outside of the workplace but still private. They adopt workplace and industry levels in this category from Kaine's (2014) four levels of union voice. Phillips (2017) identifies that, as a voice mechanism, trade unions could also fit here. This is because trade unions work at organisational, sectoral and national levels, but, in these cases, it is done in private and negotiations are usually kept confidential. The final tier of Lewis and Vandekerckhove (2016) is public, to which Kaine's (2014) levels are industry, national and supranational. Phillips (2017) suggests that at this level, non-union voice and public union voice could be adopted. The key here is that information is not restricted to certain groups and is at large for the public. This is set out in Figure 2.6 below.



*Figure 2.6: Three tier union voice (Phillips 2017)*

To understand this better, the next subsections undertake a review of these three levels, by looking at each individual voice mechanism and the role trade unions play. An overview of this can be seen in Table 2.8.

Voice Mechanism	Union involved	How do unions engage?
Individual Voice	Yes	Representation
Collective Bargaining	Yes	Negotiating
Works Councils	Sometimes	Information Consultation
Joint Consultation Committees	Sometimes	Consultation
Non-Union Voice	No	No engagement with organisations – support of individual members

*Table 2.8: Summary of voice mechanisms*

### 2.8.2 Individual voice

Employees can voice issues on an individual basis through grievance procedures. A grievance procedure may form part of a collective agreement with a trade union or be a procedure instigated by the employer. Whilst the trade union may have advised and agreed with the employer about a grievance procedure, it is by its very nature an individual voice mechanism rather than a collective one. A grievance being filed indicates “the employer must have taken some action with which the employee disagrees” (Lewin 2014). Grievances may, in the first place, be voiced directly to a manager and then, depending on the action of the manager, may lead to being formalised in writing. Whilst a whistleblower may use a whistleblowing procedure, they may alternatively use a grievance procedure to make the disclosure (Lewis and Vandekerckhove 2016). Furthermore, a whistleblower may use a grievance procedure to disclose retaliation stemming from the disclosure, perpetrated by a manager or peer. Trade unions can play a role in the individual grievance system, firstly by representing or advising the individual in the lead-up to and during the process. This will be easier in unionised workplaces, as trade unions can get representation rights within collective arrangements. However, where a workplace is non-unionised, the trade union may be able to rely on legal protections

where they exist, like in the UK, where individuals have the right to union representation for any grievance hearing (S10 ERA '96). To our knowledge, there is no literature on unions applying pressure on organisations to correct wrongdoing coming from a whistleblowing disclosure; however, trade unions may be able to apply pressure on the organisation through representation to rectify the wrongdoing and prevent further retaliation. Furthermore, by taking up these individual issues, trade unions can turn them into larger issues that engage collective voice both inside and outside of the organisation (Kaine 2014).

### **2.8.3 Collective bargaining as voice**

As discussed in section 2.3.2, trade unions engage in collective bargaining to achieve better working conditions for its members. Through collective bargaining, trade unions can seek to include whistleblowing in the overall agreement.

There is currently no literature that suggests this is occurring. Hence, the exploration in this research of whether and how whistleblowing is discussed as part of collective bargaining constitutes another contribution of the thesis. It is expected that it is more likely to occur in Norway, where collective bargaining starts at a national level and works down to a local agreement which must include the national and sectoral agreements. Because of the relationship between businesses and unions in the Netherlands, trade unions are more likely to be able to put whistleblowing on the collective bargaining agenda. However, as bargaining occurs at the sectoral level, it is likely trade unions will have less influence than in Norway, but more than the in the UK.

### **2.8.4 Works councils and joint consultation committees**

Works councils are institutionalised representative bodies. However, these are usually established independently of, or against the will of, management (Nienhuser 2014). The purpose of these councils varies between countries, but the overarching aim is to represent the interests of all employees in an organisation to its management (Rogers and Streeck, 1995: 5). Joint consultation committees are

different in that they are set up by management with the purpose of exchanging views on matters outside of collective bargaining arrangements (Pyman 2014) and indirectly influence organisational decision making (Morishima 1992).

Works councils vary in power and rights. Some countries, such as the UK, only have a right to information, whereas countries like Germany and the Netherlands have a right of codetermination and consultation. Norway has a mid-position along with countries like France and Luxembourg who only have consultation rights. The rights of joint consultation committees similarly differs by country. In the United Kingdom, there is little to no legal support, whereas, in others, such as Germany, they are embedded through law and practice (Brewster et al 2007).

Both works councils and joint consultation committees have different representatives. In terms of trade unions, they can be present on both. However, unions often run alongside work councils due to the very different remit. In some cases, such as Sweden, the trade union acts as the works council. Brewster et al (2007) suggests that many joint consultative committees have significant union membership and Pyman (2014) suggests this is due to the fact unions were the dominant mechanism prior to the creation of joint consultative committees. Where unions are not part of either of these voice mechanisms, it has been found that, if there is mutual support between the voice mechanism and the union, this will have a positive effect for employee voice and workplace outcomes (Brewster et al 2007 and Marchington 1994)

Trade unions' engagement will vary considerably dependent on their location, and role within these mechanisms. Where trade unions are part of a works council or joint consultation committee, it is an expectation of this research that they have a greater influence over the discussions. However, this will be more nuanced, as some works councils will only have information rights and it is, therefore, anticipated that unions in the Netherlands will be better at this than Norway and the UK, due to their codetermination rights. The same expectation exists with Joint Consultation Committees: The more embedded they are within the national system, the greater the influence they will have.

### **2.8.5 Non-union employee representation**

With the decline in trade union membership, non-union employee representation has increased (Bryson et al 2013). Non-union employee representation usually occurs in organisations where there is no trade union, although in some instances it can occur where there is a trade union but the trade union is not entitled or invited to participate in the representation structure. To be a non-union employee representation mechanism, Gollan (cited in Dobbins and Dundon 2014 page 343) highlights five core features of a non-union representation: Firstly, it must be restricted to individuals employed by and within the organisation. This limits the role of external organisations such as trade unions. Secondly, he highlights that there is likely to be no or very limited links to trade unions or other external representative units. Thirdly, it is the firm or organisation that provides resources for the forum to exist. Fourthly, the representative body is essentially indirectly providing representative functions rather than more direct mechanisms of involvement, and finally, the structures represent all employees at the workplace level.

Dobbins and Dundon (2014) highlight that these non-union employee representation models generally occur in different forms of committees, such as grievance committees, joint health and safety and well-being committees or equal opportunity dialogue forums. It can also encompass works councils and joint consultative committees where there is no union presence or influence. Bryson et al, (2013) highlight that these indirect forms non-union voice representation are in decline, whilst more direct channels such as team briefings and problem-solving groups are on the increase. Dobbins and Dundon (2014) highlight that literature on non-union employee representation suggests that there are two reasons an employer might engage in non-union employee representation. The first is union avoidance, meaning it is a primary objective to avoid an external union involving itself in the affairs of the organisation. Gall (2004) suggests that non-union voice mechanisms are often the result of an organisation trying to express to its workers that there is no need for union recognition within the workplace. Secondly, the alternative is to go beyond union avoidance, so the arrangements are set to

complement union structures rather than replacing them. Bryson (2004) found that direct voice mechanisms and non-union representation together had better managerial responsiveness than union voice. However, Bryson (2000) suggested that where unions existed direct voice was more effective.

Whilst the trade union may not be involved in a non-union employee representation mechanism, or have no role within the organisation, it is anticipated that an individual involved in one may be a union member. The trade union can, therefore, support that individual through training to help them put forward information. The trade union can also support direct voice mechanisms where they are engaged in a workplace to improve managerial perceptions and activities. Where trade unions have no role in an organisation, they may still be able to use their voice to raise issues from individual members in the public domain.

### **2.8.6 Overview of voice mechanisms**

This section has sought to identify how different voice mechanisms exist in organisations and what role trade unions have within them. It highlighted that these various voice mechanisms exist at different levels and sought to show this by extending and applying Vandekerckhove and Lewis' three-tier approach. It was shown that there are various factors that affect how unions can engage in using their voice to support whistleblowers. This discussion has revealed that there is little understanding of trade union voice when supporting whistleblowing and lends further support to the research question of 'how do trade unions use their voice to support whistleblowers'. Based on the discussion in this section, two expectations of trade unions were drawn. Firstly, where trade unions have internal power, they can become part of the organisation's whistleblowing processes, and secondly, irrespective of the union's position within a workplace, they can use various voice options to support whistleblowers.

This section has also drawn attention to how these various voice options interact through the use of Lewis and Vandekerckhove's (2016) three-tier model. This thesis aims to make a theoretical contribution here by exploring trade union voice mechanisms and seeing whether they align with this model.



## **2.9 Research overview**

This chapter has sought to identify relevant features that may affect trade unions in supporting whistleblowing. It did this by exploring discrete areas of literature that impact on trade unions in the context of whistleblowing. Namely Law, victimisation and voice. While discrete there is clear overlap and connection between them. Whistleblowing is recognised in law as important employment right. The law exists to protect individuals from victimisation. Trade unions exist to support members and improve working conditions. All these facets are held together by expressions of voice. This final section seeks to bring the chapter to a close by reminding the reader of key points of discussion and highlighting the questions this thesis will explore and the expectations that it identified. It will also remind the reader of the key theoretical contributions that this study will aim to address.

### **2.9.1 Overarching research question (RQ)**

Through an exploration of the whistleblowing literature, we found that there was very little exploration of the role of trade unions. We saw that Lewis and Vandekerckhove (2016) suggested several ways trade unions could engage in supporting whistleblowing. This was, however, a theoretical contribution. Phillips (2017) applied that theoretical contribution to suggest how trade unions could utilise their voice in supporting whistleblowing. However, these academic contributions have not yet been explored in an empirical study. Thus, a clear understanding as to the role of trade unions in whistleblowing is still lacking. Therefore, this study seeks to address this gap by researching the question:

‘What role do trade unions play in supporting whistleblowers?’

This question is, however, very broad and cannot itself be answered in a single study. Due to the limited exploration in the literature, it makes it difficult to identify a more specific overarching research question or adopt a hypothesis for testing. Therefore, this study has identified through the literature some key areas that will help us address this question. These areas can themselves be structured into sub-questions which are now identified. Again, each of these sub-questions do not have literature on trade unions' engagement in the specific area and thus do not have a

hypothesis, instead we have drawn expectations which we have drawn from the discussion. This study avoids claiming hypothesis to test on the basis that literature is to date void on clear empirical and theoretical findings in relation to trade unions and whistleblowing which one would conventionally hang a hypothesis on. However, a golden thread that runs through these questions and expectations and is specifically covered in sub-question four is that whistleblowing is an act of voice. Trade unions have a role of supporting members in the workplace and more widely to improve working conditions. They potentially do this through using a variety of mechanisms such as representation or engagement in wider society and as such use their voice to do undertake that primary role.

### **2.9.2 RQ1 and expectations**

It was identified that trade unions exist within national systems. Based on these national systems, trade unions have different positions and roles. We saw that in the UK trade unions are limited in engaging in wider society and have adversarial relationships with government and business. We also saw that collective bargaining in the UK is mainly localised and has a low level of coverage across the workforce, which matches a low level of union membership. This is in stark contrast with the Netherlands, where trade unions have a very cooperative relationship and engage in national policy setting. Collective bargaining starts sectorally and has a large coverage, despite low levels of membership. Norway had a cooperative relationship but with more limited power. However, Norway had far wider collective bargaining system, including coverage, and membership is high in comparison with other countries. These differences may impact how trade unions engage in whistleblowing and thus this study asks:

RQ1 ‘How do national contexts affect union engagement in supporting whistleblowing?’

Within this, we identified two expectations:

1. Trade unions will influence whistleblowing policies through the collective bargaining processes.

2. Where countries have greater collective bargaining coverage, trade unions will have greater influence over policies.

### **2.9.3 RQ2 and expectation**

After considering the trade unions, we explored how whistleblowing is protected in law. This was because in our discussion on collective bargaining we identified that the arrangements seek to provide agreement on employment rights within the workplace. We also identified that trade union activity is often circumscribed by the law. It was shown that the law's purpose was to provide protection in the context of the working relationship for individuals in the workplace. It was discussed how the UK and Norway have reactive protections from victimisation, whereas the Netherlands looks at the process of making a disclosure. We identified that none of the laws provided explicitly for trade unions to engage in the whistleblowing process. With trade unions there to support members in employment and whistleblowing being an employment provision, this study seeks to understand the whistleblowing legislations influence on trade union activity in this area by exploring the second research question:

RQ2 'How does the law affect trade union engagement?'

Within this, we recognised that trade unions look to the law to identify rights, such as collective bargaining, so we also identified the following expectation:

1. Trade unions will look to the law for a mandate to support whistleblowers.

### **2.9.4 RQ3 and expectations**

During the discussion on the law, we identified that a key aspect of the law was to protect whistleblowers from retaliation. The chapter then sought to discuss this in more detail. It identified that whistleblowers face many types of victimisation for blowing the whistle. We do not know, however, how trade unions support individual

whistleblowers, and, if they do, whether this support varies based on the type of victimisation. This study, therefore, poses the following question for exploration:

RQ3 'How does the type of victimisation affect union engagement?'

During the literature review, we explored Cortina and Mageley's (2003) two types of victimisation and then, using these, classified the various forms of victimisation from the whistleblowing literature. Having done this, we identified that, as trade unions are there to support individuals at work, they are more likely to engage in protecting whistleblowers who face work retaliation victimisation. This then created an expectation:

1. Trade unions are more likely to support whistleblowers facing retaliation where it is work retaliation victimisation (WRV) as opposed to social retaliation victimisation (SRV)

#### **2.9.5 RQ4 and expectations**

Trade union voice has been implicit throughout the literature review however, the final three sections of the literature review focused on the role of voice and of trade union voice explicitly. It started by looking at organisations that are connected in some way to whistleblowing. These were categorised into advisory, investigatory and adjudicatory, and by how they interact with trade unions, drawing to some extent on Loyens and Vandekerckove (2018). There was then a discussion on how the voice literature does not address whistleblowing as a voice effectively and sought to utilise Mowbray et al's (2015) individual voice conceptualization to identify how this could be rectified. There was then a review of the voice literature, specifically drawing on Phillips' (2017) classification of trade union voice mechanisms for whistleblowing. This led to posing the final research question for this study:

RQ4 'How do trade unions use their voice to support whistleblowers?'

The discussion of the literature led to this research question. We identified three expectations that the study will test:

1. Trade unions are less likely to engage in advising or supporting whistleblowers where there are various alternate organisations.
2. Trade unions can use internal power to become part of whistleblowing processes within organisations.
3. Trade unions can use various voice options to support whistleblowers irrespective of their position within a workplace.

It is expected that as voice is a driver throughout the literature review that this question will be most significant in addressing the overarching question.

### **2.9.6 Theoretical contributions**

This chapter has identified difficulties with the whistleblowing literature in respect of trade unions in that there is limited literature. As such the study has drawn on theoretical contributions which may enable us to review trade unions' engagement. In doing this we will provide new insights into the role of trade unions which is the overarching question and purpose of this study. However, it will also enable to bring new insights and potential contributions to the theoretical literature.

Firstly, in the final voice section of this chapter (2.8), we identified Lewis and Vandekerckhove's (2016) three-tier approach to union engagement. This was based on Vandekerckhove's (2010) three-tier whistleblowing model and Kaine's (2014) four levels of union voice. This model is the only theoretical contribution currently in the literature that focuses on trade unions in the whistleblowing sphere. The model has not yet been used for empirical research and as such remains purely speculative. Having identified that trade unions engage in the representation of individuals and collective bargaining alongside potentially interacting with other external organisations, this study has the opportunity to address whether these roles that the model suggests are evidenced in practice and to what extent.

The second contribution is in the reclassification of victimisation. The ordinary approach of assessing severity is to sum the number of different types of victimisation (Miceli et al 2008). This study drawing on other research which has

grouped types of victimisation adopts a different way of classifying victimisation, namely work-based and social-based, drawing from Cortina and Magely (2003). This model has not been utilised in the whistleblowing field to date and thus this study provides an opportunity to see if the suggestion in the literature by Miceli et al (2008) that this classification may work does indeed work in the confined context of trade union support.

The final theoretical contribution is based on the discussion of the voice literature. It was identified that whistleblowing is not clearly covered in the voice literature. This is because the voice literature is fractured. Mowbray et al (2015) has sought to rectify this by conceptualising a model of individual voice. Kenny et al (2020) have shown how whistleblowing fits within the model. The discussion has suggested where trade unions may have a role. As such, the discussion in this chapter resulted in an amended model. This study provides a practical opportunity to test whether the amended model is a suitable reconceptualization of voice.

The next chapter provides the reader with a detailed discussion of the methodology adopted for this study.

## CHAPTER 3: METHODOLOGY

### 3.1 Introduction to methodology

This chapter has the purpose of setting out how this study was undertaken. The chapter starts by identifying that this study uses a pragmatist philosophy and why that is appropriate (3.2). The section after that discusses the research design. It discusses the multiple sources of data utilised in this study, namely interviews, website analysis, parliamentary debate review, document analysis and a dataset of whistleblowing advice conversations. It explains how the different data sets were collected (section 3.3) and then (section 3.4), how the data was analysed and triangulated. After this, the ethical considerations are discussed (3.5). Finally, there is a brief reflection (3.6) and discussion of the limitations of this study (3.7).

### 3.2 Pragmatist Philosophy

McGregor and Murnane (2010, p420) state that a research paradigm is a philosophical element of a research methodology. Within a research paradigm, there is conventionally a focus on understanding the ontology and epistemology. Ontology is what counts as nature, reality, feeling, existence or being (McGregor Murnane 2010 p420), i.e. what it is we can gain knowledge about. Whereas Epistemology is about what counts as knowledge and how people come to know that (McGregor and Murnane 2010 p420). However, the pragmatist does not hold to the need for an ontology and epistemology. Feilzer (2010) argues that pragmatists sidestep the contentious issues of ontological and epistemological position by accepting that there are both singular and multiple realities open to inquiry. What is important is solving practical problems in the real world. Thus, the pragmatist looks at the nature of the inquiry itself. This is supported by Morgan (2014a) Who argues

*‘Too often, the philosophy of knowledge, with its emphasis on ontology, epistemology, and methodology, is treated as having external reality that gives it a privileged position for judging social science research. Instead pragmatism treats it as just one of many possible ways of thinking about social*

*research and suggests that each should be judged by the range of actions that make it possible.'*

This apparent lack of an ontological and epistemological position has been criticised by some who argue it is important to understand one's metaphysical issues within social research (Lincoln 2010) as there must be a focus on what nature is and what counts as knowledge. However, the pragmatist focuses and considers the knowledge itself as important. Hall (2013) articulates that this focus on knowledge itself as opposed to what knowledge is could be considered an epistemological paradigm. Therefore, Hall argues the criticism of a lack of a paradigm is not warranted (2013).

James (1906) argues that pragmatism as a philosophy is about truth. Truth he contends is built by taking one's opinion (old truth) and it being challenged by new kinds of facts or a singular fact. That new fact is added to our experiences and may lead to an amendment of that old truth. Thus, the truth is 'merely what we say about [experiences]...truth is satisfied by the plain additive formulae' (James 1906).

This is important for this study as it starts from an objective position that trade unions exist to support members in their workplace. Whistleblowing is predominantly a workplace action and thus trade unions should be involved in the process when a union member seeks to blow the whistle. This could be considered the old truth and this study seeks to understand whether that is reliable fact by investigating the research question of what role do trade union's play in supporting whistleblowers.

Dewey (1920), argues that pragmatists look to understand experiences based on active inquiry. Here experience creates meaning because an individual's beliefs (what James considered as old truth) comes in contact with an action. These experiences are then what we understand as the new truth. Dewey distinguishes experiences between habit and active inquiry. Habit are those actions taken without thought. Morgan (2014b) gives an example of this as making breakfast, there are inherent choices in that action, but we do not think deeply about it nor does it require careful decision making. Active inquiry is, however, a much deeper process which



involves decision making to occur in a self-conscious process. During this process, an individual reflects on their beliefs to choose the appropriate action in their eyes, whilst also reflecting on the action to choose or develop a belief. In this study, this reflection on beliefs and actions is important as trade unions have individual, collective and societal roles which are considered when deciding on an action in a given situation.

While Pragmatism is a philosophy, James (1906) argues that although it seeks to understand a truth through inquiry it is firstly a methodology. Because pragmatists are not constrained by the ontological arguments about either the nature of the outside world or our own conceptions of the world they are also not constrained by those positions on the choice of methods. Therefore, a pragmatist is not required to adopt a qualitative or quantitative methodology and more often will adopt a mixed-methods approach. This is because the focus is on potential consequences of choices and whether those choices 'when evaluated' will meet the goals and purposes of the research question/s. Therefore, the pragmatist can be considered to hold a contingency theory approach to research design. Contingency theory 'accepts that quantitative, qualitative and mixed methods research are all superior under different circumstances' (Johnson and Onwuegbuzie 2004). It is therefore down to the researcher to identify the most appropriate methods for the specific study.

Dewey (1920) identified a model of inquiry which enables this reflection of both belief and action for any given problem (an adapted version is shown at Figure 3.1). This five-step model begins with recognition of a problem, there is then a consideration of the nature of that problem with the third step being the suggestion of a solution. Before taking an action (the fifth step) one needs to consider the likely effects of that solution. Upon completion of this process, one must always reflect, based on that reflection the individual may be required to undertake part or all of the process again.

In identifying the appropriate methods for the specific study, Morgan (2014a) adopts Dewey's five-step model but revises it specifically for the application of research design (Figure 3.1). The first stage remains as identifying a problem. In this study,

the problem is the lack of understanding as to how trade unions support whistleblowing. There is then a process of reflection on that choice of research problem. This is where the researcher develops a research question. As they consider the question, they reflect on whether this formulation maps with the problem or whether the problem or the question needs to be reformulated (Morgan 2014a). In this study, the starting position was an awareness of the lack of understanding of the role of trade unions in the whistleblowing process and thus a broad research question was formulated, namely 'what role do trade unions play in supporting whistleblowers?'. As reflection on the research question occurred to see whether it mapped against the problem, it was identified that the question itself was potentially too broad. Rather than identifying a new problem, limitations to the research question were applied through the creation of sub-questions that could be addressed individually, which went to the heart of the overarching research question. These were drawn from the literature and four were formulated:

1. How does the societal position of trade unions affect their engagement?
2. How does the law affect trade union engagement?
3. How does the type of victimisation a whistleblower faces affect trade union engagement?
4. How do trade unions use their voice to support whistleblowers?

Having reflected on these questions and identified that they map with the problem suitably, the study then goes on to select methods appropriate for the inquiry into the problem. In this case, a qualitative method of interviews was chosen. According to Morgan (2014a) having chosen a method, the pragmatist is required to reflect on that choice to determine whether it is appropriate for the inquiry. If it is the research can be actioned, if not the researcher goes back to the method selection to identify a more appropriate method. In this study interviews were chosen as it enables research to inquire into the union itself; it seemed important to understand what trade unions see as their role and how they actively undertake a role if they see themselves as having one. Therefore, that is how the research inquiry began.

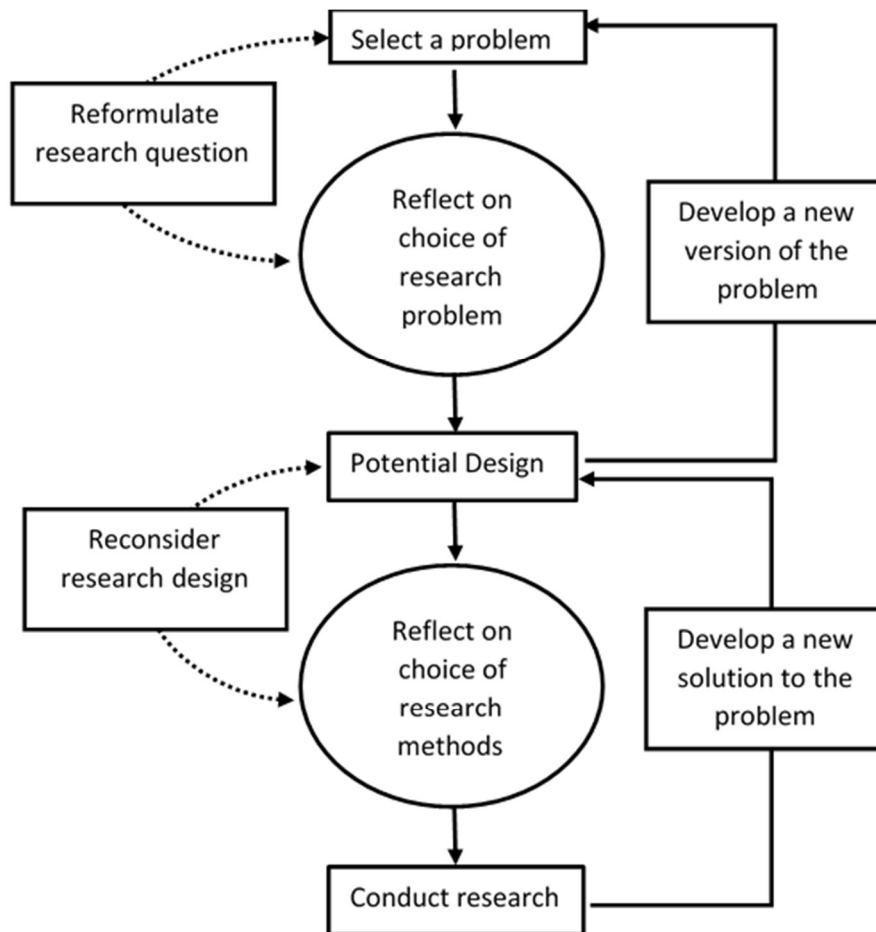


Figure 3.1: Morgan's Revisions to Dewey's five-step model

When trying to operationalise this research, difficulties at an early stage with interviews due to a lack of engagement by trade unions made the researcher have impacted on the final research design and the methods chosen. Morgan (2014a) suggests that this itself is considered a problem to which the researcher must develop a new solution. In this case, the researcher went back to the sub-questions identified and sought to reflect on these questions and identify alternative methods. In doing so the study was able to identify further qualitative methods in the form of website analysis, document analysis and parliamentary reports. That data is not individuals speaking about their roles or their understanding of the unions' role, but unions as organizations speaking to other audiences that the researcher could access. As pragmatists are not tied to qualitative or quantitative data the study was also able to identify quantitative data in the form of Inside story two data, a nominally

coded quantitative data set of whistleblowers experiences based on notes of those who advise whistleblowers. This data allows comparison of whistleblowing experience between union and non-union members. This helped address aspects of the sub-questions better than the other methods also utilised.

Morgan (2014a) considers that this mixed-methods approach is motivated by the need for additional coverage. This is one of three motivations for using mixed methods the others being; convergent findings adopted to provide greater certainty to findings and sequential contributions which links methods so one enhances the effectiveness of another. Additional coverage is utilised where different goals within a project are met by utilising the different strengths of different methods. It is best utilised in projects that include diverse or complex goals (Morgan 2014a). In this study, the goal is relatively straightforward in that it seeks to understand the role of trade unions in the whistleblowing process. However, the project has diverse elements in it looking at law, voice, victimisation and social factors. One benefit of this approach to research is that each set of data collected can be analysed separately and can inform the other data collection methods. In this case analysis of the interviews helped identify where gaps in the data were which informed the inquiry of the other methods. However, as data is collected in parallel with other data collection this can create questions around integration (Leech and Onwuegbuzie, 2009). This is where a researcher needs to have a firm understanding of the purpose of each strand of data so that it can effectively be integrated into the wider study.

This section has set out the pragmatic philosophical approach this study has been driven by. It has discussed what a pragmatic research study involves and the stages that are required to be gone through. It has highlighted how the design process was conducted. The next section goes on to address the practical elements of design to provide greater insight into each of the methods adopted and how they fit within the study.

### **3.3 Research Design**

The pragmatist philosophy discussed above highlights that multiple sources of data provide greater insight into the chosen topic. It suggests that a mix of qualitative and quantitative data provide a better opportunity to understand a phenomenon. This has become known as a mixed-methods approach. This study adopts such an approach. This section of the chapter will explore each type of data in more detail, namely; interviews, website analysis, parliamentary debate review, document analysis and a dataset of whistleblowing advice conversations (public concern at work), providing a deeper of how the collection occurred.

#### **3.3.1 Interviews**

Interviews were originally considered the best method of collecting relevant data. For this study, 12 individuals agreed to be interviewed. In total though this study was able to rely on 14 interview transcripts as two whistleblowing experts had been interviewed for other projects which had relevant information for this study. Table 3.1 sets out which union participated when and how the interview was conducted. Interviews lasted an hour and took place between August 2017 and August 2018. Different methods of undertaking the interviews were needed due to the location of participants. All initial contact was done via email. The email introduced the study and invited participation. Attached to the email was a participant's information sheet which set out a greater explanation of the study. All the UK interviews were done face to face except the RMT were due to work commitments the participant was only able to do this on the phone. All international interviews were done using the skype phone function.

At the commencement of each interview, participants were asked to confirm they had received sufficient information to enable them to freely consent to participate and that they did so. For those face to face, this was confirmed by signing a consent form. The phone interviews were asked to confirm orally and this was then noted. Participants were asked for permission to record the interview and all gave their consent. After the interview, the recordings were transcribed and anonymised. The transcripts were then sent to the participants for comment, or correction. At this

point, participants were reminded of their entitlement to withdraw from the study and a date was provided to return transcripts and or notify of withdrawal. No participant chose to withdraw from the study. As previously mentioned two transcripts used in this study were not collected as part of this study. The two UK experts were interviewed as part of other projects, the freedom to speak up project and advice-givers to whistleblowers project. Both these interviews occurred prior to the implementation of GDPR and thus express consent was not required. However, both participants gave consent for their interviews to be utilised for academic purposes. Therefore, the consent was broad enough to enable their use in this study. This also explains the missing data in table 3.1.

<b>Study Identifier</b>	<b>Role and Union</b>	<b>Date of Interview</b>	<b>Location of individual</b>	<b>Interview mode</b>	<b>Access gained through</b>
UKpubreg1	Unison – regional rep	30/08/2017	UK	Face to face	Email based on TUC list
UKgenlay1	GMB – Lay rep	22/09/2017	UK	Face to face	Email based on TUC list
UKpublay1	UCU – Lay rep	25/07/2017	UK	Face to face	WERU
UKprilay1	RMT -Lay rep	29/11/2017	UK	Phone	Personal
UKfed	TUC	27/11/2017	UK	Face to face	WERU
NEDfed1 NEDfed1b	FNV	02/10/2017 and 23/07/2018	Netherlands	Phone	IWRN
NORpubnat1	Norwegian Police Union	21/12/2017	Norway	Phone	IWRN
NORpri1	Fellesforbundet	29/03/2018	Norway	Phone	IWRN
NORexpert1	Expert	09/08/2018	Norway	Phone	IWRN
NEDexpert1	Expert	18/07/2018	Netherlands	Phone	WERU
NEDexpert2	Expert	18/06/2018	Netherlands	Phone	WERU
EUfed	Eurocadres	20/11/2017	EU	Phone	WERU
UKexpert1	Expert	-	UK	-	-
UKexpert2	Expert	-	UK	-	-
<i>Table 3.1: Interview participants</i>					

Participants were identified in a number of ways. The researcher used networks that they were engaged with, in an attempt to recruit participants. The Work and Employment Research Unit based at Greenwich University provided some contacts, Secondly, contacts from within the International Whistleblowing Research Network were utilised. Thirdly, the researcher utilised the TUC directory of unions and sent emails to all the unions listed. Finally, personal contacts were utilised (Table 3.1 identifies which route was utilised for each participant). The study started to identify Unions based on a case study approach and thus a multiple case study sampling strategy was initially adopted. However, due to difficulties, the study adopted a convenience approach to interviews in the hope of increasing engagement. Where a response was received a snowballing strategy was adopted to identify further participants. This involves asking the participants if they have contacts that could be approached that meet the criteria. Snowballing sampling is an effective way of achieving a larger number of participants where access may be difficult (Blaikie, 2010). However, Cohen and Arieli (2011) highlight that snowballing also has two major limitations; firstly snowballing reduces representativity which can lead to selection bias, secondly snowballing can lead to an exclusion of individuals that may have important information but are not part of that specific network. They argue whilst these limitations cannot be removed, by planning ahead and having clear research goals the limitations impact can be reduced. In this study exclusion of individuals is not critical as the specific network is trade unions. The trade union network for each individual union is limited and not dispersed. Furthermore, as an exploratory study, it is not seeking to make specific correlations but identify potential factors, therefore, the impact of exclusion is limited. Snowballing was only effective in Norway where the contact through the IWRN was able to provide more contacts.

Interviews are 'an attempt to understand the world from the subject's point of view, to unfold the meaning of their experiences, to uncover their lived world prior to scientific explanations' (Kvale 2007). Kvale and Brinkmann (2009, p 1). This can provide rich data and an understanding of a phenomenon through the lens of those that are affected or affect it. Whilst interviews provide rich data they do, however, have limitations. The structure and purpose are determined by the researcher hence it is not a spontaneous conversation (Kvale 2007). This means the participant may



be guided in their responses by the form of a question, location or desire to be helpful to the researcher (Kvale and Brinkmann 2009). To try and limit the impact of these limitations semi-structured interviews were chosen. A semi-structured interview enables the researcher to ask questions based on the research project but leaves room within the interview to delve into the responses before moving on to another question. All interviews commenced with the same question 'How would you describe the union's position in relation to whistleblowing?' from here the interviews diverged based on the individual's role and response. The interviews all ended with the same final question 'How do you see the unions approach to whistleblowing changing over the next few years?'. Throughout the rest of the interview, the interviewer was guided by the responses given. The interviewer had in total 10 prepared questions based on the four themes from the sub-questions identified in chapter 2. While these questions were consistently asked of interviewees, they were adapted to fit the context of the individual's position and the country. For example, one question was 'what impact does the whistleblowing provisions in the Public Interest Disclosure Act 1998 have on how you engage with whistleblowing issues?' When speaking with individuals in Norway and Netherlands the legislation was amended to match the national provision. The questions other than the first and last were not asked in the same order in every interview but rather the interviewer let the interviewee talk and asked questions at an appropriate point based on the discussion had.

### **3.3.2 Public Concern at Work**

During this doctoral study, the University of Greenwich and Public Concern at Work a UK Whistleblowing charity worked together to undertake a research project which followed up a previous piece of research called The Inside Story. Public Concern at Work provides a telephone advice line to prospective and actual whistleblowers. The organisation maintains records of those calls on a database with the advisors writing up the content of the calls. The project aimed to review 500 of these conversations. To ensure that comparable data to the first study was collected, the research team started with the codebook used in that study. The data collected covered demographic information, the process of disclosure such as who they

disclosed to and how, the nature of the issue, responses by the organisation, colleague or external recipients to both the concern raised and whistleblower. The codebook was then developed further identifying new data to be captured and refining previous options. New information included codes such as the legal classification of the concern and trade union membership status. This development of the codebook was undertaken by this researcher and Dr Wim Vandekerckhove. All cases were reviewed and coded in line with the codebook on the premises of the organisation by a single researcher (Arron Phillips). The coding took place between August and December 2016. The research took a starting point of cases from 31<sup>st</sup> December 2014 and worked backwards until 500 cases had been coded. This approach was adopted to ensure as best as possible that all cases coded had been closed. For the purposes of this thesis study, only 323 of the cases were used in the analysis as all cases where trade union membership was not known were excluded.

### **3.3.3 Trade union Websites**

Websites can provide insight into how an organisation sees a given subject. Research suggests that organisations that are meant to perform a role in whistleblowing do not tend to have sufficient information on their websites (Phillips and Lewis 2013). Therefore, this study considered that union websites might provide another source of data. Websites of TUC affiliated trade unions were searched in Autumn 2017. Each website was reviewed for information using the search function where available. The search terms used were, Whistleblower, Whistleblowing, Public Interest Disclosure, Protected Disclosure and confidential reporting these were taken from previous research looking at whistleblowing information on prescribed persons' websites (Lewis and Laverty, 2011 and Phillips 2013). Furthermore, only the first page of search results was reviewed in line with the previous research which suggests whistleblowers will not spend time searching multiple pages of results. The exercise looked for information that either discussed how trade unions support whistleblowing<sup>25</sup> or guidance on what whistleblowing is<sup>26</sup>. Where the exercise located a relevant downloadable document this was done. The

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25 An example would be a guide to local representatives on negotiating a policy.

26 An example would be a page outlining the law.

documents located are listed below in section 3.3.5. Whilst writing up the thesis the researcher was impacted by COVID-19 which prevented access to an office where the spreadsheet of website results was stored (documents downloaded from websites were available as the researcher had printed copies). Therefore, a search of trade unions websites that were affiliated to the TUC was undertaken again in July 2020. This search was undertaken in the same manner as the previous exploration.

### **3.3.4 Parliamentary Review**

As a function of trade unions is to lobby the government for the interests of their members, the parliamentary debates surrounding whistleblowing legislation was felt to be a potential source of information. Therefore, the researcher undertook a review of Hansard the verbatim record of parliamentary proceedings for both the House of Commons and the House of Lords. The review looked at two points in time. Firstly, it looked at the parliamentary debates surround the whistleblowing law when it came onto the statute books The Public Interest Disclosure Act 1998. Secondly, it reviewed the parliamentary debates surrounding amendments to the legislation this was done through the Enterprise and Regulatory Reform Act 2013. When reviewing the debates any information that pertained to trade unions engaging with the legislative process was recorded. Further, any information relating to the role trade unions play in the whistleblowing arena was also recorded. This data collection was done in October 2017. Having done this it was felt that a similar review of Norway and the Netherlands would be informative. The researcher relied on academic contacts from Dr Wim Vandekerckhove as the language differences was a barrier to personal collection of the data. The researcher put together a research guide explaining the studies purpose and what information was sought. The guide gave examples from the UK review to help the researchers understand the process and to recognise the distinctions between the different data elements sought (i.e engaging in lobbying and the role they will play). The Netherlands data was collected in April 2018 and Norway in July 2018.

### 3.3.5 Documents

Throughout the data collection phase documents were identified that may provide helpful information which could be analysed. Several unions (see table 3.2) that were contacted about the study and invited to be interviewed responded saying why they could not participate. These responses provided insights into the trade unions' perspectives and were, therefore, a rich source of data.

Trade union	Date of union response
Aegis	28/08/2017
Fire Brigade Union	11/07/2017
UCU	16/07/2017
ETUC	08/11/2017

*Table 3.2: Email response from unions declining participation*

In February 2013 The Charity Public Concern at work launched a whistleblowing commission to undertake a consultation and look into whistleblowing and the law. The commission put out a call asking for individuals and organisations perspectives of elements of whistleblowing set out in the consultation document. As part of the call the organisation set out the plan to publish responses and asked for consent to do so. When the report was published in late 2013 those submissions where consent was provided were also published. These were downloaded at the time by the researcher.

As discussed in 3.3.3 trade unions' websites were reviewed to identify relevant whistleblowing information. As part of this process, several documents were found and downloaded. The documents are set out in table 3.3

Trade Union	Document	Date of document
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Chartered Society of Physiotherapists	Whistleblowing briefing	January 2015
National Association of Racing Staff	Whistleblowing Policy	03/11/2015
UCU	Advice for NATFHE – Whistleblowing	August 2000
Unison	Whistleblowing Factsheet	June 2017
Community	Victimisation factsheet	2002

*Table 3.3 Trade union website documents*

The preceding section has sought to show how the data gathering process was undertaken. The next section discusses how the data was analysed. It is structured in the same way as the collection of data discussion namely by discussing each data source separately. Having done this there is a discussion on triangulation showing how the various data sources work together to provide validity to this study.

### **3.4 Data Analysis**

Having identified the multiple streams of data this section of the chapter addresses how these sources were analysed. It then explores how the data works together to create a valid study through triangulation (3.4.4).

#### **3.4.1 Interviews**

Before being able to analyse the interviews, it was important that the data was familiar to the researcher. Familiarisation occurred through transcription and reading of the transcripts. Each transcript was read at least twice before it was coded. Transcripts were uploaded to a piece of qualitative software called MAXQDA. This software supports the coding of data and enables different types of data to be uploaded and analysed which made it apt for this study.

The first stage of the analysis after familiarity was to find the preliminary themes (Brookes et al 2015). These preliminary themes were based on the literature discussed in chapter two. The themes are set out below in table 3.4. Having set out these themes the analysis then sought to identify the specific detail that complements or contradicts the theme (Cresswell 2007). It was important to remember that analysis is an iterative process and that themes may emerge from the data which the researcher had not anticipated. Therefore, the analysis took a four-stage approach to coding the transcripts. The first stage occurred after familiarisation. In this stage, the researcher focused only on coding the preliminary themes. Having completed this each transcript was reviewed to identify emergent themes and these were then coded (see table 3.4 for identification of emergent themes). The third stage was to read each transcript a further two times to ensure that no data that matched a preliminary or emergent theme was missed. The final stage occurred after all the other data had been analysed. This was a final read-through of the coded transcripts to make sure they had been fully coded and marked up.

Theme	Status
Perception of whistleblowing	A Priori
Understanding of whistleblowing	Emergent
Training	Emergent
Provision of Advice	A Priori
Provision of Support	A Priori
Engaging with Policy	A Priori
Collective Bargaining	A Priori
Work Retaliation Victimization	A Priori
Social Retaliation Victimization	A Priori
Outcomes of Union Whistleblowers	Emergent
Perceptions of Law	Emergent
Trade unions use of the law	A Priori
Lobbying	A Priori
Collaboration	A Priori
<i>Table 3.4: research themes</i>	

### 3.4.2 Document analysis

The parliamentary data (3.3.4) and the website documents identified in 3.3.5 were suitable for analysis using the thematic approach and codes identified in 3.4.1. Therefore, these documents were uploaded to MAXQDA alongside the interview transcripts. Each document was read twice before any coding was done. Coding

was done in line with themes set out in table 3.4 No new themes emerged from documents.

### **3.4.3 Public Concern at Work**

As identified in section 3.3.2 the data from this study was coded in line with a codebook. The codebook provided that each piece of data was given a number that denotes its status for example trade union membership was coded a yes = 0, no = 1 and unknown = 2. This meant the data was suitable for analysis using quantitative methods. In this case, SPSS was utilised. Before undertaking the analysis, the data was cleaned to ensure that each code was valid and there were no empty boxes. The data file also checked each variable to make sure that it had been correctly identified as a nominal. At this point, the dataset was reduced by running a check to identify all cases where trade union membership was unknown. These cases were then excluded, and a master file was created which just had those cases where union membership was known. All further analysis was done using this master file. A basic crosstab was then run of the complete codebook using trade union membership as a constant factor to be tabulated against. These crosstabs were then reviewed to see whether they supported or questioned the data analysed using the thematic analysis.

### **3.4.4 Triangulation**

Research needs to be reliable and the data valid; by ensuring a study has both, the researcher provides rigour to the findings (Bashir et al 2008). The rigour of a study can be enhanced through the use of triangulation (Heale and Forbes 2013). Triangulation is the use of multiple approaches to researching a question. This can be through multiple theories, data, researchers or methods (Denzin 1978). Method triangulation involves using multiple types of data collection whereas data source triangulation involves utilising different types of people (Carter et al 2014). This study has used both multiple data and multiple methods. Utilising different data and method sources has the purpose of confirming the data as it cross validates one data source or method with another as opposed to providing completeness to a



study (Adami and Kiger 2005). Table 3.5 sets out the Method triangulation used whereas table 3.6 sets out the data source triangulation.

<b>Method triangulation</b>	
Interviews	With trade unions and whistleblowing experts
Public Concern at Work advice line Data	Insights from whistleblowers
Website Data	Insights of trade unions
Parliamentary debates review	Insights of politicians
Trade union Whistleblowing commission submissions	Insights from trade unions
Document analysis	Insights from trade unions
<i>Table 3.5: method triangulation</i>	

<b>Data Source Triangulation</b>	
Trade Union officials	Through interviews
Whistleblowing experts	Through interviews
Politicians	Through parliamentary debates
Whistleblowers	Through PCAW data
<i>Table 3.6: Data source triangulation</i>	

Not only does triangulation provide rigour to the overall study but it can increase confidence in the data and provide a clearer understanding of the problem (Thurmond, 2001, p.254). Mathison (1988) suggests that triangulation will provide one of three outcomes namely convergence where the data comes together to provide an understanding to a phenomenon, Inconsistency where the data does not

confirm a single phenomenon and thirdly contradiction where the data provides opposing views.

What did the triangulation consist of in this study? In this study, triangulation has led to data convergence. Throughout the study, the different methods have been utilised at different points. This is to ensure the most appropriate data is used to explore a given theme. Table 3.7 sets out for each of the themes which method has been utilised as the primary data source and what has been used to triangulate. The table highlights that some of the themes do not have method triangulation however, as the primary data is interviews there is triangulation involved based on data source triangulation as interviews were carried out with union representatives and whistleblowing experts.

<b>Theme</b>	<b>Primary method</b>	<b>Triangulation method</b>
Perception of whistleblowing	Interviews	Documents and PCAW
Understanding of whistleblowing	Interviews	Documents and PCAW
Training	Interviews	
Provision of Advice	Interviews	PCAW, Websites
Provision of Support	Interviews	
Engaging with Policy	Interviews	Documents
Collective Bargaining	Interviews	Documents
Work Retaliation Victimization	Interviews	PCAW
Social Retaliation Victimization	Interviews	PCAW
Outcomes of Union Whistleblowers	Interviews	PCAW
Perceptions of Law	Interviews	PCAW
Trade unions' use of the law	Interviews	
Lobbying	Parliamentary Debates	Interviews and Documents
Collaboration	Interviews	

*Table 3.7: triangulation of the themes*

The next chapter (four) presents the findings of this study. An attempt has been made to structure and write it as representative of pragmatist inquiry. This study has sought to find the truth about the role of trade unions in whistleblowing in line with the pragmatist philosophy enunciated by James (1906). It has utilised Dewey's model of inquiry (1920) to identify the most appropriate data to address the question set. The motivation of using multiple methods was the need for additional coverage.

By doing this the study has utilised multiple sources of data and multiple methods which enables it to triangulate data and ensure greater validity of the findings. The search for truth is found on a factual analysis of data and triangulation outside of the researchers' personal perspectives of what constitutes knowledge. Thus, this study holds to the fundamental principles of pragmatic study.

Having considered the philosophy that underpins the study, alongside the methods of collection and analysis it is important to consider the ethical issues that exist within this study that is what the next section of this study does.

### **3.5 Ethical Consideration**

As a mixed-methods study, there are elements of the data which are qualitative in their nature. These carry particular ethical issues. This is because it often seeks to understand an area using human subjects as the main source of data (Creswell 2014). In regard to interviews, Kvale and Brinkmann (2009) identify some key ethical considerations. These include fully informed consent being that the individual should be told the background of the research, the purpose of collecting data and the future use of the data prior to giving their consent. Confidentiality entails making sure participants' information is not disclosed or that they are identifiable without their express consent. Whilst consequences relate to the level of harm a participant may suffer. In general, a do-not-harm policy should be taken, however, there are occasions where a participant may recall an event or story which brings with it emotional side effects. In these situations, the role of the researcher is crucial in balancing the desire to get rich contextual data without exposing the participant to unnecessary harm.

In following these principles, the research first sought and received, ethical approval from the universities research ethics committee. This was originally granted to interview trade unions (see appendix one for approval letter). However, as the study had difficulties recruiting trade union participants further approval was requested to interview experts in the field. This extension was granted (see appendix two for this approval). On recruiting participants, they were supplied with details of the study in the form of a participant's information sheet (see appendix three). before engaging

in the interview's individuals were asked to confirm they had read the information sheet and were giving their consent to participate. Interviews that occurred in person signed a consent form. Those done over electronic means gave verbal consent.

Upon completion, the interviews were transcribed, and the raw data and transcripts were kept on a secure private folder to which only the researcher had access. This enabled the researcher to ensure privacy and confidentiality alongside complying with data protection legislation. To ensure that participants engagement in the study was consensual they received the transcript and had an opportunity to amend or clarify any point in the transcript. They were able to identify any part they on reflection wished not to be used alongside the opportunity to withdraw. This ensured that when analysis was undertaken it was the participants meaning and perceptions as opposed to the researchers that were analysed.

It should however be highlighted that in two cases this process was not followed. The two UK experts were not interviewed as part of this study. Expert 1, was interviewed as part of a research project undertaken as part of the governments' freedom to speak up investigation. The research project lead was Dr Wim Vandekerckhove and had ethics approval from the University of Greenwich (13.5.5.9). The project complied with expected norms or research. Expert 2, was interviewed as part of a research project looking at advice-givers to whistleblowers. Dr Wim Vandekerckhove was the project lead with ethics approval from the University of Greenwich (15.3.5.15). The specific interview was undertaken by Arron Phillips in both cases the interviews occurred before the implementation of GDPR which requires express consent. The two participants gave consent for participation in those studies and for the data to be used in wider research projects. Thus, while explicit consent for this project was not given, the use of the transcripts was within the bounds of consent provided by the participants.

Another stream of data used in this study has been the analysis of cases to Public Concern at Works advice line. This data was collected as part of a follow-up study called inside story 2. This project was a joint project between the University of Greenwich and the organisation. The research used secondary data for which

research ethics approval was not required. The charity gave informed consent for the data once collected and anonymised to be used for academic purposes.

All other data collected for this study were publicly available data. The data was on websites to which the organisations intended to be freely available to any individual who searched the website. Thus, this can be considered secondary data and does not pose ethical issues highlighted for other data sources.

This section has considered the ethical implications of this study and the action taken to ensure ethical compliance. As has been mentioned on several times in this chapter the researcher faced problems in getting sufficient participants for the study. The next section reflects on these problems.

### **3.6 Reflections**

Looking back at the process and journey of the study there have been some considerable hurdles that have been faced. The study originally designed was for a purely qualitative piece of research using a constructivist philosophy and case study design. It had originally been planned to have three overarching cases based on the three countries. Within these, there would be three subcases focused on a public sector union, private-sector union and a general union. Two significant problems arose as this was implemented. Firstly, as the researcher only spoke English there were language barriers. While efforts were made to minimise this by using contacts to identify appropriate participants the language issue did prevent some individuals from participating. The limited interviews in Norway and Netherlands meant that the case study approach needed to be reconsidered. This was further reinforced by the second problem which was a lack of willingness by trade unions to engage in the study. As so few trade unions responded to the requests it was clear that a qualitative case study design would not yield the data required for a doctoral thesis. This led the researcher to reconsider the study. In doing so they looked back to previous research and interests to identify ways to move the research forward. In previous research website analysis has been undertaken which provided insight and good data. Having undertaken previous studies in the field of Law the idea of reviewing parliamentary data came to mind. These data methods provided rich data.

This alternative approach also meant that the constructivist approach was not congruent with methods. However, the approach adopted on reflection clearly situated itself within a pragmatist framework.

The next section goes on to address the limitations surrounding the methods of this study.

### **3.7 Limitations**

In every study there will be limitations that affect it in some way, this study is no exception. In chapter 6 there is an exploration of the wider limitations of this study in light of the findings. The limitations discussed here relate specifically to the methods adopted.

The first limitation relates to the interviews. As identified in section 3.3.1 only 12 interviews were conducted for this study. A further two interviews from previous research were utilised to increase this to 14. Of those 14 only 7 were UK based. Of the 8 trade union interviews, only 5 were UK based. This is a very limited number and therefore cannot be considered representative of the whole trade union movement. To an extent, the impact of this limitation is mitigated by fact that two of the three largest unions Unison and GMB engaged in the study albeit at regional and lay respectively. Furthermore, the other methods of data collection included a much wider range of trade unions.

A second limitation relates to the website analyse. When searching the websites, it was only possible to review publicly available data. Many of the unions have membership walls. It is entirely possible that the unions have information on whistleblowing for members in those member sections. Another limitation is the search terms used, these were taken from previous research and thus may not have captured terms a union might use for example in recent times the phrase speak up has become more popular as opposed to whistleblowing. Furthermore, as the research chose to focus on TUC affiliated trade unions websites of non-affiliated unions were excluded. These non-affiliated unions may engage in whistleblowing activities and as such this study will have missed the opportunity to see that data.

Furthermore, by only searching the first page of results the researcher has limited the opportunity to identify relevant material which may exist on later pages.

When reviewing the parliamentary debates, we are limited to the verbatim record of the debate. In the debates, reference was made to letters or communications these are not publicly available. This makes it difficult to identify the extent or level of engagement thus creating a limitation.

There are limitations with the documents that have been reviewed in this study. This is because each of the documents analysed was written for a specific purpose. This study has reviewed the documents outside of that purpose. Thus, the analysis is applying research parameters that were not intended for in the interpretation or application of those documents. Furthermore, some of the documents available were old and thus may have been updated but not made publicly available. These old documents may not, therefore, be a true reflection of the unions' position or engagement in whistleblowing at the time the study has occurred.

The Public Concern At Work data has limitations. Firstly, the data comes from the potential whistleblower. This will be their subjective interpretation of their lived experience and they may not disclose all the relevant information. Secondly, the qualitative elements of the data are the advisor's summary of the conversation. This limits the data further as it will not record all the information disclosed in the call but rather the information the advisor deems relevant in the context of recording the conversation and providing them advice on the given situation.

A further limitation of this study is that the data analysed was collected between 2016-2018. As with any research field, it needs to be recognised that things change. In the context of whistleblowing, we have seen the European Union introduce a directive on whistleblowing. This will require changes to whistleblowing provisions in its member states. While the United Kingdom has left the EU and is not required to implement it, it may be that trade unions have taken note of it and have reviewed their position.



## Chapter Four: Findings and Interpretation

### 4.1 Introduction

This chapter analyses and interprets the data for this study. The chapter is structured around three key themes: how unions perceive whistleblowing, their role within organisations, and their role within society. These themes result from findings emerging from triangulating different data sets, in an inquiry-driven by the research questions. The main research question of this study is:

‘what role do trade unions play in supporting whistleblowers?’

More specifically, the literature review specified four research sub-questions:

1. ‘How do national contexts affect union engagement in supporting whistleblowing?’
2. ‘How does the law affect trade union engagement?’
3. ‘How does the type of victimisation affect union engagement?’
4. ‘How do trade unions use their voice to support whistleblowers?’.

During the analysis of the data, various themes emerged. On review of the four literature-driven research questions and the themes emerging from the data, three overarching themes used to structure this chapter became clear. The first theme that is explored is the perception of whistleblowing by trade unions. This theme relies on interview data as the main source of data. In triangulating the data, reliance is placed on the PCAW data and trade union website data.

The second theme is the role trade unions have within organisations, the internal role. This is further divided into Advising, Supporting, Collective Bargaining, Policy and Victimisation. This theme relies on interviews as providing insights this is then triangulated by the PCAW data, in relation to advising and supporting reference to websites of trade unions further supports the analysis.

The third theme explores the wider role trade unions play in society, the external role. This section is broken down into subsections that cover the Law, Lobbying, Collective bargaining outside the organisation and engagement with other organisations. The Law, Collective bargaining and collaboration sections primarily derive data from the interviews. The Law section then uses the PCAW data to triangulate the findings. The lobbying section uses information from the parliamentary process as the main driver of data; this is then triangulated through interviews and publicly available consultation documents. The structure of this chapter based around these three themes resonates with theoretical frameworks discussed in chapter two, namely the three tiers and the model of voice.

While the above highlights how the chapter is structured based on the themes along with how each data source relates to the themes, it should further be noted that the main focus of discussion is the United Kingdom. What this means is that each section will focus on the data relevant to the UK for the main discussion. Where the Norwegian or Netherlands data enables this study to suggest that a finding may be universal or differ based on elements discussed in previous chapters, this will be drawn out at the end of the relevant section.

## **4.2 The perception of whistleblowing by the trade unions**

The way trade unions understand, and view whistleblowing is likely to affect how they engage in whistleblowing within the workplace and wider society. Therefore, before looking at findings around the specific roles of trade unions in whistleblowing, this section looks to identify how trade unions perceive whistleblowing. It does this by exploring several sources of the data. The data from the interviews drives the understanding of the perceptions. This is because whilst it is the subjective voice of the participant that is expressed, this will be formed by what they have heard and been told by the union itself. This will then show how the union itself perceives whistleblowing. This subjective perception can then be analysed through other data firstly we can see whether the union voice that is given in the interviews is seen on the union websites. The websites are informed and speak to what the union see as important for the public and their members. We are able to then analyse the union perceptions against the PCAW data which gives us actual data of potential

whistleblower journeys. From this, we are able to see if those perceptions of the union map against the reality of the whistleblowing and the whistleblower journey.

#### **4.2.1 Important but no cases**

Whistleblowing is perceived as an important part of the role of trade unions. Trade unions encourage members to raise concerns:

*we encourage our members to articulate their concerns (FBU email response)*

*'in terms of whistleblowing, we actively encourage members to come forward and make whistleblowing complaints.'* (UKprilay1)

This encouragement is seen as important as it provides information about members' concerns that can be used by trade unions, which they would not get through other mechanisms:

*'yeah, and the reason we're very pro is just, it's another mechanism for people to actually raise things that they wouldn't normally come forward with.'* (UKprilay1)

While the unions see whistleblowing as a positive way of receiving information, several lay representatives of the unions suggested they had dealt with very few, if any, whistleblowing cases:

*'I don't think I did, strictly speaking'* (UKpublay1)

*'in the last 25 years, I've only dealt with one proper whistleblowing case'* (UKpubreg1)

This lack of whistleblowing cases was cited as a reason by a couple of trade unions at the national level for not participating in this study.

*We are a very small union and it's not something that has arisen as far as I'm aware. (Aegis email response)*

*Whistleblowing has not been a significant issue in our union. We have had very few cases (UCU email response)*

This suggests a conflict across trade unions about how whistleblowing can be encouraged and can be a source of information; lay representatives do not seem to deal with whistleblowing cases. The suggestion that whistleblowing is not an issue for members can be questioned when we consider that almost 50% of those individuals who sought advice from PCAW were trade union members (see Table 4.1).

<b>Trade Union Membership</b>	<b>Number</b>	<b>Percentage</b>
Yes	151	46.75%
No	172	53.25%
Total	323	100%

*Table 4.1: Advice line Union Membership*

In further discussion with trade union representatives, it became clear that there were potential explanations for the conflict highlighted above. One such explanation is that trade union representatives do not fully understand what whistleblowing is. For example, one union stated

*'I'll tell you one of the problems we do have is more that sometimes people don't recognise it as a protected disclosure. That can be a bit more complicated, so that's reps as well as members, they don't actually understand what makes up protected disclosure.'* (UKprilay1)

Other unions were not so clear

*'but, then, thinking of what Wim was saying, when he came to speak to us last month, he was saying, "well whistleblowers never set out thinking, you know, I'll be a whistleblower". Actually, I think possibly I did see, what could have been the early stages of whistleblowing, had it continued along that path.'* (UKpublay1)

In this response, it is clear the representative was only able to recognise a whistleblowing case looking back on their time as a lay rep, having heard someone explore what whistleblowing is.

#### **4.2.2 Lack of understanding**

In another case, a trade union suggested a lack of understanding by highlighting that most concerns raised were not, in fact, whistleblowing.

*'You may think it's whistleblowing, but usually it's going to be a collective bargaining issue or it's going to be in the public interest'* (UKpubreg1)

This was a surprising statement coming from a regional representative who advises and supports local representatives and so should know the union's position. Furthermore, this specific union has information publicly available on its website in the form of a whistleblowing factsheet for members negotiating whistleblowing policies, something one would expect a regional representative to be familiar with. This factsheet clearly sets out that while there are the six legal categories (in bold below) of protected disclosure, Unions should negotiate a much broader range of concerns for protection under a whistleblowing policy.

*The word whistleblowing in this policy refers to the disclosure internally or externally by workers of malpractice, as well as illegal acts or omissions at work.*

*An employee can raise a concern if they reasonably believe that one or more of the following has occurred<sup>27</sup>:*

***A criminal offence***

***A failure to comply with a legal obligation***

*Improper unauthorised use of public funds or other funds*

***A miscarriage of justice***

*Maladministration, misconduct or malpractice*

***Endangering of an individual's health and safety or welfare***

***Damage to the environment***

***Deliberate concealment of any of the above***

*(Unison Whistleblowing factsheet June 2017 p11, emphasis added)*

Another union focussed throughout the interview on health and safety issues.

*'Our main set of disclosures tend to be about health and safety' (UKprilay1)*

These examples suggest a lack of understanding, which could be explained by three further factors that came out of the interviews. The first of these is that trade unions see whistleblowing as something that happens much further down the line of raising a concern.

*'Actually, I think possibly I did see, what could have been the early stages of whistleblowing, had it continued along that path.' (UKpublay1)*

*'Generally, it's the last resort' (UKprilay1)*

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<sup>27</sup> Bold denotes a criterion found in the legislation

This perception of whistleblowing is supported by the website analysis as one of the documents stated:

*When is whistleblowing justified? Only as a last resort  
(Chartered society of physiotherapy Whistleblowing advice  
sheet January 2015, emphasis in original)*

However, if the purpose of whistleblowing is to raise concerns, it must generally be that acknowledgement of a disclosure as whistleblowing must come early in the process of voicing concern. As the data from the advice line shows, whistleblowers make disclosures multiple times (see table 4.2) and in the first instance usually to line managers (see table 4.3), suggesting that whistleblowing starts off as a more informal process. Only a few of the interviewees recognised this.

Trade union Membership	Disclosure attempt 1	Disclosure attempt 2	Disclosure attempt 3	Disclosure attempt 4
Yes	125	60	26	4
No	140	57	20	5
Total	265	117	46	11

*Table 4.2: Number of disclosures at each attempt*

Receiver		Wrongdoer	Line Manager	Higher manager	HR	Union	Specialist	Regulator	Professional Body	MP	Media	Other	Total
Trade union member	Yes	11	49	47	5	1	0	4	0	1	1	6	125
	No	13	70	32	11	0	1	4	1	0	0	8	140
Total		24	119	79	16	1	1	8	1	1	1	8	265

*Table 4.3: Receiver of first disclosure*



The second factor was mentioned by several of the unions and concerns a lack of training.

*'I haven't been trained or anything.'* (UKgenlay1)

*'Being honest, I can't remember any training on it at all any formal training'* (UKprilay1)

This representative followed up to expand on this point and the difficulties with training.

*'What we do, as a branch, we subscribe to what's called the Labour Research Department. Now the Labour Research Department produce books, law books, so we buy that, so we've got about 100 reps in our branch, and about 70 of them get law books, that they're updated on a yearly basis, and they're more reference type books, and they're really good. If we're dealing with cases we tend to refer to our law books to assist members.... In effect we're facilitating people to be self-taught'* (UKprilay1, emphasis added)

The quote highlights that whilst training exists, learning is expected to be done by the reps through the reading of material provided by the union. This makes it difficult to know whether representatives have truly understood the information they need to know to represent their membership.

The third factor found in the data, suggesting a lack of understanding is around the role of the national arm of individual unions in setting a position on whistleblowing. When asked about the union's position on whistleblowing, representatives were unaware of their national union position:

*Interviewee: 'I don't think so, no. No, I don't think so.'*  
(UKpublay1)

*'There's never been an item on an agenda, at the congress, or any meeting at all. The subject just hasn't come up..... I don't know what it is, to be honest. If you're asking what the JNB's position is, I don't know.'* (UKgenlay1)

This is further supported by a lack of engagement by the TUC who did not see whistleblowing as a priority.

*'it wasn't a priority.....So, to be honest, it was a kind of back-burner. Because I was interested, I did keep an eye on it.'* (UKfed)

This lack of priority is not surprising when one considers that, as mentioned earlier in the chapter, the national level does not see whistleblowing as an issue they face. In fact, one of the unions went further and highlighted they had 'not issued specific guidance on the subject' (UCU email response).

As such, it is likely that this union also does not provide training, and thus the lack of understanding by the lay rep can be explained.

Interestingly, the PCAW data (Table 4.4) enables us to identify that all but one of the UK unions that participated in this study fall within the top five industries from which workers seek advice from PCAW. This corroborates the finding that although some union reps say that whistleblowing is important, the data suggests that generally, unions underestimate the importance of whistleblowing because they fail to understand whistleblowing, and hence are not engaging with it.

Industry		Care	Health	Education	Local Government	Financial Services	Charity	Others <sup>28</sup>	Total
Trade Union Membership	Yes	18	47	28	18	2	7	31	151
	No	43	11	18	5	17	11	67	172
<b>Total</b>		61	58	46	23	19	18	98	323

*Table 4.4: Industries of whistleblowers*

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28 This is an amalgamation of 18 other known industries where the total did not exceed 10 per industry plus unknowns

How can we explain this apparent non-engagement by trade unions? One of the interviewees, a UK whistleblowing expert, identified unions' perceptions of whistleblowing as an individual and time-consuming behaviour:

*'.... the problem about whistleblowing is it's time-consuming. So instead of it being a great opportunity to get in there and mobilise people about things that people regard as important, it's seen largely as an individual issue that's very time-consuming.'* (UKexpert1)

This is largely supported by the data (Table 4.5) which shows that while wrongdoing is often witnessed by multiple people (100 cases from 263), in only 27 of those cases did the group make a disclosure collectively (10% of all disclosures).

		<b>Witness Alone WB Alone</b>	<b>Witness Group WB Alone</b>	<b>Witness Group WB Group</b>	<b>Total</b>
<b>Trade Union Membership</b>	Yes	68	41	15	124
	No	95	32	12	139
<b>Total</b>		163	73	27	263

*Table 4.5: Wrongdoing and whistleblowing alone or as a group*

The data in Table 4.5 also shows that while over half of wrongdoing is witnessed by the singular whistleblower, there is a significant amount of wrongdoing that is witnessed collectively even if not disclosed by the collective. This provides the trade unions with scope to collectivise the issues. However, the findings of this study suggest trade unions do not see that scope. What the data does not, however, tell us is if other trade unions have seen this scope. With the limited number of trade unions engaging in this study the collective nature of whistleblowing did not come out. Later in the findings, we will see that whistleblowing is seen as an individual act

by these unions and may explain why this scope is not identified or part of the trade union discussion.

#### **4.2.3 Conclusion on trade union perspectives**

It can be seen from the data above that there is a clear conflict between what trade unions at the national level perceive to be whistleblowing and what local representatives see. This conflict may exist due to a lack of understanding of what whistleblowing is, which arises due to a lack of training and communication between the levels of the unions. The secondary data does little to support the trade unions' perception that it is not an issue for trade union members but rather goes to highlight that these perceptions are likely to be mistaken and thus require at least some trade unions to rethink how they view whistleblowing.

Although there is a finding that there is a conflict between the levels of the unions and that unions do not have an appreciation of what whistleblowing is, there is also finding that trade unions do see the importance of whistleblowing – at least in theory. These findings provide insight into the role of trade unions and thus help us address the overarching research of the role of trade unions. The finding that whistleblowing training is not provided to local representatives provides further support for a lack of engagement by trade unions which goes to the overarching question. It further points us to the fourth sub-question on the trade union voice. It can be suggested that if trade unions do not understand whistleblowing and have a perception of whistleblowing that does not align with the reality of it, then they are not likely to be using their voice effectively. This tentative position will need to be explored further as we go on to explore the data in more detail.

The findings identify that a potential reason for this is that whistleblowing is seen by trade unions as an individual act and trade union seeks to engage at a collective level. This initial finding is strengthened later in this chapter. This idea of a collective mindset goes to the heart of sub-question one and the social role of trade unions. It also provides us with an early insight into how unions utilise their voice which is the

purpose of sub-question four. These connections between findings and the research questions will be explored further in chapter five of this study.

The next section of this chapter will explore this in more depth by focussing on the actual role trade unions undertake within the organisational context.

### **4.3 Trade unions' internal role**

This section of the chapter looks at the role trade unions have within an organisation. There are different functions for trade unions and whilst advice is a form of support, trade unions delineate between the two. The quote below can be seen as a summary of the findings from this section.

*'we advise the whistleblower what to do, and we help him in doing the right things' (Norpubnat1)*

This section follows this split approach and looks at advice before addressing support. Then, having considered how they support whistleblowers individually, the section looks at the wider role of trade unions within an organisation specifically around collectivising and policy. Often policy and support are there to protect whistleblowers from victimisation, and thus the internal section concludes by addressing victimisation.

#### **4.3.1 Advise**

This section of the chapter focuses on how trade unions engage in the role they play. Trade unions want their members to come forward with concerns.

*'we encourage our members to articulate their concerns, there are channels through the union to raise these with management.'* (FBU email response)

*'Right, in terms of whistleblowing, we actively encourage members to come forward and make whistleblowing complaints.'* (UKprilay1)

As previously mentioned, this is because it brings forward information that the union would not otherwise receive. However, the trade union's role goes beyond encouraging disclosure and is more about supporting the member. As one union official articulated, they saw the role as:

*'That's really supporting and protecting the member..... So, yeah. Protect and support.'* (UKgenlay1)

The other representatives did not expressly specify this as the role but implicitly did through exploring what support they provided. For example:

*'You may get issues where things arise, which are not necessarily, directly a work-related or contract-related issue. So, for example we had all the scandal that went through Tower Hamlets when the Mayor was done for corruption. And though we, did not led the charge on that, we were behind the scenes, working with the individuals concerned. Because, they needed that support and advice as to how to be able to take the case forward.'* (UKpubreg1)

One union highlighted why it was important that the union provided this function:

*'because they may be up against a lot of powerful people and I don't want them getting squashed in the process, sacked or whatever else.'* (UKgenlay1)

This suggests that trade unions believe the response to whistleblowing is likely to be negative. Whether this is the case is discussed later in the chapter (section 4.3.6 victimisation). Thus, it is important to identify what advice trade unions provide to those who choose to blow the whistle.

Several of the trade unions identified that if they had a whistleblower, they get them to raise it through the union.

*'But the advice that the individual would receive would be to actually raise it through us. Then there is merit in us pursuing it.'* (UKpubreg1)

*'People will come to us with information, we will raise the information on their behalf'* (UKprilay1)

This approach was echoed by an expert who supported trade unions on whistleblowing.

*'they had the backup from the union who could make the disclosure for them and they came to us and sort advice early so we could do that.'* (UKexpert2)

*'Get your union to do it and that's the approach we took in the end'* (UKexpert2)

One reason highlighted for going through the union was that it protects the member and keeps them out of the disclosure:



*'We set it up with all our ducks in a row and the actual union made the disclosure and the member was nowhere near it.'*  
(UKexpert2)

Another union highlighted that raising it through the union as a collective grievance was a better way of dealing with the issue. This is because it protects the whistleblower from potential management action as the concern is then not a disagreement between the individual and the manager but the union against the organisation.

*'So, we would always argue, to our people, not to put a grievance on. If you're going to run a grievance against your manager, then you have to have the acceptance in your head, that all hell could come your way. So, there may be different ways of dealing with it. And, if you win your grievance, well what have you done? You've made your manager look small. Unless, the manager has got a lot more bounce about them, or better leadership above them, too many of them will then try and get their own back. So we've got to find different ways of handling it. So, collective grievance is far better than individual grievance. Take everybody on.'* (UKpubreg1)

While one of the unions highlighted that relative weakness of the union means that they can be a shield for the member

*'Where we're industrially strong, we will directly support or members to make these claims. Where we're industrially weak and people are more worried that they are going to get dismissed if they raise complaints, we try to act as a shield for people.'* (UKprilay1)

There is a clear distinction here by the union between support, which entails helping the union make a disclosure and protecting a member by being a shield.

In Norway, we see a different approach in that trade unions do not attempt to be a shield for the whistleblower. There is a much more stark position about what to advise, either make the disclosure and then leave or do not make a disclosure at all.

*‘Yes. It’s a simple answer of that. We ask have you another job to go to? Because the experience, I’m talking a little bit about myself, because experience is not so good, but we help them, we take the issue.’ (NORpri1)*

*‘But the risks are too big, the infrastructure is not in place so we can’t recommend it.’ (Norpubnat1)*

Here we can identify a difference in approach between the UK and Norway trade unions. In Norway, the trade unions are not suggesting they can shield a whistleblower from negative treatment, but rather the focus is on helping them make a disclosure or finding a way to move out of the organisation. This suggests that there is a recognition that the position of the whistleblower is difficult once the disclosure is made. However, we cannot draw a firm conclusion on this as the interview data is limited to a couple of trade unions. What it does show is a different mindset by those interviewed and alludes to a different approach to advising and support. This points to the fact that social differences may exist when addressing the sub-question on contextual differences but would need further specific research to identify whether these initial observations hold when looking at the wider trade union movement in Norway.

In terms of what the advice might look like other than going through the union, the interviews did not provide any further context. This is not surprising. As identified previously (section 4.2.2), the unions appear to lack understanding of what whistleblowing is. The PCAW data also indicates that union member whistleblowers seek further advice from an external agency after making a disclosure. Of the 151 union members in the data sample, 124 of those rang the advice line after the first attempt at disclosure (see table 4.6). This suggests that either these whistleblowers have not found their trade union supportive or they lack trust in them. The numbers

for non-union members are similar, leading us to find that being in a union for the purpose of whistleblowing advice or support appears to provide no benefit to the whistleblower.

		<b>Before Raising</b>	<b>After First attempt</b>	<b>After Second attempt</b>	<b>After third Attempt</b>	<b>After Fourth Attempt</b>	<b>Total</b>
<b>Trade Union Member</b>	Yes	27	70	36	15	3	151
	No	34	85	36	12	5	172
<b>Total</b>		61	155	72	27	8	323

*Table 4.6: Whistleblowers first contact with the advice line*

The table below further highlights the lack of information around whistleblowing for trade union members (table 4.7). It shows that of TUC affiliated trade unions, over half of them had no publicly visible relevant information on their website about what whistleblowing is. However, it should be noted that this is a search of the publicly accessible material there may be further information behind a member's wall. This further speaks to the earlier discussion on perceptions. The lack of information albeit with the caveat of the members' wall, suggests that trade unions do not perceive whistleblowing as of importance requiring guidance or information on the website.

Trade Union / search term	Whistleblower	Whistleblowing	Public interest disclosure	Protected disclosure	confidential reporting	Members Wall	Further Information
Accord	X	X	X	X	X	Yes	No search function
Advance	X	X	X	X	NRI	Yes	
Aegis	X	X	X	X	X	Yes	
AEP	X	X	X	X	X	Yes	
AFACWA	NRI	X	X	X	NRI	No	
Artists union	X	X	X	X	X	Yes	
ASLEF	NRI	X	X	X	Information on confidential incident reporting	Yes	
BALPA	X	X	X	X	X	Yes	
BDA	Member-only access	Member-only access	NRI	Member-only access	Member-only access	Yes	
BECTU	X	Member-only access	General Information on dismissal reference to whistleblowing	General Information on dismissal reference to whistleblowing	NRI	Yes	Members-only access was on Prospects website
BFAWU	X	X	X	X	X	No	

BIOS	X	Link to an employment law service page which references whistleblowing	Link to an employment law service page which references whistleblowing	Link to an employment law service page which references whistleblowing	NRI	Yes	
<b>Trade Union / search term</b>	<b>Whistleblower</b>	<b>Whistleblowing</b>	<b>Public interest disclosure</b>	<b>Protected disclosure</b>	<b>confidential reporting</b>	<b>Members Wall</b>	<b>Further Information</b>
College of Podiatry	X	X	NRI	NRI	X	Yes	
Community	Information on legal protection	Information on legal protection	Information on legal protection	Information on legal protection	Information on legal protection	Yes	All searches provided the same single link to a health and safety page
CSP	Training activity book dated 2015	Training activity book dated 2015	NRI	NRI	NRI	Yes	Training guide uploaded in 2018 so was not identified in the 2017 search. The document located in 2017 no longer on the first page of search results
CWU	X	Link to General employment advice page	Link to General employment advice page	NRI	NRI	Yes	
EIS	X	X	X	X	X	Yes	
Equity	X	NRI	NRI	NRI	NRI	Yes	

FBU	NRI	NRI	NRI	NRI	NRI	No	
FDA	X	X	X	X	X	Yes	
<b>Trade Union / search term</b>	<b>Whistleblower</b>	<b>Whistleblowing</b>	<b>Public interest disclosure</b>	<b>Protected disclosure</b>	<b>confidential reporting</b>	<b>Members Wall</b>	<b>Further Information</b>
GMB	X	Link to Information about employment tribunals reference to whistleblowing	NRI	NRI	X	Yes	
HCSA	NRI	Link to get help whistleblowing in the list of topics	NRI	NRI	X	Yes	
Musicians union	X	X	NRI	NRI	NRI	Yes	
NAHT	X	NRI	X	X	X	Yes	
NAPO	X	NRI	NRI	NRI	NRI	Yes	
NARS	X	X	NRI	X	X	No	

NASUWT	NRI	NRI	NRI	NRI	NRI	Yes	Had specific whistleblowing agreements with three schools available
National House Building Council Staff Association	X	X	X	X	X	No	No website
NSEAD	X	X	NRI	NRI	NRI	Yes	
<b>Trade Union / search term</b>	<b>Whistleblower</b>	<b>Whistleblowing</b>	<b>Public interest disclosure</b>	<b>Protected disclosure</b>	<b>confidential reporting</b>	<b>Members Wall</b>	<b>Further Information</b>
Nautilus	NRI	X	X	NRI	X	Yes	
NEU	Model policy, policy checklist and General guidance available	Model policy, policy checklist and General guidance available	Model policy, policy checklist and General guidance available	Model policy, policy checklist and General guidance available	NRI	Yes	All Information dated 2019 onward
NGSU	X	Link to HR policies page behind member wall	X	X	NRI	Yes	
NUJ	NRI	NRI	NRI	NRI	NRI	Yes	
NUM	X	X	X	X	X	No	No search function
PCS	NRI	Link to employment law scheme	X	NRI	NRI	No	
PFA	X	X	X	X	X	Yes	

POA	NRI	Information on legal protection	Information on legal protection	Information on legal protection	NRI	Yes	The relevant information was the same page under each search and was from 2015. It did not accurately state the law at that date.
Prospect	X	Information on legal protection	Information on legal protection	Information on legal protection	NRI	Yes	The search did not identify the link found on the search of BECTU
RCM	X	Reference to support from regional reps	NRI	X	X	Yes	
<b>Trade Union / search term</b>	<b>Whistleblower</b>	<b>Whistleblowing</b>	<b>Public interest disclosure</b>	<b>Protected disclosure</b>	<b>confidential reporting</b>	<b>Members Wall</b>	<b>Further Information</b>
RMT	NRI	NRI	NRI	NRI	NRI	Yes	
SOR	Link to page behind member wall	Link to page behind member wall	NRI	NRI	NRI	Yes	
TSSA	Whistleblowing briefing and Links to legal protection	Whistleblowing briefing and Links to legal protection	Whistleblowing briefing and Links to legal protection	Whistleblowing briefing and Links to legal protection	NRI	Yes	Each search term providing the same links and documents
UCAC	X	X	X	X	X	No	
UCU	NRI	NRI	NRI	NRI	NRI	Yes	
Unison	Whistleblowing factsheet and Link to page on what whistleblowing is	Whistleblowing factsheet and Link to page on what whistleblowing is	NRI	NRI	NRI	Yes	



Unite	NRI	NRI	NRI	NRI	NRI	Yes	
URTU	X	X	X	X	X	No	No search function
USDAW	Information on legal protection	Information on legal protection	Information on legal protection	Information on legal protection	NRI	reps only	Each search term providing the same Links and documents
WGGB	X	X	NRI	NRI	NRI	Yes	
Key	X - search resulted in no results						
	NRI - No relevant information on trade unions engagement with whistleblowing in the results of the search						
<i>Table 4.7: Trade union website whistleblowing information July 2020<sup>29</sup></i>							

<sup>29</sup> Due to Covid-19 the original website analysis was unavailable, so the search was undertaken again in July 2020.

This section suggests that trade unions within the UK context look to identify a collective framework for disclosures when providing advice to their membership. This collective voice mindset goes to the social nature of trade unions and as such, helps us explore sub research questions one and four in the discussion chapter. However, as identified previously, very few whistleblowing cases are collective, so it is important to understand what support is provided by trade unions to individual members. That is the purpose of the next section.

### **4.3.2 Support**

Trade unions are there to support their membership when issues arise and help them deal with the issues.

*'We all the way represent the whistleblower and try to back him.'* (Norpubnat1)

One way this is done is through directly supporting individuals in the preparation of their cases. In one interview, this was highlighted as helping them find the evidence.

*'Then ultimately build a case, and if we get the evidence'*  
(UKprilay1)

While another union specified that the support they provided focused on looking at the material gathered and identifying how that supported the individual in the context of the organisations' policies.

*'I suppose, I ended up doing two things for this member. One was simply going through all the papers that she could provide and identifying how they related to college policies and to key principles in employment law.'* (UKpublay1)

In looking further at how this support occurs, it was anticipated that representation would be mentioned by all the unions due to it being part of the ordinary role of trade

unions representatives' duties<sup>30</sup>. Thus, the interviewer did not ask directly about representation; rather, they asked the wider question of what does support look like for union members. In only one of the UK interviews did representation get mentioned and as can be seen this was in a part of the interview where the union official was providing an example as opposed to discussing the role specifically.

*'And the person I was trying to represent kept saying, "But, that wasn't what I wanted, I've got a career elsewhere, I just wanted to do that bit of teaching. It was of interest to me, it seemed to be satisfactory to you until suddenly whatever it was happened". And I would occasionally chip in, "Oh, by the way, employment law means you can't do that". And you'd go round and round with this.'* (UKpublay1)

While other representatives did not identify the expected role, they did talk about providing emotional support, something the researcher had not anticipated.

*'What we tend to do is, we take a very supportive role with the members, because obviously we give them a shoulder to cry on and you talk to them and you help them and you support them and all of that.'* (UKprilay1)

*'But the member actually needed much more in the way of emotional support because she was going up against people who had been her colleagues. I mean she was now, obviously, some of them were managers but also they're colleagues, they're people she worked with. She'd organised a conference with one of them. That was actually where we'd met, I'd spoken at it. And I remember sitting in this very tricky meeting. She was in tears. It's emotionally very fraught. And I think that, that kind of support is reassuring. Saying, "Don't*

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30 In the UK under S10 of the Employment rights act 1996, any employee has the right to have a trade union representative in any grievance, disciplinary or redundancy situation.

*worry, you're not insane and you've got a perfectly feasible case".*' (UKpublay1)

There was, however, a recognition that trade unions do not meet these needs.

*'we probably don't do enough to support the emotional needs of people that have made complaints.'* (UKprilay1)

This lack of meeting whistleblowers' emotional needs may be explained by the fact that this kind of support sits outside the ordinary role a union plays, especially being available to listen outside normal working hours.

*'It's like a counselling thing in some way, because they might ring me up on the evenings and the weekends on the mobile. Any other member, I wouldn't answer it, routinely. But if it's one of them, they need the support. You've got to listen.'* (UKgenlay1)

This lack of support from unions is not just evident in the UK but was also mentioned in the Netherlands interview.

*'there are also cases in which the individual worker doesn't experience the support from the trade union and the workers wanting to blow the whistle....'* (NEDfed1b)

This suggests that trade unions underestimate the level and type of support whistleblowers require.

This section has addressed the data relating to supporting individual whistleblowers. It has shown that trade union representatives do not appear to engage with representing individual whistleblowers but will seek to provide emotional support. However, this is less than what whistleblowers need. This finding speaks to the way trade unions utilise their voice in the context of the individual member and thus provides evidence towards research sub-question four on how trade unions use their voice.

This sub-section of the second theme has shown the role of trade unions when they engage directly with the individual members within an organisation. It has shown that in the UK trade unions do not seek to provide members with individual advice but rather look to collective methods of raising the concern. This feeds into the support they provide as trade unions do not suggest they engage with representing individuals when raising a concern. Rather they engage in supporting the emotional welfare of the member. These key findings, as has already been suggested, help us to address sub research questions one and four. In relation to sub-question one, we can see that trade unions are focusing on their collective role. They seek to identify the wider membership benefit. This fits into the wider social role trade unions play and the way they engage organisations and society. In doing this, they utilise their voice in one of two ways firstly they support individuals with the emotional side of whistleblowing and secondly, they seek to take the issue away from the individual and raise it collectively. It also suggests that where one would expect the trade union to use their voice such as representing individual members to raise concerns, they do not do this. Further discussion on these findings in relation to the RQ's is explored in chapter five. In relation to the emotional side and supporting whistleblowers, this will be explored further in this chapter in looking at the victimisation whistleblowers face. First, though we have addressed the individual role and identified trade unions look to collectivise, therefore the next part of the findings related to the second theme and look at how trade unions engage within organisations in their collective capacity.

#### **4.3.3 Policy and collective bargaining**

Having considered the individual role trade unions play within an organisation, it is important to look at the role they play for the collective membership within any given organisation. This section does that by firstly addressing the role they play in having whistleblowing dealt with within the collective bargaining process. Subsequently, it will look at the data regarding trade unions' engagement in policy use and formation.

#### 4.3.3.1 Collective bargaining at the local level

As can be seen from the below quote trade unions prefer to collectivise, as this provides them with a stronger alternative to individual mechanisms.

*'Also, from a Trade Union point of view, why would we want individual resolution to problems when it should have been a collective issue..... Whereas, collective bargaining we can get an agreement which is a different animal altogether.'*  
(UKpubreg1)

Using collective bargaining as an avenue to respond to issues was identified by one of the unions in an email response to the request to participate in the research.

*We tend to deal with matters through collective bargaining nationally and locally, (FBU email response)*

One explanation for this collective mindset is that it provides a mechanism to apply pressure on an employer.

*'But in real terms they are few and far between. Normally we would deal with things on a collective bargaining basis. It is very easy, sometimes, to put the frighteners on an employer. In the nicest possible way.'* (UKpubreg1)

However, it should be noted that this union representative had a very limited view of what whistleblowing is. It suggests that whistleblowing is separate from any collective bargaining.

*'You may think it's whistleblowing, but usually it's going to be a collective bargaining issue or it's going to be in the public interest.'* (UKpubreg1)

When discussing whether whistleblowing is covered or negotiated within collective bargaining agreements, the unions posited that whistleblowing was not a factor to negotiate within a collective bargaining arrangement. Instead, it was a matter for discussion outside of this process at a local level.

*'Is whistleblowing discussed in those arrangements?'*

*Interviewee: Depends.....We're not going to have a whistleblowing clause, Well we may have, but it's then going to be diverted into these other agreements and processes.'*  
(UKpubreg1)

*'Okay, so, in that case, would you say whistleblowing is outside of the collective bargaining arrangements that you have with the employer?'*

*Interviewee: Yeah. It's not necessarily a union thing.'*  
(UKgenlay1)

This position of collective bargaining not being the place for whistleblowing was also evidenced in Norway and the Netherlands.

*'Are these whistleblowing policies used as part of the collective bargaining? Are they part of collective bargaining or are they kept very separate?'*

*Interviewee: No, they're part of the Working Environment Act. So it's not related to the collective bargaining issues.'*  
(NORexpert1)

*'Actually, the whistleblowing issue is not mentioned in any collective,'* (NORpri1)

Thus, it can be seen at the local level trade unions do not consider collective bargaining to be an appropriate place to discuss whistleblowing. If collective bargaining is part of the role of trade unions, we can see they do not see whistleblowing as fitting within this element of their role. Therefore, this impacts how trade unions utilise their voice and these findings on collective bargaining help us address both how trade unions utilise their voice and perform their social function. Thus, the findings help us address sub-questions one and four. If collective bargaining processes are not the appropriate place, we would expect stand-alone policies to be negotiated, and thus the next section looks at how trade unions engage in this process.

#### **4.3.3.2 Policy**

*‘Trade unions are key to well-functioning whistleblowing policies in the workplace and for effective legislation to protect workers.’ (ETUC email response)*

The above quote highlights that the European federation considers trade unions to be an important part of whistleblowing policies. However, only one trade union expressly mentioned having a role in policy creation.

*‘However, we do participate in the creation of whistleblowing policies, so for example, in our spheres of influence London Underground have got a whistleblowing policy which we was involved in. Metronet had a very good, which was one of the old private companies, they had a very good policy.’ (UKprilay1)*

Another union recognised the existence of a policy and an understanding of it.

*‘The employer has a clear Whistleblowing policy, which I've obviously read.’ (UKgenlay1)*



However, they had no awareness of the union being involved in its creation<sup>31</sup>. This was despite acknowledging the employer would normally consult with the union.

*'I don't know when the policy was written and implemented, but I've been in the union a long time. We weren't involved. So its' either a very old policy, before my time or the unions were....<sup>32</sup> I mean the employer normally consult with the union on most things, most policies. All I know is that whistleblowing policy is there on the intranet and I've read it and try use it' (UKgenlay1)*

One reason that trade unions may not engage in whistleblowing policy creation could be that it provides an alternative avenue for an individual to raise a concern.

*'I can understand there's some people may have a fear that it's used to undermine trade unions. I.e. you've got a whistleblowing policy, therefore you don't need to complain, don't go through your union, you can come to us because you can trust us.' (UKprilay1)*

This quote provides further support for the earlier finding regarding trade unions' perception and lack of understanding of what whistleblowing is. However, in relation to policy, this quote suggests that trade unions see whistleblowing as an individual act that goes against the collective mindset trade unions rely on for strength in a workplace. This may further explain why a couple of the unions were explicit that they did not have advice or an ideal policy they could use to get adopted in the workplaces.

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31 During a break in the interview the interviewee checked the policy which was dated 2013. The union rep had been in the role prior to that date.

32 The interviewee here paused and did not complete the sentence

*'We don't have our own independent ideal policy that we'd like people to sign up for.'* (UKprilay1)

*We have had very few cases and have not issued specific guidance on the subject.* (UCU email response)

This last quote is interesting because it shows some circular reasoning in the approach of the union. They do not have advice as they have only had a few cases. But, if officials at the local level do not have support and guidance on how to tackle whistleblowing cases, then they are unlikely to handle cases well. If they do not handle cases well, individuals are unlikely to go to the union for support in raising a concern and thus, cases remain few. Furthermore, if trade unions are seeking collective as opposed to individual resolutions, lack of engagement in providing advice and support is not helpful. Rather, it is likely to further increase individual attitudes towards an organisation's whistleblowing policy, thus reducing opportunities to collectivise.

This lack of engagement is of further concern when organisations that recognise trade unions will often direct the individual to the trade union for advice and support in their policies. This point was identified by one of the experts (UKexpert1).

As can be seen from the above trade unions do not appear to consider themselves to have a role in supporting whistleblowers through the creation of policy. This finding helps us in part address the overarching question of this study. This lack of a role appears to be due to the individual perspective trade unions have of whistleblowing. The literature review suggested that policy was one-way trade union would engage in supporting whistleblowing. The findings seem to suggest otherwise, and this will be addressed in chapter five when exploring sub-question one on the social role.

So far, this section has looked at how trade unions support whistleblowers in the process of making a disclosure. One other space at the local level where trade unions may have a role is supporting members after they have raised a concern and the consequences of doing that. Therefore, the next section looks at how trade unions perceive and engage in support around retaliation and victimisation.

#### **4.3.4 Victimisation**

This section of the chapter seeks to look at the area of victimisation. Its purpose is to identify how victimisation occurs through the eyes of the trade unions and also what their response might entail. In doing this, the section draws on the interviews and data from the PCAW-study.

*‘We’re just here to support our members.’ [UKprilay1]*

The role of a trade union is to support its members. How do unions support their members then when they face retaliation? Retaliation occurs in many ways, and the discussion in chapter two brought out a distinction between two forms, work retaliated victimisation and social retaliation victimisation. The next two subsections will present the findings on these two areas in more detail. A further section will then look at some of the other themes around victimisation that were identified, namely Europe and outcomes.

##### **4.3.4.1 Work Retaliation**

Work retaliated victimization is where we would expect trade unions to be acting effectively and be able to recognize these forms of retaliation. Trade unions are able to identify these different types, for example:

*‘We see members who are dismissed or victimized’  
[UKpubreg1].*

What we can see here is that unions appear to treat dismissal as separate from victimization, whereas in effect dismissal is a form of victimization, a negative action taken by someone against the whistleblower for making such a disclosure. Another

union identified that they struggled to deal with work retaliated victimization because individuals in the union didn't have formal contracts, so to speak.

*'I tended to see cases from people who were sessionals, because that's what I was dealing with. And, of course, actual formal violations of contract would be quite difficult to pin down because we were still in the throes of trying to negotiate with the organisation. I mean, there was, of course, implicitly, in law, there had to be a contract. But, in fact, it was so up in the air what it was, it would have been very difficult to pursue for formal violations' [UKpublay1].*

However, another union identified a strong-handed approach. They gave an example where an individual's shifts were changed, and they identified their response to be:

*'Our role is usually you go in there and you say, for example, "Do you know what you're doing is illegal? I'm just giving it to you straight, actually, and we're going to drag your ass to an employment tribunal." That's our usual mechanism, so that's quite a direct one.' [UKprilay1]*

From this, we can see those trade unions are able to recognize what formal retaliation looks like and have strategies to deal with this.

In the PCAW study (see table 4.8), we find, however, that only a small proportion of whistleblowers noticed no difference in the way they are treated by their manager after making a disclosure. Individuals are most likely to face some form of formal retaliation from their manager. There is little difference between union and non-union whistleblowers.

		No Difference	Informal	Formal	Support	Unknown	Total
<b>Trade Union Member</b>	Yes	23	21	43	10	29	126
	No	25	17	54	10	35	141
<b>Total</b>		48	38	97	20	64	267

*Table 4.8: Response from managers after the first disclosure*

In the above table, we can see that a similar proportion of whistleblowers, regardless of membership status, suffer negative treatment. This is at the formal<sup>33</sup> stage, so aspects of work retaliated victimization is at a similar rate to that of non-union members who blow the whistle. The fact that individuals face retaliation after making a disclosure suggests that trade unions are not adequately engaging in the disclosure process such as advising and supporting the whistleblower. This supports our prior findings in this regard. What we do find in this data is that whistleblowers from unions to a small extent are more likely to face informal retaliation by management, suggesting that union member whistleblowers are likely to face greater victimization than non-union members. This is done in such a way that victimization is not picked up in the formal mechanisms. However, we need to approach this conclusion with some caution as the data is the subjective perception of the potential whistleblower as recorded by a third party. Secondly, the numbers are small and so any conclusion would need to be tested in a much larger sample. Finally, we are not able to rule out that the difference between union members and non-members is not caused by some other factor and the union membership status is merely a coincidence. The next section of this chapter will go on to address this social retaliation and look at union responses and engagement with this informal victimization.

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33 Formal is used here and in table 4.8 as that was how it was coded in the data collection. Formal in this context is number of retaliatory actions that would fit within WRV, however WRV encompasses a greater number of work based retaliatory actions as set out in chapter 2.

#### 4.3.4.2 Social Retaliation

Social retaliation victimization is recognized by trade unions. In fact, it's something that they identify as problematic for their members.

*'we have somebody who has seen off the victimisation but is then getting cold shoulder. Is not getting a promotion. Is getting the bad shifts. Which is what happened to my Branch Secretary. They wouldn't know until the Sunday before the week started, which shift she was working. They would never have consistency in their shift pattern. If they knew that the person had a Union meeting to go to, they would make sure they had to work. The only way we deal with that is by going to the far senior level within the Trust and try to argue the issue out.'* (UKpubreg1)

So in this instance, we can see that the union approach to tackling this unseen retaliatory practice is to go to the senior management, which is a suitable response where the senior management is responsive and not complicit in such activity. However, as identified by another interviewee, sometimes the management is involved in the victimization. They highlight the different ways that victimization occurs.

*'The sorting out can be quite subtle. It doesn't mean getting you in a corner and punching your head, it can be start excluding you from emails, you don't get invited to meetings, your requests for training get turned down, your administrative support starts to sort of reduce. You're put on different shifts, you're transferred to a different department. All with a very good reason, but it happens to be happening to you and they start to scrutinize your work. The minute you make a mistake, as everybody does, your mistakes are jumped on'* [UKexpert1].

Even after receiving work retaliation victimization and being successfully supported by a union, the individual is then likely to face social retaliation victimization, and this is where trade unions further struggle, as one union identified.

*'The department was required to find teaching for her, up to a certain value and reinstate her, which they did, sort of. But she didn't get the courses back that she'd spent time developing. That didn't happen. She got sent off to do whatever it was she*

*got sent off to do and the atmosphere was poisonous.'*  
 [UKpublay1]

One union identified a successful strategy for dealing with social retaliation victimization as a collective response. He recognized that the social retaliation, while started by management, could be undertaken by staff and co-workers.

*'He turned the whole workforce against this one woman, I went round and explained to our membership, which was, if they didn't like it they can leave the union. If anyone wants to pick on her, I would help her personally make complaints against the individuals. We will not tolerate this.'* [UKprilay1]

As we can see here, the union approach is to collectively garner support from its membership as a way of preventing victimization or social retaliation.

In the PCAW study, we find a similar outcome for whistleblower's responses from co-workers. Table 4.9 shows that whilst the union members receive some negative repercussions from co-workers, they have a much higher rate of support when compared with non-union members.

		No Difference	Informal	Formal	Support	Unknown	Total
<b>Trade Union Member</b>	Yes	15	15	3	20	73	126
	No	19	14	6	10	92	141
<b>Total</b>		34	29	9	30	165	267

Table 4.9: Response from Co-workers

Another union response to dealing with informal victimization or retaliation is to try to formalize that retaliation. They do this by using policy and procedure to help them get evidence to support their case.

*'It's difficult to deal with because ultimately it's awkward to prove what is the motivation behind their actions. In those sorts of cases, you tend to use other law. We tend to use Freedom of Information Act when a request can be quite useful, but usually it's the Data Protection Act. We submit practice requests and try and get hold of email traffic. Then ultimately build a case and if we get the evidence then we do what everyone else does and is get our members to lodge a grievance.'* (UKprilay1)

These two approaches tend to focus on either the specific role of unions as out in the law or the collectivization of the union's predominant function, which goes back historically to their formation. However, quite often, informal repercussions do move on to the more formal repercussions. For example, in one case, the union highlighted that after two years of this toxic environment where the whistleblower was facing social retaliation, the organization offered a lot of people a redundancy package and the union identified that the member took this option,

*'and she said, "Yeah, well I think I'm going." I mean, she had this other career. She didn't need the grief. What she wanted was that bit of work which she had felt she had a vocation for.'*  
[UKpublay1]

From the above discussion, we have found that trade unions are able to distinguish between formal and social retaliation. However, there is some suggestion trade unions have little impact on work retaliation. But they do appear to have a greater influence on social retaliation by collectivising the wider membership to support the individual, which in turn reduces the likelihood of social retaliation by colleagues. There was no divergence of this position in the data from Norway and the Netherlands. So, this suggests the social context does not affect the role of trade unions in relation to protecting whistleblowers. However, as the interviews in both Norway and The Netherlands were limited in number this can only be a tentative finding which requires further exploration to see if it holds. These findings engage with research question three on victimisation, which will be addressed further in chapter five.



#### **4.3.4.3 Outcomes of retaliation**

The approach by unions to tackle informal victimisation in a collective or formalised manner has led to the victimisation continuing in some circumstances. Whistleblowers have left employment because of it, and we can see from the PCAW data (table 4.10) that outcomes for whistleblowers at the end are much the same as compared with those who are not in a union. The difference is that a higher number of non-union members, 47% of non-union members where outcomes are known, are likely to be dismissed as opposed to union members where it is 30%. While at first glance this would seem to contradict the earlier finding that trade unions are not particularly effective at engaging with WRV, this needs to be contextualised further. Dismissal is only one type of work retaliation and table 4.10 captures this as distinct from other types of both WRV and SRV which would be covered in victimised, whereas the previous data discussions had dismissal as part of the WRV group. Secondly, it may be that the resignation was an act of constructive dismissal. This means the employee has resigned because the employer has acted in such a significantly negative way so as to breach the implied contractual term of trust and confidence. We do not know whether this is the case from the data as these types of resignations were not separated in the data. Further, such a conclusion can only be confirmed by a finding in the employment tribunal and very few of the cases from the PCAW data went to the tribunal. Finally, table 4.10 looks purely at the final outcome and so focuses on what occurred after the final disclosure. In each case, there was previous disclosures and retaliation. Thus, the earlier finding is not contradicted by this data. However, as with previous discussions, further research on a greater number of whistleblowers which focuses on trade unions vs non-unions whistleblowing journeys would be helpful.

		Thanked or rewarded	Victimised	Bullied by co-worker	Dismissed after disclosure	Resigned after disclosure	No consequences	total
<b>Trade union Member</b>	Yes	1	10	2	17	23	3	56
	No	1	7	0	31	22	5	66
<b>Total</b>		2	17	2	48	45	8	122

*Table 4.10: Final outcome for whistleblower*

When speaking with individuals in Norway and the Netherlands, the health of the whistleblower emerged as a theme related to the outcome of blowing the whistle.

*'It's a process that takes years in a lot of cases. It's not really the acute stress and the actual financial problems, but the tensions become structural and that's why it also affects their mental health and the health of the family relations.'*  
[NEDexpert1]

As can be seen that the process and time it takes for a whistleblower to go through this process increases their emotional demands. This is then furthered by the response of management, whose actions can increase the stress of sickness of an individual. Thus, creating negative outcomes for the whistleblowers health.

*'But all the while, the leadership was telling and doing the same things about and to the whistleblower and tried to marginalize him, he was not going to work because he was sick because he was punished and so on. It was a terrible case for the whistleblowers.'* [NORpubnat1]

Having identified this theme, it became clear that this was not an issue that the trade unions in the U.K. had, in fact, picked up on. According to the PCAW data, health outcomes for the whistleblower during the process is not positive. Further, trade union members are far more likely to have health issues and be off sick. As the data shows (table 4.11), around 47% of trade union members who blow the whistle are

off sick, ill, whilst another 17% are at work but have poor health. This suggests a negative relationship between union status and health.

		<b>Problem but still working</b>	<b>Problem and off sick</b>	<b>No health issues</b>	<b>Unknown</b>	<b>Total</b>
<b>Trade Union Member</b>	Yes	14	38	29	70	151
	No	3	25	45	99	172
<b>Total</b>		17	63	74	169	323

*Table 4.11: Health of whistleblower*

There could be several reasons why this relationship occurs. It could be due to a lack of support from the union. We have seen that unions struggle to tackle victimisation, and when compared with non-union members, the outcomes are much the same for unionized whistleblowers. So, it could be related to these outcomes, that if union members are not receiving any better outcomes or action during the process because of the problems unions face and the way they try to tackle through the formalised collective route, whistleblowers may feel a lack of support from the union and thus going through a process where they feel they have no support may increase their health issues. This lack of support is further corroborated by the data from PCAW (table 4.12), which suggests that of those union members that go to PCAW for advice most do this having already made a disclosure. The data also shows there is no real difference between non-union and union members as to when they call the helpline suggesting that the union plays no supporting or advisory role for these members.

		Before Raising	After the first attempt	After the second attempt	After the third attempt	After the fourth attempt	Total
Trade union member	Yes	27	70	36	15	3	151
	No	34	85	36	12	5	172
<b>Total</b>		61	155	72	27	8	323

*Table 4.12: When do Whistleblowers Seek External Advice*

However, whilst this provides support for the argument, it needs to be highlighted that we do not know how many union members make disclosures without going to seek advice from these other agencies and do so without advice or on the advice of the union.

Alternatively, it may be that union members have higher sickness rates because the unions are using this as a tactic to remove union members from the situation whilst the process is ongoing, i.e. the trade unions advise their members to be signed off sick and utilise organisational sickness policies as a strategy for assisting in the tackling of the whistleblowing concern. However, none of the unions mentioned this as a strategy.

Having identified that none of the unions in the U.K. talked about the health of whistleblowers, there was, however, a recognition that union members needed emotional support as previously discussed. In one instance, the union rep highlighted that the union were not in a good place for tackling the emotional side of whistleblowing. They stated that,

*‘Usually we try and refer people through the company counselling or their own GP, because there's only so much you can actually do as an organization which fundamentally isn't designed, so we don't have our own counsellors or anything like that. It's just like they say, the reps will try their best. That's pretty much with it.’ (UKprilay1)*

In another case, there was a recognition that the need was less of a formal process but more of an emotional side.

*'But the member actually needed much more in the way of emotional support because she was going up against people who had been her colleagues.'* (UKpublay1)

This recognition does not, however, appear to help with the health outcomes of the whistleblower. Further, while trade unions appear to engage better with WRV the whistleblower still faces victimisation and thus has a negative outcome due to raising a concern.

Section 4.3.4 focused on understanding how trade unions see whistleblowing victimisation and how they engage in supporting members. While the data has been limited we have been able to identify a few key aspects in the data that help us address this study's research questions. Firstly, we have been able to see that trade unions do recognise whistleblowers face victimisation and need protection from adverse impacts. However, we also saw that trade unions involved in the study do not appear to engage in supporting whistleblowers when they face retaliation that would fit within the work retaliation victimisation group. There was, however, greater focus and engagement by trade unions in supporting whistleblowers with the emotional social forms of victimisation. While this was evidenced the focus of trade union support appears to be less of the individual perspective, rather engaging at the collective getting other members to not take retaliatory action. These findings help us in addressing firstly the research question around victimisation showing that trade unions do to a limited extent engage here. Secondly, they go to the research question around voice. By focusing on the collective support, the union can provide they engage in the collective voice which further connects with the social role trade unions have. However, we also see that unions are limited in the way they use the voice at the individual representation and support level.

Section 4.3 focused on addressing the role of trade unions within a given organisation. This was because a key feature of trade unions is that it supports their members in the workplace. However, what we have seen from the data is that trade unions suggest they want to support whistleblowers they do not provide advice and support in a clear manner. They see whistleblowing as an individual act but their role is collective so it is not surprising that the data shows most engagement is in getting union members to not take any retaliatory action against the whistleblower.

The next section of the data findings moves outside of the individual whistleblower context and focuses on the data relating to trade unions' engagement in wider society.

#### **4.4 Trade union's external role**

Having considered the internal role in the previous sections, this section presents findings on the wider role trade unions may play in relation to whistleblowing. Having looked previously at victimisation and recognising this is an area trade unions' may have a role in, this section will start by looking at the trade unions' view of and engagement with the law. The law being the 'place' that provides the right not to face retaliation. Having looked at the law, the section after that will then address how trade unions have engaged in the legislative process. Having identified in the previous findings that officials look to collectivise, this section will present findings on the role of national or regional collective bargaining. The chapter will conclude by presenting findings on unions' engagement with other organisations.

##### **4.4.1 Perceptions of the law**

As identified in the literature review, the legislation provides protection for whistleblowers from victimisation. In the previous section (4.3), we saw that trade unions struggle to engage with supporting members. This section shows what emerges from the data when queried whether the law may have a role to play in this.

*'As a union we have no faith in the law.'* (UKprilay1)

The above quote is a telling statement of a wider perception of the failing of the law from the trade union perspective. During the interviews, the predominant discussions around the law were negative.

*'Well, same way as, when they were gonna bring it in, I was reading what it was gonna be about, but I haven't actively referred back to it.'* (UKgenlay1)

This statement suggests that trade unions do not actively engage with the law. However, another TU interviewee did use the law.

*'We certainly don't shy away from using the law.'* (UKprilay1)

The same interviewee tempered this by another statement

*'It's useful to have, when people make protective disclosure, I know there's certain aspects of law which do apply, but we think that, the way we think of the law in general is we don't see the law as written for us, so it's a tool that we use, when there isn't any others available.'* (UKprilay1)

This quote above suggests firstly that the legislation is not written for trade unions and secondly because of this, it can only be used as a last resort. When discussing the law in interviews, this negative perspective of legislation came through. This was clear through the articulation of the problems with the law. Not one of the UK interviewees had a positive contribution around the law.

*'As I said earlier, I haven't really had one case like that in 10 years. And even that never really got through to the courts. Simply, because you start getting into impossible legal hurdles to achieve.'* (UKpubreg1)

This perception of not going to court is supported to some extent in the PCAW data, which shows that of the 323 cases, only 30 went to the tribunal. And of those that have concluded, only two had positive outcomes (see table 4.13).

		ET ongoing	ET Won	ET lost	ET settled	No ET	Total
Trade union member	Yes	8	0	7	1	135	151
	No	11	1	2	0	158	172
<b>Total</b>		19	1	9	1	293	323

Table 4.13: Employment Tribunal Outcomes

This table shows that those whistleblowers that contacted the advice line overwhelmingly did not take legal action. However, it is interesting to note that of the two successful cases, the union member had settled, whereas the non-member required judgement from the tribunal to recognise the victimisation had occurred. What this does not tell us, however, is what happened to those two individuals. Looking into the data for the two cases, the non-member made a disclosure regarding patient safety and faced formal victimisation before being dismissed. The union member raised a concern regarding a breach of legal obligation and was dismissed after facing informal and formal retaliation from management. The union member phoned the advice line after seeking support from the union, which suggests that the union were ineffective for this member. So while both had positive results from bringing legal action, overall neither had a positive experience of raising concern as both lost employment as a direct result of raising a concern.

That there are difficult legal hurdles was also recognised by one of the experts who highlighted that the law does not always provide what the client wants.

*'we can only do what the law allows us to do to achieve so the common one you hear all the time is, "I want to clear my name," and the law really doesn't allow you to do that. But we will very often have people say, "Well, I want that manager*



*disciplined." Well, we have no mechanism for achieving that. There simply isn't a legal mechanism to require an employer to achieve that.' (UKexpert2)*

The PCAW data corroborates this (see table 4.14). Of the cases where the whistleblower was aware of what happened to the wrongdoer, 40% of the wrongdoers had no action taken against them.

Outcome for wrongdoer		Nothing	Warning	Dismissed	Resigned	Total
<b>Whistleblower a Trade union member</b>	Yes	10	1	3	4	18
	No	5	6	7	2	20
<b>Total</b>		15	7	10	6	38

*Table 4.14: Outcome for wrongdoer as declared by whistleblower*

A further problem identified relates to how the law is developed or defined.

*'The problem you then get, is that by the time it comes to the region, and we're talking to the lawyers, you're into a different ball game, because the law will interpret something differently.'* (UKpubreg1)

*'And the law is very good at changing how you define a criteria, to make it impossible to actually pursue a case....'* (UKpubreg1)

The second quote the participant went on to give an example of what they meant from a different employment right.

*'Ten years ago, the acceptance of stress at work and whatever creates that, should be dealt with through tribunals and you could win significant payouts. The first half dozen cases were huge in terms of three hundred to four hundred thousand pounds. So they then changed the law, to introduce criteria, which was to show that only if you knew, on day one, that the results of what the employer was doing to you would end up with special mental health issues, only then would you have a case to go forward. So, on day one you've got to say to yourself, "I'm going to have a mental health issue.". Which is impossible to define, because in a year's time, five years time, who knows. So, it's the way the law has always worked, is that once we win something, they twist it to make it impossible.'* (UKpubreg1)

The UK expert identified that the development of the law over the years has not been helpful for whistleblowers and supports the union position.

*'The law has developed rather unhelpfully in the last few years ....when we started off winning the Parkins v Sodexho Ltd case<sup>34</sup>. That was like open season on whistle-blowing. That was brilliant and you could go and achieve all sorts of things when it was like that and of course once the establishment realizes that you can go and achieve something they like to squash that off so Parkins v Sodexho Ltd was pinched off.'* (UKexpert2)

As can be seen from the above, the law is not considered beneficial for this due to its difficulty to interpret and its development. One area that could be considered

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34 Parkins v Sodexho Ltd [2002] IRLR 109 was a case where the Employment Appeals Tribunal found that an individual could make a disclosure within the terms of the legislation where the disclosure related to a breach of an individuals' personal employment contract.

difficult to interpret is whether something is whistleblowing or not. As the UK expert highlighted, often whistleblowing is part of a wider claim.

*'People are casting around to try and find a peg to fight this on and it'll be because they've said something to their manager six months ago and you try and turn that into an whistle-blowing argument because a lot of what we do is as much trying to build up an industrial platform to try and get an industrial solution as anything else, so we rarely have a standalone whistle-blowing case. It'll be part of a wider discrimination claim, or a wider unfair dismissal claim' (UKexpert2)*

This uncertainty of whether something is whistleblowing or not is not helped by the law's classification of what is whistleblowing. As the PCAW data suggests (see table 4.15), the third-highest group of disclosures do not fall within the legal classifications<sup>35</sup>.

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<sup>35</sup> It should be noted that this classification was done by the researcher based on information in the case notes. Whether something meets the legal category test is one for the tribunal. Therefore, it may be that some cases may be differently categorised if they were before a tribunal. All classification was done by the same researcher applying the same criteria to each case.

Public interest category		Criminal Offence	Failure to comply with a legal obligation	Miscarriage of justice	Health and safety of an individual	Environment	Cover up of prior groups	Not a legal category	Total
Trade union member	Yes	11	46	0	65	0	1	28	151
	No	24	52	1	61	2	5	27	172
<b>Total</b>		35	98	1	126	2	6	55	323

*Table 4.15: Public interest categorisation of disclosures*

Two further problems for trade unions were highlighted.

*'Up until a fortnight ago all Tribunal cases were determined, what we would term on their merits, but it was really to do with box ticking. Because you could win a case but the actual compensation you would get would be small I mean it wouldn't pay the fees. So, we've won that but we move on.'* (UKpubreg1)

This highlights that the award in the tribunal would be insufficient to justify taking a case to the tribunal. The remedy from a tribunal was also mentioned by the UK expert who suggested that even with a tribunal finding of victimisation it has little impact on the organisation.

*'The most that you can do is to get a tribunal judgement to say that that victimization has taken place, but employers what they tend to do whenever an individual is singled out is they say, "Well, we were unlucky. We were unlucky to have pulled that Judge or that tribunal. We actually do things pretty well." Occasionally, they'll say it's the manager gone rogue and we've done something about it. Most of the time nothing happens.'* (UKexpert2)

The other problem identified with using the law relates to the purpose of a trade union.

*'why would we want individual resolution to problems when it should have been a collective issue. So, you have a different mindset around those who want to use the law to resolve everything.'* (UKpubreg1)

This quote highlights the conflict between the individual whistleblower and the collective nature of trade unions previously identified. The PCAW data, however (see table 4.16), could provide unions with support for taking a collective approach

as it highlights that in 100 cases, the wrongdoing is witnessed by more than one person. In 56 of those cases, the whistleblower is a union member.

Witness the wrongdoing		Witness alone and disclose alone	Witness as a group disclose alone	Witness as a group disclose as a group	Total
Trade union member	Yes	68	41	15	124
	No	95	32	12	139
<b>Total</b>		163	73	27	263

Table 4.16: Witnesses of wrongdoing

The TUC identified that trade unions would not engage with the law due to not having a role in the legislation

*'I think in a way because they weren't given a specific role in law, unions tended to be a bit less interested in it. They had no real stake in it.'* (UKfed)

The PCAW data corroborates this (see tables 4.17 and 4.18), which shows that of the 265 whistleblowers, only one raised it with the union on the first occasion. This went up to 4 on the second occasion.

Recipient	Wrongdoer		Line Manager	Higher manager	HR	Union rep	Specialist	Regulator	Professional body	MP	Media	Other	Total
Trade union member	Yes	11	49	47	5	1	0	4	0	1	1	6	125
	No	13	70	32	11	0	1	4	1	0	0	8	140
<b>Total</b>		24	119	79	16	1	1	8	1	1	1	14	265

Table 4.17: Recipient of whistleblowers first attempt at disclosure

Recipient	Wrongdoer		Line Manager	Higher manager	HR	Union rep	Regulator	MP	Media	Other	Total
Trade union member	Yes	2	4	27	12	4	6	2	0	3	60
	No	2	5	22	15	0	14	0	2	7	57
<b>Total</b>		4	9	49	17	4	20	2	2	10	117

Table 4.18: Recipient of whistleblowers second attempt at disclosure

From the above, we can see that trade unions in the UK do not view the law positively as it is not supportive of whistleblowers and acts as a barrier. The PCAW data largely corroborates the trade union interviewees' position. In the literature review, we saw that the law provided a contextual difference between the UK, Norway and the Netherlands. Whilst the UK unions see the law negatively, in Norway, the law is seen as a positive although in need of change.

*'But it's also important to understand that the law is, if you read the law in Norway, it's pretty good. But the understanding of the law, it's not good. And it's too many questions that's not even answered, and it's being looked into in different ways. One way from the whistleblower, one way from the employee, one way from the unions.'* (Norpubnat1)

*'When I read the law, actually the law is mentioned very good. It's actually, it's protecting. But still, the authority says we don't see this existing law as strong enough to protect, to give the protection, which we want to give actually. Because there's no doubt the authorities want to give the whistleblower protection, because whistleblowers mention something very important in the society. They do. They accept that, but the law is not strong enough.'* (NORpri1)

These quotes suggest that Norwegian unions see the law as positive but its application and understanding as problematic. That is different to the UK where the law is seen as negative completely. While this study is unable to explore why this difference exists, it could potentially be due to the greater interaction in Norwegian society of trade unions. The fact that trade unions engage with the government in law setting and policy, as outlined in chapter two, may influence their approach to legislation. This engagement in law setting was referred to in the Netherlands when highlighting the poorness of the law.



*'Here, we got the law and made it. But, it's not a very good law. That's basically my statement. I think that that's partly because it's a compromise.'* (NEDexpert2)

From these perspectives, we can see that all three countries see the law as problematic to varying levels. However, Norway, where trade unions have a recognised role in the law, appears to have a more positive frame for looking at the law.

The above discussion has shown that trade unions participating have a negative perception of the law. They do not see it as made for the trade unions and their members. Therefore, they do not utilise in supporting members. This may to some extent explain why the trade unions do not support members when facing work retaliation victimisation. It further helps us identify why they do not understand whistleblowing as found earlier in the chapter. If trade unions do not see the law as helpful, then they are less likely to engage in keeping up to date with it. This then feeds into the lack of awareness of what whistleblowing is and the lack of training that has previously been identified. However, the data from the PCAW does go some way to support the trade unions' perspective as it shows that very few of the cases in the dataset went to tribunal and even fewer were successful in the sense of having a positive decision from the tribunal. This then feeds into sub research on the law as it helps us understand why trade unions do not use it in the workplace to support their members. It further provides some explanation as to why trade unions are not using their voice to support and advise members in the workplace.

#### **4.4.2 The legislative process**

The previous section suggested that the law is considered problematic by the unions. This section of the chapter seeks to address how and why trade unions engage with lobbying businesses and the government to support and or bring around change in whistleblowing.

*'[It] was to offer the TUC's services as a national body that could lobby for improved legislation if the legislation that existed was proving to be ineffective or there was a problem with that. And also the TUC can sometimes speak to national employer organisations, so possibly in the health or service or local government associations or something like that. If a union wanted us to.'* (UKfed)

The above quote highlights that the UK federation sees lobbying as an important role they undertake in supporting their member trade unions. This role was also evidenced by the Dutch federation, who stated:

*'because for FNV this is the two important activities for FNV as a trade union apart from the lobbying and the legislation, I think<sup>36</sup>.'* (NEDfed1b)

Alongside this, an EU trade union federation recognises the need for national trade unions to lobby governments.

*'We'll be more leaning toward providing support for our member organisations, ensuring that our platform members give out good information to the national affiliates of the platform, to ensure they can lobby on member state levels for good implementation, for transposition of the directive.'* (EUfed)

This provides a consistent picture that engaging with lobbying during the legislative process is an undeniable part of the role of trade unions. But the data from the interviews and the document analysis suggest that the way they do this is different depending on the national context, which the next sections go on to address.

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36 The second activity alongside that of lobbying was supporting the FNV unions to support their members.

First, findings are presented on how trade unions in the UK (4.4.2.1), Netherlands (4.4.2.2), Norway (4.4.2.3) and at the EU level (4.4.2.4) engaged in the process of legislation creation around whistleblowing. Subsequently, findings on how unions lobby reforms in the three countries will be presented.

#### **4.4.2.1 Lobbying for Legislation in the UK**

If trade unions and federations see lobbying as a key role they play in supporting members, it is important to look at how they engaged in this process when whistleblowing legislation was developed. By looking at the period leading up to whistleblowing legislation, we can see how important whistleblowing was as an issue and how they represented members views.

In the UK, the TUC did not take an active role in pushing for legislation. Rather they only began to engage in 1997 when approached by the then-new Labour government for comment on a draft bill.

*'the then-new minister who was Ian McCartney saw the TUC about a whole range of issues and said, "By the way, we're minded to support the private members' bill, PIDA, Public Interest Disclosure Act, presumably the TUC would support that." So I said, "Instinctively yes, but I need to go away and talk to some of the unions and just see if we can be slightly more useful to you than simply going, yeah okay."..... So it was really on that basis. We were really ... unusually actually, it wasn't us lobbying the government; it was the new government lobbying us. Because they wanted to make sure they weren't going to annoy one of the unions.'* (UKfed) (emphasis added)

Once the bill was notified to them, the TUC took some interest, and it is suggested that they sought to amend the bill to have trade unions expressly mentioned in the bill.

*'The one thing we argued, I think, that we never got and as far as I'm aware has never been put in the legislation, is a specific role for trade unions in the legislation. That never happened. And I think in a way because they weren't given a specific role in law, unions tended to be a bit less interested in it. They had no real stake in it' (UKfed)*

In the parliamentary debates around the Public Interest Disclosure Act 1998 little is mentioned of how trade unions had lobbied the government over the content of the legislation. On one occasion regarding a specific dimension of the bill related to compensation sums, a reference to a letter from the TUC is made.

*'The Minister is aware that I have received a letter from Sarah Veale, the senior policy officer of the TUC. The House deserves the courtesy of hearing what the TUC has written about the matter. Ms Veale wrote that she noticed with interest the amendment on compensation tabled by my hon. Friends and me. She continued: As you may be aware, there is near-unanimous support across industry for compensation for unfair dismissal for public disclosure to be uncapped. We fully support your amendment.'* (Mrs Gillam, Parliamentary Debates on Public interest Disclosure Bill, Pos. 77)

Whilst little mention of direct lobbying exists in the parliamentary debates it was noted that the bill had the support of the TUC. (Lord Borrie Parliamentary Debates on Public interest Disclosure Bill, Pos. 85 and Lord Newby Parliamentary Debates on Public interest Disclosure Bill, Pos. 111).

As mentioned above the TUC sought to have trade unions mentioned in the legislation - which never happened. In the parliamentary debates, this lobbying was not directly mentioned. However, the role of trade unions was raised.

*'It seems to me that for some workers an appropriate person might often be his or her union representative. The union might be expected to have the appropriate knowledge of the way to proceed and whether the failure concerned was of a sufficiently serious nature to qualify under the terms of the*

*legislation. That raises a further point in my mind. It might well be said that a recognised union holding a collective bargaining agreement with the employer is clearly an appropriate person within the meaning of the new bill.* (Baroness Turner of Camden, Parliamentary Debates on Public interest Disclosure Bill, Pos. 89)(Emphasis added)

*'I am therefore concerned that the bill does not provide clearly for such trade union representation.'* (Baroness Dean, Parliamentary Debates on Public interest Disclosure Bill, Pos. 98)

These two quotes clearly highlight the concern that trade unions have not been granted a role. In response to these concerns, the expected role of the trade union was articulated.

*'My noble friends Lady Dean, Lady Turner and Lord McCarthy asked about trade union officials. The Government hope that employers will work with employees and their representatives, including trade unions, to put in place appropriate procedures to enable internal disclosures to be made. It is possible that trade union representatives may be the appropriate people to whom disclosures will be made as part of these procedures.* In those circumstances, a disclosure to a trade union official would be a protected disclosure. We would certainly encourage employers and workers to identify the most suitable procedure for their circumstances. However, where trade union representatives are not part of the internal disclosure procedure, a disclosure made to them would have to be considered under Section 43G. Provided that the disclosure met the test in that section, it would be regarded as a reasonable disclosure and thus protected.' (Lord Haskell, Parliamentary Debates on Public interest Disclosure Bill, Pos. 115)(Emphasis added)

*'As regards my noble friends Lady Turner and Lady Dean and also my noble friend Lord McCarthy and trade unions, although the phrase "trade unions" does not appear in the bill, there is no doubt whatever that they are, have been and will*

*be most helpful in the preparation of codes of practice and other forms in enabling workers to take advantage of the bill and to bring about the change of culture to which the noble Lord, Lord Newby, referred. Trade union representatives will inevitably and happily be most helpful in their advisory role which clearly is needed.’ (Lord Borrie Parliamentary Debates on Public Interest Disclosure Bill, Pos. 122)*

These two quotes highlight that it was expected trade unions would pursue with employers’ internal policies in which they could have a role. Alongside this, an advisory role would be played by them; however, as the previous sections in this findings chapter show, this has not occurred, and trade unions play a very limited role within organisations.

The above findings suggest that trade unions in the UK took a reactive approach to whistleblowing legislative provisions and that parliament had intended trade unions to take an active role in supporting members. The fact that trade unions did not fully engage with lobbying provides us with a snapshot of how they utilised their voice back in 1998 alongside how they engaged in their social role. These will be discussed further in chapter five. There is a considerable divergence of approach to lobbying when we look at the Netherlands and Norway when compared to the UK’s reactive approach, so the next two sections review the Dutch and Norwegian approaches to the introduction of their respective whistleblowing laws.

#### **4.4.2.2 Lobbying for legislation in the Netherlands**

The role of the Dutch federation FNV has been markedly different from that of the TUC in the UK. Whilst the TUC waited to be contacted; the FNV took a proactive approach. This started by identifying a need for whistleblowing support.

*‘Well, I don’t think that I exaggerate when I say that the base for the protection of whistleblowers has in the Netherlands, started with a reporting line of the FNV in the year 2000. And in the year 2000 there was this three days, three afternoons reporting line organised by the FNV for members and non-members to report about their experiences.’ (NEDfed1)*

This phone line led the government to undertake research

*'And the results we presented also to the members of parliament, and the minister of social affairs led to the decision of the ministry of social affairs, to having research made by the University of Tilburg (IVA Tilburg). Which was the same conclusions, as the conclusions of our three day reporting line. And this led to the statement of the labour foundation.'* (NEDfed1)

The 2010 statement of the Labour foundation was a voluntary code that, after a period of time, was not sufficient.

*'But the members of parliament .... were not content with these measures. For them, it was not enough. And they wanted more and they wanted also a research body for the private sector. And they also wanted that, making a procedure for reporting wrongdoing would be no longer a voluntarily thing, but would be an legal obligation for employers.'* (NEDfed1)

The Labour foundation made up of business and trade union federations worked together on the legislative lobbying

*'together we had a lot of common remarks on the legislation of this proposed legislation, the draft of the parliament. And we succeeded in having the senate saying, "We cannot agree with this initiative of the parliament" [the house of commons in UK terms] "But we are very willing to go further with this initiative, if some elements are being changed in the law. So the house of commons had to come with new proposals on several aspects of the legislation.'* (NEDfed1)

This rejection of the legislation was seen by one of the Dutch experts as negative as it suggests that the unions were not considering the workers.

*'There, we see the unions as another type of employees with the same attitude towards whistleblowers. In the preparation of the new law, the unions opposed the new law, so that was strange for us because you should think that unions would support employees, but they were rather against it in all the advisory boards.'* (NEDexpert1)

The rejection was also highlighted in the parliamentary debates

*'We issued a draft law in 2012. The cabinet opposed it, the VNO-NCW opposed it, the FNV opposed it, the inspections opposed it, supervising agencies opposed it. Only the House of Representatives It led to a tense situation.'* (Dutch whistleblowers act parliamentary phase purpose 1, Pos. 5)

However, this cooperative approach led to amendments and agreement on the legislation across the board

*'And because we had influence on the ministry of internal affairs, and also good relations with some of the members of parliament that were involved in this initiative to make a law, we succeeded in some changes in the draft. That led to the result in the end that both the house of commons and the senate, voted in favour of the draft unanimously, and also with the support of the labour foundation. So in the end, all parties agreed on the legislation.'* (NEDfed1)

This support was highlighted as a significant positive change

*'The most important gain in comparison to 2012 is that public support for this draft law has increased. [...] The FNV and employers organisations perceive the draft law in an entirely different manner, so support has much increased.'* (Dutch whistleblowers act parliamentary phase purpose 1, Pos. 5)



In the parliamentary debates, there is a lot of reference to the background and work of the FNV and the labour foundation.

*'In the second half of 2000, in response to the 'reporting channel whistleblowers' ('Meldlijn Klokkenluiders') installed by the FNV in May 2000, the Labour Foundation ('Stichting van de Arbeid') expressed the desirability to ensure protection of whistleblowers in the private sector. At the end of 2000 the dialogue between employers and employees ended without any results.' (Dutch whistleblowers act parliamentary phase purpose 1, Pos. 5)*

*'In response to that, the Minister of Social Affairs asked the Labour Foundation ('Stichting van de Arbeid') to develop rules of conduct that could be implemented by means of collective labour agreements. This led to the 'Declaration on dealing with alleged wrongdoing in firms' on 24<sup>th</sup> June 2003 by the Labour Foundation ('Stichting van de Arbeid').' (Dutch whistleblowers act parliamentary phase purpose 1, Pos. 5)*

*'On 24<sup>th</sup> October 2006 the minister of Social Affairs reported about the response of the Labour Foundation in the House of representatives. The Foundation rejected in its response the idea of a compulsory whistleblower procedure, because installing such a procedure does not automatically result in a safe climate to report wrongdoing. The Foundation states that in its opinion the government is responsible to install an whistleblower protection arrangement. Self-regulation is the preferred way to encourage discussion about whistleblowing and encourage individuals to report wrongdoing, but support and information by the government is also necessary.' (Dutch whistleblowers act parliamentary phase purpose 1, Pos. 5)*

These three quotes further support the information from the interview with the FNV that the trade unions were pushing for appropriate whistleblowing measures. It also further highlights that a cooperative approach between government business and trade unions has been adopted.

It was mentioned in the UK data that the TUC wanted trade unions to be clearly specified in the legislation. In the Netherlands, however, the approach was different, and the FNV did not want unions to be specified. The reason for this was two-fold. First, they did not want whistleblowers to be dependent on the trade union

*'First of all, we wanted to create a system with procedures and channels that made it possible for individual workers to blow the whistle or to report wrongdoing, without being dependent of the opinion of colleagues or the works council or the union. This in the first place, so there's no dependence.'* (NEDfed1)

Secondly, they recognised the role of alternative employee voice in the workplace.

*'Another thing is that, the procedures for whistleblowing that's all companies with at least 50 employees have to establish, have to get the approval of the works council. So this means the works councils are being involved, because they have to approve the procedures.'* (NEDfed1)

Another reason that came out was related to the potential conflict between the collective wishes of union members and an individual whistleblowing member. If that individual requests the union to make the disclosure but the collective membership do not wish the union to be involved, it can cause a problem for the union.

*'But when it has to do with issues that are only, or much more related to the real public concern, and there is a difference in appreciation between one worker and the other worker. You have the mechanism that the trade union is just counting. In the sense that, when one worker is asking the trade union to report about some wrongdoing within the organisation, and 15 members for instance, of the trade union ask the trade union not to do this, then the trade union is choosing the side of the 15 workers, 15 members. And being aware of the fact that the one member has the channels to report the wrongdoing. But when 15 workers that are members of the union, ask the union not to act, the union doesn't act itself. So that's the limited*

*possibilities of the trade union to report wrongdoing to the employer.’ (NEDfed1)(Emphasis added)*

However, these reasons are questionable when the FNV representative highlighted that in practice, a lot of workers go to the trade union to report the wrongdoing, which has a positive impact.

*‘Then in practice, for a lot of workers, they prefer the works council or the trade union to report the wrongdoing. So they report to the unions and to the works council and they ask them to report the wrong doing. And what you see is that this works. I’m talking about the trade unions, it works when the issues of wrongdoing are directly related to the interests of the workers. So when it’s about health and safety, intimidation, wrongdoing related to pensions and or working times, it’s no problem for the workers to go to the trade unions. And for the trade unions, there’s no problem to discuss this with the employers.’ (NEDfed1)(Emphasis added)*

One of the experts reiterated this strong approach from the trade unions which led to the advice centre and changes to the legislation in its passage through parliament.

*‘what’s good in the Netherlands, that the trade unions really wanted an advice centre for whistleblowers, and it was part of their lobby that the Advice centre for whistleblowers was established five years ago, and then it, of course, became the House for whistleblowers. The trade unions also shared their concerns with respect to the House for whistleblowers, and some of those concerns have been taken into account; the bill for the house of whistleblowers has been amended several times.’ (NEDexpert2)*

The Discussion on the Netherlands provides us with some clear differences in approach compared to the UK. Firstly, we can see that trade unions have been very proactive and actively pursued legislation and pushed the need for a law to support

whistleblowers. Secondly, we see that the social position of trade unions (federations) engaging in high-level political discussions and committees has a positive impact. The unions influence and expertise is recognised, and they are involved in negotiating with business and government, and this feeds into parliamentary discussions. Finally, we see that trade unions actively oppose being specified in the law not due to having no interest but rather to provide flexibility to the whistleblower and the union in how they engage and deal with a concern.

#### **4.4.2.3 Lobbying for legislation in Norway**

Little information was gleaned from the Interviews about the role of trade unions in lobbying the original legislation. However, the expert noted that trade unions did make a difference in the legislative process.

*‘those professional groups, they were rather active, the unions for the professional groups, and I think it made a difference in the process before the legislation was debated and settled in Norway. So they have been rather active’ (NORexpert1)*

The parliamentary process in 2006 highlights that unions were consulted on the legislation:

*‘In the consultation round, which the committee has conducted, this proposal was met with broad support from the workers’ organisations’ (parliamentary debate, purpose 1, Pos. 1)*

It also shows that they engaged with the content of the legislation on a very detailed level.

*‘However, it should be noted that all employee organisations who participated in the consultation round we held together, found that the term "responsible" seen from their side of the*

*table - seen from the workers side of the table - gave a better framing of the limitations which should be in the whistleblower protection, than the listing suggested by the minority, which associates responsibility unilaterally with the interests of the company.’ (parliamentary debate, purpose 1, Pos. 1)*

The trade union position was used as a strength in making a case for specific terminology and countering alternatives:

*‘Doesn’t Engeset care at all about the fact that the social partners in the labour market - who are the ones enforcing these rules - agree with the government’s proposal?’ (parliamentary debate, purpose 1, Pos. 1)*

*‘The representative Woie Duesund stressed that it is important that we are on the same team as the employees and their representatives in terms of securing the protection of whistleblowers. We participated in the same hearing, where a large number of organisations, employers and employees were present and where all the workers’ organisations said that they preferred the wording that the majority proposed, as opposed to the wording given by the minority. How can the representative Woie Duesund then claim to be on the same team as the workers?’ (parliamentary debate, purpose 1, Pos. 1)*

In identifying the role of trade unions in the whistleblowing process, it was identified that they could provide advice and legal advice

*‘Organised workers can also get competent advice from their union, which can often also help supply legal advice afterwards if needed.’ (parliamentary debate, purpose 2, Pos. 1)*

*‘The Christian People’s Party, of course, believes that one should consult with the elected union representatives and*

*Speak up internally before proceeding. That must be the most important thing. We agree on that.’ (parliamentary debate, purpose 2, Pos. 1)*

Therefore, when looking at Norway’s approach to the initial legislative provisions, we can see that like the Netherlands, a proactive approach to engaging with other parties is evidenced. This flows into the parliamentary debates and shows that the trade unions have an important influence within the system, unlike the UK. However, we can see that the level of engagement by the Norwegian unions is not on the same scale as that of the Netherlands. This suggests that level of trade unions’ engagement in wider society does impact to some extent the influence that the trade unions have. This will be further explored in chapter five when addressing sub-question one.

#### **4.4.2.4 Lobbying for legislation in the EU**

Trade Unions have taken an active role in securing an EU Directive on whistleblowing. One of the leading EU trade unions identified that the trade secret directive of 2016 made the need for whistleblowing protection more important

*‘In the last pushes in Parliament in the trade secrets directive debate, and the adoption of the directive, the whistleblower protection issue became more and more important.’ (EUfed)*

*‘For that reason we saw that we need to use this momentum in Parliament, try to push for proper legislation now.’ (EUfed)*

This was done through a cooperative approach

*‘We have good experience from working on the trade secrets directive together with other organisations, so we felt the need to try to form a coalition once more. We took the lead and invited to some meetings, and we bought the domain whistleblowerprotection.eu, and started a campaign on the*

*basis of that. We made a political statement that would be the basis of this platform, and that was also later used as a petition tool to allow the members of the platform to have activities targeting individuals also. We gathered signatures for this purpose. Our main aim was never to have as many signatures as possible, it was mainly to get the platform members a tool to use in their communication. When we did the handover we delivered more than 81,000 signatures<sup>37</sup>, which is not great on the European level, but it was something.’ (EUfed) (emphasis added)*

One reason identified for such a directive was to create a consistent framework across EU member states due to the free movement of workers multiple pieces of legislation make it difficult for a whistleblower.

*‘With this patchwork of legislation that we have in the EU right now, it’s close to impossible for the worker to figure out what kind of protection it would have in any situation. let’s take the example of ... Let’s say, for example, a Belgian worker, working in a German company, in France, finding out stuff, which needs to be disclosed, about a factory in Poland. What kind of protection would this person get, if it disclosed to someone internally in Germany, internally in France, internally in whatever. If it would go to Polish media, it would go to Polish authorities. This is, of course, impossible to keep track of with different legislation.’ (EUfed)*

It was also noted that Norway, in particular, was strongly behind the push for a directive. Whilst this study focuses on the UK, which is no longer an EU member, this short section highlights again a proactive approach by trade unions in countries where unions have a stronger social role.

Table 4.19 sets out in a timeline the above discussion, pulling out the key dates and periods of trade union engagement in the development of legislation.

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37 The petition was handed in on May 4th 2019.

After the table, there is a further short summary of this section looking at parliamentary debates around the initial whistleblowing laws.



1997	1998	2000	2003	2005	2006	2010	2012	2016	2019
TUC approached over the support of whistleblowing legislation	Public Interest Disclosure Bill passed becoming an Act							Trade secret Directive passed Eurocadres, and other EU trade unions begin pushing for whistleblowing law	Eurocadres submit a petition in May to get changes to directive. Directive passed in October.
		FNV sets up a three-day phoneline for whistleblowers	Labour foundation make a declaration on whistleblowing			Labour foundation publishes a statement on whistleblowing which becomes a voluntary code	Draft Law rejected  Advice centre which has union support opens	House for Whistleblowers Law passed	
		Trade unions negotiate with business and government between 2001-2016							
				Norway unions engage with discussions	Amendment to the working environment 2005 provides				

				pre legislation	whistleblowing protection				
KEY Row 1 is UK and EU (Green = UK, Blue = EU), Row 2 and 3 Netherlands (yellow), Row 4 Norway (grey)									
<i>Table 4.19: a synopsis of union engagement in the legislative process leading to whistleblowing law</i>									

The preceding sections clearly highlight that there is not a consistent union approach to engaging in lobbying for legislation on whistleblowing. There is a marked difference between national systems where there are cooperative processes compared to those such as the UK where cooperation is not particularly evident. In these cooperative systems, we see trade unions taking an active role in pushing for legislation. Whereas in less cooperative systems, it is a reactive response to legislative provisions. In terms of the legislative provisions, the cooperative countries appear less inclined to seek direct inclusion and focus on the relationships between the various groups. While in a less cooperative country such as the UK, cooperation is expected by parliament and used as a reason to avoid providing legislative provision. These findings clearly identify that there is a difference between countries which may be explained by the level of engagement in the wider society by trade unions, particularly at the political level. These findings go to the nature of the sub-question one around the role of trade unions. Further, we identified that there was a difference in the position of trade unions and their specification within the law. This will be further explored in the discussion on sub-question two. Finally, this chapter has shown how trade unions in the three countries lobby parliament for law, i.e. reactive and proactively this is evidence of how trade unions utilise their voice and will help us address sub-question four on union voice.

As identified in the methodology chapter, a pragmatist looks to build truth. In doing this, they take a truth and test it through analysing relevant data. From this, they are able to build on that truth. Recognising that the UK's whistleblowing law was passed in 1998 and the findings identified may therefore no longer hold as knowledge, the next section goes on to review the data around legislative reform to see whether knowledge (old truth) still holds as truth or whether through new relevant data new findings emerge which provide us with further knowledge.

#### **4.4.2.5 Reform in the UK**

The United Kingdom whistleblowing provisions were changed by the Enterprise and Regulatory Reform Act 2013. This section will look at the parliamentary debates to

see if and how the trade unions engaged in this review process, including trade unions' engagement in the subsequent whistleblowing consultations led by Public Concern at Work<sup>38</sup> and the Department for Business Innovation and Skill<sup>39</sup>. From this, we can identify whether trade unions are still reacting to whistleblowing change or have moved to a more proactive position.

A search of the parliamentary debates in the House of Commons around the legislation shows that the whistleblowing provisions were debated between June 2012 and April 2013. However, there was no mention of trade unions engaging in the legislative review process. There was no mention of their agreement, disapproval of the whistleblowing provisions in the legislation or their role in relation to these amendments either.

In the House of Lords debates between October 2012 and April 2013, we do find a slightly different picture. Whilst there is no mention of the role trade unions play, they are referenced at various stages on specific issues. The biggest cause of concern was the introduction of the public interest test. This was first raised in the second reading.

*'Public Concern at Work and the BMA have argued that the Bill will be a barrier to whistleblowers. Business and trade unions have suggested that the amendment to the Public Interest Disclosure Act set out in Clause 15 will not tackle the problem of claimants using the whistleblowing laws in private employment disputes.'* (Lord Touhig, House of Lords, Second Reading 14<sup>th</sup> November 2012)

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38 Public Concern is now known as Protect

39 The department is now known as the Department for Business Energy and Industrial Strategy

As can be seen, it is suggested that trade unions have engaged in some form with the legislative process. However, it is not clear how many trade unions or which ones have engaged. At the committee stage, reference is made to the TUC in regard to the objection to the public interest test.

*‘As far as the clause itself is concerned, it had been my intention to move that it should be opposed, mainly because the TUC’s view is that the wording as it now exists in the Bill introduces a public interest test into whistleblowing rights and, for such claims to succeed, the employee will have to demonstrate that he believed that disclosure was in the public interest and that this belief was reasonable in the circumstances. The view of the TUC was that this would limit the protection that employees have in raising concerns about health and safety issues at work. The Law Society also has doubts about this clause.’ (Baroness Turner of Camden, House of Lords, Committee 10<sup>th</sup> December 2012) (Emphasis added)*

The same member of the House of Lords made a further comment at the third stage, highlighting the concern around the introduction of the public interest test.

*‘My Lords, briefly, I have tabled Amendment 30 in this group because the TUC wrote to me and pointed out, among other things, that if you left the Bill as it stood, with the protected disclosure being limited to something in the public interest, that could well be construed to mean that a worker would not be protected if he or she made a disclosure affecting the provisions on health and safety at work. The TUC wanted to make sure that a worker would be protected if he made a disclosure in regard to the health and safety and general interests of the workforce; that is the intention of my amendment.’ (Baroness Turner of Camden, House of Lords, Third Reading 26<sup>th</sup> February 2013)(emphasis added)*

While the reference is in particular to the public interest test, it is interesting to note that the concern arises because of health and safety concerns. Trade unions regularly engage in the health and safety area in the workplace. This engagement

is based on a legal role trade unions have in the health and safety area. The excerpt further highlights that the TUC focus is on the general interests of the workforce. It thus relates back to previous findings regarding the collective mindset of the unions.

Other than the public interest test, the only other mention of trade unions was in relation to an amendment over liabilities.

*‘A concern has been raised by some trade unions regarding the personal liability of workers as set out in proposed new subsection (1E) in government Amendment 34.... This, it is feared, impliedly creates personal liability in a way that no other part of the section does. There are some concerns that this will lead to individual workers being sued.’ (Lord Low of Dalston, House of Lords, Third Reading 26<sup>th</sup> February 2013)*

Again, this quote does not identify how many, or which unions have engaged but does show that some unions are engaged at some level in lobbying politicians to protect their members.

One criticism of the legislative revisions is that they came at a time when there had been no public consultation on the Public Interest Disclosure Act 1998. The charity Public Concern at Work had instigated a consultation on the legislation which was ongoing at the time of the Legislative revisions. This led to calls for the whistleblowing amendments to be paused and for a full review to occur. Rather than this, the government of the day<sup>40</sup> agreed to do a call for evidence after the legislation had been amended.

*‘Once this Bill has completed its passage, the Government will launch a call for evidence to establish whether there is a case for reviewing the legislation, including its scope. The Government have agreed to meet the chair of the PCaW whistleblowing commission, Sir Anthony Hooper QC, and look forward to discussing whether and how we might work together.’ (Viscount Younger of Leckie, House of Lords, Third reading 26<sup>th</sup> February 2013)*

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40 This was a coalition government of the Conservatives and Liberal Democrats

As can be seen there is limited engagement by trade unions in the lobbying of parliament when the whistleblowing law is being amended, where it does occur this appears to be at the Lords as opposed to the commons. There is some reference to trade unions, but we are not provided with clear information. Furthermore, what we do see is that when trade unions have engaged in lobbying, this has revolved around collective issues predominantly as can be seen from above in the area of health and safety. As health and safety in the workplace is a role to which trade unions have long engaged and have statutory rights, it is not surprising to see some engagement. However, the parliamentary debate information is limited as it does not show us which unions lobbied parliament or at what stage. As the Public Concern at Work consultation occurred during and after the parliamentary debate, the Government launched a call immediately after the legislative process, looking at the trade unions' engagement in these consultations may provide further insights into the trade unions lobbying activities and which unions have engaged and how. The next section presents findings on that.

In February 2013 Public Concern at Work launched a 'whistleblowing commission' to examine the effectiveness of existing whistleblowing arrangements. A consultation document was launched in March of 2013. From this call, the charity received 142 responses. The charity made submissions publicly available unless the submitter had stated otherwise. A total of 59 submissions were made publicly available, of which only two are from trade unions: Guild of Healthcare Pharmacists (which is a part of the larger Unite Union), and the Royal College of Nursing.

Within the two unions' submissions, there is no discussion on the specific role of the trade unions. However, the Royal College of Nursing indirectly recognises a potential role of the union in making disclosures on behalf of whistleblowers. This is done in the context of suggesting that the commission looks at wider protection for whistleblowers who use third parties to make the disclosure.

We propose that the agency principle should be imported into PIDA so that a worker is protected when a disclosure is made by or on behalf of the worker via a third party, who is not also a prescribed person, including: trade union representative, workplace representative, Occupational Health clinician, and other treating clinicians or therapists. It is suggested that such disclosures will arise where: (1) a worker makes a complaint of wrongdoing to this category of third party with a view to this third party disclosing this wrongdoing on their behalf; or (2) a worker makes a complaint of wrongdoing to such a third party that is then disclosed without their knowledge or consent. In either case, the worker should be protected from any victimisation that takes place because of this disclosure being made by the third party.

*(Royal College of Nursing submission to the whistleblowing commission, 13<sup>th</sup> June 2013)*

This lack of engagement of trade unions discussing a role they may perform is in stark contrast to some of the other submissions which directly comment on the role of trade unions. One submission by the author<sup>41</sup> of this work highlighted that trade unions play an important function in providing advice and thus may receive disclosures from members and thus should be designated as a recipient.

The legislation currently permits disclosure to be made to a legal advisor in the course of obtaining legal advice. It is suggested that in the context of receiving advice on employment issues, many employees or workers will be unlikely to turn to a lawyer whilst still in employment. They however may seek advice and support from a trade union and it would be a logical step to make trade unions a person to whom a disclosure could be made. Trade unions will generally have more power to negotiate or discuss issues with an employer and therefore more likely to secure a happy outcome from any disclosure.

*(Arron Phillips submission to the whistleblowing commission 2013)*

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41 This submission was made in the context of the author completing a Master's in Law focused on the prescribed person. At that stage the author was not engaged in research on the role of trade unions.



Both the Institute of Employment Rights and Thompsons<sup>42</sup> believe trade unions should be designated as recipients although they suggest a more specific location for designation as under the prescribed persons provisions.

9.2 Trade Unions should be expressly included within any definition of prescribed persons. Trade unions can provide significant support and advice to a member who is considering blowing the whistle. As a trade union is not a prescribed person, any worker expressing concerns to a union official will be deemed to have made an external disclosure which will have to satisfy the onerous conditions of section 43G or section 43H of the ERA 1996. Any proposed extension of prescribed person should include trade unions in general who could then properly raise concerns on behalf of their whistleblower.

*(Institute of Employment Rights submission to the whistleblowing commission 2013)*

We agree that trade unions should be added to the list of prescribed persons. In our experience, union members are often more comfortable with approaching a union rep about concerns than

they are a manager. Indeed this can be a reason why a claim cannot be pursued – the disclosure has not been made to a prescribed person.

*(Thompsons submission to the whistleblowing commission 2013)*

This perspective could be explained due to both organisations working for or supporting trade unions. Further to these perspectives, the TUC in their submission

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<sup>42</sup> Thompsons is a solicitor's firm which provides specialist advice purely to trade unions and their members.

did identify that trade unions should be also be included as protected for advice-giving.

Likewise trade unions should be included as organisations which are able to provide advice and guidance to members as to the appropriate steps to be taken when raising an issue.

*(TUC submission to the whistleblowing commission 2013)*

The reason for this was that specific recognition was wanted as being part of the process to ensure their member unions engaged with whistleblowing.

*'I think we said in our response that it would enhance the whole procedure if trade unions were given a specific role. Not to be whistle blown to, we didn't want to be one of the listed bodies, but we wanted to be written in as an organisations which were part of the mechanism, That's not to say that we don't do anything if we are not in legislation. But I just feel that unions are focused more on areas where they have specific legal responsibilities.'* (UKfed)

A limited role for trade unions was recommended by the commission.

*Recommendation 20: The Commission recommends that PIDA is amended to include obtaining advice from trade unions. (Whistleblowing commission report 2013)*

This may not be surprising as a member of the TUC was on the commission. As the TUC were pushing for recognition in this limited way, it would be easier to make a case. Yet, it is interesting to note how the TUC came to be on the commission. In an interview with the TUC, the individual highlighted that it was PCAW that approached the TUC:

*'I met Cathy James. She came in to see me, actually, after she took over from Guy. She came up to me at some do or other, some BIS do I think, and said: "we really need to get ourselves together again because I'm worried that, our connections with you have lapsed and we want to rebuild them." So we did that. She invited me to join their Board and I said, "Yeah, as long it's not too onerous given my workload"'. (UKfed)(emphasis added)*

This fits with previous findings which suggest that UK trade unions are reactive to changes in whistleblowing and lobbying for change. Having the TUC on the commission as the trade union voice may explain why so few submissions were made by trade unions. Alongside this TUC affiliated unions will have seen the TUC submission and may have accepted that as representing them. That is what the TUC representative seemed to suggest during the interview.

*'We put it round to them for comment. We put it in the circular we sent to unions, called the TUC Mail. So every union could comment on it if they wanted before we submitted it. I knew some of them would not have time to look. So I then actively took it to union leaders, officers, and others. So it would then get looked at. It went to the TUC executive and they were supportive and happy with it. I can't say there was a big debate on it. But they were pleased it was being done.'* (UKfed)

This comment again highlights the lack of engagement around whistleblowing by trade unions, suggesting it is of little or no importance to them.

One other argument the TUC made in their submission specifically relating to trade unions was for protection for representatives who may make a disclosure.

The TUC would particularly argue that a worker acting in the capacity of a trade union representative should also be protected, as should full-time trade union officials. In the latter case, following a legitimate whistleblowing there is the potential detriment of having trade union

recognition withdrawn, which in turn it can be argued would be detrimental to the workforce.

*(TUC submission to the whistleblowing commission 2013)*

It is interesting that the reasoning for this is the risk of recognition being withdrawn. This suggests that as with previous findings in this chapter, trade unions are looking at whistleblowing with a collective mindset.

The second consultation was launched by the Government Department for Business Innovation and Skill. This call was launched on the 12th of July 2013 and ran until 1<sup>st</sup> November 2013. As noted, this came after the Enterprise and Regulatory Reform Bill had passed through the legislator and became an Act. The formal government response was published in June 2014. The government call led to 78 responses being submitted. This led to 9 submissions from trade unions and staff associations<sup>43</sup>. It is not possible to analyse these responses as they were not made public<sup>44</sup>.

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43 The document does not distinguish between the two groups so it is not clear how many trade unions specifically responded.

44 A freedom of information request was made on 19th September 2017 for copies of the submission, but the relevant government department responded that they could not be provided as they could not be located.

Having said this, we do know that the TUC is one of those nine submissions as the TUC interviewee confirmed they submitted the same consultation document to the government call as they did for the previous PCAW consultation.

*'Interviewer: Okay. So, obviously, in terms of TUC's report for the commission, which was then, I believe you-you said you put the same one forward for the government.'*

*Speaker 2: Oh, yes. There was no point in rethinking it, so we put the same thing in.'* (UKfed)

However, the result was that the government made no changes in relation to trade unions in fact, a search of the government response shows that the term 'trade union' only appears four times in the document. The first and second time came in the same sentence summarising submissions regarding the definition of a worker. The third time was in relation to blacklisting for trade union activity and not relevant to the role trade unions play. The final mention was in the annexe, identifying how many participated in the call for evidence.

The above discussion on the consultations has shown that whilst non-union individuals and organisations see a role for trade unions, they themselves do not advocate or fight for a specific role. Where trade unions do participate in lobbying, this is for a very specific purpose that relates to a collective function they already undertake. Further, this section has found that not only was there limited engagement in lobbying around the law the consultations that followed also did not attract significant engagement by trade unions. This reinforces earlier findings that UK trade unions engage in a reactive capacity to lobbying around whistleblowing.

In the Netherlands and Norway, the law was either due for review or under review<sup>45</sup> at the time this study was collecting data. Therefore, it is not possible to review reforms; however, in both cases, interviewees highlighted that trade unions will be or are involved in that process.

*'Of course the review of the functioning of both the law House for Whistleblowers and the House itself is coming up. The trade unions will definitely play an important role then.'* (NEDexpert2)

*'There is a white paper out now for reading. So, we have to give reply for that. That will result in later of maybe to make the law stronger. It's been a big group who are working with that and they come with some advice for what we should do, what the government should do.'* (NORpri1)

*'But still, the issues have been discussing in the three partite, it's been discussing in other committees of course. With the government, with employers, so we have a lot of forums we are discussing these things.'* (NORpri1)

*'What we are doing, we are lobbying the government, up to the director of work department, and say we have to do something about the law. I can come a little bit back to it, because actually have been some things about it. It's what do you say, it's out in some paper, white paper from the government we have to discuss about this one.'* (NORpri1)

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45 Since the interviews and parliamentary data was collected further changes in Norway have been made but these are not considered for this study.

As part of the Norwegian legislative review process, an expert group was set up, and one of the unions noted how it was part of the process of getting that expert group created.

*'we have managed to get the government to the expert group to look into whistleblowing. The group is where Henrik is sitting in the group for UNIO.'* (Norpubnat1)

The union then went on to explain why this expert group was so important.

*'We have big hopes for the expert group that the government have, doing, the expert groups looking into whistleblowing this time. And it's coming with its report in first of March 2018. That report is a key role of how we want to do the whistleblowing cases in Norway for the next 10 or 15 years, I think. And it's very important for us that it's going to be a good report that makes, for example, a set of rules that secures objective look into the cases. We have a national set of rules, how to look into the cases, and further on. So that is a critical report for us I think, and for the police unions it's a demand from us to have another system than we have today before we can recommend our members to whistleblower. So I hope, I hope next year it's a law development report that's coming.'* (Norpubnat1)

This engagement by Norwegian trade unions has been recognised by those outside of the lobbying system.

*'I think, especially Unio, made a rather good work getting promoting the legislation and the different sides of the whistleblowing process. So I think they still are the most active part when it comes to the unions, but also the doctor's union, or the physician's union, in Norway have been more engaged in question regarding whistleblowing and the law.'* (NORexpert1)

When whistleblowing has been addressed in parliament in Norway post the original legislative provisions, trade unions have been mentioned as a significant part of the process.

*‘When the government presented its proposal for new whistleblowing legislation, great emphasis was placed on the fact that that workers and employers organizations, along with the majority of other consultations bodies, agreed that certain limitations on the freedom to blow the whistle should apply, and that the current framework for freedom of speech should be continued.’ (Stortinget debate, 2<sup>nd</sup> December 2010)*

*‘Organized workers can also get competent advice from their union, which can often also help supply legal advice afterwards if needed.’ (Stortinget debate, 2<sup>nd</sup> December 2010)*

This suggests that the tripartite communication the union identified above exists in practice and that trade unions are clearly seen as having a workplace role. Further parliamentary comments show that trade unions have influence over politicians.

*‘Therefore, the Christian People's Party is not going to support the proposals of the Labor Party, the Center Party and Socialist Left Party, because when I speak with the Police Federation [union], they are also quite clear that it is not necessarily the laws that need to be changed, but instead the culture, just as they also point towards an ombudsman. (...) We want an assessment, ie to ask the government to consider the creation of an ombudsman or a separate entity under the Labor Inspection agency, which might be an equally good idea.’ (Stortinget debate April 5<sup>th</sup> 2016)*

*‘When union representatives warn against blowing the whistle, when we see that whistleblowers are experiencing a great deal of retaliation from the employer and when we see that whistleblowing-cases are treated as personnel-cases, it can be read as an expression of a wall of harmful culture that*



*the truth must continue to poke at, in the hope of getting through.’ (Stortinget debate April 5<sup>th</sup> 2016)*

*‘And when Politiets Fællesforbund [union] who has experienced the Monika [whistleblower] case - or the Schaefer [whistleblower] case - are as clear as they are, in actually warning their members against blowing the whistle, because they do not want them to go through that process or experience what Schaefer experienced, I think we have to take it seriously.’ (Stortinget debate April 5<sup>th</sup> 2016)*

These quotes from the debate verify the information from one of the interviews highlighted earlier where the union official said they advise against blowing the whistle. This perspective is clearly of concern to the members of the parliament. Trade unions also have the influence to shape the political party's arguments and the legislative provisions.

Not only does the debate information highlight the influence trade unions have, but they also identify the role trade unions play in the workplace.

*‘The big task now is to implement the regulations at the individual workplace and that the laws are actually followed. If the rights of employees are violated, union representatives must assist the employees.’ (Stortinget debate April 5<sup>th</sup> 2016)*

This quote highlights that parliament sees trade unions having a role in representing their members in dealing with violations. However, they are also seen as having a wider remit.

*‘But the most important thing is the work which is done out in the actual organizations – that you have a culture and an*

*attitude signalling that whistleblowing is a key part of the work of union representative, that union representatives are active in their workplace, among other things with regards to educating their fellow employees.’ (Stortinget debate April 5<sup>th</sup> 2016)*

The above shows that earlier findings that Norway, and to a limited extent the Netherlands, take a proactive approach have continued. This is in contrast to the UK which has remained reactive. We also see that in Norway trade unions see themselves as having a role in lobbying for change both in the law and in the workplace but still do not recommend blowing the whistle. This is supported by the findings on debates in parliament that echo the organisational and advisory role of unions. These findings again highlight that where cooperation between social actors exists, there appears to be greater action and voice by trade unions. The findings also suggest that these cooperative, proactive approaches also lead to greater influence in discussion and decision making. Table 4.20 seeks to summarise this section to show how trade unions in the UK and Norway have engaged in lobbying around reforms. These findings will be addressed further in the discussion of sub research questions one, two and four.

Pre 2010	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
			Parliament debate The Enterprise and Regulatory Reform Bill and pass into law – limited evidence of Trade Union engagement							
				Public Concern at Work Commission TUC involved some unions contribute						
				Government consultation on whistleblowing law – some unions contribute						
	Debate on Whistleblowing law review						Debate on whistleblowing law changes	Debate on whistleblowing law change – changes adopted into law		

Trade unions engage in discussion with government prior to whistleblowing review		Trade unions engage with various organisations	Trade unions call for an expert group to explore the white paper			
	Key UK – Green, Norway - Blue					
<i>Table 4.20: a synopsis of union engagement in the legislative process leading to whistleblowing reform</i>						

#### 4.4.3 Collective bargaining at the national level

Earlier in this chapter (4.3.3), we discussed collective bargaining at the local level. This section looks at the information relating to collective bargaining at the national level.

At the national level, the only reference to collective bargaining in the United Kingdom was in the response from the Fire Brigade Union.

*I've spoken to some officials and we don't think we have a great deal to offer on whistleblowing. We tend to deal with matters through collective bargaining nationally and locally, and whilst of course we encourage our members to articulate their concerns, there are channels through the union to raise these with management. (FBU email response)*

As can be seen from this, there is not an explicit recognition from them that whistleblowing is dealt with under collective bargaining but rather that they use collective bargaining as a mechanism for dealing with issues. The TUC data made no reference to collective bargaining. This lack of discussion in the interviews was not the case in the Norwegian and the Netherlands interviews.

In the Netherlands, the federation identified that some collective bargaining procedures do include whistleblowing procedures, but this is generally public sector.

*'Only in fact in the public sector, where there is some collective bargaining about the procedures for whistleblowers. And then we have, of course, a structure in the legislation so there is now much less to discuss in collective bargaining' (NEDfed1b)*

However, from this, the federation anticipates a lesser role for collective bargaining for whistleblowing as the law is now in place. Another reason they identified for lack of collective bargaining at the national level was due to public and private sector differences.

*'especially in the public sector because in public sector the procedures for whistleblowing are established on the sectoral level. Whereas in the private sector, almost all procedures are being established on the company level.'* (NEDfed1b)

As can be seen, there is some evidence of sectoral level but not of national processes in the Netherlands. The use of law as a reason for not using collective bargaining agreements was expressed in Norway as well.

*'No, they're part of the Working Environment Act. So it's not related to the collective bargaining issues'* (NORexpert1)

*'Yes, but this is whistleblowing. This is something that is secured by the law and government. This is not a part of our collective bargaining. We have, in my unions, we have over 24 collective agreements. All of them are referring to the law when it's whistleblowing, they refer to the working environment committee in the company we are referring to the safety officer in the company, This is the first level. Of course, they can raise the issue further, Legally. Actually, the whistleblowing issue is not mentioned in any collective, this is something in the Working Environment Law.'* (NORpri1)

However, whilst unions do not consider whistleblowing as part of collective bargaining, there was a recognition that whistleblowing could be part of the collective bargaining discussion.

*'This year we're starting collective bargaining for national things and it's starting, and we are finished in May. And, then we can, we can't put the demand into the collective bargaining, the expert group that the government put down that Henrik is in is coming with the report in first of March. Next year, first of March. And if they are coming with things that we want, we can take it in to the collective bargaining. To make changes in the rule set. So what it is, is an open here. We haven't done it yet but it's open to do it, yeah, if you understand.'* (Norpubnat1)

The above suggests a consistent picture across the three countries, namely that collective bargaining is not used nationally to support whistleblowers. This finding will be explored further in the discussion chapter. Specifically, it helps us identify that whistleblowing as an aspect of collective bargaining is not considered and thus is not part of the social element of trade unions (sub-question one). Further, it is not part of trade unions' voice mechanisms (sub-question four).

#### **4.4.4 Collaboration**

One of the discussion themes in the literature review was regarding how trade unions engage with alternative organisations in supporting whistleblowers. This final section of the findings chapter presents findings on this theme.

Interviewees were asked about whether they engage with other organisations regarding whistleblowing. The TUC identified several organisations.

*'Well, PCAW was the organisation in the know. I mean, they did corner the market, in the sense they were very good, and they had a fantastic pedigree and Maurice Frankel who did freedom of information stuff was there at the beginning of the campaign to get legislation. So people could trust him and the very knowledgeable people involved. The other organisations that we were close to were those like the Health and Safety Executive who were good about this and included it in their training for employers and safety reps. They would always mention the importance of whistleblowing procedures because if you don't have them, lives could be lost. They saw that straight away. So we used those kind of institutional arrangements. ACAS as well.'*  
(UKfed) (emphasis added)

Here we can see several organisations. Firstly, we have the regulator in the Health and Safety Executive, it is not a surprise that the TUC engaged with them. This is due to the large role of trade unions revolving around health and safety in the workplace. This engagement of health and safety has been a recurrent theme when UK trade unions talk about whistleblowing. They also identified ACAS and the PCAW as

organisations that provide an advisory function for whistleblowers. The TUC interviewee went on to explain why PCAW was an important alliance.

*'I think the TUC has always been an important connection for PCAW. We felt that that was an organisation that had all the expertise that we hadn't got. We felt it was trustworthy, had a very good director. And I think we felt that by linking with them, as they were doing lots of work, this was our best chance of getting any traction in this area. And they could then say, "Well this is backed by the TUC." And we could say, "Well, we believe this is important. That PCAW really is the organisation that has the expertise, so we're supporting them." So it was mutual back scratching. It wasn't just PCAW. We did that with various other respectable government and civil society organisations on some other issues. It wasn't a new approach or anything.'* (UKfed)

As can be seen, it was considered a mutual relationship as whilst PCAW had the support of the TUC, the TUC got support from what they considered an expert organisation. This mutual relationship could be seen from the previous discussion (at 4.4.2.5), where PCAW invited the TUC to sit on the Commission. However, it could be considered to be a limited relationship as findings show that TUC has been reactive to whistleblowing issues and consultations.

At the union level, a different picture emerges around organisations such as PCAW and ACAS who may provide whistleblowers with advice. As local representatives are careful about members getting legal advice from multiple places and the potential difficulties that can cause for the union.

*'We get into a very difficult position around Law Society advice, which is if someone has had a legal opinion, they can't come to us for a second one. I know that's not true in practice, because if we don't like legal advice on issues we've had, we go and ask another lawyer. We as a Trade Union, we're more likely to come up and say well you've had this advice in this case, we will then get all kind of high and mighty and say we can't touch it. But I think the real issue is, is it in the interest of the Union to pursue something. Or is it in the real interest of the individual to pursue it. What sort of political mileage, personal mileage, where do we*



*go with it, So, I think you have to have that very very pragmatic grasp of what's going on, on the ground.'* (UKpubreg1)

The quote above shows that trade unions seek to avoid the conflict unless there is collective union benefit to taking a pragmatic approach.

Whilst not working with other organisations, one union did identify they try to refer people to GP's or company counselling. Whilst it does not help with the whistleblowing concern, it does show the trade union is aware of the emotional impact of whistleblowing a point identified earlier in the victimisation findings.

*'Usually we try and refer people through the company counselling or their own GP, because there's only so much you can actually do as an organisation which fundamentally isn't designed, so we don't have our own counsellors or anything like that. It's just, like I say, it's just let's really try your best, those reps will just try their best. That's pretty much it with that.'* (UKprilay1)

This union also noted that they tend to tackle the issue themselves but would work with other organisations if they needed to.

*'Because generally people come to us and we deal with it. We're not averse to working with other organisations, and right, our advance work is quite basically with organisations like MOJO, which is miscarriages of justice. It's not that we don't work with organisations, especially something like whistleblowing, but it's not really come up.'* (UKprilay1)

One union official identified suggested a reason to not go outside of the organisation was that it would cause problems for embedded union relationships within the organisation.

*'Yeah, I think it would get complicated if we went outside. Because I've got those good relationships at the top and with the*

*politicians as well. You know I'm trade union liaison officer for the constituency and on the executives' (UKgenlay1)*

Another union official identified that there were ways to resolve concerns, which prevented the need to go elsewhere. In this case, they specifically identified the media as a location to take a whistleblowing case too.

*'So, it wouldn't have been something you would have gone to the press with as such as a whistleblowing case but there are ways and means to sort these problems out.'* (UKpubreg1)

The media was mentioned by another union interviewee, who talked about how the trade union engaged with the media in place of the whistleblower, due to employer policies.

*'So you will find that there are a number of Trusts who have policies that will prevent their staff speaking to Media. They will have policies, which prevent staff speaking in uniform. So, a lot of the time that will then come down to the likes of myself, or my regional organisers, who will have to front things up. Cos, we can say things, which people could feel threatened about. And of course the Trust would argue this is nothing to do with suppressing Whistleblowers or anything like that, but it's about how they want to present the image. Corporate image is the direction we're going in these days'* (UKpubreg1)

A couple of the local union representatives discussed the question of engaging with other organisations. One union identified that they worked with other unions.

*'On some issues, we work in solidarity with other unions its clear and open.'* (UKgenlay1)

However, the same interviewee previously stated that it does not work with other unions on whistleblowing.

*'No, especially as one of the unions was complicit in the problems. Sometimes the chief executive might know the union's misbehaving in collusion with senior management and HR. It's all intertwined, so no, definitely not other unions.'*  
(UKgenlay1)

This suggests that the other union was itself misbehaving or colluding. The union also explained that sometimes it could be difficult due to the other union's members being involved in the issue.

*'Because this has dishonesty involved in the corruption and collusion, then we have to operate in a different way. And some of these senior people who have been moved sideways, or sacked, or resigned, or whatever the official thing is, because of this ... Well your members of the other union and were supported by the other union. In the normal role of things, when there's a complaint against them, their members of the other union, they have the union's support. It does make things a bit awkward.'*  
(UKgenlay1)

However, another union discussed the problem of multiple trade unions in one organisation.

*'Well, the Mid Staffs fiasco, is the best one to think about, because both locally and regionally, all Trade Unions turned a blind eye. And, the leading lights, in most of it was the Royal College of Nursing. So, we took a decision, not to criticise the Royal College of Nursing publicly. The way that the structures in the hospital were, they had the lead positions for the staff side, staff side chair and secretary, which tends to leave the other Trade Unions out. It would have been unfair for us to criticise them, when we didn't deal with it on the ground at the time. [...] Well we could have made a lot of cheap points by attacking other organisations but the actual real responsibility, as far as I'm concerned, rested with all of us, because too many people knew what was going on'* (UKpubreg1)

In this case, it is clear that there was a conflict between the unions, but as each were as much to blame for neglecting the whistleblowers, they took a pragmatic approach to resolving the issue. However, this was not due to a cooperative approach but rather to avoid criticism themselves.

As can be seen from the data above, no clear picture emerges as to how trade unions in the UK engage with other organisations. What is clear, however, is that there is some reticence to work with other organisations due to a potential conflict with legal advice and other unions colluding with the organisations.

We have seen that in Norway and Netherlands, trade unions engage with business and parliament when it comes to the law. This suggests that trade unions are more likely to engage at the workplace level as well. Therefore, it is interesting to see whether these differences exist in engaging with a wider audience.

In Norway, at the national level, we see a cooperative approach between trade union federations.

*'In Norway, we have four organisations, confederations, LO is the biggest one. And we are the second biggest one, and we have two others we call YS and Akademikerne. And we work together to find a solution, how to manage to solve this, to have a better set of rules, looking into whistleblowing cases. And when, but Unio's, it's not good to have a far way to go. Unio is probably the confederation that's, it has done the most to put this issue on the map.'* (Norpubnat1)

Much like the UK, the external groups identified were similar. However, engagement differs. One of the local representatives identified that they discuss whistleblowing cases with the Labour Inspections<sup>46</sup>.

*'We have a lot of meetings with the labour inspections about our specific cases about whistleblowing which actually have not*

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46 The Labour Inspection is an organisation that oversees the implementation and operation of the Working Environment Act 2005 by Businesses in Norway.

*ended good. And they have come back to us and have official meeting with us' (NORpri1)*

Here we see the trade union use a regulator to discuss cases whereas, in the UK, the regulator was only mentioned by the TUC and in the context of training.

The media were also identified by the interviewees. One union identified they try to help the whistleblower avoid the media in the first instance.

*'If we can help them not to blow them in the media, they will be more helpful.'* (NORpri1)

However, they also identified that the media is interested in whistleblowing stories and so the union do work with them on some cases.

*'In all the case about whistleblowers, each case that all the mainstream media is very interested in to write about, especially if there is interest of the public. Of course, many of these cases are interest of the public. I consider the mainstream media they are not so difficult, that we tell them about some cases. They are willing to report, to write about it.'* (NORpri1)

Another union identified going to the media was something the union would do to alert the public to what's happening in a case.

*'Some other cases we contact the media and we can go to the media for the whistleblower or the lawyer going in the media for the whistleblower just to open the cases so the public can see what's in the cases'* (Norpubnat1)

In the UK data, we identified that trade unions were in conflict. In Norway, there is some recognition of potential difficulties of working together, but they also identify that at the national level it is easier.

*'I've been talking to the lawyer's unions in the national level invited their telling about whistleblowing and what we have done.'*

*But in the local area, it's more like a fight. It's more difficult to work together because I don't know why. I have some ideas, but it's probably because of it's been so tough for every part of the union and the whistleblowing and the people that's included, been in the cases. It's been very demanding for all the people that work in the police force in the west coast. If you understand. And that makes some big scars on everybody. And it's been harder to work together. But in the national area, we are working better. In the trade union. Yeah. Because that's, I think it's also because the cases is more far away and you don't have the same commitment to the cases, and you don't feel the pressure in the same way when you have some distance.'*  
(Norpubnat1)(emphasis added)

Another union talked of trade unions as a family and thus cooperative.

*'There is public unions, there is government union, there is a private unions. We are a family. We are actually talking to each other in whistleblowing issues. So, there is not a disagreement about that.'* (NORpri1)

One union also identified that they work with a lawyer as they provide the union with support in whistleblowing cases.

*'We have a person here in Bergen. She has been following the cases there in Bergen in the police force. They have several big whistleblowing cases, and she has been a terrific support for us. And we have a close contact and has been helping us understanding and following the cases. We are using her as a lawyer in several of the cases we have.'* (Norpubnat1)

The data suggests trade unions in Norway are more likely to engage with other organisations, including other trade unions to support whistleblowing and whistleblowers.

In the Netherlands, the interview with the FNV did not discuss working with other organisations other than in the context of lobbying and legislative provisions which has been discussed previously. However, it was noted by an expert that trade unions positively work with the media.

*'Another important role is that the trade unions actively support whistleblowers in the press. There are several cases in the Netherlands where the trade unions actively supported a whistleblower and this helped the whistleblower. In principle, it may be better if a whistleblower doesn't have to go to the press to arrange for a proper investigation of the wrongdoing, but if it happens, then support of the trade unions may be very valuable.'* (NEDexpert2)

This suggests a cooperative approach much like that in Norway, but unlike that in the UK. This engagement between groups goes to how trade unions engage in society and how they utilise voice mechanisms. Therefore, these findings will be developed further in sub-questions one and four in the next chapter.

Section 4.4 has focused on trade unions' engagement in whistleblowing from outside the members' organisation. It has been found that trade unions that participated do not use the law and see it as not for the worker this was supported to some extent by the data on the whistleblowing cases going to the employment tribunal. We also found that trade unions in the UK do not use their voice to advocate or push for a change of the law to improve it for the whistleblower. Where they do engage in political lobbying it appears to be reactionary. This is in stark contrast to the evidence from Norway and the Netherlands which suggests that unions there are more proactive in lobbying for whistleblowers when it comes to the law. This difference could be attributed to the social contexts of the countries and thus is an important finding for addressing the sub-question posed on the social differences.

## 4.5 Conclusion

This chapter has explored various streams of data that shed light on how trade unions engage in the area of whistleblowing. In section 4.2 we explored how trade unions perceive whistleblowing we identified that while they perceive it as important, they do not understand or recognise what whistleblowing is. This lack of understanding flows into how they engage in advising and supporting their members to blow the whistle. This was explored in section 4.3 where we identified that in the individual context trade unions are limited in their engagement. They do not appear to engage in supporting whistleblowers in the disclosure phase or protect them from work retaliation victimisation. However, they do appear to be able to engage the wider membership to prevent whistleblowers from facing social retaliation victimisation from other union members. We have also seen that in terms of policy and localised collective bargaining trade unions do not engage here. This may be the result of seeing rightly or wrongly whistleblowing as an individual act, where they would want to act on collective issues. This lack of collective bargaining was further evidenced at the sectoral and national level which was addressed in 4.4. Externally, we found that trade unions in the UK do not trust the law and fail to proactively engage in lobbying to make the law more effective for their members. It was at the lobbying discussion that we saw the most prominent distinction between countries suggesting that those countries with trade unions holding a stronger social function are more proactive in using their voice to lobby for members and change.

The brief summary has focused on the key features of the discussion had in this chapter. However, throughout the chapter, we made additional findings some were very clearly drawn from the data. Other findings, however, were more tentative and as such caveats were given. Table 4.21 has the aim of helping the reader by bringing them together in one place. Throughout the chapter at appropriate points guidance has been given as to how the finding connects to the research questions. Chapter five has the purpose of bringing these findings together and addressing more clearly how these findings help us address the research questions.



<b>Findings that provide insight</b>	<b>Location in the findings chapter four</b>	<b>Relevant research question</b>
Whistleblowing is perceived as important by trade unions	4.2.1	
Trade unions have an internal conflict regarding supporting whistleblowers.	4.2.1, 4.2.2	
Whistleblowing is an issue for union members even though it is not recognised by the unions	4.2.1	RQ1
Trade unions lack understanding of what whistleblowing is	4.2.2	
Whistleblowing is a protracted process	4.2.2	
Whistleblowing starts as an informal process	4.2.2	
Trade union representatives have very little training on whistleblowing	4.2.2	
Trade unions consider negative responses most likely by organisations	4.3.1	RQ3
Trade unions seek to advise members to raise a concern through them	4.3.1	RQ4
UK trade unions try to be a shield for their members	4.3.1	RQ4
Union members are no less likely to seek alternative advice when compared to non-union whistleblowers, suggesting unions do not provide an advisory role	4.3.1	RQ4

Representation is not seen as a role for trade unions when supporting whistleblowers	4.3.2	RQ4
Trade unions attempt to provide emotional support, but this is not effective	4.3.2	RQ4
Trade unions want to collectivise	4.3.1, 4.3.2, 4.4.1	RQ4
Whistleblowing is not considered an issue for collective bargaining	4.3.3.1, 4.4.3	RQ1, RQ4
Trade unions do not participate in the formation of whistleblowing policy	4.3.3.2	RQ1, RQ4
Trade unions see policy as providing an individual response	4.3.3.2	RQ1
Trade unions do not engage in policy creation as they believe they do not have many whistleblowing cases	4.3.3.2	RQ1
Trade unions are able to identify types of WRV	4.3.4.1	RQ3
Trade unions do not mediate or reduce the amount of WRV whistleblowers face	4.3.4.1	RQ3
Trade unions are able to identify types of SRV	4.3.4.2	RQ3
Trade unions engage their members as a mechanism to reduce SRV	4.3.4.2	RQ3
Trade union members garner greater support from co-workers	4.3.4.3	RQ3

Trade unions do not positively affect outcomes of whistleblowers	4.3.4.3	RQ3
Trade union members are more likely to be off work sick during the process of whistleblowing	4.3.4.3	RQ3
The law is ineffective and not trusted by trade unions	4.4.1	RQ2
Legal action does not assist trade union members	4.4.1	RQ2
The law is perceived not to meet the needs of whistleblowers as it changes to benefit business	4.4.1	RQ2
Some types of whistleblowing fall outside of the law	4.4.1	RQ2
Awards in tribunals are insufficient to justify trade unions taking claims	4.4.1	RQ2
Law creates individual resolutions	4.4.1	RQ2
Wrongdoing is often seen by a group of people	4.4.1	RQ4
Trade unions do not engage with the law as they have no role set in it	4.4.1	RQ2
Trade union members do not make disclosures to the union	4.4.1	RQ4
Lobbying is an important role for trade unions	4.4.2	RQ1
Trade unions in the UK take a reactive approach to lobbying	4.4.2.1, 4.4.2.5	RQ1, RQ4

There is little evidence of trade unions engagement in lobbying parliament regarding whistleblowing	4.4.2.1, 4.4.2.5	RQ1, RQ2, RQ4
Trade unions have not met with the expectations of parliament regarding engagement on whistleblowing	4.4.2.1	RQ4
Where trade unions have engaged in lobbying parliament, it has been around Health and Safety	4.4.2.5	RQ4
There is little evidence of engagement with government and whistleblowing consultation	4.4.2.5	RQ4
Trade unions submissions to consultations had no impact on outcomes	4.4.2.5	RQ4
Trade union engagement with PCAW consultation was reactive	4.4.2.5	RQ4
Collaboration with other organisations is seen as positive at a national level but difficult at the local level within the UK	4.4.4	RQ4

*Table 4.21: important findings relating to the research questions*

## Chapter Five: Discussion

### 5.1 Introduction to discussion

This fifth chapter is the discussion chapter. It draws on the findings presented in chapter four to address the research questions set out in chapter two. The chapter is broken down into two parts. The first section addresses this thesis' overall question of

*Overall RQ 'what the role of trade unions is in whistleblowing?'*

It does this by answering the four sub-questions:

*RQ1 'How do national contexts affect union engagement in supporting whistleblowing?'*

*RQ2 'How does the law affect trade union engagement?'*

*RQ3 'How does the type of victimisation affect union engagement?'*

*RQ4 'How do trade unions use their voice to support whistleblowers?'*

This chapter provides an answer to these questions in the form of four paradoxes that emerge from the data.

The second section of this chapter discusses how the research presented in this thesis contributes to theory. While the study has focused on trade unions, this has been a mechanism to meet the thesis' aim of contributing knowledge to the whistleblowing field. Therefore, drawing on the theoretical frameworks identified in chapter two the discussion shows how these frameworks are further developed by this study. In doing so it makes three contributions: 1) That reconceptualising victimisation research to look at WRV and SRV is a useful methodological framework to research those who could or do support whistleblowers. 2) That the three-tier approach to whistleblowing highlighted by Lewis and Vandekerckhove (2016) is useful but needs to be seen as a holistic process as opposed to linear. This could be done by adopting Loyens and Vandekerckhove's (2018) functional types, and 3) That Mowbray's (2015) model of

individual voice is better seen as descriptive as opposed to its current prescriptive state, and needs to account for the influence of collective voice within an individual voice process.

## **5.2 The Paradoxes**

The overarching question of this study is ‘what role do trade unions play in supporting whistleblowers?’ A very short and straightforward, bottom-line answer is that trade unions do not currently play an effective role in supporting members who wish to make a whistleblowing disclosure. However, this does not address why unions do not play that role or what the barriers are that currently prevent trade unions from taking up a role in supporting whistleblowers.

In the findings, we observe recurring patterns throughout the datasets, which enable us to formulate some insights into these further questions. We see that trade unions perceive whistleblowing as important, however, this is attenuated by the fact that trade unions at all levels seem not to understand what whistleblowing is. There is some recognition of whistleblowing issues at the local level, but support is not sufficiently provided by trade unions. The reason this support is not forthcoming is that trade unions perceive whistleblowing as a very individualised act, whilst unions are looking for collective action. Because trade unions see whistleblowing as an individual act, they do not use their voice or collective mechanisms to improve whistleblowing, neither internal to the organisation nor externally in lobbying and engaging with other agencies. The key findings that help us draw these conclusions have been set out in the conclusion of the previous chapter (see table 4.21 in section 4.5) and in the research sub-questions discussed below. Table 4.21 can be read both as a synopsis of the findings as well as a guide to formulating answers to the specific research sub-questions. Some findings do not relate to any specific research sub-question, but they were nevertheless salient. These ‘surplus findings’ will be discussed in a separate section.

Overall, the findings can be summarised by four paradoxes:

1. Trade unions want to support whistleblowers, but they do not understand what whistleblowing is.
2. Trade unions want to advise members, but they don't engage in policy creation to provide themselves with a role.
3. Trade unions want to collectivise whistleblowing, but do not put whistleblowing on the collective bargaining table.
4. The law is weak and lacks credibility for trade unions, but they do not engage in lobbying effectively to change it.

### **5.2.1 Research Question One: The Social Position**

This section explores the first research question, which is: 'How do national contexts affect union engagement in supporting whistleblowing'. In the literature review, we identified two key expectations. Firstly, trade unions will influence whistleblowing policies through the collective bargaining processes. Secondly, we expected that where countries have greater collective bargaining coverage, trade unions will have greater influence over policies. In relation to both of these expectations, whistleblowing was found not to be part of collective bargaining regimes. The data in relation to localised collective bargaining shows that trade unions do not view whistleblowing for localised bargaining (4.3.3.1). At a national level, the same picture emerges (4.4.3). As whistleblowing is not seen as part of the collective bargaining process, it cannot, therefore, be seen to influence policy and thus, expectation one is not met. In any event, the data suggests that even if trade unions did use collective bargaining to support whistleblowers, this would have little impact on policy. This is because, at the local level, trade union representatives do use policy, but do not engage in its creation (4.3.3.2). The data suggest two reasons for trade unions not to engage in policy creation: firstly, whistleblowing policy is seen as providing individual responses (4.3.3.2); secondly, there is no need to engage with policy creation, because trade unions do not have many members raising concerns (4.2.1, 4.3.3.2). This lack of engagement in policy is problematic as Lewis (2006) identified that a policy that has union engagement in its creation creates more trust in it.

In comparison to the UK, where there is no recognition of collective bargaining having a role, the data from Norway and the Netherlands suggest while currently, the role of collective bargaining is limited, the mindset of the trade unions is more open to this approach. Therefore, the data does suggest that while expectation two cannot be confirmed it also cannot be completely ruled out.

In addressing the broader nature of the research question, we can see that the societal position of trade unions does have some potential influence on the trade union engagement around whistleblowing. In the UK, we see that trade unions take a rather reactive approach to engagement with whistleblowing (4.4.2.1), and they do not actively seek to engage in lobbying (4.4.2.1) even though they recognise that lobbying is an important role for them (4.4.2). The findings show that engagement is usually the result of being approached by another organisation or MP. However, in the Netherlands, the trade unions actively started the conversation and brought MP'S and business to the place of recognising the need for whistleblowing provisions (4.4.2.2). There is also evidence that trade unions in Norway (4.4.2.3) have taken a proactive approach to lobbying and legislative discussion. Thus, this lends support for the idea that where there is a cooperative approach between government business and trade unions, we will see a proactive rather than a reactive approach. This is in line with previous literature which suggests that where union membership or collective bargaining coverage is low there tends to be a lower political influence (Bernaciak, Gumbrell-McCormack and Hyman 2014). Furthermore, while these comparative findings are limited, they do appear to fit with the wider literature of economics and politics. Specifically, the varieties of capitalism (VOC) literature that distinguishes between coordinated and liberal market economies (Hall and Soskice, 2001). In the VOC framework, the Netherlands is seen as a coordinated market economy whilst the UK is a liberal market economy. Hence, VOC would predict that one would find differences in the way the industrial relations stakeholders engage. The findings of this study do show differences but do not allow us to draw any more meaningful connections to this stream of literature. However, this is something that could be explored in future research.



Pulling this data together enables us to identify that while trade unions use policy, they have no role in its creation. That is the second half of paradox two mentioned at the outset of this chapter, namely 'trade unions want to advise members, but they don't engage in policy creation to provide themselves with a role'.

The findings also provide insight into trade unions' views around collective bargaining, the findings show that whistleblowing is not considered when it comes to engaging in collective bargaining at both local and national levels. This enables us to identify a part of paradox three, namely 'trade unions want to collectivise whistleblowing, but do not put whistleblowing on the collective bargaining table'.

## **5.2.2 Research Question Two: The Law**

This section focuses on the second sub-question, namely 'how does the law affect trade union engagement?' We expected to see that trade unions will look to the law for a mandate to support whistleblowers. Some of the findings suggest that trade unions do not engage in whistleblowing due to not having any recognition within the law (4.4.1). This provides some support for the expectation. While there is no role within the law, we also see that trade unions do not actively engage in the lobbying process to change the law to provide themselves with a role (4.4.2.1, 4.4.2.5).

The reasons trade unions do not engage with the law revolve around a lack of trust towards the whistleblowing legislation' (4.4.1). There were several reasons identified for this lack of trust. These were that the legislation is ineffective and does not meet whistleblowers' needs (4.4.1), that the law does not assist whistleblowers as it is set up to benefit business (4.4.1), and that the remedies it provides are inadequate (4.4.1). Thus, trade unions argue that the law is ineffective (4.4.1). This perspective garners support in the literature where Lewis (2017) argues that the law is in need of reform. Furthermore, aside from the issues with the content of the law, another problem for trade unions is that the law provides individual solutions which do not align with the collective nature of trade unions (4.4.1). This individualising dynamic of the law is in line with O'sullivan et al (2015) that researched whether the move in Ireland to more

individualised employment laws remove the role of trade unions in Ireland. In their study, they found that while individualised employment laws had increased there was still a role for trade unions. This study echoes that sentiment by highlighting in the specific context of whistleblowing there is a collective avenue within this individualised employment right.

From this, we can assert that trade unions do not see the law as beneficial for them or their members. At the same time, as we see in RQ4 they do not engage in lobbying which could bring about positive changes to the law. Hence the contradictory proposition articulated as paradox four that trade unions see the law as weak and lacking credibility but do not engage in lobbying effectively to change it.

### **5.2.3 Research Question Three: Victimisation**

This section focuses on the third sub-question, namely 'how does the type of victimisation affect union engagement'. The expectation from chapter two was that trade unions are more likely to support whistleblowers facing retaliation where it is work retaliation victimisation (WRV) as opposed to social retaliation victimisation (SRV). Trade unions are able to recognise when their members face WRV (4.3.4.1) and SRV (4.3.4.2). However, trade unions do not appear to engage in supporting individuals who face WRV (4.3.4.1). Trade unions instead focus on helping members who face SRV (4.3.4.2) and they do so through collective approaches. This may explain why trade union members who blow the whistle seem to have greater support from their co-workers (4.3.4.2). Thus, the findings do not support the expectation.

In looking at the broader question of victimisation we can identify some other key findings which provide insight into the role of trade unions. Firstly, trade unions perceive that whistleblowers will generally face negative treatment by the organisation (4.3.4). This can explain trade unions' inactivity for WRV prevention, namely, they see no scope in preventing WRV because they regard it as inherent and perfectly normal to whistleblowing. However, that is not supported by the literature on victimisation which suggests that victimisation is not inevitable (Brown et al 2018). The trade unions' perception does however accord with the whistleblowing literature which shows the

amount of retaliation a whistleblower anticipates is often more significant than they actually face (Rothschild and Miethe, 1999, Vandekerckhove and Phillips, 2019).

The second relevant finding here was that trade unions do not positively affect whistleblowers outcomes (4.3.4.3) and finally, that trade union members are more likely to be off sick during the process than non-union whistleblowers (4.3.4.3). These latter two findings can be explained by the fact that trade unions appear to focus on SRV and the emotional side of the whistleblower. In their perception, this is where whistleblowers need support. However, the whistleblowers themselves want support in rectifying the wrongdoing they raised.

As can be seen, trade unions want to provide support to whistleblowers; they recognise the impact raising a concern can have. This finding helps us identify the first part of paradox one namely that trade unions want to support whistleblowers but don't understand what whistleblowing is.

#### **5.2.4 Research Question Four: Voice**

The final sub-question asked 'how do trade unions use their voice to support whistleblowers'. The literature review developed three expectations: the first expectation was that trade unions are less likely to engage in advising or supporting whistleblowers where there are various alternate organisations. A second expectation was that trade unions can use internal power to become part of whistleblowing processes within organisations. The final expectation was that trade unions can use various voice options to support whistleblowers irrespective of their position within a workplace.

The findings suggest that trade unions are not effectively using their Voice to support whistleblowers. At the individual level, we see that trade unions tend not to provide individual advice but rather seek to get members to raise the concern through the union (4.3.1). In turn, union members are not less likely to seek advice from other organisations (4.3.1). Despite trade unions' desire to receive disclosures, their members do not see the union as a particularly appealing recipient (4.4.1). When it comes to representing members, trade unions do not see themselves as fulfilling such

a role (4.3.2). This position goes against the expectations of parliament who expected trade unions to participate in advising and representing whistleblowers as part of their everyday role (4.4.2.1). Instead, trade unions use their Voice to provide emotional support (4.3.2) and act as a shield for their members against negative treatment (4.3.1). However, as pointed out in the previous section, they are not particularly effective at doing this.

At the collective level, we see that Voice is also not used effectively to support whistleblowing. Trade unions do not use their voice to participate in collective bargaining mechanisms (4.3.3.1, 4.4.3) or in the formation of whistleblowing policies (4.3.3.2). This is despite the fact that trade unions want to collectivise (4.3.1, 4.3.2, 4.4.1) and the evidence that wrongdoing is often witnessed by groups as opposed to individuals (4.4.1).

Notwithstanding trade unions have a public voice, they are not using it to actively support whistleblowers. As identified in the answer to RQ2 (law), trade unions do not engage with the law because it is weak. Trade unions see lobbying as an important role (4.4.2), but surprisingly the evidence is that they take a reactive approach to engaging in parliamentary processes (4.4.2.1) and even that is limited (4.4.2.1, 4.4.2.5). When they did engage, it tended to be focused on health and safety issues (4.4.2.5). Outside of engaging in parliament, we see that trade unions have not used their Voice to engage in public consultations effectively (4.4.2.5) and the engagement they made had no impact on the outcomes of those consultations (4.4.2.5). While the trade union federation was part of the PCAW consultation, this was as a result of being approached by another organisation; another confirmation of the reactive picture emerging from the research in the UK (4.4.2.5).

In regard to other organisations (such as PCAW), we see that trade unions do not use their Voice to engage these organisations. At a national level trade unions see collaboration as positive, however, at the local level representatives find it difficult to collaborate (4.4.4). This was due to conflicts with an individual receiving advice from multiple groups alongside trust issues (4.4.4).

In terms of voice mechanism, we see some differences in Norway and the Netherlands. In Norway, we see that trade unions do not provide a shield (4.3.1) but rather focus on supporting the member to leave the organisation. We also see that Norwegian trade unions are more willing to collaborate with other organisations such as the media to support whistleblowers (4.4.4). In terms of lobbying, we see that both Norway and The Netherlands are proactive in their approach (4.4.2.3 and 4.4.2.2).

In chapter two (2.6) we identified the relationships between various groups and identified three functions namely Advisory, Investigatory and Adjudicatory. The findings in this study have enabled us to see some conflict as UK trade unions appear to have difficulty providing advice and support where other organisations are involved. Therefore, we find some support for expectation one. The findings did not enable an exploration of the relationship with investigatory and adjudicatory groups which may provide room for future research. This functional approach can be found in research by Loyens and Vandekerckhove (2018) in their review of national institutional arrangements, which suggests that it has a wider application and validity as a model for reviewing interactions between different stakeholders.

Expectations two and three are not supported. In relation to expectation two, trade unions do not use their voice internally within organisations. While they provide limited support to members, they do not utilise collective bargaining to engage in whistleblowing policy creation. Furthermore, they do not seek to create a role for themselves with the organisations' structures. In relation to expectation three, externally, trade unions' do not lobby parliament or engage in public voice to raise whistleblowing issues more broadly.

The findings suggest that trade unions want to advise members albeit would prefer to do this in a collective way. Considering this and linking to the findings around the failure to engage in policy creation set out above and in RQ1 we see that trade unions are not creating a space for themselves to provide advice. This leads to the second paradox, namely: Trade unions want to advise members, but don't engage in policy creation to provide themselves with a role. We also see that trade unions want to

collectivise issues, however, as identified in RQ1 and above they do not use their voice or collective bargaining mechanisms to support whistleblowing. This enables us to draw out paradox three: Trade unions want to collectivise whistleblowing but do not put whistleblowing on the collective bargaining table.

### **5.2.5 Other Findings**

This section draws on some other key findings which do not specifically relate to the sub-questions but provide insights into the overarching questions.

The findings suggest that trade unions perceive whistleblowing as important (4.2.1). However, findings also suggest that trade unions do not have a clear understanding of what whistleblowing is, neither at the local or national level (4.2.2). Trade unions at the national level consider whistleblowing as a last resort or something that does not involve union members (4.2.1). Findings, however, show that whistleblowing starts as an informal process (4.2.2) and is often protracted with several stages of disclosure, and supports previous research describing whistleblowing as a protracted process (Vandekerckhove and Phillips 2019). Compared to the national picture the local union representatives do see whistleblowing cases 'as they happen', but only when they reflect on the case. This creates internal conflict within the union (4.2.1, 4.2.2) and may explain why there is a lack of training by the unions for their representatives (4.2.2): local representatives don't see the need because it's not happening, and national level union officials don't think unions have any role in the whistleblowing cases.

Trade unions want to support whistleblowers but currently have a collective mindset, and as such fail to see the opportunities for supporting whistleblowers and for collectivising their concerns. The findings thus suggest that unions lack a clear understanding of what whistleblowing is. Hence the formulation of the first paradox: Trade unions want to support whistleblowers, but they do not understand what whistleblowing is. It is perhaps the most fundamental one, in the sense that it underlies or 'sets in motion' the other three paradoxes emerging from the findings. Hence why, although discussed as the last paradox, it is positioned as the first of four. It is not a cluster of findings that emerged because of a specific research question. The research

did not set out to find out what the understanding was that trade unions had of whistleblowing.

Having discussed the research questions in more detail we can come back to the paradoxes. The study has identified four paradoxes the weight of each paradox needs to be considered. As a pragmatic study, the findings have been drawn from multiple sources of data. While this helps triangulate the data it also means that the weight of data differs across the areas we have explored. Paradox's two and three are more limited than one and four. These are both taken predominantly from the interview data. Paradox four is drawn from the interviews, PCAW data and the legislative exploration this means that we can have greater confidence in it. However, the limited interviews do mean the first part of the paradox is not as strong as the later part which is clearly found through exploration of the political debates. While caution is needed with paradoxes two, three and four, each of these adds weight and support to the findings that lead us to paradox one. This paradox is the most comprehensively evidenced in the study. It is to some extent the most fundamental finding of this study as without a proper understanding of what whistleblowing is everything else a trade union may want to do or are able to do cannot be done properly. Without understanding what whistleblowing is, they cannot advise members or engage in policy creation. Further, they will be unable to identify a whistleblowing situation and thus cannot make it a collective issue or protect a whistleblower from victimisation. If they cannot identify whistleblowing cases, they are unlikely to be able to use their voice to bring about change to the legislation to improve it for whistleblowers.

The above has sought to draw on the data and answer the research questions set out in chapter 2. Having done this, it has provided new insights by identifying four paradoxes in relation to trade unions' engagement with whistleblowing. The next section goes on to provide contributions specifically to whistleblowing theory.

### **5.3 Contributions to the whistleblowing literature**

In this section, the theoretical contribution of this research will be discussed. The thesis claims three contributions: firstly towards a classification of victimisation, secondly towards the 'three tiers' model of trade union engagement, and finally towards the role of Voice.

#### **5.3.1 Classification of victimisation**

Within the whistleblowing literature discussed in chapter two, many types of victimisation were identified. The most comprehensive list can be found in the Whistle While they Work study (Brown et al 2008). It was noted that whistleblowing literature uses the number of types of victimisation as a proxy for the severity thereof (Smith 2014, Miceli et al 2008). It suggested that Cortina and Mageley's (2003) conceptualisation of victimisation - work retaliation victimisation (WRV) and social retaliation victimisation (SRV) - may be of value following the suggestion of Miceli et al (2008). The various types of victimisation were broken down into WRV and SRV. Brown et al (2018) argue that the 27 types of wrongdoing identified in the 2008 study, which were used as part of the classification in chapter two, are individually infrequent. They argue that this leads to the need for research on the prevalence of informal impacts and collateral impacts such as job performance and isolation.

In the data, we are able to see that trade unions do make a distinction between types of retaliation. We saw that they engaged better, although not satisfactorily, where members faced emotional-type retaliation SRV as opposed to the employment contract breach-type victimisation WRV. We can therefore see that using this classification can assist in developing a better way of analysing victimisation faced by whistleblowers. In that sense, this study heeds the call by Brown et al (2018) for a different way of looking at victimisation.



This thesis showed that trade unions predominantly focus on supporting whistleblowers at the informal (SRV) level. It also highlighted that they recognised they did not do this effectively. This enables us to see that the trade unions as stakeholders in whistleblowing may not be looking at the holistic picture when it comes to whistleblowing. That may be the case for other stakeholders too. Rather than looking holistically, stakeholders may focus on what they deem to be most important which may not align with reality. In this thesis, trade unions focus on SRV support because the whistleblower needs emotional support. However, the whistleblower wants the issue raised to be rectified. Trade unions do not engage in WRV protection or other mechanisms of supporting whistleblowers outside of protection from victimisation. This suggests that trade unions may not be aware of the role they could play here. If this is the case for trade unions it may be that other stakeholders also fail to recognise and take a holistic approach to supporting whistleblowing. The contribution of this thesis to whistleblowing scholarship is that it shows WRV-SRV is a useful methodological framework to research those who could or do support whistleblowers. Empirically, the thesis found that the WRV-SRV distinction resonates with how trade union interviewees reasoned. That is, the WRV and SRV concepts were successfully used as coding themes and findings could be arrived from that. Future research can use the WRV-SRV distinction as a way to measure to what extent whistleblowing stakeholders perceive their role holistically, i.e. to what extent they can see the potential role they could play.

### **5.3.2 Three tiers**

The second contribution is to further the understanding of the role of trade unions as outlined in Lewis and Vandekerckhove's (2015) three-tier approach. Their research maps Kaine's (2014) four levels of union voice against Vandekerckhove's (2006, 2010) three-tiers to then speculate how trade unions can engage in whistleblowing support. Phillips (2017) develops this model further by advancing six specific types of Voice that could be utilised by trade unions to support whistleblowers at these three levels.

This thesis has provided new insight into the previous theoretical contributions (Lewis and Vandekerckhove, 2015, Phillips, 2017). At the organisation level, Kaine (2014) suggests individual, and workplace voice will be utilised, and Phillips (2017) argues trade unions will do this through individual voice mechanisms such as providing advice or representation, and they may also engage in collective bargaining. This thesis finds that UK trade unions do not perform these functions.

At the Regulator level, Kaine suggests there will be both a workplace and industry voice. Phillips suggests this will be in the form of collective bargaining. However, this thesis has identified that trade unions do not use collective bargaining mechanisms to support whistleblowing. Hence, we can see that trade unions are not engaging at this level either.

At the Public level, Kaine argues that Industry, National and Supra-national Voice can be used. Phillips argues this will be in the form of Non-Union Voice (supporting individuals in workplaces where the union has no recognition) and Public Union Voice (lobbying and working with other agencies such as media to publicise whistleblowing issues). In this study, there was no evidence of engagement in non-union Voice and minimal engagement in the public Voice; this was in the form of engaging in lobbying but was reactive.

Phillips (2017) speculated that trade unions might use works councils and joint consultation committees to support whistleblowers. Unfortunately, this thesis found nothing to support Phillips (2017), possibly because the UK shows little engagement with whistleblowers in the industrial labour context. However, the thesis did find that there were some differences in the level of engagement in Norway and the Netherlands. At the public voice level, unions in the Netherlands and Norway seem to actively engage in lobbying. Furthermore, in Norway, we saw engagement with the media in a positive manner. This suggests that there may be variances in the engagement of the six types of Voice, depending on the country. A contribution of this thesis is that mindset rather than collective bargaining coverage corroborates with these voice variances. Hence, further research might be more successful if cultural

rather than institutional variables are pursued to find explanations for differences in the types of stakeholders that support whistleblowers in a particular country.

The three-tier model assumes some linear building of process. This is not surprising as it focuses on the United Kingdom and the whistleblowing law adopts this linear process of disclosure. This study, however, questions whether looking at the role of trade unions in this linear fashion is appropriate. In the United Kingdom, we see that trade unions currently adopt a very limited role at the public level. This thesis suggests that trade unions want to collectivise whistleblowing. Theoretically, they want this because that may enable them to engage with whistleblowing at the organisation and regulator level. However, this thesis shows that trade unions do not see whistleblowing holistically and thus do not see links between lobbying, policy creation and representation. Instead, trade unions fail to see and understand whistleblowers as anything other than individual elements.

A contribution of this thesis is that the linear nature of Lewis and Vandekerckhove's model has to be questioned. In their model, they follow a three-tier process as outlined above creating a staged process of disclosure from internal to external. They highlight how at each stage trade unions might engage. The findings have shown that 'advise and support' can occur at the same time as lobbying or collective bargaining. Thus, trade unions could be using multiple voice channels at the various levels at the same time, or, immediately at one of the higher tiers (regulator, external) without having used the lower (internal, regulator).

However, if we consider the three tiers as overlapping and potentially occurring at the same time as the findings suggest is more likely, the Lewis and Vandekerckhove (2016) model still has value. It provides a useful framework for assessing how external groups, such as trade unions may engage in supporting whistleblowing.

Loyens and Vandekerckhove (2018), in analysing national institutional arrangements for whistleblowing, identify three function types, which cover eight roles. Firstly, advisory functions encompass awareness, training, legal support and psychosocial support. These are individual factors that could be argued to align with the organisation level of the three tiers. The data discussed previously has shown these are areas trade

unions could engage in and to a very limited extent do. For example, providing emotional support may fall into the psychosocial category, trade union members will have access through their union to legal support. Secondly, investigative functions include an investigation into wrongdoing and also into reprisal. Depending on arrangements this could fall within the regulator (second) level of the three tiers. Thirdly, adjudicative functions cover corrective action and protection of reporting persons. This is more difficult to place on the three tiers, but trade unions could 1) use their Voice to protect whistleblowers and - if they took an active role - seek to get the organisation to remediate, and 2) where they fail, use their public Voice to hold the organisation to account. While the two models are supportive of each other, trade unions might find this function-classification more useful to identify ways they can engage effectively with whistleblowers. Hence, this thesis finds Loyens and Vandekerckhove (2018) a more useful model to research stakeholders of whistleblowing than Lewis and Vandekerckhove (2016). Further research is required to assess whether these insights into the model hold when reviewed against different contexts such as different countries or organisations.

### **5.3.3 Voice**

The third theoretical contribution this study makes is to the role of the union in assisting whistleblowers in voicing their concern. Of the three theoretical contributions, this is perhaps the most salient when we consider the research questions and the emergent paradoxes. How the unions utilise their voice in the different whistleblowing contexts could be said to be the golden thread that runs through the thesis.

As discussed above, trade unions can use their Voice for supporting whistleblowing in many ways, but they currently do not. In the literature discussion in Chapter two, it was identified that the role of whistleblowing in the voice literature had perhaps been 'displaced in dispersion' and that Mowbray et al.'s (2015) staged model of Voice had sought to draw the streams of voice literature back together. This study has not sought to investigate where whistleblowing should sit within the voice literature. Rather this study suggested that Mowbray et al.'s (2015) model could provide insight into how trade unions influence whistleblowers' decisions around voicing a concern. More precisely, the 'route-of-action' as suggested by Mowbray's model was that after a

whistleblower had made a decision to Voice (stage one) then trade unions could engage in one of three ways. Firstly, they could be the target of a disclosure. This thesis found, however, that trade unions do not engage in receiving disclosures as part of the organisational processes. Secondly, the model suggested trade unions could be the mechanism that an individual uses to make the disclosure. This thesis on the contrary found that trade unions do not engage in making disclosures for individuals. Nevertheless, trade unions do advise their members to raise concerns with the trade union.

The model suggested that the third way trade unions could support whistleblowers in the voicing process was between stage one and stage two, namely that trade unions could manage the Voice by being a mediating mechanism. This thesis finds that individuals are often not the only ones to see a concern. Trade unions want to collectivise whistleblowing concerns rather than deal with them at the individual level, and, thus, advise members to use the union. However, this thesis also finds that trade unions do not currently play a mediating role.

If we consider the collective role trade unions want to have, we can assert that they could play a significant mediating factor in the individual voice process. When an individual has decided to voice the concern, the trade union could mediate the Voice by taking the concern from the whistleblower and using the union's collective Voice on behalf of the wider membership. This would require a change to Mowbray et al.'s model to create an alternative stream of collective Voice alongside these individual voice channels. Precisely here lies the contribution of this thesis. The adapted model is shown in Figure 5.1 with this thesis contribution highlighted in red.

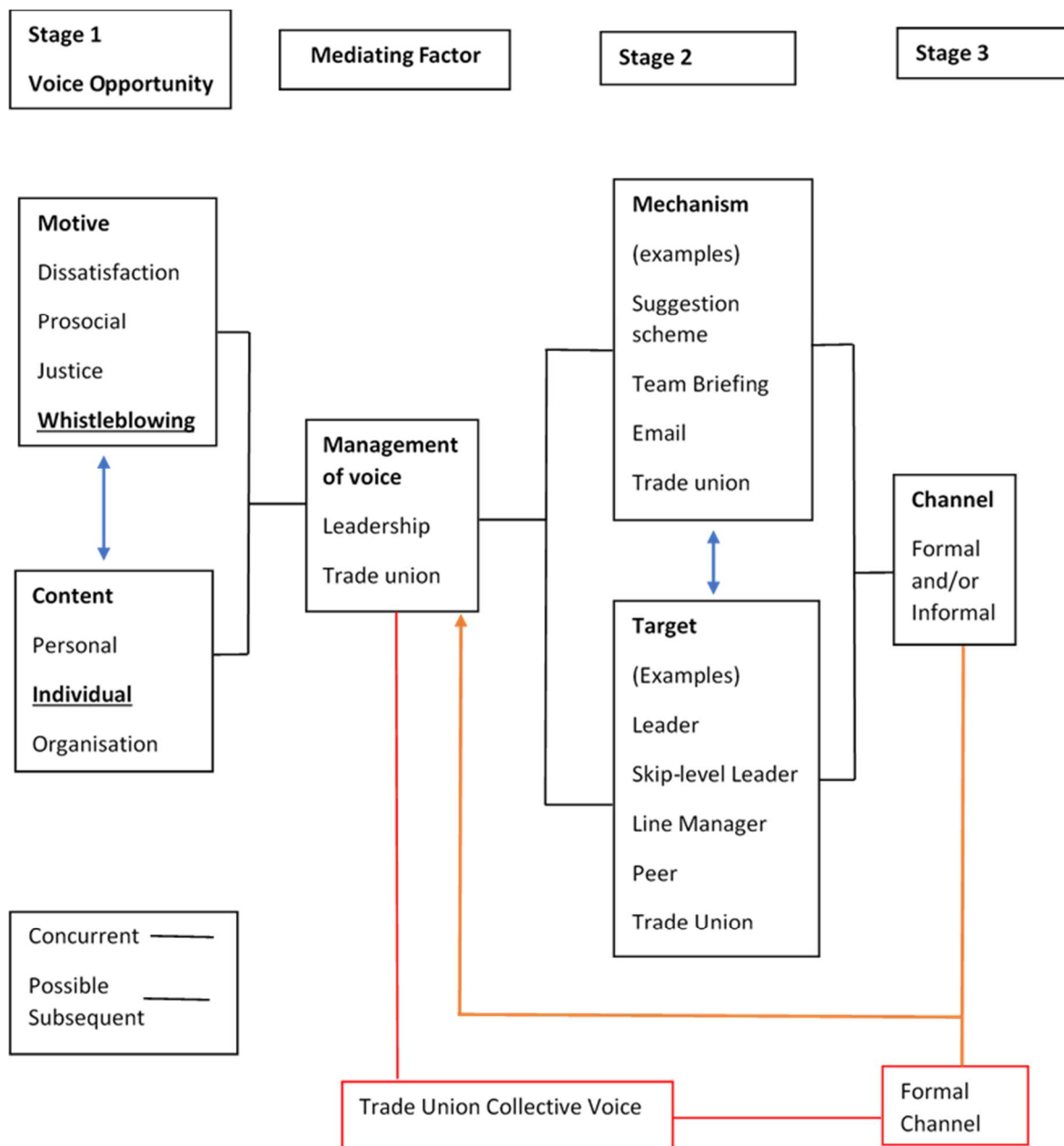


Fig 5.1: Adapted Conceptual model of Voice

Two important things need to be noted with regard to the adapted model in Figure 5.1. Firstly, Mowbray et al (2015) initial model identified trade unions as a mechanism at stage two. This needs to be distinguished from this new stream. In the former (shown in the mechanism box in figure 5.1), the trade union is the mechanism of the individual concern, in this case, the individual may not have the support of union members, and they may also not have the anonymity that a collective mechanism can provide. Thus, with the individual mechanism, there is a greater opportunity for the whistleblower to

face victimisation. Whereas in the latter (shown in figure 5.1 in red), the trade union is acting in a collective capacity and thus is not the mechanism of the individual but rather a mechanism of the collective. The trade union can act as a shield for the whistleblower something the findings highlight UK trade unions do try to do. Thus, this reduces the likelihood of the individual whistleblower facing victimisation.

Secondly, it may be that the trade union is unsuccessful in its formal collective Voice. When this occurs, the individual may not be satisfied and thus may seek to make the disclosure themselves and may do this via an alternative internal channel. That would be consistent with extant research suggesting individuals make disclosures several times internally before going outside of the organisation (Vandekerckhove and Phillips 2019). This explains why the amended model has an avenue from the collective stream (shown in red in fig 5.1) back to the individual approach (shown in orange in fig 5.1). One of the surprising findings of this thesis was that trade unions seemed to fail to 'see' whistleblowing when it was happening in front of them, i.e. they did not have an appropriate understanding of whistleblowing. Perhaps it indicates the scholarly naivety to assume in research subjects a proper understanding of a phenomenon. That would apply to both this thesis as well as Mowbray et al (2015). Hence the contribution of this thesis is to improve Mowbray's model by making it more descriptive rather than prescriptive, i.e. the model is now able to explain the phenomenon better because it makes less assumptions.

## **5.4 Conclusion**

This chapter has sought to use the findings to answer the research questions. Overall, this chapter has discussed the findings of the research to identify how trade unions can engage in individual whistleblowing voice mechanisms by using, as well as in order to utilise the collective voice more effectively. In doing this, it has identified and outlined four paradoxes that, together, grasp the various findings. This thesis provides insights into trade union engagement in whistleblowing which did not exist before this study. In answering the research questions in more detail, this thesis shows that trade unions do not currently play an effective role in supportive whistleblowers.

Further, this chapter has argued that the thesis makes three theoretical contributions. It has identified how research on victimisation can be reframed into WRV and SRV to enable further research beyond a summing up approach to understanding the impact of retaliation. Secondly, it has identified how trade union voice is not used in a linear fashion and thus has provided new insights into the tiered approach suggested by Lewis and Vandekerckhove (2016), as well as argued why Loyens and Vandekerckhove's (2018) functional distinctions might be more useful. Finally, the thesis has led to amending Mowbray et al (2015) integrative voice model, strengthening its explanatory power.



## CHAPTER 6. Conclusion

The purpose of this chapter is to draw the thesis to a close. It does this by reflecting on the aim of this study and showing how the thesis contributes to knowledge. It further highlights the limitations of this study and the potential for future research.

The aim of this study was to provide insights into the role that trade unions play in the whistleblowing process. The literature in this specific field was sparse there was some theoretical suggestion that trade unions were well placed to support whistleblowing (Lewis and Vandekerckhove 2016). However, no empirical study had been undertaken to do this. Due to the broad nature of the research question, the literature discussed in chapter two enabled us to focus on key areas where trade union activity on whistleblowing was expected. From this we were able to identify four sub-questions:

1. 'How do national contexts affect union engagement in supporting whistleblowing?'
2. 'How does the law affect trade union engagement?'
3. 'How does the type of victimisation affect union engagement?'
4. 'How do trade unions use their voice to support whistleblowers?'

These questions were explored through a mixed-methods data approach. Adopting a pragmatist philosophy, the study was able to draw on a range of data from a range of sources discussed in chapter three. In chapter four the findings were laid out. While in chapter five we discussed how these findings mapped against the research questions and help this study develop theory and make its contribution.

### 6.1 Contribution

This study's contribution falls into two distinct areas. Firstly, is the practical contribution, that is to say, our understanding of trade union engagement in

whistleblowing. Secondly, this study makes a number of theoretical contributions by developing the whistleblowing literature.

### **6.1.1 The practical contribution**

At the start of this study, we had very little understanding of trade unions' activities in the area of whistleblowing. Having undertaken this study we are able to identify that TUC affiliated trade unions in the UK are not actively engaging in whistleblowing support. We have identified that this is partly because there is a lack of understanding around whistleblowing, alongside a lack of awareness of the extent of whistleblowing. Furthermore, trade unions do not engage with activities such as policy creation or lobbying for changes to legislation. One of the novel facets of this study is that in drawing the findings together the study posits four paradoxes. This is unusual as a paradox is often the starting point not the endpoint of research. However, as the first detailed study addressing trade unions' engagement in whistleblowing this study is the starting point in and of itself and that these paradoxes provide the opportunity for more targeted research in this field.

1. Trade unions want to support whistleblowers, but they do not understand what whistleblowing is.
2. Trade unions want to advise members, but they don't engage in policy creation to provide themselves with a role.
3. Trade unions want to collectivise whistleblowing, but do not put whistleblowing on the collective bargaining table.
4. The law is weak and lacks credibility for trade unions, but they do not engage in lobbying effectively to change it.

### **6.1.2 The theoretical contributions**

The study was able to utilise the findings to address three theoretical frameworks from the literature. The first contribution was to suggest tentatively the use of Cortina and Mageley's (2003) model of victimisation retaliation. This had been suggested

previously in the whistleblowing literature but had not actively been pursued. This study has done that by using the model and connecting it to what we know of whistleblowing victimisation.

Secondly, the study develops Lewis and Vandekerckhove's (2016) three tiers of union engagement. It shows that the tiers are not separate and often engaged at the same time so whilst helpful Loyens and Vandekerckhove's (2018) functional approach may be a better way to look at union's engagement.

Finally, and possibly the strongest theoretical contribution was suggesting that Mowbray et al's (2015) model of individual voice is helpful but in the context of whistleblowing could be adapted to include collective voice as an aspect of the individual voice process.

## **6.2 Limitations**

This study has provided some important findings and contributions. Like any study, it has its limitations. The methodological limitations have been discussed in chapter three. However, in reflecting on these conclusions it is important to remember that there were limitations in how the study was designed and in the data that was gathered. Significantly, the interview population was small and thus only gives insights to a few trade unions. Therefore the study cannot claim to offer a representative set of trade union representatives. Having said this, the pragmatist approach of utilising multiple data sources has enabled this study to triangulate and give support to the information from the interviews.

The data utilised in this study was collected in 2017 and 2018. This is a limitation as it only provides us with an insight into the trade unions' approach at that time. Since then the whistleblowing landscape has changed. The European Union have passed a Directive specifically on whistleblowing. Thus, all member states are currently in the process of transposing. With the UK now out of the EU, the question remains whether the standard amongst a group of countries – i.e. the Directive - could put pressure on

the UK to review its legislation. Furthermore, some European trade unions have been engaged in lobbying around the directive and now its transposition. As the TUC, is part of the ETUC whistleblowing may now be part of the conversation UK trade unions are having. Having said this while it is a limitation the pragmatist looks for truth and builds this from developing older truths and testing them. This study provides those building blocks from which future research can develop new truth.

Another limitation is that this study has focused on TUC affiliated unions only. This has meant trade unions that are not affiliated have been missed such as the British Medical Association. The NHS is one of the sectors that has been the focus of public inquiries and reform studies with regard to the handling of whistleblowing disclosures. However, several of the big trade unions that cover the NHS are affiliated to the TUC such as Unite and Unison and thus would have been captured in some of the data. It is, therefore, possible that some trade unions are more active in whistleblowing than this study has found.

### **6.3 Future Research**

This study has been somewhat exploratory in that it has taken up the call to look empirically at how trade unions engage in whistleblowing. It is therefore pertinent to highlight where the researcher sees potential for future research. We can start by focusing on the theoretical and practical contributions before casting our net wider.

From a theoretical position, this study suggested adopting a new way of addressing victimisation drawing on Cortina and Mageleys model. The first thing this study did was in the literature discussion, it sought to organise the various types of victimisation identified in the whistleblowing literature into one of two categories work retaliation and social retaliation. It identified that in some cases such as blacklisting there was some crossover. Therefore, further exploration and refinement of the classification will be helpful going forward. This would be of value as this study has shown that trade unions are able to delineate between the two types. The value of this model is that it does not sum up and rather places the focus on where the victimisation occurs i.e. in the more

formal work structures or the social work interactions. This focus could have wider implications and will be attractive to other stakeholders who seek to support whistleblowers. Potential research questions for this would be:

1. To what extent can recognised forms of whistleblowing victimisation be framed into WRV and SRV?
2. How can WRV and SRV help organisations be more effective support whistleblowers?

In the findings, we saw that trade unions seemed to engage more in the SRV arena which was against expectations. It was anticipated they would be better at protecting workers from WRV due to their ordinary functions at supporting individuals in grievances and disciplinaries etc. Further research is warranted here firstly to identify if this anomaly in expectations is evidenced across more trade unions and secondly if so, why is this. This latter question was not addressed in this study in any depth. There was some indication that trade unions recognise that whistleblowing is a considerable thing to do going up against the organisation which may explain this.

1. Do trade unions provide greater support to whistleblowers in protecting them from social retaliation in the workplace compared to work-based retaliation?
2. Why do trade unions engage more effectively in social support of whistleblowing?

The study also found that while Lewis and Vandekerckhove's (2016) three-tier model was useful it suggested that Loyens and Vandekerckhove's (2018) functional classification may be more useful. This study did not explore these functions as it did not have the data to do so. However, the study did identify that trade unions do not actively engage in advising whistleblowers, making disclosures for whistleblowers or engaging with other organisations that may do. Therefore, a very useful piece of research would be to explore with trade unions what of the functions do they engage with and why. This will also provide further insight into trade unions' thinking about their role. If looking at functions proves to be effective for viewing trade union engagement in whistleblowing, it will be worth extending this further and researching how other organisations/stakeholders in the whistleblowing journey fit within the

classification. This in turn would give a much clearer picture of which stakeholders perform which function which would help whistleblowers approach the most appropriate support or understand why an organisation may not be responsive to their approach.

1. To what extent do trade unions perform any Loyens and Vandekerckhove functions and if so how?
2. Can Loyens and Vandekerckhove's eight functions model explain the interactions whistleblowers have on their journey with other organisations?
3. Which functions in the classification provide the greatest positive outcomes for whistleblowers and wider society?

The final theoretical contribution was the development of the individual voice model to include a collective stream. It was suggested that trade unions do not engage in whistleblowing support as whistleblowing is an individual act and trade unions are for the collective. However, the data from the PCAW study showed that a good number of whistleblowing situations were witnessed by a group. It was suggested that trade unions could act as a mediating factor by taking the concern and raising it as part of a collective voice action. Trade unions raise issues through collective grievances and so have the ability and know-how on how to take collective action. Future research could explore how trade unions go about this to identify how they might do this for whistleblowing and in doing so identify the potential problems.

1. How can trade unions better identify whistleblowing issues as collective issues?
2. Are trade unions able to use their collective voice to protect whistleblowers?
3. What voice mechanisms that trade unions have are most effective at bringing about change?

The practical contributions saw us address the research questions and identify the four paradoxes.

The first research question focused on the social context of trade unions. While the study focused on the UK we explored at appropriate places data from Norway and Netherlands. We were not able to draw definitive conclusions around the differences

that exist and the causes of them. However, we did see that the Netherlands took a very proactive approach to supporting whistleblowing and lobbying for whistleblowing legislation. In Norway while not as proactive they still took a more engaged approach than the unions that participated in the UK. One potential reason for this was the wider role trade unions play in the Netherlands and Norway. Having identified some differences we also saw some similarities in the limited data from Norway which suggests that the wider social role may not be as significant a factor. This, therefore, warrants further research to understand if this social position of a trade union in a given country is a factor in the approach to whistleblowing. Hall and Soskice's (2001) work on varieties of capitalism may provide a good framework for this further research. Alternatively, the institutional approach may provide a more practical lens to explore the social factors. One factor which was touched upon but not explored in the findings was the lobbying for the EU directive. The fact that the UK is no longer an EU member means that it has not been transposed into UK law. However, many EU countries did not have whistleblowing legislation prior to the directive so it would be an interesting piece of research to look into how trade unions have engaged in lobbying during the transposition phase. This would provide greater insight into whether trade unions that have a wider social role in a country take a more proactive approach or not.

1. To what extent does the integration of a trade union in society affect their engagement in whistleblowing issues?
2. Has the European Union directive led to trade unions taking a greater role in lobbying for their members on whistleblowing issues?

This leads us on to research question two which focused on the law. We saw that trade unions do not trust the law and take a very limited reactionary role in lobbying. If trade unions are there to improve the working environment for its members greater exploration of why trade unions do not see value in seeking changes to legislation. We also saw that whistleblowing cases are unsuccessful when they go to employment tribunals. While there is research that explores employment tribunal cases on whistleblowing for example William and Vandekerckhove (2021) look at the power balance in whistleblowing cases, there is none that looks at trade union's role in the

process. It is therefore suggested that a qualitative exploration of employment tribunal judgements looking at whether the whistleblower was a union member, what role the union performed in that whistleblower's journey and the outcomes would be a fruitful exercise.

1. What role do trade unions have in whistleblowing cases that end in a case at the employment tribunal
2. Why do trade unions not actively engage in trying to improve working conditions for whistleblowers by lobbying for change to the Public Interest Disclosure Act 1998?

Research question three on victimisation has been addressed in the theoretical discussion above. Research question four focused on voice. Trade unions can use their voice in many ways as suggested by Phillips (2017). However, the data suggests this is not seen in practice. The key paradox in this study suggests that voice is not utilised because the trade unions do not understand whistleblowing. Therefore, focusing on trade unions' understanding of whistleblowing would appear to be an important first step in the future research on trade unions. One thing that was clear from the participants is that there is a lack of training around whistleblowing. Research looking at what training trade unions have on whistleblowing would be useful. Understanding what exists in terms of training resources will enable other stakeholders to engage with trade unions more effectively. One participant highlighted training was through a law book. As whistleblowing often exceeds the parameters of law this union would be limiting their effectiveness by constraining their support/advice to the legal construct which has been found to be in need of reform (Lewis 2017).

1. To what extent do trade unions provide lay and regional reps with whistleblowing training? What does that look like?

In this study, one limitation was the limited number of participants willing to engage. The study set out to identify what role trade unions play. Inevitably the limited participants limit the strength of some of the findings of this study. Hence the discussion identifies paradox one as being confirmed the most. Thus, future research should revisit these paradoxes and the findings in a study engaging more trade unions.



With this study making clear findings that are perhaps not great reading for trade unions, it may be that trade unions will want to understand and engage more effectively. One way of getting more traction from the trade unions may be to get the TUC involved. Trade unions that are connected to the TUC may be more inclined to engage if they see that the TUC sees the importance of research and understanding of whistleblowing.

1. To what extent are these paradoxes evidenced across the wider trade union movement?

This study has focused on the trade unions' perspective. However, in the PCAW data, we saw that very few whistleblowers made the disclosure to the union and many went to the adviceline after going to the union. Therefore, it suggests that trade unions are not meeting the needs of whistleblowers. For trade unions to take a more proactive effective role it will be important to understand why whistleblowers do not go to the trade union. Therefore, a study that engages whistleblowers exploring their relationship with the trade union and the role of the union in their whistleblowing process would be illuminating. Looking at the whistleblower's expectations of the union would be especially helpful as this could be directly compared with what the trade unions themselves see as their role. Having heard from whistleblowers at various events one reason for limited trade union engagement is that they see trade unions as in partnership with the employer. However, it is likely that there are other reasons that also affect this such as the union not seeing the issue as a collective benefit.

1. Why do whistleblowers appear not to engage with trade unions in the whistleblowing process?
2. What do whistleblowers expect of trade unions in the whistleblowing process?
3. How do whistleblower expectations of trade unions map against what trade unions are able to provide?

One aspect we identified in the data was that trade unions do not engage with other organisations. Exploring this and understanding why not would be valuable. Trade unions provide a valuable role and have a wide remit. Therefore, engaging with

specific organisations that have specialist knowledge would at first glance appear to be beneficial. Some data suggested that it can be problematic as it can create conflict between the union and the member for example where they want legal advice from the union having already received advice from support organisations. Looking at the relationship between trade unions and these other organisations may help identify the limits of cooperation and where the conflicts arise and why.

1. What are the reasons trade unions do not engage with other organisations that aim to support whistleblowers?
2. How can organisations that perform a similar function supporting whistleblowers do this effectively?

One final suggestion for future research would be to undertake a large quantitative study of whistleblower journeys. Research has shown how these studies can be fruitful in developing our understanding for example the whistle while they work study in Australia questioned the understanding that victimisation occurs in most whistleblowing journeys, while Vandekerckhove and Phillips (2019) using data from the Inside Story project showed that the journey is far more protracted than considered in whistleblowing literature. Working with advisory organisations that support and advise whistleblowers such as Protect (formerly PCAW) has been shown to provide excellent collaboration and results in new knowledge. In this study, we used data that was collected from PCAW for a different purpose, but they did identify trade union membership status.

1. Does being a trade union member have an impact on the whistleblowing journey?
2. To what extent does trade union membership help or hinder the whistleblower as they go through the protracted process of raising a concern?

## **6.4 Concluding remarks**

Having concluded this study one could be disappointed that trade unions are not engaging in whistleblowing. However, when this study was commenced the researcher had the perception that trade unions had limited engagement here. This was based on prior whistleblowing research the researcher had done on other aspects of whistleblowing, alongside having attended conferences and heard from whistleblowers about their experiences which often spoke of trade unions negatively. Therefore, the researcher is not disappointed. The findings and identification of the paradoxes are positive as it moves our knowledge and understanding forward. It provides evidence to what whistleblowing scholars have thought about trade unions but have not been able to evidence, and it enables further research in these specific areas. It also enables researchers and other stakeholders to be more focused in their interactions with trade unions to help them get on board with engaging and supporting whistleblowing. While the data shows a limited role the union officials that spoke as part of this study were in the most part positive about whistleblowing and recognised that unions need to do more. This provides us hope that trade unions can have a role and will in time with the right framework take up whistleblowing.

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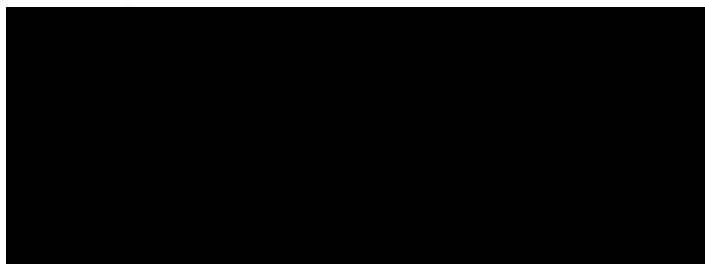
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# Appendices

## Appendix 1 – Ethics approval

Reprinted 7<sup>th</sup> July 2017



Direct Line 020 8331 8842  
Direct Fax 020 8331 8824  
Email [researchethics@gre.ac.uk](mailto:researchethics@gre.ac.uk)  
Our Ref UREC/16.3.5.2  
Date: 13<sup>th</sup> April 2017

Dear Aaron,

**University Research Ethics Committee – Minute 16.3.5.2**

**TITLE OF RESEARCH:** Can trade unions provide an alternative route for whistleblowers to make safe disclosures?

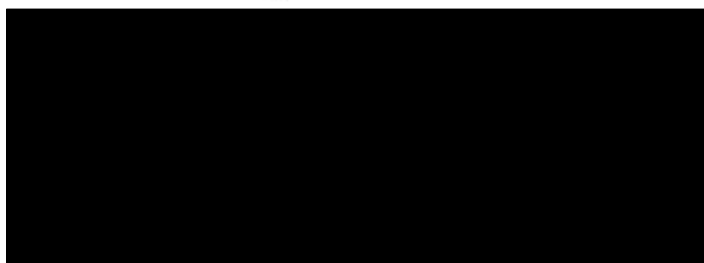
I am writing to confirm that the above application has been **approved** by Chair's Action on behalf of the Committee and that you have permission to proceed.

I am advised by the Committee to remind you of the following points:

- You must notify the Committee immediately of any information received by you, or of which you become aware, which would cast doubt upon, or alter, any information contained in the original application, or a later amendment, submitted to the Committee and/or which would raise questions about the safety and/or continued conduct of the research;
- You must comply with the Data Protection Act 1998;
- You must refer proposed amendments to the protocol to the Committee for further review and obtain the Committee's approval thereto prior to implementation (except only in cases of emergency when the welfare of the subject is paramount).
- You are authorised to present this University of Greenwich Research Ethics Committee letter of approval to outside bodies in support of any application for further research clearance.

On behalf of the Committee may I wish you success in your project.

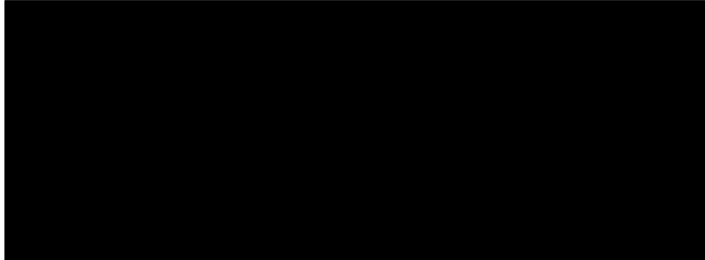
Yours sincerely



## Appendix 2 -Ethics amended approval



Direct Line 020 8331 8842  
Direct Fax 020 8331 8824  
Email [researchethics@gre.ac.uk](mailto:researchethics@gre.ac.uk)  
Our Ref UREC/16.3.5.2  
Date: 18<sup>th</sup> April 2018



Dear Arron,

### University Research Ethics Committee – Minute 16.3.5.2

**TITLE OF RESEARCH:** Can trade unions provide an alternative route for whistleblowers to make safe disclosures?

I am pleased to confirm that your application to amend your research proposal as follows:

- Extend scope of interviews to include additional research subjects (whistleblowing experts and expert groups)

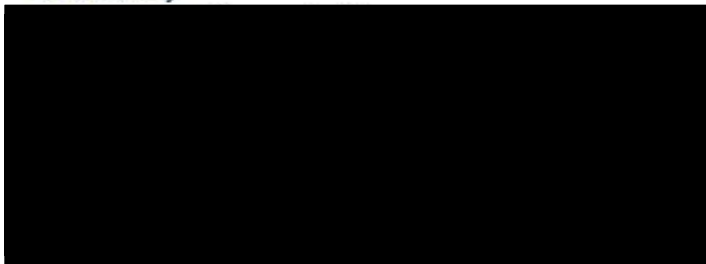
Was **approved** by Chair's Action on behalf of the Committee and that you have permission to proceed.

I am advised by the Committee to remind you of the following points:

- You must notify the Committee immediately of any information received by you, or of which you become aware, which would cast doubt upon, or alter, any information contained in the original application, or a later amendment, submitted to the Committee and/or which would raise questions about the safety and/or continued conduct of the research;
- You must comply with the Data Protection Act 1998;
- You must refer proposed amendments to the protocol to the Committee for further review and obtain the Committee's approval thereto prior to implementation (except only in cases of emergency when the welfare of the subject is paramount).
- You are authorised to present this University of Greenwich Research Ethics Committee letter of approval to outside bodies in support of any application for further research clearance.

On behalf of the Committee may I wish you success in your project.

Yours sincerely



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## Appendix 3 Participants information sheet



### **PARTICIPANT INFORMATION SHEET – Trade union support for whistleblowers.**

Trade Unions are in a unique position in that they exist as an organisation in their own right but work for a membership which is based within many other separate organisations. Unions undertake services such as collective bargaining and representation in employment. Some of their members might wish to make a disclosure about illegal, immoral or unethical activity they have reason to believe is going on within the organisation (whistleblowing). Whistleblowers may seek support from their union to make the disclosure or assist with the consequences of having done so.

There is currently no research looking at how trade unions engage in this process from the perspective of trade unions.

The research aims of this project are:

- to explore how trade unions see their role in supporting whistleblowers,
- to explore how country context and social position of unions, affect what action trade unions might engage in,
- to explore how legislation influences trade unions.

This research is based on interviews with trade unions and trade union federations in the UK, Norway, the Netherlands and European wide trade unions. Research findings will be used to complete a PhD Thesis and published in an academic journal. An interview will take approximately 1 hour.

It is important to emphasise that the research does not seek to describe or evaluate whistleblower cases. It is recognised that individual case information is confidential between the union and its member. Any information you provide will be treated with the strictest confidence. All data will be anonymized, and you will have an opportunity to review and amend the transcript of the interview. Data will be stored in compliance with privacy regulation.

Please contact me should you have further questions about this research.

Arron Phillips

