

Section A		
Institution: Middlesex University		
Unit of Assessment: 17 Business and Management		
Title of case study: Improving the protection of whistleblowers		
Period when the underpinning research was undertaken: From 1995 onwards		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title)	Period(s) employed by submitting HEI
Dave Lewis	Professor of Employment Law	1972- ongoing
Period when the claimed impact occurred: 2014-20		
Is this case study continued from a case study submitted in 2014? Yes		
Section B		
1. Summary of the impact		
<p>Research led by Lewis has played a central role in transformation of the protection available to whistleblowers nationally and internationally. In the 2014-20 period this research further raised the public profile of whistleblowing, including via the International Whistleblowing Research Network hosted by Lewis at Middlesex, to produce two areas of impact. First, through <i>changing employer practice on whistleblowing in large public and private sector employers</i>, including the NHS and Irish Garda. Here, the introduction of codes of practice directly drawing on Lewis' work shifted mechanisms of corporate and organisational accountability in respect of whistleblowing and improved employment protection for millions of workers. Second, evidence-led <i>reshaping of legislation to protect whistleblowers internationally</i> resulted from Lewis' work, informing the conceptualisation and drafting of whistleblowing law and policy. Notably this included the development of a new EU directive in 2019, covering not only the 27 EU member states of the EU but also influencing legislative development across a wider number of Council of Europe countries.</p>		
2. Underpinning research		
<p>Prior to the whistleblowing research undertaken at Middlesex University Business School during the 1990s, little scholarly interest had been shown in whistleblower protection. Researchers at Middlesex in the field of employment relations (Lewis, Sargeant) collaborated with staff in the Law School (Barrett, Homewood) initially in relation to employment protection for environmental whistleblowers. With publication of his edited volume <i>Whistleblowing at Work</i> in 2001, Lewis led the development of a body of research published across business ethics, employee relations and law journals, which clarified and defined both the principles on which whistleblowing statutes are founded in different countries, and the essential practical features of whistleblowing policies and procedures. This research has raised understanding of the importance of protection of whistleblowers nationally and internationally, with research findings making major contributions to promoting employer good practice and shaping the development of government legislation and guidelines.</p> <p><i>(1) Improving employer practice and understanding whistleblowers</i></p> <p>Empirical research into employer practice in relation to whistleblowing began with projects funded by the Employers Organisation for Local Government and the Nuffield Foundation. This focused on public sector whistleblowing procedures and then developed in relation to the practice of FTSE top 250 companies via major surveys funded by the British Academy (2007) and Sai Global (2010).</p> <p>On the basis of this expertise, in 2014 the UK Department of Health commissioned Lewis to conduct quantitative research for the independent <i>Freedom to Speak Up</i> (FTSU) review of the NHS chaired by Sir Robert Francis. Findings showed defects in existing NHS procedures as regards encouraging whistleblowing and handling reports of wrongdoing and identified preferred mechanisms for both staff and employers in improving practice [1]. A quarter of survey respondents did not know whether or not their employer had a confidential reporting procedure. Where staff were aware of procedures, a lack of trust in the system and fear of victimisation hindered reporting. When concerns were raised, 20% of respondents indicated they were then ignored by management and 17% actively victimised by management. The research evidenced that those who did follow their employer's procedure when raising a concern had better outcomes, and identified measures to make it more likely that workers would raise concerns. These included an ability to raise a concern anonymously, an undertaking by</p>		

the employer to protect a person's identity, and the presence of an independent person or organisation to receive information about concerns staff wished to raise; aspects of good practice equally applicable to both public and private sectors.

Further research into institutional frameworks for protecting whistleblowers and responding to their concerns, explored the roles that trade unions might adopt in order to improve responsiveness in the whistleblowing process [2]. This research demonstrated a key role for trade unions in negotiating whistleblowing procedures, advising and representing their members, and raising collective concerns on behalf of the workforce, as well as in ensuring that proven wrongdoing was rectified and whistleblowers did not suffer retaliation. Research from the employee perspective studied the motivation to whistleblow and the impacts on the whistleblower. Findings identified key factors influencing the decision to whistleblow, especially morality and emotion, and the demonstrable effect of perceived negative consequences on the intention to whistleblow. Study of the costs on whistleblowers in terms of their jobs, economic security, physical health and mental well-being, demonstrated negative health effects, and the implications of this for whistleblower protection [3].

(2) Whistleblowing legislation and enforcement

Following initial research from 2001 into the position of whistleblowing in relation to employment and discrimination law within the UK, Lewis pioneered comparative research into statutory provisions for whistleblowing and their effect in Australia, the US and UK (2004), developed further through studies in South Africa (with Uys, 2007) and Norway (with Trygstad, 2009). This research demonstrated how national legislation on disclosure reflected different labour relations systems and democratic values, and the importance of enforcing statutory whistleblowing protection via an accessible legal system. In the UK, Lewis's comprehensive analysis of the effects of 20 years of legislation showed the limited objectives of the legislation, its restricted personal and material scope, its complex requirements, and inadequate mechanisms for obtaining redress following victimisation.

Research into the relationship between employment law and other civil law jurisdictions clarified the interplay between whistleblowing and defamation. This demonstrated that defamation laws exposed whistleblowers to redress from persons innocently, but falsely, accused of wrongdoing, and argued whistleblowers should have absolute rather than qualified privilege if they made a protected disclosure [4]. Findings highlighted the unique role whistleblowers play in struggles against corruption and labour market abuses, where detection and enforcement are difficult. The lack of an effective labour inspectorate in the UK meant enforcement authorities relied on information about wrongdoing supplied by individual workers, as well as trade unions, competing employers and the public [5].

A critical review of international official guidelines on whistleblowing procedures produced by Lewis and Vandekerckhove (2012) examined the principles on which legislation should be based and what constituted good management practice. Lewis subsequently developed this analysis to set out the case for a specific EU Directive on whistleblowing, showing the value of such a Directive in getting Member States to first base in whistleblowing arrangements and encouraging other countries to do likewise. This also argued that to achieve best practice in legislative provision, Member States would need to go beyond the minimum standards specified in the Directive [6].

3. References to the research

[1] Lewis, D.B., D'Angelo, A. and Clarke, L. (2015) Industrial relations and the management of whistleblowing after the Francis report: what can be learned from the evidence? *Industrial Relations Journal*, 46(4): 312-327. DOI:[10.1111/irj.12106](https://doi.org/10.1111/irj.12106)

[2] Lewis, D.B. and Vandekerckhove, W. (2018) Trade unions and the whistleblowing process in the UK: an opportunity for strategic expansion? *Journal of Business Ethics*, 148(4):835-845. DOI:[10.1007/s10551-016-3015-z](https://doi.org/10.1007/s10551-016-3015-z)

[3] Lewis, D.B. and Park, H. (2018) The negative effect of external whistleblowing: a study of some key factors. *The Social Science Journal*. pp. 387-395. DOI:[10.1016/j.sosci.2018.04.002](https://doi.org/10.1016/j.sosci.2018.04.002)

[4] Lewis, D. (2018) Whistleblowing and the law of defamation: does the law strike a fair balance between the rights of whistleblowers, the media and alleged wrongdoers? *Industrial Law Journal*, 47(3): 339-364. DOI:[10.1093/indlaw/dwx015](https://doi.org/10.1093/indlaw/dwx015)

[5] Lewis, D (2019) Labour market enforcement in the 21st century: should whistleblowers have a greater role? *Industrial Relations Journal*, 50(3):256-276. <https://doi.org/10.1111/irj.12251>

[6] Lewis, D. (2020) "The EU Directive on the protection of whistleblowers: a missed opportunity to establish international best practices". *EJournal of Comparative and International Labour Studies* 9(1): 1-25. http://ejcls.adapt.it/index.php/ejcls_adapt/issue/view/73.

Funding:

(1) £43,778 from the DHSS (Quantitative research for the 'Freedom to Speak Up' independent review of whistleblowing in the NHS, 2014).

(2) £14,750 from the UK Nursing and Midwifery Council (Analysis of responses submitted by nurses, midwives and health visitors to the Francis review of whistleblowing in the NHS, 2015).

(3) 10,000 Euros under the PECK 11 scheme from the Council of Europe mission to Kosovo (drafting whistleblowing legislation, 2018).

(4) 10,000 Euros under the AEK-MKD scheme for the Council of Europe project on introducing whistleblowing legislation in North Macedonia, 2020.

4. Details of the impact

Lewis' research has raised the public profile of the significance of whistleblowing, highlighting the public interest in encouraging whistleblowing and showing that this interest cannot be adequately protected by general employment measures. Dissemination and review of specialist findings via the *International Whistleblowing Research Network (IWRN)* hosted by Lewis at Middlesex since 2008, has contributed to a new public profile for whistleblowing. The growing IWRN comprised of over 200 researchers, practitioners and policy makers from across the world has encouraged networking and dissemination of research and good practice including via regular conferences (Sarajevo, 2015; Oslo, 2017; Utrecht, 2019). In 2014, Lewis, with colleagues, edited and contributed to the landmark *International Whistleblowing Research Handbook* [5.1] widely read internationally by policy makers, and practitioners. Middlesex University has also sponsored the *Whistleblower of the Year Award* since 2013, presented to an individual or organisation in recognition of outstanding achievement in making a disclosure of information in the public interest [5.2]. Winners, selected by a five-person international jury drawn from IWRN, have included whistleblowers from Oxfam, HMRC and the NHS, and have attracted considerable media coverage.

Lewis has been routinely engaged by a range of governmental, non-governmental organisations and political parties to advocate protection for whistleblowers, including involvement in Transparency International and The Green Party's agenda-setting "Directive" on whistleblowing in 2015, through to advising on the whistleblowing provisions in the Labour Party's Industrial Relations Bill in 2019 and the All-Party Parliamentary Group on whistleblowing in 2020. His contribution through commissioned studies, professional presentations, and evidence to businesses, governments and other bodies, has provided an evidence base for work towards reform, moving from a relative lack of public and political awareness of whistleblowing principles, policies and benefits to the introduction of corporate and legal initiatives in many countries. Impact has been evident in two areas: changed employer practice towards whistleblowers; and the reshaping of legislation internationally to protect whistleblowers.

Changed employer practice on whistleblowing

The former Chair of the Industrial Law Society states of Lewis that: "*His work has influenced mechanisms of organisational accountability in relation to whistleblowing through the introduction of codes of practice and guidelines that directly draw upon his research findings, which have been especially influential on large public and private sector employers*" [5.3]. In 2013, the UK's leading online Human Resources organisation Xpert HR, in seeking evidence-led processes towards reform and innovation related to whistleblowing, commissioned Lewis to produce a widely used, comprehensive "Guide to good practice" and subsequent quarterly updates. This comprehensive good practice guide has been extensively used since by Xpert HR's customers, which are spread across 45 countries, and employ one in four of the workforce and include one in three FTSE-100 companies in the UK [5.4].

A number of recommendations made by the 2015 *Francis FTSU Report* incorporated Lewis' findings on defects in existing NHS whistleblowing procedures. Of the 20 principles identified to create an open and honest report culture in the NHS in the Francis report, six related directly to Lewis's research findings: principle 3, on culture free from bullying; principle 7 on raising and reporting

concerns; principle 8 on investigations; principle 10 on training; principle 11 on support; and principle 19 on primary care [5.5]. For principle 20, on enhancement of legal protection, Lewis advised the report author directly on the failure of the law to protect against discrimination against whistleblowers at the point of hiring. UCL Partners subsequently commissioned Lewis to deliver training workshops (2016-2017) on the implications of the FTSU review, which encouraged human resource practitioners to base their own tailored approaches on underpinning principles and evidence. The principles of the Francis review not only shaped major changes in whistleblowing report culture in the NHS (notably principles 7,8,10,11) - the UK's largest employer of 1.2m staff - but have been widely drawn on by other organisations across the public and private sectors [5.3]. A subsequent study of published procedures used by the FTSE top 100 firms showed how these principles have been widely applied in these companies [5.6].

In 2016, in response to growing public controversy over the provision of a safe environment for whistleblowing in the Garda Síochána, Lewis was contracted by the Irish Policing Authority to review their policy and procedures for the making of protected disclosures. The review's recommendations identified changes to ensure compliance with the 2014 Protected Disclosures Act regarding who could make a protected disclosure, how to make a protected disclosure, the role of the protected disclosures manager, and employee safeguards. Following consultation on the review, in November 2016 the Irish Policy Authority published a *Report of the policing authority on the Garda Síochána protected disclosures policy*. This set out 17 recommendations and led to the Garda's introduction of an amended policy to cover its 15,000 workforce in 2017 [5.7].

As part of work to embed an overall shift of employment culture internationally, since 2015, Lewis has served as a member of the British Standards Institute working party preparing an international standard on whistleblowing. This ISO standard will be the international benchmark for all whistleblowing policies and is expected to be agreed in 2021.

Reshaping legislation internationally to protect whistleblowers

The whistleblowing model Lewis first proposed in 1995 in relation to the UK of protecting whistleblowers via employment protection rights, has since informed the conceptualisation and drafting of legislation and policy internationally, particularly as countries have recognised the value of whistleblowing legislation in fighting corruption. In 2016 a three-day UNODC anti-corruption mission to Liberia aimed at training judges and senior civil servants across 12 West African countries, engaged Lewis as a whistleblowing expert. The resulting *Monrovia Statement on Whistle-blower and Witness Protection in West Africa* [5.8], jointly drafted by Lewis, was adopted by all participants to facilitate the establishment of effective whistleblower and witness protection systems within these 12 nation states. In Japan, Lewis provided evidence based on his empirical research and expertise on international best practice to a national committee in 2019, as part of an impact review of their 2005 Whistleblower Protection Act. In Australia, Lewis was adviser on the Griffith University's *Whistle while you work* project, funded by the Australian Research Council Linkage scheme, as well as recent legislation providing whistleblowing rights under existing workplace arrangements.

In Europe Lewis has worked with particular European states to develop frameworks for whistleblower protection, particularly with a view to tackling corruption. Following Lewis' address to a major OECD anti-corruption workshop in Athens in 2017, he was commissioned by the Council of Europe as part of the *Project against Economic Crime in Kosovo* (PECK) to contribute to drafting a whistleblowing statute, subsequently enacted in Kosovo in 2018 [5.9]. The Council of Europe's "highly positive experience" of engaging Lewis [5.10] led them to further commission Lewis in 2020 to produce two technical reports in support of action against economic crime in North Macedonia. These reports informed major revisions of existing legislation to enhance the protections provided to whistleblowers in Northern Macedonia. A resulting draft law is currently undergoing Parliamentary review with expected adoption in early 2021 [5.10].

The impact of Lewis' expertise and advocacy is most notable through his contribution in pushing the EU to adopt a whistleblower protection Directive, overcoming opposition from those who argued there was no legal basis or political will for such a measure. Previously in 2011, in oral and written evidence to the Budgetary Control Committee of the European Parliament, Lewis had urged the introduction of EU-wide whistleblowing measures. In 2017, he was called on as one of two academic experts to advise during the consultation process, including participation in the DG Justice workshop in Brussels shaping the Directive [5.11]. In 2019, *Directive (EU) 2019/1937 of the European Parliament and of*

the Council of 23 October 2019 on the protection of persons who report breaches of Union law, was adopted. Prior to this Directive, there was no EU measure devoted solely to whistleblowing. The Directive draws directly on Lewis' body of research, which demonstrates the need to set detailed standards for handling concerns, offer wide access to whistleblowing procedures, ensure confidentiality, provide effective deterrents to retaliation, and access to justice. The Directive provides minimum standards for all member states and requires member states to put in place relevant legislation. The Directive was transposed in December 2021, with member states now consulting and drafting national legislation on their whistleblowing practices and procedures. Beyond direct impact on the 446 million population of the 27 EU member states, the Directive will have a further effect on countries wishing to join or trade with the EU. The 47 Council of Europe countries have been formally urged to comply with this Directive, and several have taken steps to do so, including North Macedonia and Kosovo, as advised by Lewis.

5. Sources to corroborate the impact

[5.1] Brown, A.J., Lewis, D., Moberly, R, Vandekerckhove, W. (eds) (2014) *International Handbook on Whistleblowing Research*. Edward Elgar; Cheltenham. ISBN: 978 1 78100 678 8: 648 pp. <https://www.e-elgar.com/shop/gbp/international-handbook-on-whistleblowing-research-9781781006788.html> ; a comprehensive overview for policy makers and practitioners.

[5.2] <https://www.mdx.ac.uk/about-us/what-we-do/faculty-of-professional-and-social-sciences/school-of-law/law-and-politics/uk-whistleblowing-award> Whistleblower of the Year Award, awarded in 2014 to a whistleblower from HMRC.

[5.3] Factual statement from former Chair of the Industrial Law Society, corroborating the role of Lewis' research in shaping corporate codes of practice, contributing to a changed whistleblowing culture in the NHS through the Francis Review, and in preparing the EU whistleblowing Directive.

[5.4] Xpert HR Good Practice Manual on whistleblowing authored by Lewis <https://www.xperthr.co.uk/good-practice-manual/whistleblowing/114370/> and factual statement from Managing Editor of Xpert HR corroborating the commissioning of the good practice whistleblowing manual and its customer base.

[5.5] 'Freedom to Speak Up' independent review of whistleblowing in the NHS chaired by Sir Robert Francis QC. <http://freedomtospeakup.org.uk/the-report/> Commissioned research directly informing the key principles used to develop a more open and honest report culture in the NHS.

[5.6] Report by Lewis and Boylin (2018) *Results of a FTSE top 100 website survey on whistleblowing arrangements*. Middlesex University. <https://eprints.mdx.ac.uk/31723/>

[5.7] [Irish Policy Authority Report of the policing authority on the Garda Síochána protected disclosures policy \(2016\)](#), which resulted in amended [Policy/procedures document for the making of protected disclosures \(2017\)](#)

[5.8] [Monrovia Statement on Whistle-blower and Witness Protection in West Africa](#) Drafted by Lewis and adopted by 12 West African countries in 2016 to facilitate a more effective whistleblower protection programme as outcome of UN mission <https://www.unodc.org/westandcentralafrica/en/2016-09-19---whistle-blowers-and-anti-corruption.html>

[5.9] *New Law on the Protection of Whistleblowers in Kosovo* (2018) part drafted by Lewis <https://www.coe.int/en/web/corruption/-/legislation-on-protection-of-whistleblowers-enters-into-force-in-kosovo->

[5.10] Factual statement from Head of Division at the Council of Europe, demonstrating how Lewis's two [technical papers](#) produced for the [Council of Europe North Macedonian whistleblowing legislation project](#) have led an amended draft law including enhance protections for whistleblowers.

[5.11] Directive (EU) 2019/1937 of the European Parliament and of the Council 23 October 2019 [on the protection of persons who report breaches of Union law](#).