

Institution: Middlesex University
Unit of Assessment: Law
Title of case study: Pioneering Whistleblowing Legislation and Practice
1. Summary of the impact (indicative maximum 100 words) <p>Middlesex research into legislative models protecting whistleblowers has, since its beginnings in 1993 (Lewis), made a substantial contribution to protecting this category of persons in the UK and abroad. Research has led to improved corporate accountability, making organisations act responsibly, benefiting employees, and enhancing civil society voices. Empirical research in the public and private sectors has been brought into wider social policy debates. The International Whistleblowing Research Network, established in 2009 and hosted at Middlesex, is now actively used as a conduit for collaboration, taking findings to stakeholders and serving as a means to engage policy makers in numerous countries. Beneficiaries are whistleblowers, organisations and the general public.</p>
2. Underpinning research (indicative maximum 500 words) <p>Whistleblowing research began in the early 1990s at the Middlesex University Business School (where law was located) as a collaboration between Lewis and Homewood (environmental lawyer). The work was initially concerned with employment protection available to environmental whistleblowers. This research resulted in a seminal article on job security for UK whistleblowers published in <i>Modern Law Review</i> [1]. The following year, Public Concern at Work commissioned empirical research from the Unit to establish the state of play of whistleblowing procedures in English and Welsh local authorities. This work resonated with subsequently conducted studies concerned with ethical governance and corporate social responsibility, undertaken by researchers in the Business School (Croucher, Lyon, Frynas). The work also connected with strands of research in the Unit's then Centre for Legal Research (directed successively by Subedi, Carr and Sargeant, and involving prominent work by Lewis, Barrett and Miles). For Lewis in particular, whistleblowing emerged as the main research interest. His initial focus was on the principles on which relevant legislation has been based internationally. In this connection he examined the impact of statutory provisions in a number of selected countries. Comparative studies followed - the first of their kind to be conducted anywhere - published in <i>Industrial Law Journal</i> (2001) [2] and in <i>Virginia Journal of International Law</i> [3].</p> <p>More recent empirical research along similar lines, funded by the Employers Organisation for Local Government and the Nuffield Foundation, has focused on public sector whistleblowing procedures [4]. More than 2.75 million people in schools, universities, local authorities and the health service are covered by studies conducted by the Unit. Since 2002, publications by Lewis on these topics have appeared in leading business ethics and employee relations' journals [5]. In response to the changing whistleblowing climate in the private sector, for example, Lewis undertook two surveys of FTSE top 250 companies funded by the British Academy (2007) and by Sai Global (2010) [as 4 above]. In 2011, jointly with Vandekerckhove, Lewis's research resulted in a critical review of international official guidelines on the content of whistleblowing procedures [6].</p> <p>The underpinning research has sought to identify: a) the principles on which whistleblowing statutes have been based in different countries, as a basis for recommending priorities in future legislation; and b) the key features of whistleblowing policies and practice, as a basis for defining good practice. In a wide range of publications associated with related threads of employment law research in the Unit (Barrett, Sargeant, Miles), Lewis has completed comparative studies of whistleblowing statutes in South Africa and Norway (with Uys 2007 and Trygstad, 2009); he has provided a comprehensive analysis of the effect of UK legislation in its first ten years of operation (2008); and he has argued in <i>Industrial Law Journal</i> articles that the EU anti-discrimination Directives should be applied to whistleblowing (2005) in addition to being promoted as an</p>

important tool in the fight against corruption (with Carr, 2010).

3. References to the research (indicative maximum of six references)

1. Lewis, David, 'Whistleblowing and Job Security', 58(2) *Modern Law Review* (1995) 208- 221.
2. Lewis, David, 'Whistleblowing at work: on what principles should legislation be based?', 30(2) *Industrial Law Journal* (2001) 169-193.
3. Lewis, David, (with Callahan, Elletta and Dworkin, Terry), 'Whistleblowing: Australian, UK and US approaches to disclosure in the public interest', 44(3) *Virginia Journal of International Law* (2004) 879-912.
4. Research funding was competitively won from bodies with robust peer review standards, such as the Nuffield Foundation (£5,141 in 2002), British Academy (£4,608 in 2007) and SAI Foundation (£5,000 in 2010).
5. Lewis, David, 'The contents of whistleblowing/confidential reporting procedures in the UK: Some lessons from empirical research', 28(1) *Employee Relations* (2006) 76-86.
6. Lewis, David (with Vandekerckhove, Wim), 'The content of whistleblowing procedures: a critical review of recent official guidelines' 108(2) *Journal of Business Ethics* (2012) 253 -264

Research was published in leading, rigorously peer-reviewed journals in law and in business and management.

4. Details of the impact (indicative maximum 750 words)

Before our research, little interest was shown in protection for whistleblowers. It was assumed that protection either existed under common law or unfair dismissal provisions, or alternatively that it was unnecessary. Lack of empirical research prevented human resource practitioners from appreciating why whistleblowing procedures and policies were needed, how such policies might operate, and how they would relate to other arrangements. Lewis's research has driven specific lines of enquiry and strong policy engagement, and has had impact on politicians, practitioners, employers, trade unions and voluntary organisations [1]. Disseminated as commissioned studies [2] and derived presentations, and interrogated in numerous professional as well as academic forums [3], the research has highlighted public interest in encouraging whistleblowing while showing that such interest could not be adequately protected through employment measures alone.

Impact has been incremental, cumulative and goes beyond the UK. The *Modern Law Review* article (1995) stood alone as an academic study at the time of its publication, and exerted influence on the decision to make protection for whistleblowers an employment right (UK). This approach was subsequently emphasised when an increasing number of countries (and the EU) recognised the need for whistleblowing legislation as an anti-corruption tool. Legislators were assisted by access to rigorous research in the empirical evidence-base provided by Lewis's comparative studies of whistleblowing statutes when considering questions such as whether/what protection should be given, the thresholds for evidence of wrongdoing, whether motive was relevant, and what remedies should be made available to those victimised for making a disclosure.

The positive approach to whistleblowing taken by the Committee on Standards in Public Life in the late 1990s took account of empirical evidence presented in Lewis's research: Public Concern at Work deployed Lewis's results (local government study) in their submission, and Homewood and Lewis provided oral and written evidence in 1996 [4]. Increased acceptance over the last decade that effective whistleblowing arrangements are vital to private and public interests, in the wake of health and safety disasters and exposure of financial scandals, has engendered processes of reform and innovation underpinned by research. One consequence of increased recognition of whistleblowing procedures is the production (2008) of a publicly available Specification Code of Practice on Whistleblowing (BSI).

Following wider dissemination, researchers in cognate disciplines have been demonstrably

inspired by Lewis's work (e.g. Vandekerckhove). The Unit's findings have been incorporated by commercial organisations in their promotion of consultancy packages on corporate governance and integrity (see Sai Global and Expolink). Commercial training sessions for senior human resource and legal practitioners run by Lexis Nexis (2009 & 2012) derive authority from expert presentations and an outline of practice implications by Lewis; and, extending the impact of such research, Xpert HR (2012) commissioned the production of a comprehensive guide to good practice. Such channels have ensured direct and indirect impact on the behaviour of human resource practitioners, as well as on larger workforces. With organisations keen to embrace best practice, Lewis's work has made it possible for employers and employee representatives to develop appropriate approaches to whistleblowing arrangements [5].

Impact of the research reaches beyond the UK. In 2009 a Japanese national committee reviewing the impact of the Japanese Whistleblower Protection Act 2005 sought oral evidence from Lewis during its deliberations. In a similar context of public policy review and formulation, Lewis was invited to submit oral and written evidence to the Budgetary Control Committee of the European Parliament (2011), an opportunity he used to advocate EU-wide measures to protect whistleblowers via anti-discrimination directives [6]. In 2012, Transparency International formed a committee of experts to formulate principles for national whistleblowing laws, with Lewis selected as a member [7].

The Unit's research on whistleblowing continues to impact on high-level policy debate [8] and practical discussion regarding policies and procedures in this field in the UK and internationally [9]. Over two decades, a specialized, previously indiscernible focus of concern was transformed by research led by Lewis, leading to general acknowledgement that whistleblowing arrangements are needed for sound business reasons. Today, employers lacking such arrangements are recognised as failing the interests of their organisation and staff, as well as the interests of the public. Deepening the contribution made to this shift of employment culture, Lewis has been appointed as consultant academic adviser to the National Audit Office in its review of whistleblowing arrangements within Government and NGOs [10] and the Comptroller & Auditor General plans to publish the results of this work in December 2013.

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Professor A.J. Brown (adviser to the Australian Senate Committee on whistleblowing), Griffith University, Queensland [Has provided corroboration of the fact that Lewis' research into and publications about the principles upon which whistleblowing statutes should be based has impacted on legislative developments internationally. Available on request].
2. SAI Global, Contract and Terms of Reference, and Final Report available at <http://www.saiglobal.com/Compliance/resources/expert-commentaries/david-lewis-hotline-research.htm> [The commissioning of a repeat survey of FTSE companies confirms the value of the previous research. The report is being used to market the services of this multinational organisation which focus on risk management and compliance.]
3. Expolink <http://www.expolink.co.uk/2012/03/whistleblowing-in-the-uk-interview-with-professor-david-lewis/> [Demonstrates the use of research findings by a multinational specialist provider of whistleblowing hotlines and related services].
4. Nolan Committee on Standards in Public Life, *Third Report of the Nolan Committee*, Vol.2, pp.196-199. The Stationery Office. Cm 3702-II, July 1997. ISBN 0-10-137023.
5. Michael Rubenstein (editor, Industrial Relations Law Reports) [Has provided corroboration of the fact that Lewis' research into and publications about the principles upon which whistleblowing policies and procedures should be based has impacted on the development of policy and good practice nationally. Available on request.]
6. Lewis' testimony at the European Parliament with written evidence, available at <http://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19546/20110518ATT19546EN.pdf>

Impact case study (REF3b)

7. Invitation from Mark Worth, Transparency International, to sit on its panel of international whistleblowing experts, available on request.
8. List of members of the International Whistleblowing Research Network, available on request [This testifies to the range and calibre of end-users who have attended and participated in the events hosted at Middlesex University].
9. Middlesex University Whistleblower of the Year Award [determined by an international jury; testifies to the value attached to recognition of the social importance of the role, and the calibre of recipients of the award. Terms and conditions and annual call for nominations available on request.]
10. Terms of Reference, National Audit Office, available on request.