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Voice Mechanisms: An Opportunity for Trade Unions to Support Whistleblowers?

1. Introduction

Trade unions and voice go hand in hand. Trade unions speak on behalf of their members, as the collective voice is often more effective than an individual voice. Voice mechanisms often provide avenues for a representative of a group to speak, rather than allowing each individual member to do so. Whistleblowers will use their individual voice to raise concerns that may impact or affect a wider group of people within their workplace or wider society. Many whistleblowers face some repercussions for doing so; however, the concern may not be dealt with. If the collective voice is potentially more effective, it may be that a trade union's voice would have better outcomes not only for the whistleblower but also the concern raised. However, little is known about whistleblowing in the voice literature and the whistleblowing literature has not yet expansively explored the role of trade unions and how they might use voice as a mechanism to support whistleblowers. This chapter seeks to develop the literature that does exist by considering six different voice groups that trade unions could use. It then considers how trade unions might use these voice options to support whistleblowers make safe and effective disclosures. This chapter will use the standard research definition of whistleblowing by Near and Miceli (1985:4), namely "the disclosure by organisation members (former or current) of illegal, immoral illegitimate practices under the control of their employers, to persons or organisations that may be able to affect action".

2. Voice literature

The concept of voice as it is understood today started in the early seventies with Hirshman's work on consumer voice (1970). This was extended into the workplace by Freeman and Medoff, who considered employee voice of importance and defined it as 'providing workers as a group with a means of communicating with management' (1985:8). The collective nature of this definition led them to conclude that voice was served by unions on behalf of their members. In fact, unions have been using their collective voice since the late 1800's.¹ This collective power was a primary motive for joining a union. However, more recently, members have a wider set of reasons to join, such as individual representation, and legal and financial services. Having said this, union membership in the West has declined considerably (Visser 2006). There are a few exceptions, such as the Scandinavian countries that adhere to the Ghent model. Supported by the state, this system provides for unemployment funds and some other forms of benefits to be given by the trade unions (Kjellberg and Lyhne Ibsen 2016). To be entitled to access the unemployment fund, membership of the union is required, hence the higher unionisation rates in countries that implement such a system. A notable exception to union decline, Norway does not subscribe to the Ghent model but retains high membership rates. Trade unions, therefore, need to find new avenues to engage and show their members and society more broadly that they have value. One such way may be using their voice to support whistleblowers.

Recently, voice has become more individual and about promoting dialogue that is constructive (Barry and Wilkinson 2015: 2, Van Dyne and LePine (1998:109)). This has led to a division of the organisational behaviour, employee relations, and human resources management voice literature. The employee relations and human resources management literature has focused on in-role behaviours and using direct and indirect channels. These indirect channels are where trade unions are considered but whistleblowing is not looked at within this literature. Van Dyne and Lepine (1998) do not see whistleblowing as something that is done within one's role and thus it is considered as extra-role behaviour. Whistleblowing has, therefore, been left to organisational behaviour employee voice literature for discussion. This literature has been structured into two groups, namely prosocial voice and justice voice. Van Dyne et al (1995: 247) suggested four types of extra role behaviour, two of which were whistleblowing and prosocial. Whilst recognising similarities between prosocial and whistleblowing, they favoured a rigid definition where prosocial was helping an individual person. The concept of prosocial has since been widened (Morrison 2011). Therefore, whistleblowing has been viewed as justice-related under the organisational behaviour voice literature. This classification of whistleblowing in the voice literature is contrary to what is known of whistleblowing, namely that, in the majority of cases, it is an internal process which starts with using ordinary direct and indirect voice channels (PCAW and University of Greenwich 2013) and that it predominantly is done within a prosocial motive (Miceli and Near 1985, Dozier and Miceli 1985). If trade unions exist to provide an indirect voice within internal organisation voice mechanisms and whistleblowers seek to raise concerns using internal voice channels in the first instance, it is logical to suggest that trade unions could potentially have a role to play in the whistleblowing process.

3. Whistleblowing and trade unions literature

The literature on what role trade unions have in the whistleblowing process is sparse. Much of the whistleblowing literature has focussed on the whistleblower or legislation. This has sought to explore and understand the process whistleblowers go through and the repercussions of making a disclosure, with legislation being developed based on the information. However, it has been noted that this has come at the cost of ensuring that whistleblowing is effective (Near and Miceli 1995). Effectiveness can be considered as 'managerial responsiveness to the primary concerns about alleged wrongdoing aired by the whistleblower about wrongdoing; and managerial ability or willingness to refrain from, or protect the whistleblower against, retaliation or reprisals for having aired those concerns' Vandekerckhove et al (2014:306). Trade unions can have a place within the organisation and thus are in a position to assist whistleblowers to not only make a safe disclosure but also make sure the disclosure is effective. In Norway, whistleblowing has been regarded as successful. This has, to an extent, been put down to the high unionisation rate and the institutionalised nature of trade unions in the national system (Skivenes and Trygstad 2010). However, more recently, this success has been questioned (Skivenes and Trygstad, 2013 and Skivenes and Trygstad, 2017). Research suggests that elsewhere whistleblowers do not see trade unions as a suitable place to make the first disclosure. Public Concern at Work and Vandekerckhove (2013) found, in an analysis of 1000 cases logged via the charity's advice line, that in only 2% of the 849 cases where a disclosure was made, the union was contacted in the first instance. This increased to a maximum of 5% as the whistleblower made the disclosure on subsequent occasions. Furthermore, in an Australian study of public sector whistleblowers, only 1.8% of the 97% internal disclosures engaged the trade union (Donkin et al 2008:90). However, a study of the NHS in the UK

for the Freedom to Speak Up Review found that trade unions were the fourth likeliest group to be approached for internal advice by Primary Care Workers or second for NHS trust Staff (Lewis et al 2015). When the same groups were asked about making external disclosure, trade unions were the second most likely for NHS trust staff and third most likely recipient for primary care workers behind professional bodies and regulators. One reason that could be attributed to this lack of whistleblowers engaging with trade unions is that trade unions are reluctant to provide resources to an employment dispute in which the outcome is not foreseeable. This was highlighted by Vandekerckhove and Rumyantseva (2014) who were given this as a reason during an interview with a person who had experience as a union representative.

It has previously been suggested that trade unions could take on a role of supporting whistleblowing (Lewis and Vandekerckhove (2015)). They speculate how trade unions could engage in the whistleblowing process. The article takes a UK perspective using Vandekerckhove’s (2010) three tier model of whistleblowing regulation and Kaine’s (2014) four levels of union voice. The three tier model suggests a staged process for whistleblowers to raise a concern, whereby the disclosure is made internally on the first occasion. This means that it is not externalised and the organisation has an opportunity to deal with the concern raised. The second tier is to a regulator, so the disclosure of information is made outside the organisation but remains restricted. Regulators will have oversight of the organisation and often, but not always, will have the power to require the organisation to take action. The third tier is to make a disclosure to the public. Kaine’s four levels of union voice are individual, workplace, industry, national and supra-national. She provides some examples of methods, such as collective bargaining at workplace industry level and political affiliation at the national level. In their article, Lewis and Vandekerckhove (2015) align these two against each other (see Fig 1), recognising that the three tier model is rather more rigid with fixed boundaries, whereas Kaine’s union voice is multi-scaled as she herself points out.

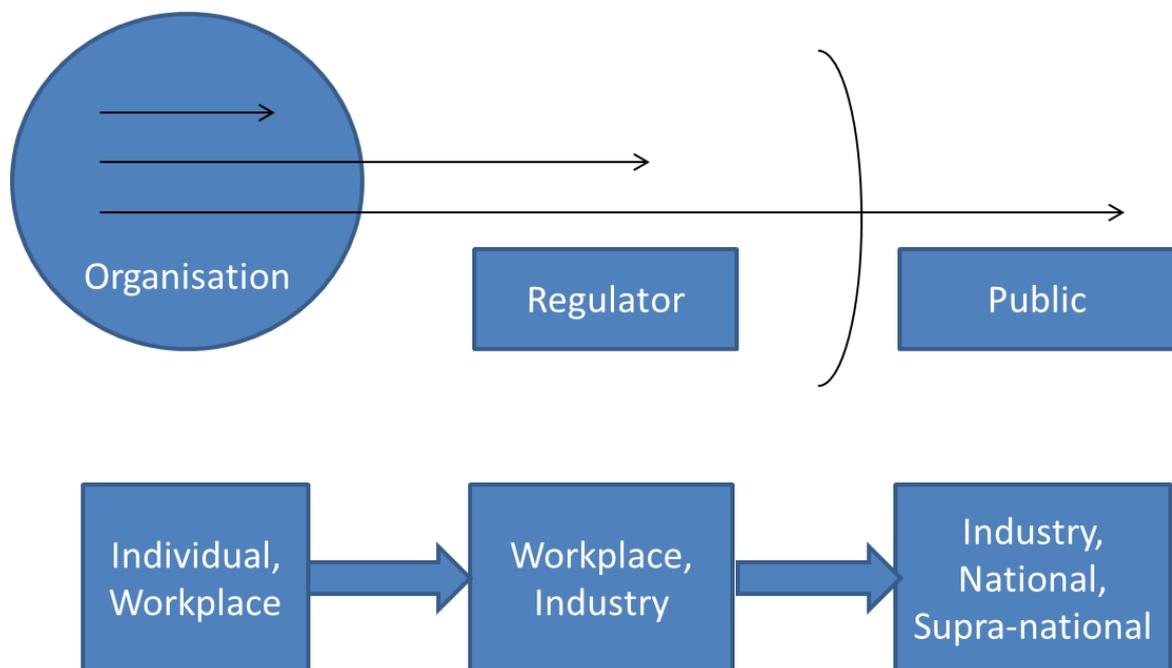


Fig 1. Lewis and Vandekerckhove 2015

Lewis and Vandekerckhove (2015) then go on to identify ways that trade unions in the UK could engage at the three levels and explore the issues around them. The article, however, does not consider the many voice channels that already exist (other than individual representation). These voice channels already being in existence mean trade unions may already be integrated or at the very least familiar with them requiring less of trade unions in terms of impetus to engage. It is suggested that these voice channels can be classified into six groups namely; individual voice; collective bargaining; works councils; joint consultation committees; non-union voice; public voice. The benefit of creating these six groups as opposed to looking at the many individual voice channels is that they have boundaries and can be aligned with Lewis and Vandekerckhove (2015) model. Secondly, these groups then become transferable to other countries that might have different voice mechanisms or unions engage differently.

4. The Six Groups of voice

Individual voice is any occasion where an individual is caused to use their own voice. In general, this will be an employee/worker invoking a designated procedure. In most contexts this will be a grievance procedure; however, it could be other policies, for example, a bullying or a whistleblowing policy. In some cases, it will be an individual using their voice in their own defence in disciplinary procedures instigated by an employer. However, research suggests that whistleblowers do not recognise themselves as a whistleblower until they are told that is what they are (Rothschild and Miethe 1999). Therefore it is possible that whistleblowers will use grievance procedure to raise their concern (Lewis and Vandekerckhove 2015). Furthermore, a whistleblower may use a grievance procedure to disclose retaliation by a manager or peer which results from them making a disclosure.

Collective bargaining is about negotiating to achieve better working conditions. Collective bargaining is predominantly undertaken by trade unions and or national trade union federations. As a voice mechanism, it seeks to reach a consensus about minimum standards and or policies (Doellgast and Benassi 2014). These will involve reaching agreement on pay, hours and holiday as a minimum but may go further to cover other terms and conditions around physical working environment and discipline.

Works councils within an organisation are institutionalised representative bodies. However, these are usually established independently of or against the wishes of management (Nienhuser 2014). The overarching aims of work councils are to represent the employees of the organisation to its management (Rogers and Streeck 1995:5) although the specific purpose can vary between countries. Works councils vary in power and rights. Some countries such as the UK only have a right to information, whereas countries such as Germany and the Netherlands have a right to co-determination and consultation. Norway has a mid-position along with countries like France and Luxembourg who only have consultation rights. Whether a trade union has a presence on a works council can depend on the country - for example, in Sweden the trade unions act as the works council (Nienhuser 2014;252).

Joint Consultation Committees, whilst similar to works councils, can be distinguished on two grounds. First, they are created by management and secondly the purpose of them is the exchanging

of views on matters that fall outside of collective bargaining (Pyman 2014). Furthermore, they have an indirect influence on organisational decision-making (Morishima 1992). Whilst Joint consultation committees are a creature of management they are in some cases supported by law or practice, such as in Germany where they are embedded into the national system (Brewster et al 2007). Brewster et al (2007) suggest 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. In both works councils and joint consultation committees union involvement is not guaranteed. However, it has been found that where unions are not part of these voice mechanisms there is a positive benefit for employee voice and workplace outcomes where the voice mechanism and the union are mutually supportive (Brewster et al 2007 and Marchington 1994).

Non-union voice mechanisms have increased as trade union membership has decreased (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 that trade union is not entitled or invited to participate in the representation structure. To be a non-union employee representation mechanism, Gollan (in Dobbins and Dundon 2014 page 343) highlights five core features, Firstly, it must be restricted to individuals employed by and within the organisation. This then 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. Finally, he says that 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 of 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 this literature suggests that there are two reasons an employer might engage in non-union employee representation. The first is union avoidance i.e. 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 thus 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.

Public voice is where an individual or group do not use internal voice mechanisms but instead choose to go outside the organisation. This can be both at a local or national level. It can be considered to be public where the mechanism used does not seek to limit who receives the information. The information will be available to the public at large.

5. Mapping against the model

Having identified the key elements of these six groups we are now able to identify how they might map against the Lewis and Vandekerckhove (2015) model (see Fig 2). At the first tier, the requirement was that it was internal within the organisation, individual voice remains within the organisation. Works councils and Joint consultation committees are within the organisation and thus can be considered at the organisational level. As mentioned by Kaine (2014) some voice is multi-scaled a good example of that is collective bargaining as in some instances it is done at the organisational level. However, in some places, it is done externally to the organisation such as nationally or industry wide. When collective bargaining is conducted it is not public and is kept within a limited group of people. For example, in Norway collective bargaining starts nationally between the trade union federations and business federations, therefore, collective bargaining also fits within the regulator level. At the third tier, we have quite clearly public voice. However, we can also place non-union voice here in the context of trade unions. As one of the main requirements was that it had to be staff, trade unions could not be involved and cannot be considered as part of the organisation. Any involvement by the trade union is going to be in an external public capacity.

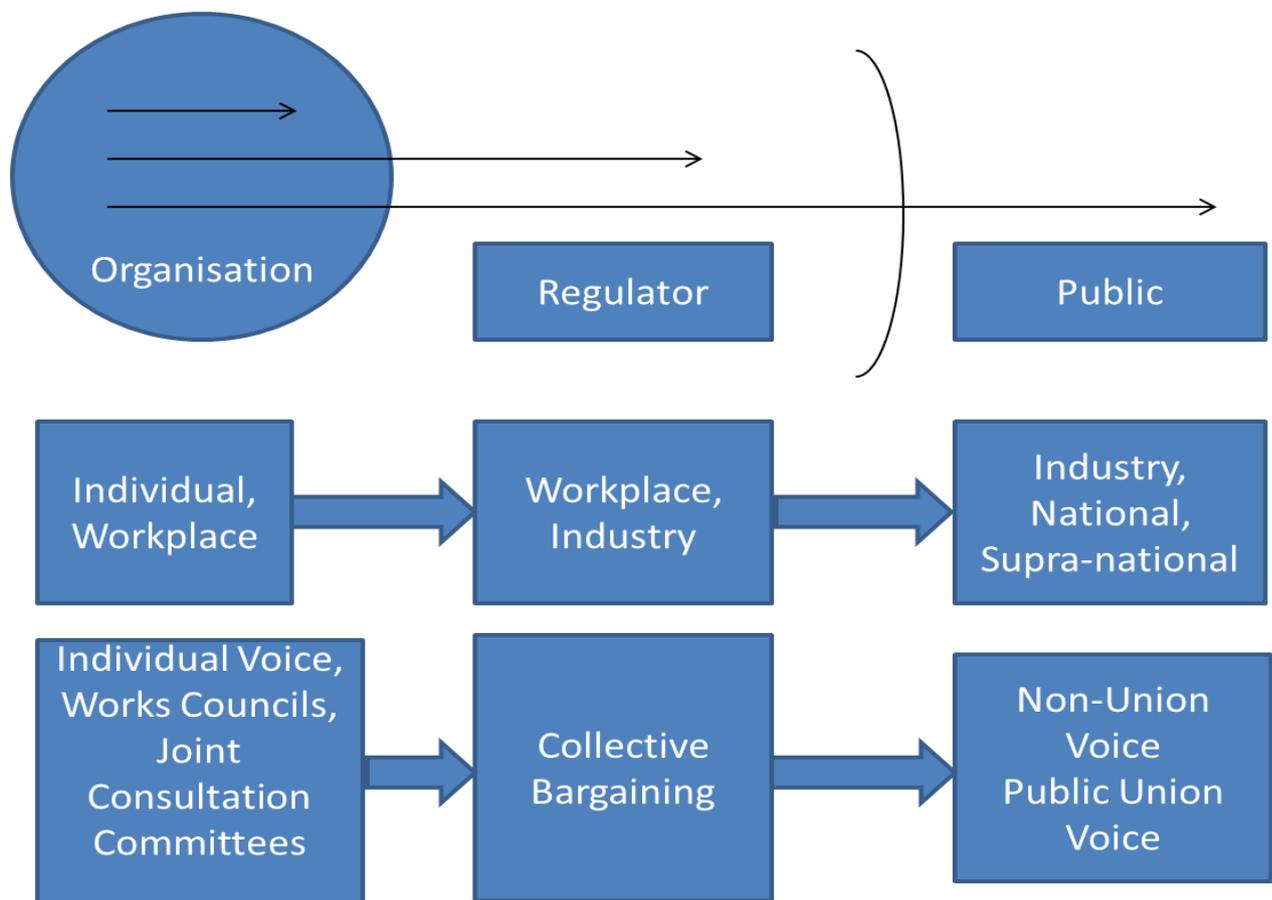


Fig 2, Lewis and Vandekerckhove 2015 adapted by Phillips

6. Potential avenues for trade union involvement

Having identified these different voice groups it is now possible to suggest ways that trade unions might use these channels to support whistleblowing and whistleblowers more proactively. By distinguishing whistleblowing from the whistleblower, trade unions can contribute to creating an environment where disclosures are dealt with effectively as well making sure whistleblowers are protected from any negative treatment.

Individual voice provides trade unions with the greatest potential to provide a safe environment for whistleblowers to make disclosures. Trade unions can provide advice to their members who wish to raise a concern. The union can then help the individual formulate the disclosure in such a way that the disclosure is seen by the organisation as a concern rather than a complaint by a disgruntled employee. The union can where they have the right to, either through collective bargaining agreement or legal right, ⁱⁱ represent the member in any meetings regarding the concern. By representing the member the union can ensure that the organisation focus on the concern raised, rather than on the motives of the whistleblower. Unions will also be familiar with the organisation's policies and can make sure that during the process the organisation follows the procedure in place. Further, by holding organisations to account in this way, the union may build trust with their membership and may see more members coming forward to raise concerns. Another benefit of representing individuals is that trade unions will become aware of issues which may affect more of their members and when this occurs they will be able to turn it into a collective issue. Making a collective issue of a concern raised enables the whistleblower to take a step back and creates an additional level of protection for the whistleblower. A collective issue raised by the union is also likely to have a greater likelihood of being effectively looked into and resolved.

Having said this, unions should be cognisant of the fact that whistleblowers will be raising a concern generally with a prosocial motive and will want to see the concern rectified. As Lewis and Vandekerckhove (2015) point out, the remedy a whistleblower may expect may not be in the wider union membership's interest, and thus unions will need to be careful to approach this potential situation with caution. Should a union not deal with it carefully the whistleblower may lose trust in the union and believe that the union is colluding with the organisation. This creates the potential of a whistleblower making a disclosure to a regulator or the public unnecessarily. A further issue unions may face is that a concern is raised by one member which implicates another union member. In general, this should not be a problem for unions as they are well versed in representing their members and on occasions have to deal with one union member raising a grievance against another. However, when this occurs unions should be careful that they do not appear to be picking sides or favouring the alleged wrongdoer over the whistleblower. For example by having a lay representative support the whistleblower whilst a full-time union official supports the alleged wrongdoer. This has the potential for the whistleblower to lose trust in the union.

Collective bargaining provides trade unions with an ideal opportunity to work with an organisation to make sure that whistleblowing is seen as important. Through collectively bargaining, trade unions can ensure the policy and procedure both protect the whistleblower and provide mechanisms for investigating any concern raised. Lewis (2006) found that where trade unions were engaged in the formulation and supported whistleblowing policies these policies were likely to be more influential. Trade unions that have a good relationship with the organisation may also try to encourage the organisation to include the union as a suitable internal recipient. As an internal recipient, it provides

whistleblowers with an additional location to make the disclosure. It also potentially provides a safer route as the organisation may not be aware of who has made the disclosure to the union. A potential benefit to the union is that non-unionised individuals may seek to use the union as a receiver of a disclosure. If the whistleblower has a positive experience with the union they may then take up membership. Thus, a potential by product of good collective bargaining might be increased membership. However, unions must be seen as independent of the organisation. Should a whistleblower lack faith in the organisation and then also feel that the union is too close to the organisation they may avoid using a well-drafted procedure and find an alternative route to raise their concern with all the potential dangers that entails.

How trade unions engage on work councils will to a significant degree depend on which country they are in and the power of the works council. As identified above, works councils will fall into three categories: information, consultation, and co-determination. As works councils are set up potentially against the organisation's wishes, it may be that the employer will only provide the minimum rights as necessary to comply with its obligations. It, therefore, requires unions on works councils to be assertive. Where a works council is only entitled to information trade unions can have two roles. Firstly, where the organisation has a whistleblowing procedure trade unions can seek information on how it is used in practice, what concerns are raised, and how the organisation has dealt with them. Through asking these questions trade unions can identify potential issues of wider importance to their membership and hold the organisation to account for its implementation of its whistleblowing arrangements. Secondly, where no procedure exists trade unions can apply pressure to create one by asking for information about issues raised that might fall under such a procedure and highlight the benefits of having whistleblowing arrangements.

Where a works council has consultation rights they can undertake all the aspects of unions that are on information only works councils. They can, however, go further and push for a policy and provide input into what a policy might contain. Where a works council has co-determination rights a trade union can put forward the idea of having a whistleblowing procedure where one is not in existence. Where a procedure exists unions can engage in reviewing its effectiveness and push for changes where needed and hold the organisation to account.

Joint consultation committees are as mentioned previously a creation of the organisation. Trade unions that are part of these committees can engage in highlighting the need for a whistleblowing policy and an effective procedure. By promoting the view that whistleblowing can benefit the organisation, trade unions can help organisations realise the need for an effective whistleblowing procedure. Where a whistleblowing procedure exists trade unions can use the committee to express their view on the effectiveness of it. This will cover both the protection of the whistleblower and how the organisation deals with the wrongdoing.

There may be occasions where trade unions are recognised by the organisation for certain things but are not part of the work council or joint consultation committee. Where this occurs trade unions should make sure that they are supportive of these voice channels as it will provide better workplace outcomes for its members and will have a positive impact on employee voice (Brewster et al 2007 and Marchington 1994). Trade unions could also encourage their members to run for election to these voice mechanisms. Whilst they will not be recognised as union officials, the union will be able to provide support and advice to these members to improve the member's engagement. Those

members can potentially undertake the suggestions above as if the union was part of these voice mechanisms. The individual could feed this information back to the union, which could, raise a collective issue or use other means to get the matter dealt with by the organisation.

Non-union voice by its very nature means that the union has little to no scope to engage. However, individuals within the organisation might be union members. Where this is the case the union can encourage them to put themselves forward as part of the voice mechanisms. Trade unions can then support that member through training courses to help them develop their skills. These individuals will then be well placed to ask the questions that a union might pose if they had recognition. Individuals may then be able to pass significant information back to the union which it can then use in other ways. One example is if the individual highlights a concern that has been raised internally but has been ignored. The union could contact the organisation and have a conversation about it. It might also apply pressure by alerting the organisation to the public voice options.

Public voice provides trade unions with a large audience to which they can share information. This gives trade unions an opportunity to apply a strong amount of pressure on an organisation. Trade unions are external to the organisation that their membership is part of. Therefore, apart from any conditions in a recognition agreement, trade unions owe the organisation little in the way of trust or confidentiality. If a trade union is ignored by the organisation it has the ability to make any concern public either locally or nationally. Trade unions will have links with media outlets and thus are able to refer whistleblowers to appropriate reporters and help them present their story in a way that is credible. Trade unions could also make the disclosure to the media on the whistleblower's behalf.

A further opportunity for trade unions in using their public voice is suggested by Lewis and Vandekerckhove (2015). They suggest that unions could use their voice to lobby for legislative changes. They highlight that unions could pool their expertise to do this. By pooling their expertise they could provide real insight into whistleblowing experiences across sectors in both the public and private sectors. Trade unions could use this to make sure that any policy or legislative changes are effective. Trade unions will have different philosophies and will approach situations with different perspectives and objectives. To take into account these differences it may be that national trade union federations could play an important role in national lobbying. At international level, the ETUC may be a good alternative to individual unions or national federations as they can draw on these wider philosophies and make sure national and social systems are considered. In countries where trade unions are heavily engaged in the social systems such as the Netherlands, this will be easier than those such as the United Kingdom where unions continue to suffer curtailment of their power.

7. Conclusion

Whistleblowers who speak out will often use internal voice channels in the hope that their concern will be heard and rectified. However, many people do not speak out for fear of retaliation. Trade unions are organisations with the purpose of securing good employment terms for their members. In performing this function, they have a unique position within society, as they are given rights within and influence over the organisation. Trade unions, therefore, have the potential to support whistleblowers both in terms of making a safe and an effective disclosure. Trade unions being in this internal position have the ability to support the whistleblower from the very first stages of raising a concern. This is significantly earlier than others, such as solicitors or regulators, who will often

become involved further down the line when the disclosure has been made and the whistleblower has not felt that the concern has been dealt with or has experienced repercussions.

Little is known to date about how trade unions engage in this process. What we do know does not paint a good picture in terms of the trust whistleblowers have in them. Lewis and Vandekerckhove (2015) started to identify ways, in which trade unions could engage in supporting whistleblowers. This chapter has sought to develop that by focusing on voice mechanisms that can be identified potentially in different countries and employment contexts. These six voice groups suggest different ways trade unions could engage in making whistleblowing safer and more effective. It is recognised that many of the suggestions are speculative. However, as unions are used to engaging and negotiating with organisations, and assisting, advising and training their members what is suggested here is not outside of the ordinary work of trade unions.

In a time when whistleblowing is becoming more frequent and whistleblowing arrangements are being recognised as an essential part of good organisational corporate governance, trade unions should see whistleblowing as providing a new opportunity for them to engage with both workers and wider society. If trade unions engage in a responsive manner, can build trust with whistleblowers and become an important actor in the whistleblowing process, they might achieve growth both in terms of responsibility and membership. By supporting whistleblowers and using various voice mechanisms, trade unions could find that they have a more expansive function within society too.

Many of the potential ways identified above that trade unions could engage with do not require much in terms of resources. Trade unions already participate in them, and the most resource-dependent one of individual representation is a function trade unions already engage with significantly. What it does require, though, is for trade unions to see whistleblowing as an employment issue and make a concerted effort to actively engage in supporting whistleblowing and whistleblowers.

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ⁱ For a critical review of the development of voice and trade union voice up to 1970's see Kaufmann 2014.

ⁱⁱ For example in the UK s10 of the employment rights act 1996 permits an individual to have a trade union official, lay representative of the union or a work colleague represent them in grievance or disciplinary proceedings.