How do we talk about whistleblowing?: a pragmatic textual discursive analysis of institutionalised whistleblowing in the UK banking industry

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A pragmatic textual discursive analysis of institutionalised whistleblowing in the UK banking industry

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“If liberty means anything at all,

it means the right to tell people what they

do not want to hear.” [1]

[1] From George Orwell's proposed preface to Animal Farm, first published in the Times Literary Supplement, September 15, 1972.

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DECLARATION

The work presented in this thesis is the candidate's own.

ABSTRACT

The study addresses a gap in the literature in relation to industry-specific, discursive studies of institutionalised whistleblowing and seeks to further develop theoretical understanding of the discursive processes that underpin institutional theory, specifically the role of texts as mediator between action and discourse. It is timely due to the growing global trend towards the institutionalisation of whistleblowing.

The study explores the discourse of institutionalised whistleblowing in the UK banking industry through a pragmatic discursive analysis of the whistleblowing texts of 59 UK Banks. It asks how the discourse has been shaped and whether it constitutes an embedded social construction.

The study's findings suggest that the institutionalisation of whistleblowing promotes a distinct discourse, particularly in highly-regulated industries, that is bifurcated, comprising two distinct and conflicting strands; termed Prescriptive and Conceptual Discourse in the study. The findings further suggest that this bifurcation is driven by the complex positioning of institutionalised whistleblowing as both an operative and official organisational problem and that the complexity is particularly marked in relation to wrongdoing and responsibility. The former has significant implications for the protection of employees and the latter supports the argument in the literature that the institutionalisation of whistleblowing fundamentally changes the nature of the act. The study concludes that the way in which UK Banks 'talk' about whistleblowing is shaped by the texts of legal, regulatory and best practice actors within the industry, that the discourse in those texts is itself conflicted and ambiguous and that the conflict and ambiguity has promoted the ethical responsibilisation of the employees of UK Banks. It further concludes that the ambiguous and unresolved quality of the discourse may not prevent it from constituting an embedded social construction, as the ambiguity and conflict appear to be both acknowledged and accepted within the industry.

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INTRODUCTION

OVERVIEW OF THE STUDY

The study's author: A reflexive account

I have worked in regulatory compliance and policy roles within the UK financial services industry throughout my career. I currently work for a specialist training company, where I write and deliver digital and classroom training modules on a range of governance, risk and compliance topics for organisations, including the types of financial services organisations included in this study. My experience of developing training on whistleblowing was the main driver for the study.

I have struggled to answer the question, 'What is whistleblowing?' when writing digital training materials and when challenged in the classroom. I have also noticed this struggle to be particularly marked when developing training materials for UK Banks (as defined by the study) subject to the Financial Services Authority's (FCA) and Prudential Regulation Authority's (PRA) mandatory rules on internal whistleblowing arrangements and the FCA's wider conduct-oriented regulatory agenda (see the discussion on the legal, regulatory and cultural environment later in this chapter at p.19).

Given my role, I acknowledge that I am one of the actors co-constructing the understanding of whistleblowing within the industry that is the focus of this study. Indeed, the texts that I consult when developing training materials are the same texts as those included in the data for the study; namely, the whistleblowing texts produced and disseminated by organisations, when developing training for a specific organisation, and the whistleblowing texts produced and disseminated by the Legal, Regulatory and Best Practice Actors within the industry (defined in the Methodology and Research Design chapter of the study) when developing non-organisation-specific training. This shared experience brings a richness and depth to my analysis, but could also give rise to conflicts of interest or unconscious bias. In order to address these potential problems, an appropriate level of challenge was built into every stage of the Methodology and Research Design and meticulous steps were taken to ensure that only data in the public domain and collected as

part of this study were included in the study (see further discussion in the Research and Methodology chapter at pp.118-9).

My background, experience and role within the UK financial services industry makes me part of the research in a very real sense (Finlay, 1998). It is acknowledged that the choices made by the author throughout the research process, including the choice of research questions, the collection of the data and the approach to the analysis, have shaped the study's findings (Weick, 2002 and Palaganas et al., 2017). These matters are discussed further in the Methodology and Research Design chapter of the study.

The aim of the study

The study focuses, in particular, on the discursive impact of the rules implemented by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)[2] in September 2016. These rules made it mandatory for UK Banks to have institutionalised whistleblowing arrangements in place. The aim of the study is to explore how UK Banks[3] 'talk' about whistleblowing and how that discourse has been shaped.

The author of the study hopes that a deeper understanding of the discourse will promote improved institutionalised whistleblowing practices and arrangements by providing greater clarity over the difference between whistleblowing and other forms of reporting and escalation and the implications of institutionalising whistleblowing for organisations and their employees.

The research questions

The study asks two interconnected research questions developed from the Literature Review that address two gaps identified in the literature.

[2] The FCA is the conduct regulator and the PRA is the prudential regulator for UK Banks.

[3] Defined in Section 1 of the Methodology and Research Design.

Research Question 1: How do UK Banks 'talk' about whistleblowing?

The literature suggests that there is "no universally accepted concept of whistleblowing" (Lewis, 2001, p.1) as its constituent elements are both individually and collectively "perceptual" (Miceli and Near, 1992, p.46). It is proposed by the study that the contingent quality of whistleblowing anchors its discursive construction in its social context and that, as a result, the question, 'What is whistleblowing?' can only ever be answered by exploring the discourse within a single organisational field[4] at a specific point in its legal, regulatory and cultural development.

The Literature Review identifies a gap in the literature in relation to textual discursive studies of whistleblowing that analyse the texts produced and disseminated by organisations within a single organisational field. In response to the first research question, the study seeks to answer the question, "What is whistleblowing?" for the UK banking industry through a pragmatic textual discursive analysis of the values-based and policy-based texts produced and disseminated by 59 UK Banks[5]. The analysis of texts is appropriate here as institutionalised whistleblowing relies on texts and other artefacts for its communication to employees and other stakeholders.

There are many different approaches to discourse analysis (see the discussion in Section 2 of the Literature Review). The study adopts the pragmatic approach, rooted in context and institutional theory, taken in Phillips et al.'s influential work (2004). If, as suggested above, the constituent elements of whistleblowing are both individually and collectively "perceptual" (Miceli and Near, 1992, p.46), then it is appropriate to choose a dynamic and interpretative discursive approach; one that proposes that discourses develop "as actors interact and come to accept

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[4] The concept of the organisational field is used to delineate a bounded and shared environment within which there is a "collective understanding regarding matters that are consequential for organizational and field-level activities" (Wooten and Hoffman, 2008, p.138). The concept is discussed further in Section 2 of the Literature Review.

[5] Defined in Section 1 of the Methodology and Research Design.

shared definitions of reality" (see also Berger and Luckmann, 1966). As the study is also concerned with the development of discourse within and across a specific industry sector, institutional theory (central to Phillips et al (2004)) provides an appropriate secondary and complementary theoretical framework for exploring how the relevant actors within a range of organisations and institutions "interact" to create the "reality" for that sector.

Research Question 2: How has that discourse been shaped?

To address Research Question 2, the study utilises the model proposed in Phillips et al. (2004, p.643). Phillips et al. (2004) seeks to explain how discourses are shaped within an organisational field and proposes a model for understanding the discursive processes that underpin institutional theory, specifically the role of texts as mediator between action and discourse. They urge other academics to utilise the model to "confirm or refute [their] arguments, as well as flesh out the details of these complex relationships" (p.647). Their model theorises how pressures and actions within an organisational field, including, in the context of this study, regulatory and cultural change, can lead to the generation of texts that, in turn, can become embedded in discourse (p.641). The final stage of the model further theorises that this discursive embeddedment process may, over time, produce a new and coherent "social construction", or institution, for that organisational field (p.644).

The study analyses the texts generated by Legal, Regulatory and Best Practice Actors within the organisational field (defined in the Methodology and Research Design chapter of the study) with "discursive legitimacy" (Hardy and Phillips, 1998, p.219) and who therefore "warrant voice"[6] (see also Potter and Wetherell, 1987). The concept of "discursive legitimacy" is explored further in Section 2 of the Literature Review (see p.88). The study explores the extent to which the content of these texts have become embedded in the discourse of UK Banks and

[6] Identified and termed in the study, Legal, Regulatory and Best Practice Actors (see Section 2 of the Methodology and Research Design).

whether the embeddedment can be said to have produced a coherent social construction, a new institution, of institutionalised whistleblowing.

Contributions to the academic literature

The study sets out to make a number of contributions to the literature, both empirical and theoretical.

Firstly, the study provides an insight into the impact of institutionalised whistleblowing in an industry-specific situation; one where internal whistleblowing arrangements are a regulatory requirement and one where whistleblowing is mandated or invited (a key aspect of the study) by organisations. This is a critical research area at this time, given the current trend towards the institutionalisation of whistleblowing through legal and regulatory intervention and developments in organisational-level policy and practice (see pp.17-18 below). Despite its importance, the literature contains only a limited number of studies that explore this topic and none that focus on the UK financial services industry.

Secondly, the study's central proposition, that whistleblowing discourses are bifurcated, enables the study to adopt an innovative approach to their analysis and, more widely, to the analysis of the discursive impact of the institutionalisation of whistleblowing within organisations. The coding frame developed by the study facilitates the identification and mapping of the prescriptive and conceptual elements of whistleblowing across the stages of the whistleblowing process. The methodology and coding frame developed by the study can be adopted by further research studies in a range of sectors and settings.

Thirdly, the study furthers theoretical knowledge in relation to the processes through which texts impact and influence institutionalisation. Specifically, it deepens our understanding of the mediation of texts between action and discourse. It takes the model proposed by Phillips et al. (2004) and applies it to the potential embeddedment of a new institution of whistleblowing within a sector responding

to the imposition of a regulatory requirement to establish internal whistleblowing arrangements. It does this through a pragmatic discursive analysis of the texts produced and disseminated by relevant Legal, Regulatory and Best Practice Actors (defined in the the Methodology and Research Design chapter of the study) and the texts produced and disseminated by impacted organisations. It maps the generation of the resulting discourse and suggests that the inconsistency and ambiguity in that discourse may not necessarily be an impediment to its embeddedment, and therefore to the establishment of a new institution, at an organisational-level (see the discussion of levels of discourse at pp.32-33).

Timing and transferability

As discussed above, the study is timely in the light of the growing global trend towards the institutionalisation of whistleblowing. The study's findings are transferrable beyond the UK banking industry to other sectors, especially highly-regulated sectors, where whistleblowing has been institutionalised.

Next, we will look at the context of the study and some of the key concepts.

Academic and non-academic interest in whistleblowing

Despite both academic and non-academic scrutiny, the question, "What is whistleblowing?" remains largely unanswered.

Academic interest in whistleblowing first began in the early 1970s with the work of the American activist, Ralph Nader (see, for example, Nader, Petkas and Blackwell, 1972). Since then, the term has been framed in a variety of ways, ranging from a disruptive and disloyal challenge to authority to a heroic, pro-social act encouraged, or even mandated, by the organisation on whom the whistle is blown. Protect (formerly Public Concern at Work), a UK whistleblowing charity, reflects on its website on this shifting perception.

> "[In 1993][7] whistleblowing was viewed very differently. Whistleblowers were largely seen as loners, mavericks, and even trouble-makers. And the idea of corporate whistleblowing with staff employed in roles dedicated to whistleblowing, was, well, quite frankly, light years away".

Since Nader's initial work, whistleblowing has generated a substantial and inter-disciplinary body of research spanning psychology, sociology, legal, regulatory and public policy and organisational studies. More recently whistleblowing has also become increasingly linked with business ethics.

Beyond the academic literature, and despite its "relatively recent entry into the vocabulary of politics and public affairs" (Perry, 1998, p.235), whistleblowing has also become the subject of intense public scrutiny. The topic is rarely out of the media headlines with high profile whistleblowing cases spanning from healthcare to banking via politics and Hollywood.

[7] The year in which the charity was established.

Institutionalised whistleblowing - a global trend

The institutionalisation of whistleblowing is an increasing global trend. In the UK, institutionalised whistleblowing arrangements have been mandated (to some degree) in a range of highly-regulated sectors, including healthcare, education and banking, and have been voluntarily adopted by many other sectors. Indeed, Principle E, Provision 6 of the UK Corporate Governance Code, published by the Financial Reporting Council in July 2018, promotes the introduction of internal arrangements for employees to raise concerns within all UK listed companies. In addition, in June 2019, the UK All Party Parliamentary Group for Whistleblowing recommended that UK organisations should be required to establish whistleblowing mechanisms and protections (APPG for Whistleblowing, 2019). Beyond the UK, the European Union (EU) recently passed the Directive of the European Parliament and of the Council on the Protection of Persons who Report Breaches of Union Law 2019 which comes into force at the end of 2021. The Directive will require all organisations in EU Member States with more than 50 employees (or an annual turnover of more than 10 million Euros) to establish confidential whistleblower channels and clear internal reporting processes.

The institutionalisation of whistleblowing is characterised by the implementation of organisational level policies and procedures that permit, or require, a whistleblower to use, or at least consider using, internal disclosure channels provided by the organisation before turning to external channels (Vandekerckhove and Commers, 2004, p.226). From this brief description, it is clear that the institutionalisation of whistleblowing requires organisations to answer the question, 'What is whistleblowing?' for their organisation. This is a perquisite to framing whistleblowing in organisational-level texts and, where relevant, to distinguishing it from other forms of reporting and escalation.

Although studies have shown that the implementation of institutionalised whistleblowing arrangements within organisations can increase disclosure levels (Lewis and Vandekerckhove, 2015 and Roberts, Olsen and Brown, 2009), the literature suggests that it also presents a number of conceptual challenges and a potential paradox.

Some academics argue that whistleblowing can only ever operate outside the systems and controls of an organisation and that the term 'whistleblowing' should be reserved solely for employees making external disclosures (see, for example, Andrade, 2001). Other academics argue that the implementation of institutionalised whistleblowing arrangements gives rise to a potential paradox because their effectiveness depends on high levels of trust between employees and organisations (Holtzhausen, 2009 and Near and Miceli, 1985) and, as a result, they are at their most effective where they are least needed (see Grant, 2002, Vandekerckhove and Tsahuridu, 2010 and Contu, 2014). These conceptual challenges and potential paradox are discussed further in Section 1 of the Literature Review.

Next, we will consider whistleblowing within the context of the UK banking industry.

Overview of the legal, regulatory and cultural environment

More than ten years on from the financial crisis, the financial services industry worldwide is still addressing its conduct failings. In the UK, this has resulted in a programme of regulatory and cultural change driven by the combined forces of the media, politicians, legislators and regulators. These forces have promoted an "age of accountability" [8] (Stapleton and Hargie, 2011); one in which society increasingly demands that the employees of UK banks be held responsible and accountable, not only for their own failings, but also for the failings of their colleagues and organisations.

Individual accountability and responsibility have become central themes of the drive for higher standards in the financial services industry. These themes encourage, or require (an important distinction explored by the study), employees to take greater personal responsibility for their own conduct and for the conduct of their colleagues. For the UK banking industry, these themes have crystallised in two separate, but closely linked, regulatory initiatives implemented in September 2016 by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), namely the Senior Managers and Certification Regime (the SMCR) and rules making the implementation of institutionalised whistleblowing arrangements mandatory.

Both of these regulatory initiatives were introduced in response to the recommendations of the Parliamentary Commission on Banking Standards (PCBS). The PCBS was established in July 2012, in the wake of the LIBOR (London Interbank Offered Rate) rate-setting scandal, to conduct an inquiry into professional standards and culture in the UK banking industry and to make

[8] Stapleton and Hargie (2011) analysed the transcripts from of the Treasury Committee UK Banking Crisis Inquiry, which took place in February 2009.

recommendations for legislative and regulatory change. Their recommendations were published in a report entitled 'Changing Banking for Good' in June 2013 (PCBS, Volumes 1 and 2, 2013[9]) and subsequently passed into legislation in Part IV of the Financial Services (Banking Reform) Act 2013. An intervention by the Treasury later watered down some of the key elements originally included in the 2013 Act through the Bank of England and Financial Services Bill 2015[10].

In their June 2013 report, the PCBS made it clear that it was "shocked by the evidence it heard that so many people turned a blind eye to misbehaviour and failed to report it" (PCBS, Changing Banking for Good: First Report of Session 2013-14, Vol. 1: p.48, paragraph 142). This comment is supported by the literature which suggests that there are particularly low levels of whistleblowing in the financial services sector (Vandekerckhove, James and West, 2013, p.6 and Kenny, 2019) and particularly high levels of fear of retaliation (Protect, 2020[11]).

The SMCR and the FCA and PRA rules on institutionalised whistleblowing arrangements, in common with other conduct and culture-based regulatory initiatives introduced since the financial crisis, such as the management of Conduct Risk[12], devolve much of the responsibility for establishing conduct standards from the regulator to organisations within a broad regulatory, principle-level framework. This approach is termed "meta-regulation" and the literature suggests that it is adopted by regulators as a means of holding "businesses accountable" without the imposition of detailed and explicit rules (Parker, 2007, p.2). Detailed and explicit rules are replaced by an obligation to put in place

[9] The content of the PCBS report is discussed further in Section 2 of the Data Analysis.

[10] The most noteworthy change was the removal the reversal of the burden of proof in the context of regulatory action against Senior Managers (a defined term under the SMCR – see later explanatory footnote on p.21).

[11] Silence in the City 2, June 2020, showed that 70% of those working in financial services in UK that called the Protect helpline felt that they had suffered retaliation.

[12] An FCA regulatory initiative that requires UK financial institutions to manage the risk that poor conduct could inflict on stakeholders, such as customers, markets and society, and to promote good outcomes for those stakeholders.

"internal governance structures, management practices and corporate cultures aimed at achieving responsible outcomes" (Parker, 2007, p.3). In other words, organisations are required to self-govern and to decide what steps they must take to meet a series of high-level regulatory standards. There are potential risks associated with this approach. The risk most pertinent to the study is that meta-regulation promotes the framing of organisational wrongdoing "as a principal-agent problem" and that, as a result, it gives "organisational principals incentives to more carefully police their agents" (Krawiec, 2005, p.597). The risks of meta-regulation in the context of the mandatory institutionalisation of whistleblowing are discussed further in Section 1 of the Literature Review.

The Senior Managers and Certification Regime (SMCR)

The SMCR was implemented for UK Banks[13] in September 2016. Since then, it has been rolled out in stages across the entire UK financial services sector. The regime has two main aims. Firstly, it seeks to clarify the level of individual responsibility and accountability owed by employees of UK financial services organisations, with a specific focus on Senior Managers[14]. Secondly, it seeks to improve behaviour within the industry through the introduction of the revised and more widely applicable conduct standards set out in the Conduct Rules[15]. The SMCR and the Conduct Rules introduced as part of the SMCR are discussed in detail in the Data Analysis.

There are direct links between the SMCR and the FCA and PRA rules making the implementation of institutionalised whistleblowing arrangements mandatory for UK Banks. Both were introduced in September 2016 and both are concerned with conduct and the reporting of wrongdoing. In addition, one of the designated

[13] Defined in Section 1 of the Methodology and Research Design.

[14] Senior Managers are the small group of senior individuals who are responsible and accountable for how their organisation is governed and managed. Broadly, the population is comprised of executive directors, designated non-executive directors and other senior individuals responsible for a range of systems and controls functions.

[15] The Conduct Rules introduced by the SMCR are discussed in Section 2 of the Data Analysis.

Senior Manager roles under the SMCR is the Whistleblowers' Champion. This role must be allocated to the named Senior Manager (generally, a non-executive director) responsible for, and accountable to the regulators for, oversight of their organisation's internal whistleblowing arrangements and for an annual Whistleblowing Report to their board.

Mandatory institutionalised whistleblowing arrangements

The FCA and the PRA implemented new rules on whistleblowing in September 2016. These made it mandatory for certain types of UK financial services organisations to put in place institutionalised whistleblowing arrangements; UK incorporated deposit-takers with assets of £250m or greater, PRA-designated investment firms and insurance and reinsurance firms within the scope of Solvency II and to the Society of Lloyd's and managing agents. Prior to that date, the UK regulators had only published non-mandatory guidance on internal whistleblowing arrangements. For organisations outside this group, the new rules are non-binding and continue to be for guidance only.

The study focuses solely on the first category listed above - UK incorporated deposit-takers with assets of £250m or greater. It excludes building societies and credit unions and considers only deposit-takers defined by the Bank of England as 'Banks'. A full description of the definition of 'UK Bank' used within the study is contained in Section 1 of the Methodology and Research Design.

Broadly, the FCA and PRA rules require UK Banks to establish internal whistleblowing arrangements and reporting channels under the ultimate oversight of a Whistleblowers' Champion. They also mandate that employees must be trained on their organisation's arrangements and informed that they have the option to blow the whistle outside their organisation to the FCA or PRA. The FCA and PRA rules are discussed in detail in Section 2 of the Data Analysis.

The Public Interest Disclosure Act 1998 (PIDA)

The Public Interest Disclosure Act 1998 (PIDA), as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA), referred to collectively in the study as

PIDA/ERRA, seeks to compensate whistleblowers who suffer detrimental treatment at the hands of their employer. The legislation applies to all UK organisations, including UK Banks. The legislation does not contain a legal obligation for organisations to protect 'workers' (a broader category than employees) who blow the whistle from retaliation. Instead, it provides a right for whistleblowers (whose actions fall within the scope of the legislation and who have suffered retaliation) to have their case heard before an employment tribunal and to receive redress and compensation.

Under the FCA rules, UK Banks must inform the FCA if an employment tribunal finds against them and in favour of a whistleblower.

In order to benefit from the protections afforded by PIDA/ERRA, a disclosure must meet a number of tests. Firstly, the disclosure must fall within the definition of a Qualifying Disclosure. Qualifying Disclosures can only be made about the types of wrongdoing listed in PIDA/ERRA. Secondly, the disclosure must be made through the channels prescribed by the legislation. This means to an employer, or, where permitted, to a Prescribed Person or one of the other specified persons listed in the legislation (subject to certain legal tests being met). The FCA and the PRA are both Prescribed Persons under PIDA. Thirdly, the person making the disclosure must demonstrate a 'reasonable belief' that their disclosure is in the 'public interest'[16].

Other relevant legislation

The financial services industry in the UK is also subject to a range of other laws and regulations that impose reporting requirements either at an individual or organisational level.

Part 7 of the Proceeds of Crime Act 2002 and the Terrorism Act 2000 requires employees in the regulated financial sector to submit a Suspicious Activity Report

[16] PIDA/ERRA is discussed further in Section 2 of the Data Analysis.

(SAR) if they know, or suspect, or have reasonable grounds for knowing or suspecting, that a person is engaged in, or attempting, money laundering or terrorist financing. A SAR must be submitted as soon as is practicable to the firm's appointed Money Laundering Reporting Officer (MLRO) and must explicitly not be reported to or discussed with anyone else within the organisation to limit the possibility of financial criminals being 'tipped off' about the report.

The Market Abuse Regulation (MAR), implemented in July 2016, requires employees in the regulated financial sector to make Suspicious Transactions or Orders Reports (STORs) using their organisation's internal reporting arrangements where there are 'reasonable grounds' to suspect market abuse, such as insider dealing or market manipulation.

In addition, UK financial institutions, including UK Banks, are subject to organisational level legal obligations to report potential breaches of trade and economic sanctions and suspicions of bribery and corruption, tax evasion and anti-competitive practices.

In order to meet these organisational level reporting obligations, employees of UK financial services organisations are subject to a wide range of internal policies and procedures establishing specific reporting obligations and protocols in relation to these matters.

LITERATURE REVIEW

OVERVIEW

Research gaps

The literature contains several content analyses of whistleblowing legislation, regulation and organisational level policies and procedures (see, for example, Hassink, De Vries and Bollen, 2007 and Vandekerckhove, 2006). These studies do not, however, focus on the dynamics of how whistleblowing discourses are promoted, influenced and absorbed within an organisational field and the role of powerful interest groups and other industry actors in their promotion and embeddedment.

The study's author suggests that there is a gap in the literature in relation to pragmatic approaches to textual discursive studies of institutionalised whistleblowing that analyse texts produced and disseminated by organisations across an entire organisational field and that explore how that discourse has been shaped. The study seeks to address that gap and also to answer the call in Phillips et al. (2004) for more research into the role that texts play as the mediator between action and discourse and the processes underpinning institutional theory.

Section 1 of the Literature Review

Section 1 of the Literature Review explores whistleblowing discourses, with specific reference to institutionalised whistleblowing and the whistleblower-employee. It considers the framing of whistleblowing and the role of the whistleblower within the literature and deconstructs the concept of whistleblowing to facilitate an examination of each of its component parts.

It identifies two distinct and conflicting strands within whistleblowing discourses, termed in the study Prescriptive Discourse and Conceptual Discourse, and suggests that the bifurcation of these discourses is driven, at least in part, by the positioning and framing of whistleblowing by organisations as both an operative (broadly, policy and procedure-orientated) and official (broadly, values and culture-orientated) organisational problem.

Section 2 of the Literature Review

Section 2 of the Literature Review explores how discourses across an organisational field are shaped and answers the call in Phillips et al. (2004) for further research into the discursive processes underlying institutional theory, specifically the role of texts as mediator between action and discourse and the production of new discursive social constructions or institutions.

The two sections of the Literature Review were used by the researcher to formulate the study's two Research Questions. Section 1 of the Literature Review shapes and provides theoretical underpinning for Research Question 1: How do UK Banks 'talk' about whistleblowing? Section 2 of the Literature Review shapes and provides theoretical underpinning for Research Question 2: How has that discourse been shaped?

SECTION 1

What is whistleblowing?

The origin of the term 'whistleblowing' is unclear and disputed. Some suggest that it comes from the practice in the mining industry of blowing a whistle to signal an accident. Others link the term to the whistle blown by a sporting referee or policeman. Whatever its origin, these examples all contain the two characteristics of whistleblowing that are perhaps the most common in everyday usage - drawing attention to a problem with a view to stopping it and putting it right. Both of these elements are also reflected in the broadly worded definition of 'whistleblowing' in the Collins English Dictionary: "the practice of informing on someone or putting a stop to something" (2014).

As discussed in the Introduction, despite the current high levels of academic and non-academic interest in whistleblowing, a fundamental question remains unanswered - 'What is whistleblowing?'

There is no single or consistent answer to this question as "there is no universally accepted concept of whistleblowing" (Lewis, 2001, p.1). Its constituent elements are both individually and collectively "perceptual" (Miceli and Near, 1992, p.46). It is proposed by the study that the contingent quality of whistleblowing anchors its discursive construction in its social context and that, as a result, the question, "What is whistleblowing?" can only ever be answered by exploring the discourse of a single organisational field[17] at a specific point in its legal, regulatory and cultural development.

[17] The concept of the organisational field is used to delineate a bounded and shared environment within which there is a "collective understanding regarding matters that are consequential for organizational and field-level activities" (Wooten and Hoffman, 2008, p.138). The concept is discussed further in Section 2 of the Literature Review.

Over the years, whistleblowing has been framed in a variety of ways; from a disruptive and disloyal challenge to authority (Nader, 1972) to a heroic, pro-social act encouraged, or even mandated, by the organisation on whom the whistle is blown. More recently, Mannion and Davies (2015, p.503) have proposed that whistleblowing by an employee should be framed as "the disclosure to a person or public body, outside normal channels and management structures, of information concerning unsafe, unethical or illegal practices". This definition is of interest to the study as it challenges the very concept of institutionalised whistleblowing. Institutionalisation potentially positions whistleblowing within the "normal channels and management structures" of an organisation. The concept of operating "outside normal channels and management structures" may, however, be a helpful means of differentiating institutionalised whistleblowing from other forms of reporting and escalation protocols and related employee duties.

As also discussed in the Introduction, the institutionalisation of whistleblowing arrangements inherently requires organisations to define 'whistleblowing' and, where relevant, distinguish it from other reporting and escalation protocols and related employee duties. This is a prerequisite to both capturing the concept in relevant organisational-level texts and communicating it to employees. In other words, it forces organisations to answer the question, 'What is whistleblowing?' for their organisation at that point in their legal, regulatory and cultural development.

Why is the discourse so complex?

The study proposes that whistleblowing discourse, particularly institutionalised whistleblowing discourse, is complex as a result of its positioning within organisations. It "sits as part of a wide spectrum of formal and informal behaviours that are embedded in local organisational context and cultures and enmeshed in both formal and informal governance arrangements and practices" (Mannion and Davies, 2015, p.504). This positioning is not unique to whistleblowing; the same may be said of a range of ethical and conduct discourses within organisations, especially those in highly-regulated sectors.

This multi-layered positioning was acknowledged by Huw Jenkins, former Chief Executive Officer of UBS, in his evidence to the Parliamentary Commission on Banking Standards (PCBS)[18]. In his view, the failure of employees to report wrongdoing within the financial services industry results from both "a failing in our systems and controls and [Sic] in our culture" (PCBS, Vol. 2: para 1280).

Ellickson (1991) considers the role of formal and informal behaviours within organisations, and their interaction with formal and informal governance arrangements and practices, and suggests that employees are subject to three types of "behavioural constraints" within organisations; first, second and third-party. First-party constraints are self-imposed by the actor and can be equated with an employee's personal ethics. Second-party constraints take the form of employee rewards and punishments positioned within the contractual bilateral relationship between employee and employer. Third-party constraints take the form of non-contractual forces imposed and administered within an organisational context by relevant actors and social norms. The latter can be described as the culture of the organisation. Institutionalised whistleblowing potentially spans all three of these behavioural constraints - personal ethics, contractual relationships between the employees and employers (expressed through contracts, policies and procedures and encompassing relevant legal and regulatory constraints) and the culture of an organisation.

Kerr (1975) considers the discourse of formal and informal behaviours, particularly those associated with second-party and third-party behavioural constraints. Kerr observes that "official goals" that are concerned with culture and values, are expressed in a way that is "purposely vague and general" and that, as a result, they take the form of "high acceptance, low quality goals" (Kerr, 1975, pp.769-770) (see also Perrow, 1969, p.8). Kerr gives the example from politics of exhortations to 'build better schools'. In contrast, "operative goals", that are concerned with contractual relationships and contained in employee contracts,

[18] The role and findings of the PCBS are discussed further in Section 2 of the Data Analysis.

policies and procedures, are expressed with a high degree of specificity and detail. In relation to building better schools, for example, the operative goal would include the number of schools to be built, the level of funding required and the source of that funding (Kerr, 1975, p.770).

Levels of discourse

Whistleblowing discourses operate at multiple levels within organisations. There is also a dynamic interplay between those levels.

The focus of the study is on organisational-level practices and discourses in relation to institutionalised whistleblowing; specifically, the texts produced and disseminated by UK Banks and the texts produced and disseminated by Legal, Regulatory and Best Practice Actors within the industry (as defined in the Methodology and Research Design chapter of the study) which are directed, in the main, at organisations, rather than their employees.

Employees are, however, the primary recipients and consumers of the texts produced and disseminated by UK Banks[19] in the study. As a result, the study encompasses the 'top-down' discourse between the senior management and the policy-makers of UK Banks and their employees. The policy-makers here include the legal and compliance teams and the HR, ethics and conduct teams who are the authors of the policy-based and values-based texts included in the study (see further discussion and definitions in the Methodology and Research Design chapter).

In deconstructing the discourse, the study utilises an adapted version of the Miceli and Near (1992, p.60) decision-making model (see pp.40-42 below). The modifications made to the model, to adapt it more specifically to institutionalised whistleblowing, mean that it is able to encompass some of the complexity

[19] Other stakeholders who receive and consume the texts include customers, shareholders, auditors, regulators and, potentially, litigators.

presented by multiple levels of discourse. It is built around a series of questions to be addressed by a putative whistleblower-employee within an organisation with internal whistleblowing arrangements. The answers, however, of interest to the study are the ones provided in the texts produced and disseminated by their employers at an organisational level. Senior management and policy-makers within organisations are privileged here. They select the frame which enables them to position a problem or situation in a particular way and to drive the discourse in a particular direction.

The study does not focus on employee-level discourse. Further research would be instructive here. This is discussed further in the Methodology and Research Design chapter (see p.102) and the Key Implications and Findings chapter (see p.270). Such further research could utilise the same coding frame developed in the study. This would complement this study and provide an interesting comparison between organisation-level and employee-level discourses.

Bifurcation of the discourse

Section 1 of the Literature Review identifies and discusses two distinct and conflicting strands of whistleblowing discourse, termed in the study Prescriptive Discourse and Conceptual Discourse, and suggests that the bifurcation of the discourse is driven, at least in part, by the positioning of whistleblowing within organisations as both an operative (broadly, policy and procedure-orientated) and official (broadly, values and culture-orientated) problem for an organisation (see Kerr, 1975 and the arguments in Mannion and Thompson, 2005 and 2014 in relation to healthcare). If this is the case, the bifurcation in the discourse is likely to be particularly evident within highly-regulated environments where the operative goals of organisations are shaped by legal and/or regulatory obligations.

Prescriptive Discourse: An overview

The study argues that Prescriptive Discourse is used to express the "operative goals" of an organisation in relation to whistleblowing (Kerr, 1975, p.770). As

discussed above, the expression of contractual, legal and regulatory relationships through policies and procedures requires a high degree of specificity and detail in relation to the composite definitional elements of whistleblowing. In a highly-regulated environment, the discourse is likely to reflect applicable regulations and legislation and to focus on the circumstances in which whistleblowers are afforded protection. As a result, Prescriptive Discourse is shaped by the circumstances in which whistleblowers are protected, rather than by what whistleblowing 'is' or the role of the whistleblower.

The exclusive nature of Prescriptive Discourse makes it suitable for accommodation within the policies and procedures of an organisation; it contemplates whistleblower-employees acting within the systems and controls of an organisation.

This exclusivity can prove problematic in practice. This was illustrated in the regulatory action taken by the FCA and the PRA against Jes Staley, the Group CEO of Barclays (FCA Final Notice, 11 May 2018). The two letters that led to the regulatory action were received by Barclays at a time when the FCA and PRA rules in relation to whistleblowing were changing. When the new regime came into force in September 2016, the definition of 'whistleblower' in Barclays' Whistleblowing Policy was extended, in line with the new rules, beyond employees to anyone raising a "reportable concern". However, at the time of the receipt of the letters, the definition of 'whistleblower' in Barclays' policy was restricted solely to employees. Whether the letters were 'whistleblows' was a central element of the case and led to prolonged legal argument.

The two leading whistleblowing definitions in the academic literature are perhaps those proposed by Near and Miceli (1985) and Jubb (1999). Both of these definitions reflect a Prescriptive Discourse, to some degree. Both delineate who can blow the whistle, to whom and about what and both contain aspects of exclusivity. A comparison of the constituent elements of these two definitions enables their boundaries to be explored and challenged. A brief overview is

provided here. A detailed comparison of the two definitions is made later in Section 1 of the Literature Review.

Near and Miceli (1985, p.4) defines 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 effect action."

This definition, which specifically references whistleblower-employees ("organisation members") has been used in a number of studies across various professions, roles, industries and countries (see Hassink, De Vries and Bollen 2007 for examples).

Jubb (1999, p.78) defines whistleblowing as,

> "A deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organisation, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organisation, to an external entity having potential to rectify the wrongdoing."

Jubb's (1999, p.78) later and more restrictive[20] definition is also frequently cited in the literature (see, for example, Vandekerckhove, 2006). Although it may encompass some non-employees with "privileged access to data", such as legal advisers, it also appears to be primarily focused on whistleblower-employees.

[20] Jubb refers to it as a "restrictive" definition.

Conceptual Discourse: An overview

The study argues that Conceptual Discourse is used to express the "official goals" (Kerr, 1975, p.770) of an organisation in relation to whistleblowing. As discussed above, the expression of organisational culture and values in organisational level texts is likely to be "purposely vague and general" (Perrow, 1969, p.8). It is likely to have an inclusive frame that is focused on what whistleblowing "is" and the role of the whistleblower rather than circumstantial details or whether the whistleblower will be protected by regulation, legislation or policy.

Within the literature, Conceptual Discourse is perhaps best captured in the phrase "speaking truth to power", a phrase coined by civil rights leader Bayard Rustin, and closely associated with Foucault's concept of parrhesia or frank speech (Foucault, 2011 and 2001). A number of academic studies have used Foucault's concept of parrhesia as a lens for examining whistleblowing in an organisational context (see, for example, Mansbach, 2007 and 2009, Rothschild, 2013, Vandekerckhove and Langenberg, 2012 and Weiskopf and Willmott, 2013). Through this lens, whistleblower-employees are portrayed as "late-modern parrhesiastes" (Mansbach, 2009, p.365) whose role is to perform a specific "modality of truth-telling" (Foucault, 2011, p.15) within the context of the asymmetrical power dynamics of the workplace (Weiskopf and Miersch, 2016).

Parrhesia has a long history. The term dates back to ancient Greece where it was "first of all and fundamentally a political notion" (Foucault, 2010, p.8) concerned with speaking "truth" in the public setting of a political assembly. Later, the concept became associated with truth-telling in other situations (Catlaw, Rawlings and Callen, 2014 and Luxon, 2008). Whatever the setting, parrhesia has the same function; it seeks to expose wrongdoing in order and to disrupt the status quo to a sufficient degree to force change. Foucault distinguishes parrhesia from other forms of truth-telling told by the prophet, the sage and the technician/expert/professor (2001, p.19). He does this by reference to a series of identifying relationships which are unique to parrhesia. These relationships are "to truth through frankness", to the parrhesiastes' "own life through danger", to

"criticism (self-criticism or criticism of other people)" and to "moral law through freedom and duty" (2001, p.19).

It is important to acknowledge here that parrhesiastic truth is a subjective truth; it is what the parrhesiastes "knows to be true" (Foucault, 2001, p. 14). The speaking of parrhesiastic truth also takes the form of critique expressed from a position of morality and vulnerability; "Foucault inserts critique as a moral attitude to acknowledge the subtle and vulnerable practices of power between truth and the subject" (Vandekerckhove and Langenberg, 2012, p.36 from Foucault, 1978). Mansbach (2009, p.367) positions parrhesiastic whistleblowing in the workplace as a "practice of resistance" which is "intended to create change in the decisions made by more powerful actors, such as management and superiors". Foucault's reference to "moral law through freedom and duty" (2001, p.19) implies that parrhesiastes choose to speak and that the only duty to which they are subject is a moral or ethical one. The danger for "late-modern parrhesiastes" (Mansbach, 2009, p.365) may not be the same as for their ancient Greek counterparts, but retaliation by an organisation and, potentially, colleagues, can be life changing nonetheless (Lennane, 2012).

Truth, criticism, morality and danger are therefore the central elements of a parrhesiastic framing of whistleblowing and, the study suggests, of Conceptual Discourse. All of these elements are examined in detail later in the Literature Review. A contemporary use of Conceptual Discourse can be seen in the definition of 'whistleblower' used by the Government Accountability Project, US advocacy group; "a person of conscience who uses free speech rights to challenge abuses of power that betray the public trust" (Devine and Massaarani, 2011, p.316).

As mentioned above, a number of academics have questioned whether institutionalised whistleblowing policies and procedures "leave an opening for parrhesia" (Vandekerckhove and Langenberg, 2012, p.40) and that they may neutralise speaking truth to power (see, for example, Hedin and Mansson, 2012, p.153).

Others argue that the act of whistleblowing can never be subject to institutionalisation as the act must take place outside an organisation's systems and controls. Mansbach argues that parrhesiastic whistleblowing is "located at the point where an individual's voluntary submission to employment becomes his or her oppression"; meaning that it occurs where an employee can no longer accept or trust the systems and controls of their organisation and therefore must elect to act outside them (2009, p.372). Alford (2001, p.5) powerfully illustrates this phenomenon with the words of a Vietnam-era whistleblower, who described themselves as a "space-walking astronaut who has cut his lifeline to the mother ship".

It follows that an employee who reports or escalates a concern internally to their organisation is displaying a confidence that their concern will be addressed by the organisation (or is at least unconcerned by the repercussions of doing so). Andrade identifies this as the potential paradox inherent in institutionalised whistleblowing: "Effective whistleblowing policies need an organisational and societal culture characterised by the absence of abuse of power in highly independent and transparent organisations. However, to assume such a culture annuls the need for whistleblowing" (Andrade, 2015, p.321).

DECONSTRUCTING THE DISCOURSE

In order to systematically explore these two strands of discourse, Prescriptive and Conceptual, the study seeks to deconstruct whistleblowing by an employee within an organisation with institutionalised whistleblowing arrangements into its constituent elements. These constituent elements are then used by the study to construct a frame for analysing institutionalised whistleblowing discourse and for identifying and mapping the indicators of Prescriptive Discourse and Conceptual Discourse outlined above and discussed in detail below. This frame develops into the coding frame contained in Section 1 of the Methodology and Research Design (see Figure 6) and used for the data analysis.

The frame is based on Stage 2 of Miceli and Near's model of the "Whistleblowing Process" (1992, p.60). Miceli and Near describe this stage as the decision making process that precedes the act of blowing the whistle. It takes place following the "occurrence of a triggering event" and encapsulates the "ultimate response that will be made to the event" (1992, p.58). The Miceli and Near model draws on the pre-existing literature, in particular Dozier and Miceli's (1985) modification of Latane and Darley's model of bystander decision-making (1968, 1970).

The Miceli and Near model deconstructs Stage 2 of the "Whistleblowing Process" into four sequential steps and supports each step with a question to be addressed by the prospective whistleblower. The answers to these questions determine whether the prospective whistleblower (Miceli and Near use the term "Focal Member" here) will decide to blow the whistle.

Figure 1 below presents a simplified version of the Miceli and Near model (1992, p.60).

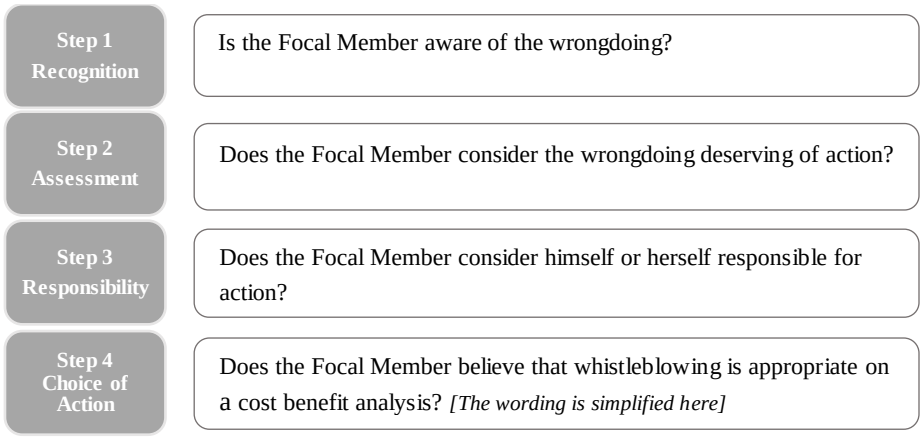

Figure 1

Simplified version of Near and Miceli's model mapping Stage 2 of the Whistleblowing Process (1992, p.60)

For the purposes of the study, the steps and supporting questions in the Miceli and Near model have been adapted. These adaptations are required to align the steps and supporting questions more closely to the thought process of a prospective whistleblower-employee in an organisation with institutionalised whistleblowing arrangements, particularly organisations in highly-regulated sectors, such as the UK Banks. The frame used in the Literature Review is shown in Figure 2 below. It is comprised of five steps: (1) Recognition, (2) Assessment, (3) Responsibility, (4) Retaliation and (5) Choice of action. This frame was later modified to form the coding frame used for the data analysis, as discussed in Section 1 of the Methodology and Research Design[21].

Step 1, Recognition, and Step 2, Assessment, have been adapted from the Miceli and Near model to facilitate exploration of the distinction between recognising 'wrongdoing' and assessing whether that 'wrongdoing' falls within the scope of an organisation's whistleblowing arrangements. Step 3, Responsibility, has also

[21] The frame used for the coding and data analysis was modified following the pilot stage. The final coding frame is comprised of four steps: (1) Wrongdoing: Am I concerned? (2) Protection: Am I protected? (3) Responsibility: Why should I act? (4) Channel Selection: What should I do?

been adapted to facilitate exploration of the range of duties that may be relevant, including legal, regulatory, contractual and ethical duties. A replacement Step 4, Retaliation, has been added to address protection from retaliation or victimisation. This is partly addressed by the reference to "costs" at Step 4 of the Miceli and Near model in relation to the decision to blow the whistle. As protection from retaliation is particularly relevant in relation to institutionalised whistleblowing, it has been separated into a distinct step. It is also likely to be a powerful determining factor in decisions taken by prospective whistleblower-employees. Step 5, Choice of Action (Step 4 in the Miceli and Near model), has also been adapted to overtly reference the range of channels open to a prospective-whistleblower employee under institutionalised whistleblowing arrangements. The Miceli and Near model contemplates whistleblowing more narrowly as an act of public disclosure. Institutionalised whistleblowing arrangements present employees with a range of reporting and escalation protocols and whistleblowing channels and so a more complex range of options.

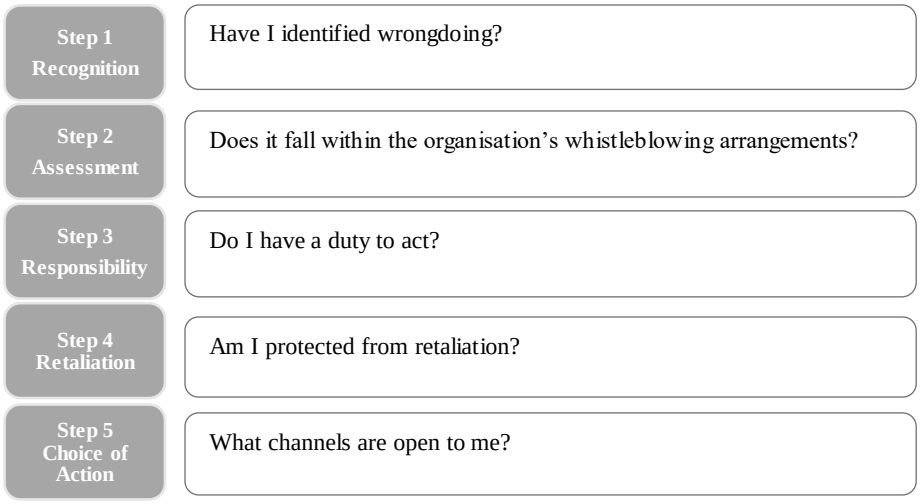

Figure 2

Frame used by the study to structure the Literature Review adapted from Stage 2 of the Whistleblowing Process proposed by Miceli and Near's Model (1992, p.60)

The remainder of the Literature Review explores the literature associated with each of these five steps and maps and contrasts the Prescriptive and Conceptual Discourse indicators at each step.

Steps 1 and 2: Recognition/Assessment

At Steps 1 and 2, a prospective whistleblower-employee must address two sequential questions. Firstly, "Have I identified wrongdoing?" Secondly, if so, "Does it fall within the organisation's whistleblowing arrangements?" These two steps are closely linked and form a two-part recognition and assessment process. For this reason, the two steps are taken together here.[22]

Conceptual Discourse is concerned solely with Step 1 and the question, "Have I identified wrongdoing?" Step 2, "Does it fall within the organisation's whistleblowing arrangements?" is irrelevant. Conceptual Discourse is not concerned with an organisation's whistleblowing arrangements; it operates outside them and has no need for definitions of wrongdoing contained within them. This framing puts the prospective whistleblower-employee in control of the definition of wrongdoing; the answer to the question, "Have I identified wrongdoing?" is a subjective one. Whistleblower-employees framed as "late-modern parrhesiastes" (Mansbach, 2009, p.365) use their perception of the 'truth' as their reference point fuelled by their desire to disrupt the continuation of the wrongdoing.

By extension, the 'truth' is a truth that the employee's organisation does not want to hear or which is already known to the organisation, but which the organisation has chosen not to address. Hirschman (1970), and later academics such as Bashshur and Oc (2015, p.1531), argue that whistleblowing is an exercise of

[22] Steps 1 and 2 are combined in the coding frame discussed in the Methodology and Research Design to form a single Step 1 labelled 'Wrongdoing – Am I concerned?'

'voice' used specifically to bring about change. It is not the discovery of the truth, but the speaking of that truth that matters. Andrade (2015, p.323) argues that criticism and dissent is a "crucial element of whistleblowing" and speaking the truth must carry the "risk of provoking war with others" (Foucault, 2010, p.25). This is the framing of whistleblowing associated with high profile whistleblowers such as Edward Snowden (computer intelligence consultant - National Security Agency), Paul Moore (HBOS - Banking) and Julie Bailey (Mid-Staffordshire - NHS).

In contrast, Prescriptive Discourse relies on an organisation's whistleblowing arrangements as the reference point for recognising wrongdoing and for determining whether that wrongdoing falls within those arrangements. Prescriptive Discourse provides definitive and objective answers to both of the questions at Steps 1 and 2 and, in order to answer those questions, an employee must consult the texts, and potentially the applicable legislation and regulation, that establish their organisation's whistleblowing arrangements.

Prescriptive Discourse contemplates, and can accommodate, a distinction between the wrongdoing under Step 1 and the wrongdoing that falls under the organisation's whistleblowing arrangements under Step 2. The latter may be a sub-set of the former or, indeed, a broader category than the former. This two-part test enables organisations to distinguish between the two and ring-fence the types of wrongdoing covered by their whistleblowing arrangements. Prescriptive Discourse requires both categories to have clear and exclusive definitions and this binary nature is likely to promote detailed and bounded definitions. Prescriptive Discourse is also likely to mirror the definitions of wrongdoing in applicable legislation and regulation, particularly at Step 2. This mirroring may generate multiple definitions and categories of wrongdoing for organisations in highly regulated industries (see Lewis et al, 2015, p.312), particularly those with global policies and procedures.

It is instructive here to return to the framing of wrongdoing in the two leading definitions of whistleblowing proposed by Near and Miceli (1985) and Jubb (1999). Near and Miceli refer to "illegal, immoral, or illegitimate practices". Jubb is less prescriptive and refers more widely to "illegality or other wrongdoing". Terms such as "immoral", "illegitimate" and "other wrongdoing" sit uneasily within Prescriptive Discourse as they introduce an element of subjectivity, more aligned with Conceptual Discourse. Phrases such as "other wrongdoing" immediately render prescriptive lists open ended. The introduction of morality here is particularly interesting and is addressed in detail under Step 3 below. This interweaving of the dual strands within the discourse is of interest to the study. Although the strands are conflicting, their usage may not be discrete. This potentially unsettles the discourse and adds further complexity.

Both the Near and Miceli (1985) and the Jubb (1999) definitions of whistleblowing also qualify the wrongdoing they include. Firstly, they both specify that the relevant wrongdoing must be "under the control" of the whistleblower's organisation. In relation to institutionalised whistleblowing, this not only positions the wrongdoing within an organisation, but also suggests that it must be of a type that the organisation has agency over and could therefore take steps to either prevent or stop. Jubb emphasises this point by also specifying that the wrongdoing must be of a type that "implicates" the organisation. This additional qualification frames wrongdoing as more than the poor conduct of an individual employee (or small group of employees), but instead frames it as a wide spread problem, condoned or at least not addressed by the organisation. These qualifications also promote the positioning of whistleblowing as an act of dissent, with an employee-whistleblower exposing wrongdoing and implicating their organisation in that wrongdoing. Secondly, Jubb includes a test of materiality, meaning the seriousness of the wrongdoing, by including a qualification that the wrongdoing must be "non-trivial". Near and Miceli (1985) is silent on the matter. A number of academics have considered the impact of the seriousness of the wrongdoing on the decision to blow the whistle. Dozier and Miceli (1985, p. 831) argue that materiality is a determining factor for whistleblowers; "the more serious the wrongdoing, the more likely it is that a potential whistleblower will decide to

come forward" (see also Jones, 1991 and Singer, Mitchell and Turner, 1998). However, Near and Miceli (1995) suggest that whistleblowing is likely to be less effective where the wrongdoing is serious, especially where it threatens an organisation.

To conclude, the literature suggests a marked difference between Conceptual and Prescriptive Discourse at Steps 1 and 2. Conceptual Discourse is unconcerned with definitions of wrongdoing beyond the subjective perception of the whistleblower-employee. Prescriptive Discourse, in contrast, promotes bounded definitions of wrongdoing at both Step 1 and Step 2 and, in institutionalised whistleblowing arrangements, these definitions are likely to take the form of prescriptive lists contained in the texts produced by organisations. In addition, the literature acknowledges the challenges of providing bounded lists of wrongdoing and the potential for subjective elements, indicative of Conceptual Discourse, to be introduced into those definitions causing the dual strands of discourse to become intertwined.

Step 3: Responsibility

At Step 3, a prospective whistleblower-employee must address the question, "Do I have a duty to act?"

Prescriptive and Conceptual Discourse responds to this question very differently. The range of potential answers to the question is reflected in the lively debate in the academic literature over the nature of the 'duty' to blow the whistle, especially under institutionalised whistleblowing arrangements.

The argument on one side of the debate is that any form of legal, regulatory or contractual duty to blow the whistle destroys the essential nature of the act; it must be a matter of personal choice; a personal ethical decision. Alford (2007), Contu (2014) and others go further and argue that whistleblowing is a compulsion rather than a rational choice. Alford argues, however, that this construction does not

prevent the act from being 'ethical' as the "way one lives" and the "person one is" are the ethical factors that present the individual with the "choiceless choice" to blow the whistle (Alford, 2007, p.223).

By extension, any steps to remove choice, through the imposition of a legal, regulatory or contractual duty, renders the act one of reporting or escalation (see discussion in Vandekerckhove and Tsahuridu, 2010, p.365) aligned with other such duties within the systems and controls of an organisation, rather than whistleblowing. As a result, the discourse of 'duty' in relation to institutionalised whistleblowing arrangements is both fundamental and formative.

Conceptual Discourse frames whistleblowing as a personal choice. Prescriptive Discourse, however, is able to contemplate a range of duties to blow the whistle including legal, regulatory and contractual duties as well as ethical and moral duties. Near and Miceli's (1985) definition of whistleblowing, discussed above, is silent in relation to choice and duty. Jubb's (1999) definition, however, includes the qualification that the act is "a non-obligatory act" and excludes, for example, disclosures of fraud by internal auditors on the grounds that such disclosures are 'role-prescribed' and therefore mandatory (Jubb, 2000).

A 'right' to blow the whistle could, however, be consistent with both Prescriptive and Conceptual Discourse, depending on how it is framed. It is instructive to explore the differences between duties and rights and how these differences might be reflected in the discourse of institutionalised whistleblowing.

Duties and rights

Pufendorf (DJN I.vi.4, in Rorvik, 2015) considers the nature of laws and the obligations that they impose. Unlike Hobbes (Leviathan, Parts III and IV), he considers that it is not just God that has the authority to impose obligating laws (DJN I vi. 9-10, in Rorvik, 2015); they can be imposed by any superior with power, including the management of an organisation. Pufendorf argues that the authority to impose obligating laws emanates from the power to back the order with a threat of punishment for disobedience (see also Scheenwind, 1998, p.134).

Having established the relationship between power and obligation, Pufendorf goes on to consider the distinction between obligation and coercion; arguing that an obligation must be justified for it to amount to more than coercion. Although both obligation and coercion depend on the threat of punishment, the distinction lies in the response of the inferior individual in the power relationship who is subject to the obligation. Where that individual acknowledges and accepts that the punishment is imposed on them "justly" (DJN I.vi.5, in Rorvik, 2015), should they fail to fulfil the obligation, they accept that their moral autonomy should be "limited at his [superior's] pleasure" (DJN I.vi.5, in Rorvik, 2015). Linking the relinquishment of freewill to the justification for the imposition of obligations is an argument open to legislators, regulators and organisations in relation to legal, regulatory and contractual obligations to blow the whistle. The justification here is likely to be concerned with the role of the whistleblower and therefore to be more indicative of Conceptual rather than Prescriptive Discourse.

More recently, Moghaddam et al (2000) has also considered the nature of duties and, specifically, the difference between duties and rights. Firstly, they focus on the non-obligatory nature of rights; the exercise of rights is optional, "one need not, and people often do not" exercise them (2000, p.275). Secondly, they argue that the reciprocal nature of rights distinguishes them from duties. With rights, the 'obligations' lie with the giver, not the recipient. The giver has the obligation of ensuring that the right that they have granted is protected and that it can be exercised by the recipient (Rose, 1996 in Moghaddam et al, 2000, p.276). Reciprocity is highly relevant in the context of the study. Employees may be granted protection from retaliation at a legal, regulatory or contractual level in return for the right to blow the whistle through approved and specified channels. Vandekerckhove and Commers (2004, pp.229-230) note that such reciprocal obligations form a contract, express or implied, between the employee and organisation, but caution that this contract may be broken where there is a lack of trust between the employee and the organisation or the organisation fails to fulfil its obligation to its employee.

Negative and positive duties

In Foundations of the Metaphysics of Morals, Kant differentiates between 'imperfect duties' and 'perfect duties' (Kant, 1959/1785). Vandekerckhove and Tsahuridu (2010, p.367) note that, in the contemporary literature, Kant's imperfect duties are often referred to as "formal" or "negative" duties (the term 'negative duties' is adopted in this study) and perfect duties as "normative" or "positive" duties (the term 'positive duties' is adopted in this study).

The distinction between the two is a matter of formulation. A negative duty requires you to refrain from doing something, whereas a positive duty requires you to do something. Negative duties are generally easier to enforce (Vandekerckhove and Tsahuridu, 2010) and are more likely to be framed in absolute terms and to demand a specific form of action. As a result, negative duties may be more associated with contractual, legal and regulatory duties. Conversely, positive duties tend to have a less rigid frame and may be subject to exceptions or capable of fulfilment in more than one way (Vandekerckhove and Tsahuridu, 2010). These qualities may mean that positive duties are generally more closely aligned with rights and associated with moral and ethical duties (Moghaddam et al, 2000, p.292).

Schmidtz (2000) argues that failing to prevent harm does not 'feel' the same as doing harm. This distinction, and the issues it raises in relation to positive duties to blow the whistle, are explored in McCabe (1984) and in Vandekerckhove and Tsahuridu (2010).

A positive duty 'to do good'

A duty to blow the whistle has been labelled as a positive duty to "do good" or "rescue" (see Rawls, 1971, p.114 in Vandekerckhove and Tsahuridu, 2010, p.367). In an organisational context, duties to rescue that are shared by colleagues raise three potential issues relevant to this study. Firstly, there is the interaction with the 'bystander effect' (Latane and Darley, 1970). This effect suggests that an employee is less likely to act, if they observe colleagues failing to do so. In the context of whistleblowing, this means that employees are less likely to comply

with a duty to blow the whistle in response to wrongdoing by others if they observe their colleagues (who are also subject to the same duty) turning a blind eye. Secondly, Vandekerckhove and Tsahuridu (2010, p.368) and Scott (2000) both argue that positive duties to rescue are potentially more difficult for employees to identify and comply with than negative duties not do harm. This is because, as stated above, positive duties tend to have a flexible frame and may be subject to exceptions or capable of fulfilment in more than one way. This characteristic means that the way in which they are communicated to employees is particularly important. The communication of positive duties to rescue calls for the clear boundaries and precise language indicative of Prescriptive Discourse. Where positive duties to blow the whistle are contained in laws, regulation or policy, they are therefore likely to be framed in the sort of prescriptive language more generally associated with negative duties (see Schlenker triangle below). Thirdly, where there is a positive duty to blow the whistle, an employee must demonstrate ignorance of either the duty or the wrongdoing to avoid punishment for non-compliance. As a result, Vandekerckhove and Tsahuridu (2008) suggest that a positive duty to blow the whistle may potentially result in over-reporting by employees, who are attempting to avoid liability.

A further dimension of both negative and positive duties is the consequence of non-compliance in terms of punishment and reward. Vandekerckhove and Tsahuridu (2010, p.367) suggests that compliance with positive duties tends to be more, although not exclusively, associated with rewards and non-compliance may not necessarily be associated with punishment. By contrast, non-compliance with negative duties is more likely to result in punishment.

The role of rewards for whistleblowers has prompted much debate, both inside and outside the academic literature. In the literature, one side of the debate argues that rewards, whether internal or external to an organisation, may dilute the moral and ethical dimension of whistleblowing and may, as a result, be counterproductive (see for example, Berger, Perreault and Wainberg, 2017). This is the stance taken by the FCA and PRA in their rejection of the payment of

incentives or rewards for whistleblowers[23]. On the other side of the debate, it is argued that rewards play a positive role in encouraging whistleblowing. The work of Xu and Ziegenfuss (2008), for example, supports the payment of financial incentives. They focus on whistleblowing behaviour triggered by the discovery of fraud by internal auditors and consider the impact of rewards, such as cash incentives and guaranteed employment contracts. Their results indicate that internal auditors are more likely to disclose wrongdoing when incentives are offered and that reward systems may have a positive effect on disclosure levels. Further, Mogielnicki (2011) proposes that the payment of financial rewards by regulators or similar bodies may promote the moral autonomy and moral development of employees by providing an environment in which their moral autonomy can be exercised without fear of reprisal. In the US, the Securities and Exchange Commission (SEC) has adopted this approach. It is important, however, to note that the role of rewards and incentives for whistleblowing is nuanced and has multiple dimensions. The Xu and Ziegenfuss (2008) study, for example, also suggests that it is the internal auditors with the lowest levels of moral development that are more sensitive to cash incentives. The relevance of moral development to whistleblowing is discussed further below.

Punishments

In practice, 'punishments' for whistleblowing may take more than one form. Employees subject to a duty to blow the whistle may be punished if they fail to do so. This is discussed under the Responsibilisation heading below. In addition, employees who *do* blow the whistle may also be subject to reprisals or retaliation from their organisation or colleagues. The latter may be an informal form of punishment, but it is likely to be a strong determining factor for potential whistleblower-employees (see, for example, Alford, 2001 and Glazer and Glazer, 1989). Retaliation is addressed below under Step 4. It should be noted that these

[23] In their paper entitled "Financial Incentives for Whistleblowers: Note by the Financial Conduct Authority and the Prudential Regulation Authority for the Treasury Select Committee" (see Section 1 of the Data Analysis).

'punishments' may operate simultaneously in opposite directions, creating a dilemma for the employee.

These issues raise interesting questions about the concept and attribution of responsibility.

Responsibility

Schlenker et al (1994) explore the constituent elements of responsibility and conceptualise it as the "adhesive that connects an actor to an event". Their responsibility model, known as the 'Schlenker Triangle' (1994, p.632), provides a means of exploring responsibility attribution and the rationalisations and excuses that individuals use to minimise their responsibility. This approach may be instructive when considering how employees respond to duties in relation to whistleblowing, especially in relation to decisions not to blow the whistle. Although the Schlenker Triangle frames responsibility in a causal sense, as harm done, it can perhaps be extended in this context to encompass duties to blow the whistle in response to harm committed by others.

The three points of the Schlenker Triangle are (1) Prescription, (2) Identity and (3) Situation/Event (1994, p.632). Together these three points and the linkages between them combine to make individuals feel 'responsible'. Schlenker et al (1994) suggest that individuals are most likely to feel responsible where there is a clear, well-defined set of prescriptions that patently apply to a particular event and which do not conflict with any other duties owed (Prescription), the relevant actor is perceived to be bound by the prescriptions (Identity) and the actor feels connected to the event (Situation/Event). Schlenker et al (1994, p.632) further suggests that rationalisations and excuses are used to weaken one or more of these points and/or the linkages between them.

These three points, together with the linkages between them, are all relevant in the context of a duty to blow the whistle. The first, Prescription, calls for the precise and exclusive language indicative of Prescriptive Discourse. As discussed above, positive duties are not generally framed in this type of prescriptive language. The

second, Identity, requires the employee to understand that they have a personal responsibility to act. The scope of the responsibility and the circumstances in which it must be executed must therefore be clearly stated. The third, Situation/Event, is potentially the most problematic of the three elements in relation to whistleblowing. This is because whistleblowing is, primarily, a response to the conduct of others, rather than one's own conduct, and this weakens an individual's connection to the event.

Kaler (2002) separates responsibility into two distinct dimensions. The first dimension is "causal" responsibility (in the sense of being responsible for the event happening) and the second dimension is "duties owed" responsibility (in the sense of having a responsibility to do or not do something). Kaler (2002) also distinguishes between "responsibility" and "accountability" (see also Elliston, 1982). These two words are closely associated with the SMCR implemented for UK Banks by the FCA and the PRA in 2016 (see Introduction). They are also two words that are often used interchangeably or as synonyms within (and indeed without) the literature (Kaler, 2002, p.327). Kaler (2002, p.328) locates accountability as a sub-category of causal responsibility arguing that accountability means, in essence, being "answerable" for conduct in the sense of being "informative" or reporting on the performance of our responsibilities. The conceptualisation of accountability as an informative response is instructive in the context of institutionalised whistleblowing. Locating it solely within the causal responsibility dimension, however, potentially defines it too narrowly for these purposes. Kaler (2002, p.328) is concerned solely with being "informative" about one's own actions, whereas, whistleblowing involves being informative about the actions of others. In relation to institutionalised whistleblowing, it is argued by the study that the concept of an "informative" response can also operate in the "duties owed" dimension; indeed this is perhaps the essence of institutionalised whistleblowing.

Kaler also discusses "coercive accountability" in terms of consequences; both negative consequences in the sense of "blame and punishment" and positive consequences in the sense of "due recognition" (2002, p.328). This ties in with

the discussion above concerning the formal and informal consequences of the fulfilment and non-fulfilment of a duty to blow the whistle in the context of institutionalised whistleblowing. The need to illicit an "informative response" in the "duties owed" dimension is closely linked to the concept of responsibilisation. We will turn to this next.

Responsibilisation

Baldwin (2004, p.378) discusses discourses of whistleblowing that categorise wrongdoing as "risks to be managed" within organisations and that seek to "shift blame for breaches onto individual employees" rather than frame them as organisational level failings (Wilson, 1993). Laufer (2003) labels this process "reverse whistleblowing". Bauman (1989, p.378) suggests that duties to blow the whistle increase the pressure on employees to claim 'ethical distance' and thereby distance themselves from the wrongdoing (see also Tsahuridu and Vandekerckhove, 2008 and Mellema, 2003). It follows that a decision not to blow the whistle by an employee could be framed by an organisation as a failure to claim ethical distance, resulting in them becoming jointly responsible for the wrongdoing as they have enabled its continuation and have prevented their organisation from addressing it.

The concept of responsibilisation has its origins in the governmentality literature (see Foucault, 1997, 2005, 2007 and 2008). In that context, the term describes the process through which individuals are passed the responsibility for managing risk in circumstances where that risk would otherwise fall to be managed by a body or authority, such as a government or regulator. The process is particularly associated with neo-liberal political discourses where individuals are 'responsibilised' in relation to risks that 'should' (according to the relevant authority) be managed by them.

Responsibilisation as a governance and control technique encourages individuals to view specified risks "not as the responsibility of the state [or other relevant body], but as an individual responsibility" thereby "transforming it into a problem of self-care' (Lemke, 2001, p.202). Lemke (2001) illustrates the concept with the

example of a duty to visit the gym. A responsibilisation lens frames gym attendance in terms of an individual's responsibility to maintain their health in order to remain in employment, pay taxes and care for dependents. Responsibilisation can operate in relation to both negative and positive duties and also, to an extent, to rights. It is at its most potent, however, in relation to positive duties where non-compliance results in sanction.

The neo-liberal governmentality literature (see Shamir, 2008 and Rasmussen, 2010) extends the responsibilisation process to the workplace. The case study in Rasmussen (2010) examines the implementation of a behaviour-based safety programme in a Swedish organisation using a close discourse analysis of the work of an occupational health and safety committee (see also similar studies in Frederick and Lessen, 2000, MacEachen, 2000 and O'Malley, 1996). Rasmussen concludes that the process of responsibilisation in this context results not only in employees being made to feel that they were to blame for accidents in the workplace place, but also responsible for taking measures to manage the risk of future accidents. Gray (2009, p.337) supports this conclusion arguing that "safe behaviour" is "the current dominant discourse in workers' health and safety". Ramussen's conclusion, however, appears to go beyond "safe behaviour," implying a responsibility to actively manage the risk presented by others.

Wells (2007, p.14) goes further than Ramussen in her study on the use of speed cameras on roads. She argues that responsibilisation in this context utilises "risk as a justification for control" and goes on to consider how individuals react to the responsibilisation process. Wells discusses how the drivers in her sample attempt to shift the blame for accidents to others. Hunt (2003, p.186) labels this process, "deresponsibilisation". In Wells (2007, p.14), deresponsibilisation takes the form of drivers attempting to "re-conceptualise the most pertinent risk as coming not from their own actions in respect of the speed limit, but the authorities' attempts to enforce those limits". This re-conceptualisation enables the drivers to frame themselves as victims of the method of control adopted by the government. Mascini et al (2013, p.1221) explore a similar process in relation to the risk management of unemployment (including unemployment due to disability or

sickness) and conclude that “supporting individual responsibilisation of work-related risks does not automatically imply a willingness to take personal responsibility” for them.

Hassink and Bollen (2007) suggest that duties in relation to whistleblowing within organisations are widespread. Their study reviews whistleblowing policies within a range of large, European organisations from diverse industries and concludes that the majority adopted an “at least moderately authoritative" tone and many include a "requirement or duty to report violations" (p.36). Specifically, 30 percent of the policies in their study made it clear that "failing to report a violation (remaining silent about a breach or concealing information about one) is a violation in itself" (p.37). This trend is also discussed in Lewis et al (2015) in relation to institutionalised whistleblowing within the NHS.

Courpasson (2011), Hannah-Moffat (2000) and Cruikshank (1999) suggest that whistleblowing arrangements can be used in this way by organisations (or indeed by regulators) to ‘responsibilise’ employees for the risk management of the conduct of colleagues by transferring responsibility from the organisation and its senior management (or, indeed, a regulator) to employees (see also Siltaoja and Malin, 2015). Here employees are ‘responsibilised’ to manage risks that are neither risks created by them personally (unlike speeding drivers) nor risks to which they are personally likely to be directly exposed (unlike workplace physical safety). This is a significant departure from the types of risks covered in the neo-liberal governmentality responsibilisation literature.

Tsahuridu and Vandekerckhove (2008, p.114) extend the concept of responsibilisation in the workplace beyond compliance with law and regulation to an organisation’s “other corporate social responsibilities”. This extension is highly relevant where duties to blow the whistle are framed as ethical or moral duties. In relation to the UK banking industry, the language of the SMCR (discussed in the Introduction) and the FCA’s wider Conduct Risk agenda (discussed in the Introduction) mirrors the outcomes-focused and stakeholder-orientated language typically associated with corporate social responsibilities. It is forward-looking

and requires both organisations and their employees to think about the consequences and impact of their actions and decisions on a wide range of stakeholders. This extends beyond markets and customers, to wider-society and potentially the shareholders and the organisation itself. The inclusion of the organisation as a stakeholder creates a potentially problematic link between corporate social responsibilities and the management of the reputational risk of an organisation, opening up the use of institutional whistleblowing policies as reputational risk management tools. These themes are discussed further under 'Morals and ethics' below (see p.59).

Responsibilisation can be framed as a "form of oppression" which removes choice from the employee (Moghaddam et al, 2000, p.275). However, Miceli et al. (1991, p.114) propose that employees who are subject to a duty to blow the whistle, whether in the form of a positive duty, negative duty or a right, still have a degree of choice; the choice to trust that the stated culture of their organisation is reflected in the actual culture and lived experience of the organisation.

Loyalty

Trust between employees and their organisation is closely associated with loyalty. Hart and Thompson (2007) discusses the morally-loaded nature of the word and its complexity in an organisational context. This complexity is, perhaps, particularly evident in relation to institutionalised whistleblowing. Hirschman (1970) suggests that there are three response options open to employees faced with wrongdoing in the workplace - "loyalty" (acceptance), "exit" (departure) and "voice" (speaking up). A 'loyalty' response differs from 'exit' and 'voice' because it involves remaining part of the organisation without taking action. It requires an acceptance of the situation or trust in the organisation and its senior management that the situation will be dealt with appropriately and in accordance the organisation's aspirational values.

Other academics have argued, however, that loyalty, voice and exit are not necessarily mutually exclusive and that an employee can exercise loyalty whilst voicing dissent and even despite leaving the organisation. This requires 'loyalty'

to be re-framed. "Rational loyalty" is a concept that permits an employee to remain loyal to the aspirations and values of their organisation whilst still exercising their 'voice' (or indeed 'exit') response (Vandekerckhove and Commers, 2004, p.229). This re-framing draws a distinction between loyalty to the aspirational values and purpose of the organisation and loyalty to the fabric of the organisation itself, its artefacts and the people working for it. Rational loyalty can also apply at a political level too. Edward Snowden[24], for example, has stated that he is loyal to the US Constitution rather than to a particular President or Administration.

Rational loyalty is particularly relevant in relation to institutionalised whistleblowing where organisations state that they welcome reports of wrongdoing and yet respond with retaliation (see also Parmerlee et al, 1982 and Near and Miceli, 1986). Vandekerckhove (2006, p.14) refers to this situation as a "dualism between legitimating principles and operating practices of an organisation".

The publication of aspirational values both inside and outside an organisation promotes the development of rational loyalty on the part of employees as this establishes a "licence to operate" in the eyes of employees and the public (see Vandekerckhove and Commers, 2004, p.229). Bertland (2009, p.27) illustrates this approach through the concept of a 'good accountant' by reflecting on the purpose of the accountant's role. Thompson and Bunderson (2003) on social exchange theory, suggest that the concept of 'ideology-infused contracts" (see also Blau, 1964, p.352), is also of relevance here. Thompson and Bunderson (2003) argue that, in an environment where employees perceive that their organisation is pursuing a social cause or ideology (or is holding itself out to be), deviations from that social cause or ideology are likely to provoke a strong response and therefore to encourage 'rational loyalty'.

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[24] Edward Snowden is the American who copied and leaked highly classified information from the National Security Agency in 2013 when he was working for the Central Intelligence Agency.

Loci of loyalty

When discussing employee loyalty it is important to consider the range of applicable loci of loyalty. Loyalty in the context of team level dynamics are of particular relevance to organisational contexts where employees work in small, tightly-knit teams that operate relatively independently within the organisation. This is the case in the banking industry. Indeed, on the investment banking side of larger banks, team loyalty may be a factor even outside the organisation; within financial trading markets, close bonds operate also at an inter-bank level.[25]

Greenberger, Miceli and Cohen (1987, p.528) consider whistleblowing within the context of a team or other group dynamic and frame it as an act of non-conformity. They explore the role of the group in satisfying the social needs of its members and the pressure that the group can exert by threatening to withdraw their support in response to non-conformity (see also Festinger, 1950). Cohesive groups are more likely to be successful at obtaining conformity because members value membership of the group (Cartwright, 1968) and a unanimous majority leads to greater conformity (Asch, 1956). Greenberger, Miceli and Cohen (1987) also argue that there are two responses to a potential whistleblower-employee in the context of a unified group or team. Firstly, the group can attempt to stop the non-conforming member by pressurising them to change their views and thereby restore the cohesiveness of the group or, at worse, by excluding them from the group. Secondly, the group can adapt to a new norm. Even a single individual can be influential in altering the norms of the group, making the relationship of the whistleblower to the group potentially "dynamic and reciprocal" (Greenberger, Miceli and Cohen, 1987, p.531). They hypothesise that, in a situation where the group is "unanimous and credible", it is more likely that a group member will remain silent (p.531). The more cohesive the group, the stronger the influence, with the group playing an active role in establishing the

[25] The strength of these relationships was evident in the recent benchmark and LIBOR fixing scandals, for example.

"reality of ambiguous events" (p.529) and helping to rationalise silence in the face of wrongdoing.

Morals and ethics

Ethical decision-making and ethical choice-making are indicative of Conceptual Discourse. A parrhesiastic duty to blow the whistle is firmly rooted in the morals and ethics, with the relationship between parrhesia and duty being "a specific relation to moral law through freedom and duty" (Foucault, 2001, p.19). Given this positioning, a parrhesiastic duty to blow the whistle can only ever take the form of a positive, moral duty or a right. If it is a right, it is not subject to the reciprocity discussed above under the Prescriptive Discourse (which tethers the receiver to compliance with the 'giver organisation's' systems and controls), instead it is a self-given right and therefore free from any expectation of reciprocity. As discussed above (see p.45), it should be noted that Prescriptive Discourse may also contain some aspects of values-based and ethically-orientated language, particularly in relation to the framing of duties and rights; Conceptual Discourse may be used to cloak prescription.

It is generally accepted in the academic literature that there are three main pillars of moral theory – virtue ethics, deontological ethics and consequential ethics.

Virtue ethics

Virtue ethics places the emphasis on the attributes of the 'virtuous' person and, as such, is well aligned with Conceptual Discourse in relation to whistleblowing, where the focus is on the role of the whistleblower. The classic form of virtue ethics, 'Eudaimonia' (meaning happiness, well-being or the good life), is largely associated with Aristotle (Apostle, 1984, Aristotle's Nicomachean Ethics). Aristotle maintains that reaching a state of Eudaimonia is the proper meaning of human existence and that it can be achieved by practising the 'virtues'. Virtues here are qualities which Aristotle divides into two main types. The first type, moral virtues, include prudence, justice, fortitude and temperance. The second type, intellectual virtues, include theoretical wisdom and practical wisdom. Aristotle's

moral virtues are particularly reflective of Conceptual Discourse in relation to institutionalised whistleblowing.

More recently, the 'ethics of care' has developed as a variant of Aristotle's approach to virtue. It has its origins in the feminist movement in the second half of the twentieth century and is built on the premise that men and women think differently. As a result, it urges the adoption of a more 'feminine' ethical perspective. One of its main proponents, Carol Gilligan (1982), challenges 'male' justice-based approaches to ethics (see below) and argues for a new approach that "centers on responsiveness in an interconnected network of needs, care, and prevention of harm" (Gilligan in Beauchamp and Childress, 2001, p.371). The ethics of care frames 'care' and 'prevention of harm' as virtues within social relationships. This calls for empathy, which requires both the virtue of care and an understanding of the impact of actions on others, potentially bridging both virtue ethics and consequential ethics (discussed below). As a result, Gilligan argues that justice-based theories and the ethics of care can operate successfully in parallel. This approach is highly reflective of the FCA's Conduct Risk initiative[26]. In 2014, for example, Martin Wheatley, the then Chief Executive of the FCA, called for a "more sophisticated interpretation of integrity in business. One that is not simply defined by the ethics of obedience, so what is legally right or wrong, but actually looks towards the ethics of care, and the ethics of reason"[27] (Speech by Martin Wheatley, 2004).

From the perspective of an organisation, an evocation of virtue-orientated ethics is potentially attractive. It suggests that the way to build a 'good' organisation is by nurturing virtuous employees. As discussed under Responsibilisation above, this approach passes a degree of responsibility to those employees to behave in a

[26] A FCA regulatory initiative that requires UK financial institutions to manage the risk that poor conduct could inflict on stakeholders, such as customers, markets and society, and to promote good outcomes for those stakeholders.

[27] The terminology used here by Wheatley is taken from the book 'Ethicability' by Roger Steare, an expert in ethics and cultural change in the financial services sector (Steare, 2013).

virtuous way, as determined by the organisation. It is perhaps this latter quality that may lead to virtue-orientated ethics, in particular, being reflected in Prescriptive Discourse.

Although virtue ethics continues to be an established strand of business ethics, it has been criticised for its lack of theoretical foundations. Recently, this criticism has been addressed by Martha Nussbaum's Capabilities Theory which seeks to refresh the virtues-orientated approach. Nussbaum's theory (2001) builds on the work of Sen (1999) which focuses on government programmes in developing countries. In an organisational context, Capability Theory gives organisations a role to play in the preservation of the human dignity of their employees by enabling them to develop their capabilities freely. In practice, this means that an organisation must ask itself whether it is "allowing the individual [the employee] the freedom to do and be" (Nussbaum, 2001, p.71). Instead of "measuring character in relation to a fixed-end goal" (more associated with normative theories), it enables character to be measured "in terms of how well it facilitates the maintenance of a community that fosters the development of human capabilities (Bertland, 2009, p.26).

Bertland (2009) argues that the combination of virtue ethics with a capabilities approach, gives the former a grounding in the human dignity and removes the need for employee capabilities to be linked to a specific, identified goal set by the organisation. Nussbaum's list of capabilities is wide ranging (Nussbaum, 2001, pp.78-81), and is intentionally so, in order to provide for different settings and contexts. The list, reflective of Aristotle's moral and intellectual virtues includes, for example, the capability to feel emotion and to develop a sense of practical reason. Nussbaum distinguishes the capabilities approach from other ethical theories by focusing on individual development. The development of a capability requires flexibility rather than a prescribed set of rules or duties (Nussbaum, 2001, p.98). This approach also echoes Kohlberg's work on moral development theory (discussed below, see p.66).

Solomon (1992, p.40) focuses on the importance that virtue ethics places on character and makes the link with the concept of professionalism; "What it means to be a professional is not simply being a profit maximiser but one who pledges to perform public service". Bertrand (2009, p.26) suggests that virtue in an organisational setting, therefore, becomes equated with the role of helping to "produce an environment in which the stakeholders of a firm are able to thrive". Again, this is highly reflective of the language of the SMCR and the FCA's Conduct Risk initiative and, more widely, of the focus on values and purpose within the UK banking industry, particularly since the financial crisis (see Introduction).

Deontology

Deontological ethical theories are justice-based and normative. They make a direct link between the ethical quality of an act and the fulfilment of a duty. There is much debate in the literature over the nature and source of moral and ethical duties. The question in this debate most pertinent to the study is whether morality is driven by a higher law or authority or by an inner sense of what is 'right'.

Plato and Aristotle both contend that morality is driven by the exercise of reason. Later, some philosophers such as Hobbes, argue that morality is fixed by a higher law and is God-given. Others, including Hume and Rosseau, exchange the concept of obedience to God for obedience to an inner morality. Hume, however, categorically rejects any link between morality and reason. Instead he considers moral judgement to be based on 'feeling' rather than rational thought; "more properly felt than judg'd (Hume, 1739).

Kant builds on the idea of an inner morality further and was, perhaps, the first to draw a direct connection between individual autonomy and morality. This connection gives rise to the concept of 'moral autonomy'. Kant's approach is built on the premise that we are all rational agents and that we all innately know what is consistent and inconsistent with fundamental moral duty. Kant refers to this fundamental moral duty as the 'categorical imperative' (see Schneewind, 1998,

p.515). For him, the categorical imperative is absolute and unconditional and must be obeyed in all circumstances.

Kant's concept of moral 'choice' is highly relevant in the context of the study as he distinguishes specifically between 'choice' based on pure reason and 'choice' based on impulse or wish. He describes the former as "free choice" and the later as "animal choice (arbitrium brutum)" driven by sensible impulse and stimulus (Kant, 1797). Human choice, for Kant, can operate at both of these levels and, although human choices may be shaped by impulses, they can still be pure and can still be determined "by pure will" (Kant, 1797).

Hegel (2002) supports this approach, but considers Kant's analysis to be incomplete because of the challenges associated with applying the categorical imperative in practical real-life scenarios with any certainty. He proposes 'Sittlichkeit' as the answer. In Sittlichkeit, our moral actions are also shaped by certain external forces and factors such as society and other institutions. Like Kant, Hegel believes freedom equates to rationality, but unlike Kant, Hegel argues that rationality is derived from the framework of the social institutions within which we operate (Hegel, 2002, pp.156-157). He suggests that we can define actions taken within social institutions as "an expression, or reflection, of universal moral law" (Hegel, 1975, p.93). This is instructive in an organisational context, where 'rationality' is potentially linked to the "expression, or reflection, of universal moral law" promulgated to employees by their organisation, for example in whistleblowing texts. This idea is discussed further under the heading 'Moral autonomy' below.

Consequential ethics

Consequential ethics (also referred to as results-based ethics) is a normative forward-looking and outcome-focused ethical theory. Here it is the consequences of one's actions that are used to judge their moral or ethical correctness. Stakeholder-orientated language is associated with consequential ethics; the stakeholders are those likely to be impacted by the consequences of the choices made. The stakeholders must be identified and their relevant interests balanced.

This approach is again highly reflective of the FCA's Conduct Risk initiative (see Introduction) which requires UK Banks to take decisions based on 'outcomes' as part of an "outcomes-focus philosophy" (Speech by Adamson, 2014).

There are many forms of consequential ethics, but perhaps the most prominent are utilitarianism and altruism. Utilitarianism contends that an action is 'right' if it results in the most happiness for the greatest number of people, whereas altruism contends that an action is 'right' if it will have the best consequences for everyone, except the person making the moral or ethical choice. The sacrifice of self-interest at the heart of altruism resonates well with Conceptual Discourse in relation to whistleblowing. Key elements of Conceptual Discourse here include danger and loss by the whistleblower who is driven by the desire to protect others from the damaging consequences of the wrongdoing.

Consequentialist theories have over the years been criticised for their disregard of moral development and character and their lack of ethical content (unless one includes the virtue of seeking to promote good outcomes for others) (Foot, 1978). It struggles to explain why an action is morally 'right' or 'wrong' and fails to instruct an individual on how to act, other than by reference to the potential outcome of their actions (Anscombe, 1958).

Moral autonomy

Moral autonomy requires a degree of self-governance exercised by a moral agent. DeGeorge (1992, p.59) defines a moral agent as "any entity that acts and is subject to ethical rules, is a rational being, and is not an agent for anyone or anything else". This definition contains the key elements of moral autonomy referenced consistently within the relevant literature; freedom and the capacity to make choices that are "autonomous and self-directed" (Rachels, 1997). This poses a challenge in the workplace as it requires organisations to allow "employees to behave in accordance with their conscience and in line with societal expectations" (Tsahuridu and Vandekerckhove, 2008).

If moral autonomy is predicated on moral choice, then it is problematic in the workplace where employees are required to act within the constraints of an organisation's systems and controls. In this context, the moral autonomy literature seeks to address the problem by attempting to deconstruct and re-frame the meaning of moral 'freedom'. Maclagan (2007, p.50), for example, adopts a broader interpretation of freedom rooted in Kantian philosophy. For Kant (1993), freedom is more than the freedom to make unfettered personal choices; it can also be the freedom to comply with a set of universally accepted standards of conduct, where those standards of conduct are internalised by the individual. Dodson (1997) interprets acceptance of universal standards of conduct as a form of "social contract" that enables individuals to operate in societies and communities, including organisations, whilst maintaining their moral autonomy.

Tsahuridu and Vandekerckhove (2008) explore the impact of institutionalised whistleblowing arrangements on the moral autonomy of employees and set out two diametrically opposing positions. Firstly, that they enable individual responsibility and moral autonomy on the part of employees. Secondly, that they "aim to protect organisations by allowing them to control employees and make them liable for ethics at work" (p.107) (see Responsibilisation above). Their study concludes that institutionalised whistleblowing arrangements can, in some instances, be justified as a means of promoting and safeguarding the moral autonomy of employees by allowing them to behave in accordance with their conscience. However, other studies suggest a link between responsibilisation and the suppression of employee moral autonomy (Vandekerckhove and Commers, 2004 and Mellema, 2003). In fact, Selznick (2002) notes that responsibility without autonomy is perhaps the worst of all worlds for an individual.

Lovell (2002, p. 65) notes that the suppression of moral autonomy may not always be visible or apparent - "it is not really happening, but it is". It may, for example, be cloaked in and delivered to employees through discourse and devices that appear to promote choice whilst actually suppressing it, such as decision-making frameworks. Decision-making frameworks provide a tool for dealing with ethical choices by providing a sequential set of filtering questions for employees to ask

themselves in order to reach an 'ethical' decision. They are used by organisations to direct employees and to achieve standardisation of response and certainty, whilst avoiding the need to prescribe the precise action to be taken in each and every ethically challenging situation. A failure to address each of the stages appropriately, or coming to the 'wrong' answer, may then be treated as a failure or ethical lapse. Decision-making frameworks attempt to control and prescribe moral and ethical decision-making within a framework that is ostensibly promotes moral autonomy. Here, again, Conceptual Discourse may be used to cloak prescription.

Moral and ethical decision-making, whether or not subject to the constraints of a pre-determined decision-making framework, requires a degree of moral development on the part of the employee. It is therefore instructive to consider moral development, starting with Kohlberg's seminal work in this area.

Moral development

Kohlberg (1984) conceptualises moral development as a series of progressive, constructive developmental stages. Experimental subjects are presented with a series of moral dilemmas and their responses categorised into one of six distinct stages of moral development. These stages are then grouped into three levels - pre-conventional, conventional and post-conventional.

Kohlberg's work has heavily influenced others researchers in this area. Rest and Narvaez (1994) provide a summary of Kohlberg's six stages which they have adapted specifically for a workplace environment. These are summarised in Figure 3 below. Their interpretation specifically focuses on cooperation and the operation of rights and duties in the types of complex relationships that operate in the workplace (Mason and Mudrack, 1997).

Pre-conventional Level	Conventional Level	Post-conventional Level
Stage 1 The morality of obedience: *Do what you are told.* **Stage 2** The morality of instrumental egoism and simple exchange: *Let's make a deal.*	**Stage 3** The morality of interpersonal concordance: *Be considerate, nice and kind: you'll make friends.* **Stage 4** The morality of law and duty to the social order: *Everyone in society is obligated to and protected by law.*	**Stage 5** The morality of consensus building procedures: *You are obligated by the arrangements that are agreed to by due process procedures.* **Stage 6** The morality of non-arbitrary social cooperation: *Morality is defined by how rational and impartial people would ideally organise cooperation.*

Figure 3:

Kohlberg's six stages of moral development adapted from Rest and Narvaez (1994) and Mason and Mudrack (1997)

The application of Kohlberg's stages of moral development in the workplace prompts a debate in the literature over how the lower and higher levels of moral development operate in bureaucratic, rule-bound environments. Lampe and Finn (1992) argue that a rule-orientated environment promotes rule-obedience (deonance), rather than principle-based reasoning, and therefore operates at the lower levels of moral development on Kohlberg's scale. However, a more Kantian approach to freedom (see the discussion above) offers a broader interpretation of compliance with organisational systems and controls that could potentially permit an employee who is following the rules to be operating at Kohlberg's higher levels. The qualification is that the rules must meet the Kantian criteria and be aligned to a set of universally accepted and internalised standards. This approach is reflected in the Rest and Narvaez (1994) interpretation of Kohlberg's Stages 5 and 6 in Figure 3 above. Rest and Narvaez include the concept of "arrangements that are agreed to by due process procedures" at Stage

5 and the phrase "morality is defined by how rational and impartial people would ideally organise cooperation" at Stage 6.

Here, Kjonstad and Wilmott (1995, p.448) refer to "empowering ethics", that focuses on "understandings", and "restrictive ethics", that focuses on "instructions". They recognise that this can be a difficult balance and argue that an over-reliance on a rules-based approach can "actually undermine the capacity to engage in moral reasoning". They suggest, however, that, with the right balance, "restrictive ethics" may play a role in triggering moral development (p.461). Reed and Anthony (1992, p.606) suggest that restrictive ethics removes the "essential difficulties of moral issues" by replacing them with "simple, understandable, definitional rules" and thereby removes the moral dilemmas requiring the need for "painful thought." The swapping of "painful thought" for a "routine bureaucratic response" describes Prescriptive Discourse well, replacing choice with instructions.

Obedience is closely aligned with the lower levels of Kohlberg's scale of moral development where decisions are self-serving and based purely on personal consequences in terms of reward or punishment. Lampe and Finn (1992) have argued that moral development in a rule-orientated environment promotes a Stage 3 or 4 moral development on Kohlberg's scale (i.e. rule-obedience) rather than Stage 5 principle-based reasoning. Interestingly, Weber (1990) finds that individuals exercise lower levels of moral development when responding to business-related ethical dilemmas than those with a wider societal impact.

Mason and Mudrack (1997, p.107) conclude that employees with the highest levels of moral development experience more conflict at work between their personal values and those of their organisation than those operating at lower levels. Posner and Schmidt (1987) argue that the pressure to compromise personal values for the good of the organisation may be strongest at the lower levels of the management hierarchy. One potential outcome of this may be a process of self-selection, resulting in employees with the highest levels of moral reasoning leaving unethical organisations, or indeed industries (see Jones, 1991 and Lee and

Mitchell, 1994), so that only those operating at the lowest levels of moral development remain and are therefore the ones promoted.

To conclude, the literature regarding the 'duty to act' in relation to whistleblowing at Step 3, is complex and contested, particularly in relation to institutionalised whistleblowing. Freedom of choice and moral autonomy, unfettered by contractual, regulatory or legal duties and framed in ethical language is indicative of Conceptual Discourse. This may extend to the framing of a right to blow the whistle, although this is problematic for Conceptual Discourse where that right is linked to an undertaking by an organisation to protect an employee from retaliation if they follow the organisation's whistleblowing arrangements. In contrast, contractual, regulatory or legal duties are indicative of Prescriptive Discourse. Such duties may, however, be cloaked in moral and ethical language and the language of choice more associated with Conceptual Discourse. This cloaking is promoted in part by the categorisation of whistleblowing as a duty to do good and the need to illicit an informative response under institutionalised whistleblowing arrangements to wrongdoing perpetrated by others. Prescriptive Discourse is also associated with responsibilisation and punishments for failing to comply with institutionalised whistleblowing arrangements.

Step 4: Retaliation

At Step 4, a prospective whistleblower-employee must address the question, "Am I protected from retaliation?"

As discussed in the Introduction, the financial services sector has a record of comparatively low levels of whistleblowing (Vandekerckhove, James and West, 2013, p.6) and comparatively high levels of fear of retaliation (Public Concern at Work, 2013). An insightful overview of the reasons for such low levels of whistleblowing in the sector and the types of retaliation experienced is provided in Kenny (2019).

Retaliation, also referred to in the literature as victimisation, can take many forms including, dismissal, redundancy, harassment and the withdrawal of promotion and training opportunities. Retaliation is a manifestation of the organisation, or other relevant fora (see discussion above regarding loci of loyalty), attempting to silence or discredit a prospective whistleblower-employee.

Mesmer-Magnus and Viswesvaran (2005) and Near, Dworkin and Miceli (1993) suggest that retaliation is likely to be more severe when the whistle is blown on wrongdoing that is connected to the main activity and purpose of the organisation. This directly links to the discussion of 'official goals' (Kerr, 1975, p.770) discussed above and, in relation to the UK banking sector, to the FCA's and PRA's focus on values, conduct and outcomes associated with the SMCR and the FCA's Conduct Risk initiative (see Introduction).

In relation to institutionalised whistleblowing, protection from retaliation may be linked, through reciprocity, to the right of an employee to blow the whistle (see discussion of duties and rights above at pp.46-7 above). The organisation (or potentially society or a regulator) grants an employee the right to blow the whistle and accepts an obligation for ensuring that the right can be exercised by employees without the fear of retaliation (Rose, 1996 in Moghaddam et al, 2000, p.276). The reciprocal obligation accepted by the organisation (society or regulatory) is, however, shaped and limited by the requirement for the employee to blow the whistle in a specified way through nominated channels (see discussion below on Step 5). The dilemma here, as discussed above, is that the employee must trust the organisation for this reciprocal relationship to operate effectively (Vandekerckhove and Commers, 2004, pp.229-230).

Reciprocal protection from retaliation is indicative of Prescriptive Discourse which seeks to specify the circumstances in which a whistleblower-employee is, and is not, protected from retaliation. The identification and prescription of the circumstances in which employees are protected is likely to be closely aligned with the descriptions of wrongdoing under Steps 1 and 2 discussed above.

The protection offered may take a number of forms. The establishment of institutionalised whistleblowing arrangements provides an opportunity for organisations to offer protection from retaliation formally, at a contractual level, or informally, through internal values and principles, beyond the level established by relevant regulations and legislation.

In contrast, Conceptual Discourse is not concerned with protection from retaliation. Conceptual Discourse acknowledges and accepts the dangers associated with whistleblowing. As discussed above, Foucault (2001, p.15) ties the moral qualities of the parrhesiastic whistleblower to 'courage'.

Step 5: Choice of action

At Step 5, a prospective whistleblower-employee must address the question, "What channels are open to me?

As discussed in the Introduction, whistleblowing is fundamentally an act of disclosure. A number of academics have, however, questioned whether whistleblowing is a one-off act of disclosure or whether it should more properly be viewed as a series of disclosures amounting to a process, rather than a discrete act (see, for example, Elliston, 1982, p.167). The literature also suggests that most whistleblowers do not see themselves as 'whistleblowers', especially at the early stages of the process (Vandekerckhove, James and West, 2013). Indeed, an employee's status may change from responsible and engaged employee, to reporter, to whistleblower during the process depending on the response of the organisation (see Vandekerckhove, Brown and Tsahuridu, 2014, Catlaw et al., 2014 and Vandekerckhove and Langenberg, 2012). Conceptualising whistleblowing as a process, further blurs the distinction between whistleblowing and other forms of reporting and escalation.

The approach taken by Mannion and Davies (2015, p.1) supports the view that the definition of whistleblowing is determined, at least in part, by the route chosen by the employee for their disclosure. As discussed above, a number of academics

contend that employees who make disclosures internally within their organisation pursuant to institutionalised whistleblowing arrangements are not 'whistleblowers' (see, for example, Andrade, 2015, p.323) but instead are making reports or escalating. They contend that whistleblowers must access external channels.

It is instructive to consider this aspect of the two seminal whistleblowing definitions used within this study, proposed by Near and Miceli (1985) and Jubb (1999). Near and Miceli (1985, p.4) include the phrase, "persons or organisations that may be able to effect action" and suggest that they may be located either inside or outside the whistleblower's organisation. They label both those who access internal and external channels as 'whistleblowers'. Jubb (1999, p.78) explicitly includes the phrase, an "external entity having potential to rectify the wrongdoing". Jubb (1999) also specifies that the disclosure must be one that "gets onto public record", thereby further emphasising the requirement for the disclosure to be external.

Conceptual Discourse at Step 5 is concerned with danger, criticism and truth. It is unconcerned with the disclosure channel and is, instead, focussed on the motive for the disclosure and the fulfilment of the role of the whistleblower. If whistleblowing is framed as an act of dissent, however, motivated by a desire to bring about change, it is perhaps more likely to take place outside the organisation, if not initially, then potentially at a later stage following a lack of response by the organisation. As discussed above, an external channel is more likely to be selected where an employee distrusts the systems and controls of an organisation. This is part of the potential paradox at the heart of institutionalised whistleblowing (discussed above, see pp.17-18 and p.38) that institutionalised whistleblowing arrangements are most effective where they are least needed (see Contu, 2014, Vandekerckhove and Tsahuridu, 2010 and Grant, 2002).

It is highly relevant here that the parrhesiastic whistleblower is not just disclosing a 'truth', but a particular type of 'truth'; one that the organisation is turning a 'blind eye' to or one that it is unwilling to act upon. This distinguishes the

parrhesiastic whistleblower-employee from a non-parrhesiastic one or an employee simply making an internal report. A parrhesiastic whistleblower-employee is in essence disclosing not one, but two, organisational failings. As Foucault (1983, p.83) puts it, parrhesia "does not exist where democracy exists". Where there is an open culture of trust within the workplace, there is no need for parrhesia as other forms of reporting and escalation are sufficient. Here, the phrase "speaking truth to power" is highly relevant; the whistleblower-employee must ensure that they are heard by someone in power, with the power to act. Accessing an external channel is one of the ways in which a whistleblower can exercise that power, for example via a regulator or the media (Mesmer-Magnus and Viswesvaran, 2005, Rothschild, 2013 and Verschoor, 2012). This is the case despite the fact that the people that a whistleblower may want to 'hear' their truth are inside their organisation.

Prescriptive Discourse at Step 5 focuses on three aspects of disclosure. Firstly, protecting the organisation by reducing the number of external disclosures. Secondly, prescribing the channel, or multiple channels, through which disclosures must be made and thereby distinguishing 'whistleblowing' channels from other types of reporting and escalation channels, typically as part of a tiered hierarchy. This opens up the potential for the channel to be used for whistleblowing to be specified and prescribed by an organisation under institutionalised whistleblowing arrangements and, further, for it to become part of the definition of whistleblowing under those arrangements. As a result, this potentially creates a direct linkage between the channel accessed by an employee for their disclosure and their protection by the organisation from retaliation. Georgina Halford-Hall, CEO of charity Whistleblowers UK (WBUK), has highlighted the problems that can arise here, "I know of one compliance officer fined by the FCA for making a disclosure to the wrong whistleblowing hotline" (Halford-Hall, 2018). Thirdly, requiring employees subject to institutionalised whistleblowing arrangements to make repeated disclosures (rather than a single one-off disclosure) through a tiered hierarchy or, indeed, requiring employees to make repeated reports until they are satisfied that the wrongdoing has been addressed. This goes beyond whistleblowing being conceptualised as a process

as it results in a failure by an employee who has not been sufficiently persistent being unable to discharge their duty to make a disclosure and remaining 'responsibilised' for the wrongdoing (see discussion on responsibilisation above).

MAPPING THE DISCOURSE

Figure 4 below maps the indicators of Prescriptive and Conceptual Discourse identified in Section 1 of the Literature Review to the frame in Figure 2.

The study uses the frame in Figure 4 below as the basis for the development of the discourse analysis coding frame discussed in the Methodology and Research Design.

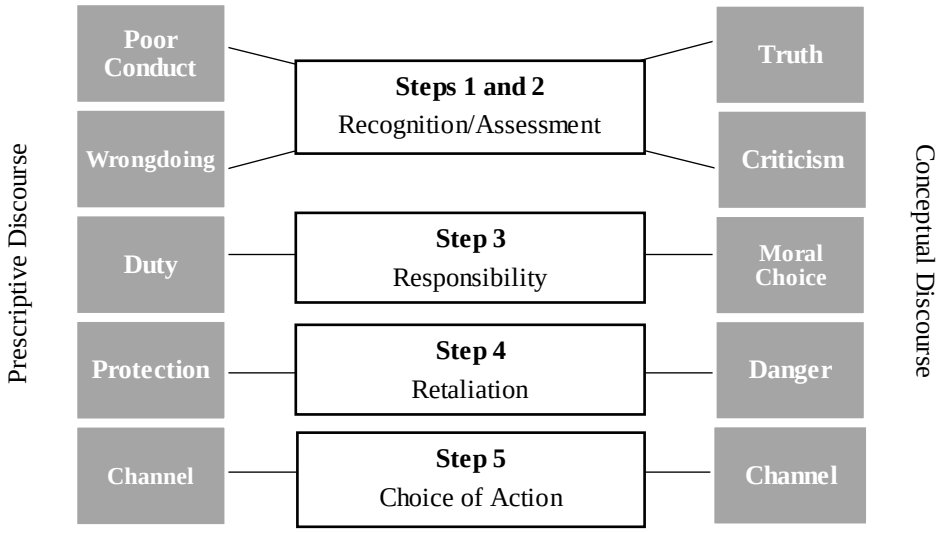

Figure 4:

Mapping of a Prescriptive Discourse and Conceptual Discourse to the frame adapted from Miceli and Near Stage 2 of the Whistleblowing Process (Miceli and Near, 1992, p.60) in Figure 2

SECTION 2

INSTITUTIONAL THEORY

Introduction

Institutional theory (see DiMaggio, 1988, DiMaggio and Powell, 1991, Scott, 1987 and Scott, 1994) is concerned with how organisations, situated within a particular social and cultural context, referred to as an 'organisational field', respond to pressures or actions within that field. The concept of the organisational field is used to delineate a bounded and shared environment within which there is a "collective understanding regarding matters that are consequential for organizational and field-level activities" (Wooten and Hoffman, 2008, p.138). The theory identifies three specific pressures, or actions, and terms them coercive, normative and mimetic (DiMaggio and Powell, 1983).

Coercive pressures or actions arise from "explicit regulatory processes, rule-setting, monitoring, and sanctioning activities" (Scott, 1994, p.52). These are particularly relevant in highly-regulated environments, such as banking.

Normative pressures or actions arise from values and norms that "introduce a prescriptive, evaluative, and obligatory dimension into social life" (Scott, 1994, p.54). By their nature, values and norms are contingent and, in an organisational context, can potentially operate at two levels. Firstly, at an aspirational level, commonly contained in values-based texts such as statements of values and principles (often contained in codes of conduct or similar). Secondly, at an actual level, as experienced by employees. There may, in practice, be a considerable gap between the two. DiMaggio and Powell (1983) argue that normative pressures and actions primarily develop from the process of professionalisation (see Section 1 of the Literature Review in relation to virtue ethics) and an attempt to gain legitimacy through standardisation, also referred to as 'best practice'. The development of best practice is particularly relevant in the context of meta-regulatory regimes (see discussion in the Introduction). Normative values are not directly associated with regulation, but there is potential for this where regulations

are concerned with conduct and culture, for example the FCA and PRA's SMCR (see Introduction). The line between coercive and normative pressures can become blurred.

Mimetic pressures arise from "the shared conceptions that constitute the nature of social reality and the frames through which meaning is made" (Scott, 1994, p.57). They drive homogeneity, or isomorphism (growing similarity) across an organisational field (DiMaggio and Powell, 1991, p.148) and the development of shared practice, which represents the "form best adapted to survival in a particular environment" (DiMaggio and Powell, 1983). Beyond survival, isomorphism can also be used as a means of securing 'social fitness' (Meyer and Rowan, 1977, p.351). Scott argues that mimetic isomorphism is a common response in the face of uncertainty or ambiguity, both highly applicable to the introduction of new regulations in relation to a complex issues such as whistleblowing. A common industry-wide response is a risk adverse strategy and an effective means of creating a degree of certainty (Kondra and Hinings, 1998); there is safety in numbers and risk in being an outlier.

Although institutional theory has historically focussed solely on collective organisational responses, neo-institutionalists have extended its application to explain the behaviour of individual organisations (see Checkland and Holwell, 1998 and Forrester, 1994). They argue that single organisations, like organisational fields, operate as systems and are therefore open to the same formative pressures and actions that operate collectively at macro level. This extension enables comparisons to be made between the responses of different organisations within the same organisational field and therefore the exploration of patterns and divergences.

A branch of institutional theory is concerned with discourse (see Phillips, Lawrence, and Hardy, 2004 and Zilber, 2008). Indeed, Foucault conceptualises organisations themselves as a form of discourse, dynamic and evolving, within a network of power-knowledge relationships (Foucault 1970 and 1988). Others conceptualise discourse as a means of exercising power amongst groups of

individuals within organisations (see Leclercq-Vandelannoitte, 2011, p.1250, Rose and Miller, 2008 in Leclercq-Vandelannoitte, 2011, p.1250 and Scott, 1994, p. 57).

Fairclough et al (2001) suggest that "discourse is the use of language as a form of social practice". As such, its scope is broad and includes "a belief, practice or knowledge that constructs reality and provides a shared way of understanding the world" (Wetherell, 2001). As such, discourse extends well beyond texts to include practices, talk and other interactions. In relation to institutionalised whistleblowing within organisations, discourse extends beyond texts and includes, for example, digital and face-to-face training materials, posters, formal conversations and interactions between colleagues (for example in meetings, emails etc.) and informal conversations between colleagues (see discussion of levels of discourse pp.32-33).

The study explores only one aspect of discourse, organisational-level texts. As the study's focus is on how organisations 'talk' about whistleblowing, the focus on texts produced and disseminated by them is appropriate. It is acknowledged, however, that this is only part of a bigger picture. This limitation was imposed by the decision to include only data in the public domain. The reasoning behind this decision is discussed in the Methodology and Research Design chapter, see p. 102, and Appendix 7). The author originally intended to include in the data a broader range of practices, talk and interactions in the data set, including posters, training materials and primary data gathered from interviews. This was not, however, possible due to the unwillingness of the UK Banks in the sample to take part in such a study due to concerns over confidentiality (see the Research Note in Appendix 7). The author considers that it would be of interest to extend the data to non-text discourse in a further study (see further discussion in the Key Findings and Implications chapter).

Phillips et al. (2004, p.638) argue that institutions are themselves "constituted by the structured collections of texts that exist in a particular field and that produce the social categories and norms that shape the understandings and behaviours of

actors". They suggest that organisational fields are "not characterized simply by a set of shared institutions, but also by a shared set of discourses that constitute these institutions" (p.647). Putnam and Cooren (2004, p.324) focus on the role of texts and argue that the "construction of social and organizational reality involves the production of oral, written, and even gestural texts" and that these together "participate in the constitution of organizations". An organisational field is therefore "as much about the practices of textual production and dissemination as it is about the study of the institutions and their patterns of diffusion across the field" (Phillips et al., 2004, p.647).

It must be acknowledged that institutional theory has its critics. One of the main criticisms is that the theory is too static and flat to encompass two important dynamic aspects of organisational behaviour; power and process. Lawrence (2008, p.171) argues that institutional theory fails to encompass the "fundamental role of power" and, as a result, lacks a critical dimension (see also Willmott, 2014). Zucker (1991, p.104) argues that the processes that underpin institutional theory remain hidden in a "black box".

Next, we will try and look inside the 'black box'.

INSIDE THE 'BLACK BOX'

Phillips et al (2004, p.635) respond to the critics of institutional theory and seek to provide an insight into the "dynamics of institutionalization". They argue that, despite the discursive approaches to institutional theory in the literature, few academics have systematically connected institutional practices to texts and discourse. They set out to "integrate concepts from discourse analysis and institutional theory to construct a model of the relationships among action, texts, discourse, and institutions" (p.635). They argue that discourse forms an intrinsic part of the process because "institutionalization occurs as actors interact and come to accept shared definitions of reality, and it is through linguistic processes that definitions of reality are constituted" (p.635) (see also Berger and Luckmann, 1966).

This view of the role of discourse closely aligns with the work of discourse analysts such as Fairclough (2003, p.22) who suggest that organisational discourse is shaped by "causal powers" such as relevant social structures and social practices and relevant "social agents" (see also Archer, 1995 and Sayer, 2000) and is increasingly utilised in organisational studies by academics who follow the "linguistic turn" (see, for example, Alvesson and Karreman, 2000, p.137 and discussion at p.78 above).

Phillips et al. (2004, p.641) propose that the pressures and actions within an organisational field trigger the generation of texts and that these texts become embedded in discourse and, over time, may produce a new discourse or institution. Their discursive model seeks to understand the connections and relationships between "texts, discourse, institutions, and action" and goes on to propose "a set of conditions under which institutionalization processes are most likely to occur" (p.635) by considering when these linkages are their most potent and therefore most formative.

Phillips et al. (2004) start by considering the generation of texts by a range of actors in response to pressures and actions within an organisational field. An example, relevant to the study, is the legislation and regulations produced in response to the cultural failings of the UK banking sector in the wake of the 2008 financial crisis (including, for example, the texts establishing the SMCR and the mandatory FCA and PRA rules on institutionalised whistleblowing arrangements). These primary legislative and regulatory texts in turn promote the generation of secondary texts by actors in the organisational field, such as those who advise on best practice and industry bodies. These primary and secondary texts, together, promote the generation of texts by individual organisations.

Figure 5 below shows the discursive model produced by Phillips et al. (2004, p. 641). An adapted version of this discursive model is used as a framework for exploring Research Question 2 of the study. Further discussion of the model and the analysis undertaken by the study is contained in Section 2 of the Methodology and Research Design.

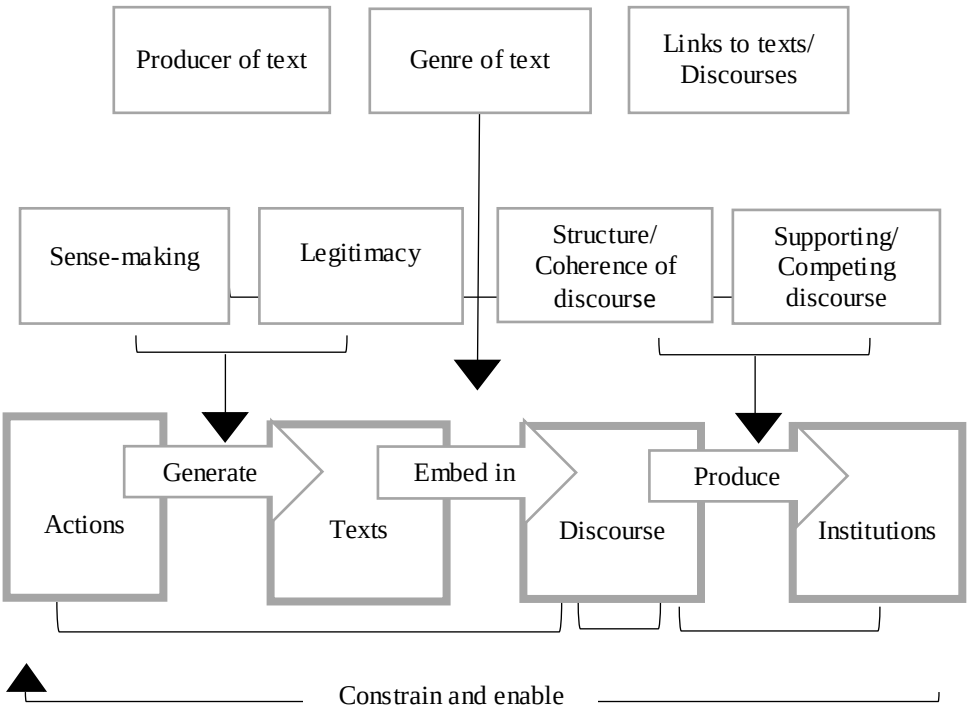

Figure 5: Discursive model proposed by Phillips et al. (2004, p. 641)

Actions and pressures and the generation of texts

Phillips et al. (2004, p.640) propose that these texts may influence and shape discourse by "leaving traces" in the discourse. By "leaving traces", texts take on a formative discursive role by "ruling in" certain ways of talking and acting in relation to a topic and "ruling out" others (see also Hall, 2001, p.72) and, as a result, "systematically form the objects of which they speak" (Foucault, 1979, p.49). Scott agrees and suggests that this formative process is reciprocal; in the "short run, actors create and modify meanings" and in the "long run, meanings create actors, both organizational and individual identities" (Scott, 2014, p.223).

Phillips et al. (2004, p. 640), accept, however, that not all pressures and actions within an organisational field (coercive, normative and mimetic) will generate texts that will "leave traces" and have an enduring influence on discourse (see also Ricoeur, 1981, p.134). They therefore explore the characteristics of the actions and pressures and the texts that are more likely to do so.

Firstly, the pressures and actions must generate texts that are widely disseminated and consumed within an organisational field (Phillips et al., 2004, p.640). Such texts are likely to be particularly potent when they undergo "successive phases of 'textualization' (Taylor et al., 1996) or 'recontextualization' (Iedema and Wodak, 1999) by being disseminated among multiple actors" (Phillips et al., 2004, p.640).

Secondly, the pressures and actions must demand material levels of "sense-making" (Phillips et al., 2004, p.640). Here, Phillips et al. draw on the work of Weick (1979 and 1995) in relation to "sensemaking" and Berger and Luckmann (1966) in relation to the "social construction of reality". Weick describes sense-making as the social process through which meaning is produced. Texts can therefore be both a vehicle for, and a product of, sense-making. Weick (1995, p.106) sees sensemaking as a linguistic process because "sense is generated by words that are combined into the sentences of conversation to convey something about our ongoing experience" (see also Brown, 2000, Donnellon, Gray and Bougon, 1986 and Rhodes, 1997).

Sense-making may be particularly called for at times of "novel moments in organizations [that] capture sustained attention and lead people to persist in trying to make sense of what they notice" (Weick, 1995, p.86) or at times of crisis (Gephart, 1993 and Weick, 1993). This is because sense-making takes place when there is uncertainty and where meaning has lost its coherence (see Scott and Lyman, 1968, Scott, 1991). The study proposes that the cultural changes demanded of the UK banking sector in the wake of the financial crisis (see Introduction) and the subsequent rule changes introduced by the SMCR and the new FCA and PRA rules on whistleblowing meet these criteria and demand sense-making across the organisational field.

Thirdly, Phillips et al. argue that the pressures and actions are more likely to "leave traces" (2004, p.640) in the discourse where they impact or threaten organisational legitimacy. A number of academics (see Berger and Luckmann, 1966, Boyce, 1996, Iedema and Wodak, 1999 and Taylor and Van Every, 2000) emphasise the role that legitimation plays in the process of social construction. O'Donovan (2002, p.349) also notes that legitimation "techniques/tactics will differ depending on whether the organisation is trying to gain or extend legitimacy, to maintain its current level of legitimacy, or to repair or to defend its loss of threatened legitimacy". Phillips et al. (2004) argue that texts have a role to play here as they can provide a way for organisations to manage or regain legitimacy through communication to relevant actors (see also Suchman, 1995). They argue that the production and dissemination of texts enable organisations to "signal to internal and external members of the organization that their activities are legitimate" (2004, p.642). Again, this is highly relevant to the cultural change required of the UK banking sector in the wake of the financial crisis where UK Banks were struggling to regain and maintain legitimacy and purpose through the dissemination of texts both to employees and shareholders as well as to clients and the public.

Embeddedment in discourse

Having established the types of pressures and actions most likely to generate texts that "leave traces", Phillips et al. (2004, p.643) go on to consider the factors that

are most likely to result in those texts having a longer term "discursive impact" through embeddedment in the discourse across an organisational field. Here Phillips et al. (2004, p.643) use the term 'embedded' to mean the extent to which texts are influential enough to shape discourse across an organisational field.

Taylor and Van Every (2000, p.96) suggest that "discourse is built up progressively" moving from the local, micro level to the global, macro level. Influenced by this approach, Phillips et al. (2004) suggest that texts are more likely to embed at a macro-level when actors at a micro level within individual organisations adopt and reproduce the same texts. There must be a connection between the "organizational conversations" at a micro level and macro level in the wider organisational field (Cooren and Taylor, 1997, p.223) for there to be potency.

Through this process, Phillips et al. (2004, p.643) argue that the embedded text is, "No longer simply an artefact of a particular network of actors; it has been transformed" and has become, "a *fact* - just part of reality in that organizational world" (see Taylor et al., 1996, p.27). Again, they consider the factors most likely to result in the embeddedment of texts in discourse. There are three and they relate to the producer of the text, the genre of the text and the consistency of the texts with the discourse inside and outside the immediate organisational field.

The first factor focuses on the producer of the text. Phillips et al. (2004, p.643) argue that the actor must be one that "warrant[s] voice" (see also Hardy, Palmer and Phillips, 2001 and Potter and Wetherell, 1987) and that therefore has "discursive legitimacy" (Hardy and Phillips, 1998, p.219) in the context. This gives them the status of a "legitimate agent" and gives them a "right to speak" (Taylor et al., 1996, p.26). Some academics refer to actors with this status as "institutional entrepreneurs" (see, for example, Greenwood and Hinings, 1996). DiMaggio and Powell (1983) give the example of a "state authority" that has "resource power", "formal authority" and that are "centrally located" in the organisational field (Phillips et al. 2004, p.643). It is proposed by the study that the legislator and relevant regulatory bodies meet these criteria and that leading

law firms and other bodies that act in an advisory capacity and promulgate best practice for the organisational field, such as charities and industry bodies, also "warrant voice".

The second factor is the form or genre of the text itself. Some genres are more suited to being "transformed and preserved in secondary textual forms" (Gephart, et al. (2000, p.247) than others (Phillips et al., 2004, p.643). Texts that are "recognizable, interpretable, and usable in other organizations, are more likely to become embedded in discourse" (Phillips et al., 2004, p. 644) as they can be used by organisations as tools for "interpretation, motivating them to use these texts and incorporate them into their own actions and texts" (Phillips et al., 2004, p.643). It is proposed by the study, that the legislator, relevant regulators, leading law firms and other bodies that act in an advisory capacity and promulgate best practice for the organisational field, such as charities and industry bodies, are in a position to generate texts of this genre. Model texts produced by these actors, such as pro forma policies and procedures, are particularly likely to meet these genre criteria. Texts of larger and respected organisations within an organisational field that are available in the public domain may also be relevant reflecting the movement from the local to global discussed above.

The final factor identified by Phillips et al. (2004) is the consistency of the texts within and without the immediate organisational field. They argue that texts that "draw on other texts within the discourse and on other well-established discourses are more likely to become embedded in discourse than texts that do not" as the effect of texts is cumulative (2004, p.644). Consistency "evokes understandings and meanings that are more broadly grounded (2004, p.644) and therefore more likely to 'stick'. Conversely, the existence of competing discourses in the form of "structured set[s] of interrelated texts offering alternative social constructions of the same aspect of social reality" disrupt embeddedment (Phillips et al., 2004, p.645). The potential fluidity of discourse means that it is subject to re-contextualisation (see above); meaning the re-shaping of an external discourse within a specific context, such as an organisational field or individual organisation (McLaren and Mills, 2008, p.308). McLaren and Mills (2008) focus on the

recontextualisation of awards discourse in the context of a specific conference setting and identify two distinct discourses – the discourse of the award-giving body and the discourse of the potential award recipients. The relevance of consistency is in line with Fairclough's (1995) proposition that references to other texts (intertextuality) and references to other discourses (interdiscursivity) impact the way in which texts are received and interpreted.

The emergence of an institution

The ultimate indicator of embeddedment is the emergence of a new institution. The final stage of the Phillips et al. (2004) model considers the circumstances in which actions and pressures that impact an organisational field will generate texts that become so embedded in discourse that a new institution emerges. Here Phillips et al. (2004, p.644) use the term "institution" to refer to a new "social construction". In the context of this study, we are therefore concerned with the production of a new social construction of institutionalised whistleblowing within the UK banking industry. Phillips et al. (2004, p.644) argue that, as discourse is "constituted by a set of interrelated texts", a coherent social construction is more likely to be produced where the discourse is both "coherent and structured" and therefore constitutes "a more unified view of some aspect of social reality, which becomes reified and taken for granted" (see also Fairclough, 1992; Foucault, 1965). Phillips et al. (2004) point to the consistency inside the organisational field as well as the broader discourse outside the organisational field. Coherence is created when multiple texts converge in "their descriptions and explanations of the particular aspect of social reality" (2004, p.644). Structure comes from the way in which texts "draw on one another in well-established and understandable ways" (2004, p.644). The more coherent and structured the discourse, the more "taken for granted" the social construction becomes and the "more difficult or costly it is to enact behaviors not consistent with it (2004, p.644). It therefore becomes self-enforcing. Conversely, contradictions in or across texts that constitute discourses make that discourse more "negotiable" and less likely to produce an agreed and generally accepted "social reality" (2004, p.644).

Outside the 'black box'

Institutional theory has been criticised for favouring a conservative approach (see, for example, Axelsen, 2018). In line with these criticisms, the author recognises that the framework adopted by the study could be accused of limiting itself to the exploration of a 'closed loop' that focuses solely on actors that have already gained legitimacy within a bounded organisational field, producing texts in recognisable formats that link to other legitimate texts. As such, it could be argued that the framework's scope, and as a result the study, excludes the wider social and political dimension within which the organisational field operates. It is important, therefore, to acknowledge that other forces may operate from outside the 'black box' that are potent in terms of sense-making and institution shaping.

In their model, Phillips et al. (2004) point to the consistency of the broader discourse outside the organisational field as one of the factors that promotes the emergence of a new institution. It is therefore acknowledged that actions and texts may emerge outside the bounded organisational field that shape the discourses within it.

The author, suggests, however, that where the discourses inside the organisational field become materially inconsistent with the discourses outside the organisational field, then there will be a destabilising effect on the discourses within the organisational field. Such destabilisation may then, in turn, lead to the generation of new texts by legitimate actors within the organisational field, thus fuelling a new cycle of discourse generation within the organisational field and the emergence of new discourses. It could be said that the poor conduct of banks during and following the financial crisis and the public's perception that employees turned a 'blind eye' to such conduct was the driver that led to the 'need' to change the institution of institutionalised whistleblowing within the UK Banking industry.

PRAGMATIC APPROACHES TO TEXTUAL DISCOURSE ANALYSIS

The analysis of discourse through the systematic analysis of text is an established research method closely associated with qualitative organisational studies. Discourses cannot be studied directly, but they can be studied through the texts that constitute them (see Fairclough, 1992 and Parker, 1992). Texts record discourses and make them accessible. Written texts, in particular, provide an accessible source of data that is also particularly "amenable to systematic analysis (Phillips et al., 2004, p.636 and see Phillips and Hardy, 2002 and van Dijk, 1997).

The Phillips et al. (2004)'s discursive model (see Figure 5 above) adopted by the study calls for the systematic analysis of texts that have been generated within an organisational field in response to pressures and actions within that field. The study explores the discourse of institutionalised whistleblowing in the UK banking industry through a pragmatic textual discourse analysis of the values-based and policy-based texts produced by UK Banks and the texts produced by relevant actors that "warrant voice" (Phillips et al., 2004, p.643) within the organisational field[28]. It then uses this analysis to consider the consistency of that discourse, points of divergence in the discourse and the potential emergence of a coherent "social construction" of institutionalised whistleblowing across the organisational field (Phillips et al., 2004, p.644).

Pragmatic approaches to textual discourse analysis support the proposition that the relationship between texts and social reality is complex and multifaceted (see discussion at pp.78-79). They are well-suited to the application of Phillips et al. (2004) discursive model and to critical discursive approaches that consider the inter-play of power relationships within organisations and their impact on discourse development. Discursive pragmatism extends beyond pure content

[28] In the study, these are identified as and termed Legal, Regulatory and Best Practice Actors (see Section 2 of the Methodology and Research Design.

analysis to relate "particular talk (interaction) to particular contexts (social structure) and also takes an interest in how 'talk' and meanings migrate between contexts" at both an inter- and intra-organisational level (Karreman, 2014, p.214).

The literature in relation to pragmatic approaches to textual discourse analysis is discussed further in Section 1 of the Methodology and Research Design.

SUMMARY

Overview

The study seeks to address the gaps in the literature in relation to pragmatic approaches to textual discursive studies of whistleblowing, particularly institutionalised whistleblowing, within a specific organisational field at a specific point in its legal, regulatory and cultural development. It also answers the call in Phillips et al. (2004) for more research into the role that texts play as the mediator between action and discourse and the processes underpinning institutional theory.

Section 1 of the Literature Review

Section 1 of the Literature Review addresses Research Question 1 of the study.

The literature contains a debate on the nature and efficacy of institutionalised whistleblowing. Some academics argue that institutionalisation renders the act of whistleblowing a form of escalation or reporting, rather than 'whistleblowing', as whistleblowing must operate outside the systems and controls of an organisation. The institutionalisation of whistleblowing also raises a potential paradox that institutionalised whistleblowing arrangements are only effective where there is trust between the prospective whistleblower-employee and their organisation; the very circumstances in which institutionalised whistleblowing arrangements are not required.

The literature suggests that the discourse of whistleblowing, particularly institutionalised whistleblowing, is bifurcated and is comprised of two separate and distinct strands, Prescriptive and Conceptual Discourse. It further suggests that this bifurcation is driven by the complex position of whistleblowing "as part of a wide spectrum of formal and informal behaviours that are embedded in local organisational context and cultures and enmeshed in both formal and informal governance arrangements and practices" (Mannion and Davies, 2015, p.2) and its operation at all three of Ellickson's (1991) levels of "behavioural constraint". As

a result of this positioning, the bifurcation in the discourse is likely to be particularly marked in highly-regulated sectors.

These two strands of discourse are explored in depth within the Literature Review by deconstructing whistleblowing into its constituent elements and mapping each element to the indicators of Prescriptive Discourse and Conceptual Discourse identified in the literature. This mapping is later used to inform the coding strategy for the study and to populate the coding frame discussed in Section 1 of the Methodology and Research Design.

Although the characteristics of these dual strands of discourse are clear and identifiable, the literature suggests that there are areas where the strands may intersect and where the discourses become intertwined.

Section 2 of the Literature Review

Section 2 of the Literature Review addresses Research Question 2.

It explores the discursive processes that underpin institutional theory, specifically the discursive model proposed by Phillips et al. (2004). In summary, Phillips et al. (2004, p.641) propose that the pressures and actions within an organisational field trigger the generation of texts which become embedded in discourse and may, over time, produce a new discourse, or institution, and, identify at each stage of the process, the "conditions under which institutionalization processes are most likely to occur" (2004, p.635).

This model is adopted by the study as the theoretical framework for exploring how the discourse of institutionalised whistleblowing within the UK banking industry has been shaped through a pragmatic textual discursive analysis of the texts produced by relevant actors within the organisational field. The study uses this analysis, together with the findings from Research Question 1, to explore the consistency of that discourse, points of divergence in the discourse and the potential emergence of a coherent "social construction" of institutionalised whistleblowing across the organisational field (Phillips et al., 2004, p.644).

The Literature Review helped the author to formulate the two Research Questions addressed by the study and provided the theoretical underpinning for the study. It also shaped the approach adopted in the Methodology and Research Design, namely the focus on whistleblowing discourse contained in values-based and policy-based texts produced and disseminated by UK Banks, the whistleblowing discourse contained in texts produced by other actors within the UK banking industry whose status gives them "discursive legitimacy" (Hardy and Phillips, 1998, p.219), the role of texts as mediator between action and discourse and the potential production of a new discursive institution of institutionalised whistleblowing within the UK banking industry.

METHODOLOGY AND RESEARCH DESIGN

OVERVIEW

The study' epistemological framework: Social constructivism

When designing any type of research, it is important to reflect on the meaning of 'knowledge'. The epistemological framework for the study is taken from a social constructivist approach to knowledge creation and development.

Social constructivism contends that knowledge develops through social interaction and discourse generation (Vygotsky, 1978). It is socially and culturally constructed through interactions in social contexts (Ernest, 1999 and Gredler, 1997).

Social constructivism approaches to social 'reality' complement both institutional theory and pragmatic approaches to discourse analysis. It encourages the close and detailed study of social phenomena in specific contexts, particularly social interactions in which discourse is generated, sustained or changed (Gergen and Gergen, 1991). It further suggests that reality is developed reflexively through the understandings and actions of relevant social actors[29] who shape it and, in turn, are shaped by it. As such, interpretive flexibility is central to social constructivism.

Artefacts, such as texts, are both culturally constructed and socially interpreted. Flexibility is manifested in how actors respond to and interpret artefacts as well as how they create them (Pinch & Bijker, 1987, p. 40). It is, therefore, relevant to reflect again here on the fact that discourses operate at multiple levels (see discussion on pp.32-33 of the study). In the study, the focus is on organisational-level texts and discourses. The data consists of organisational-level texts primarily

[29] According to Max Weber, an actor is 'social' if the acting individual takes account of the behavior of others (Secher, 1962).

written for and directed at employees[30]. This connects the study to the power dynamic of discourse development and role of privileged actors within individual organisations and the wider organisational field. It would, however, be of interest to conduct further studies that explore how employees respond to and interpret these texts (see further discussion in the Key Findings and Implications chapter).

As discussed in the Introduction, the author's own role within the UK banking industry has shaped the study and the research process. They are one of the actors co-constructing the understanding of whistleblowing within the industry that is the focus of this study. The potential implications of this, both positive and negative, are discussed in the Introduction, pp.10-11, and the Research and Methodology chapter, pp.117-118).

The Methodology and Research Design is divided into two sections.

Section 1 of the Methodology and Research Design

Section 1 seeks to addresses the gap in the literature in relation to pragmatic textual discursive studies of whistleblowing, particularly institutionalised whistleblowing, within an organisational field at a specific point in its legal, regulatory and cultural development. It draws on Section 1 of the Literature Review and addresses Research Question 1 of the study, "How do UK Banks 'talk' about institutionalised whistleblowing?"

The study systematically analyses the discourse contained in the values-based and policy-based whistleblowing texts produced and disseminated by UK Banks using the coding frame developed from the Literature Review. The coding frame contains the indicators for Prescriptive and Conceptual Discourse at each stage of the whistleblowing decision-making process from the perspective of a prospective

[30] Beyond employees, secondary recipients of the texts include a wide range of stakeholders including shareholders, customers, suppliers, auditors and, potentially, regulators and litigators.

whistleblower-employee in an organisation with institutionalised whistleblowing arrangements. The study also explores the internal and external congruence of the discourse in the texts, the presence of recurring narratives and tropes and how whistleblowing and the role of the whistleblower is named and framed.

As discussed in Section 2 of the Literature Review, the model proposed in Phillips et al. (2004) is built on the premise that social reality is created and shaped by "discursively constructed ensembles of texts" (Alvesson and Karreman, 2000, p.137); discourse "generates, not merely expresses" (Ashcraft, Kuhn and Cooren, 2009, p.2) and is not purely descriptive, but also formative. Such an approach encourages "(re)considering individual texts in the context of the whole and their social context (Heracleous and Barrett, 2001, pp. 755-778). The proposition that social reality is socially constructed and emerging suggests that its investigation must be anchored in a specific and bounded cultural context (see also Cresswell, 2013, p. 36-37 and Yilmaz, 2013).

Section 2 of the Methodology and Research Design

Section 2 draws on Section 2 of the Literature Review and addresses Research Question 2 of the study, "How has the discourse of institutionalised whistleblowing developed within the UK Banking sector?"

It answers the call in Phillips et al. (2004) for further research into the discursive processes underlying institutional theory, specifically the role of texts as mediator between action and discourse and the production of new discursive institutions. It utilises the discursive model proposed by Phillips et al. (2004) to trace the development and shaping of the discourse identified in response to Research Question 1. It identifies the actors within the UK banking industry that "warrant voice" (Phillips et al., 2004, p.643) and therefore have "discursive legitimacy" (Hardy and Phillips, 1998, p.219), termed Legal Actors, Regulatory Actors and Best Practice Actors in the study. It also sets out the approach taken by the study to systematically analyse the whistleblowing discourse contained in the

whistleblowing texts produced by these actors using the same coding frame discussed in Section 1 of the Methodology and Research Design.

SECTION 1

SAMPLE SELECTION

Introduction

The design of qualitative research, including qualitative case studies, does not rely on statistically representative samples. Instead, the ability to generalise the findings is linked not to the size of the sample, but to the patterns found in the data (see Baker and Edwards, 2012). Reliability is derived from the rigour of the data analysis and the linkage of the findings to theory (Campbell, 1975). It is the "intimate connection with empirical reality that permits the development of a testable, relevant, and valid theory" (Eisenhardt, 1989, p.532 and see Glazer and Strauss, 1967).

The study adopts a criterion-based approach to sample selection in relation to Research Question 1. The criterion being that the organisations must fall within the definition of a "UK Bank". All organisations meeting the criterion were included in the initial sample. Criterion sampling is particularly suited for studies that are information rich (Patton, 2002, p.238).

The large size of the sample enables an exploratory comparative approach, analysing the similarities, differences and patterns across several cases. The fact that the sample is well-defined and highly homogeneous enables a "detailed and nuanced analysis" (McLaren and Mills, 2008, p.308). It also makes it possible to search for outlier cases.

Definition of UK Bank

A definition of "UK Bank" had to be established within the context of the study. The starting point was the definition of 'Bank' as defined in the glossary of the Prudential Regulation Authority (PRA)[31] Rulebook. The PRA define a 'Bank' as:

[31] The lead regulator for banks in the UK.

> "A firm with a Part 4A Permission under the Financial Services and Markets Act 2000 [add reference] to carry on the regulated activity of accepting deposits and is a credit institution, but is not a credit union, friendly society or a building society".

In order to increase the homogeneity of the organisational field, the sample was then reduced through the application of two further criterion-based tests. Firstly, banks incorporated outside the UK were excluded. Branches of overseas banks operating in the UK are subject to a reduced regulatory regime under the rules of the FCA and the PRA and a number of both prudential and conduct-related rules are governed by their 'home state' regulator.[32] The study's focus is on organisations incorporated in the UK with the FCA and PRA as their 'home state' regulators. Secondly, those organisations with assets below £250m were excluded from the sample[33]. This test was applied on the basis that banks below this asset threshold are not covered by the mandatory rules on institutionalised whistleblowing introduced by the FCA and the PRA in September 2016. For banks below this asset threshold, the rules operate as guidance only.

The Bank of England publishes an official list of UK incorporated banks and updates it periodically. The initial sample for the study was drawn from the official list as at 31 October 2017. At that time, 119 organisations met the size criteria for the study. However, as discussed in Section 1 of the Methodology and Research Design chapter, p.103, and the Research Note in Appendix 7, an unforeseen delay at the data collection stage resulted in the need for a second sample to be taken. The final sample for the study was drawn from the official Bank of England list as at 30 June 2019. Appendix 1 contains the complete list. At that time, 126 organisations on that list met the size criteria for the study. A list of these organisations is contained in Appendix 2.[34]

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[32] The regulator in the jurisdiction in which the organisation is incorporated.

[33] The asset size of the organisations in the sample was checked against the total assets figure shown in the latest published Annual Report.

[34] There were four organisations that were on the Bank of England list as at 31 October 2017 that were no longer listed as at 30 June 2019. These four banks were excluded from the study.

THE DATA COLLECTION PROCESS

Introduction

The data analysed for the study is comprised of organisational level whistleblowing texts in the public domain; values-based texts, policy-based and a sub-group of hybrid policy/values-based texts produced and disseminated by the organisations in the sample.

In the early stages of the study's development, the researcher planned to collect both primary and secondary data directly from the organisations in the sample and from their employees. As discussed, in the Methodology and Research Design chapter, this would have enabled the author to include non-text discourses in the data collection process as well as employee-level discourses. However, early contact with the organisations established that they were extremely reluctant to participate in the study on grounds of confidentiality and the sensitivity of the topic. This degree of sensitivity was unexpected, but was instructive in itself. Further details are contained in the Research Note in Appendix 7.

The final data collection was conducted between June and August 2019. Only data dated after September 2016, or which explicitly refers to the post-September 2016 FCA and PRA whistleblowing rules, was included in the data (unless otherwise specified).

Policy-based texts are defined within the study as whistleblowing policies, whistleblowing procedures and governance statements that reference whistleblowing (such as those contained within an Annual Report or other similar texts). These texts are aligned with the operative goals of the organisation (see Kerr, 1975, p.770 and Section 1 of the Literature Review). Values-based texts are defined within the study as codes of conduct and other texts containing statements of organisational values and purpose. These texts are aligned with the official goals of the organisation (see Kerr, 1975, p.770 and Section 1 of the Literature Review). In order to accommodate hybrid texts aligned with both the official and

operative goals of the organisation and with elements of both values-based and policy-based content, a third sub-group of texts was also included in the data collection labelled, policy/values-based texts.

The fact that the data was limited to texts in the public domain meant that the data could be identified and collected in a systematic way.

Search protocols

The following protocols were used for the internet search for each of the organisations in the sample:

1. A general internet search using the name of the organisation plus "whistleblowing", "whistle blowing", "whistle-blowing", "speak-up", "speak up", "values" and "code of conduct"
2. A search of the organisation's website using the terms whistleblowing", "whistle blowing", "whistle-blowing", "speak-up", "speak up" "values" and "code of conduct" in the search field
3. A search of the organisation's latest Annual Report using the terms whistleblowing", "whistle blowing", "whistle-blowing", "speak-up", "speak up", "values" and "code of conduct" in the search field

THE DATA

Introduction

Data was available for 59 out of the 126 legal entities in the final sample. The 59 legal entities for which data was available represent a broad range of UK Banks in terms of their size, their business model and the nationality of their head office; 26 have a UK parent and 33 have a non-UK parent.

It is a feature of the banking sector that a number of banking legal entities operate within the same corporate group; the 59 legal entities represent 45 separate corporate groups. In the study, where separate legal entities operate under the same corporate group and share the same texts (as defined by the study), they have been analysed collectively.

The 59 legal entities were divided into 3 categories based on the data available to the study:

Category 1

This category is comprised of organisations for which a combination of values-based and policy-based texts (and potentially hybrid policy/values-based texts) were available to the study. The data available for this category made it possible to compare the discourse in the values-based and policy-based texts (and potentially hybrid policy/values-based texts) produced and disseminated by a single organisation.

Category 1 includes 18 separate legal entities belonging to 10 corporate groups. 3 of these legal entities are part of corporate groups with a non-UK parent and the remaining 15 legal entities are part of corporate groups with a UK parent. The data collected amounted to 25 separate texts. Appendix 3 contains the names of the entities included in Category 1, a brief description of each entity and a list of the type of texts (and the number of pages) included in the data.

Category 2

This category is comprised of organisations for which only values-based or policy-based (or potentially hybrid policy/values texts) were available to the study. As only one type of text was available for Category 2 organisations, it was not possible to conduct a comparison of the discourse in different types of text produced and disseminated by a single organisation.

Category 2 includes 23 legal entities belonging to 18 corporate groups. 17 of the legal entities are part of corporate groups with a non-UK parent and the remaining 6 legal entities are part of corporate groups with a UK parent. The data collected amounted to 25 separate texts. Appendix 3 contains the names of the entities included in Category 2, a brief description of each entity and a list of the type of texts included in the data.

Category 3

This category is comprised of organisations where the data available to the study was limited; meaning that there was less that one page of relevant text for the organisation. This could be limited policy-based, values-based or hybrid policy/values-based text or a combination of these.

Category 3 includes 18 legal entities belonging to 17 corporate groups. 13 of the legal entities are part of corporate groups with a non-UK parent and the remaining 5 legal entities are part of corporate groups with a UK parent. The data collected amounted to 21 separate extracts. Appendix 3 contains the names of the entities included in Category 3 and a brief description of each entity.

The next step was to consider how to analyse the discourse contained in these texts.

DISCOURSE ANALYSIS WITHIN THE STUDY

Introduction

Fairclough (2003, p.23) considers how "social agents texture text" and suggests that they do this through both their content choices, in terms of words and expressions, and their selection of delivery and presentation methods. Fairclough (2003, pp.24-6) focuses on the complex and multi-layered quality of discourse and suggests that there are three separate "orders of discourse"; 'genres', 'styles' and 'discourses'. 'Genres' are the vehicles for the spoken or written word and, in relation to institutionalised whistleblowing, potentially include texts such as policies, procedures, values statements, videos, intranet sites, desk drops, e-learning and classroom training courses. 'Styles' represent different "ways of being" and may include, for example, in relation to face to face delivery of discourse, the stance, gestures and attitude of the person in a meeting or classroom setting. 'Discourses' are shaped by language selection, visual imagery and the way in which text is presented.

Fairclough (2003, p.28) suggests that "when we analyse specific texts as part of specific events, we are doing two interconnected things". Firstly, we are looking at them in terms of meaning and how meaning is realised in terms of vocabulary, grammar and so forth. Secondly, we are making a connection between the concrete social event and more abstract social practices by asking which genres, styles and discourses are being used and how these influence the meaning. These aspects of genres, styles and discourses are not separate and distinct, but instead are in "dialectical relation" with each other (Fairclough, 2003, p.28). It is helpful to move through these layers of discourse to avoid "either an excessively deterministic or excessively autonomous view" and to take account of different perspectives (Alvesson and Karreman, 2000 and Conrad, 2004).

Fairclough (2003, p.22) draws a distinction between two different approaches to textual discourse analysis. The first focuses primarily on the text itself ('small d' discourse) whereas the second ('big D' discourse) focuses beyond the text to the

process through which that text is shaped by the relevant social structures and practices and the relevant social agents (the people) (see also Archer, 1995 and Sayer, 2000). 'Big D' approaches to textual discourse analysis take the "linguistic turn" (Alvesson and Karreman, 2000) are also referred to as 'discursive pragmatism' (Karreman, 2014, p.208). Discursive pragmatism acknowledges and incorporates the struggles, conflicts and dynamism at the heart of social constructivism (see discussion above at pp.95-96).

Discursive pragmatism is closely aligned with critical approaches that argue that discourse is shaped through a process of conflict or struggle (see Grant et al., 1998) and the creation of a discursive hiatus "within which agents can act self-interestedly and work toward discursive change in ways that privilege their interests and goals" (Phillips et al., 2004, p.637 and see also Mumby and Clair, 1997, Alvesson and Karreman, 2000, Phillips and Hardy, 2002 and Wetherell, 2001).

Discursive pragmatism extends beyond pure content analysis to relate "particular talk (interaction) to particular contexts (social structure) and also takes an interest in how 'talk' and meanings migrate between contexts" at both an inter- and intra-organisational level (Karreman, 2014, p.214). As discussed in Section 2 of the Literature Review, Phillips et al. (2004) suggests that the dynamic quality of discourse is particularly relevant during periods of ambiguity or uncertainty. During these times, discourse "rules in certain ways of talking and acting in relation to a topic and rules out others" (Phillips et al., 2004, p.636). This is illustrated in Hardy and Macguire's (2016) informative study of the discourse of risk. They propose that the discourse of risk is "constituted by texts and practices that systematically bring 'risk', as an object of knowledge, into existence" (p.82).

Pragmatic textual discursive studies of policy content

The literature contains a number of content analyses of whistleblowing legislation and regulation and organisational level policies and procedures (see, for example, Hassink and Bollen, 2007 and Vandekerckhove, 2006). It is contended by the study, however, that there is a gap in the literature in respect of pragmatic textual

discursive studies of the texts generated and disseminated in response to the institutionalisation of whistleblowing[35]; particularly studies that consider an entire organisational field.

As a result of this gap, the study draws on pragmatic textual discursive studies concerned with policy formation more widely, both political and organisational. Policy formation (widely defined here to include both values-based and policy-based texts as defined in the Methodology and Research Design) is an appropriate lens for exploring texts produced by organisations, especially in a context where complex power-knowledge relationships may be at play. As discussed above, pragmatic textual discursive studies are aligned with critical discourse analysis and therefore with the exercise of power by privileged social actors who have the opportunity to construct and shape the discourse. The choices made by privileged social actors shape the discourse not only through the words that they select, but also through presentation and communication decisions (see Fairclough, 2003 and Merleau-Ponty, 1964).

The following aspects of policy analysis in pragmatic textual discursive research have influenced the study and have been used in the data analysis (see the Methodology and Research Design chapter).

Congruence

Karlsson et al. (2017) analyse information security policy documents produced by a health care organisation. As information security policies are drafted within a

[35] One example can be found in Teo and Casperez (2011)'s exploratory case study of whistleblowing practices in a financial services organisation in Australia and predominantly uses data collected from a series of semi-structured interviews. It considers "dissenting discourse" (p.247) as an alternative to the whistleblowing/silence dichotomy suggested by Miceli and Near (1992) and the positioning of whistleblowing as a "covert means for employees to sustain a positive organisational culture".

pre-existing and external framework of security standards and guidelines, there are parallels between some aspects of Karlsson et al. (2017) and this study.

The focus of Karlsson et al. (2017, p.271) is on the consistency, or congruence, of the policy content, both the "internal congruence" (within the document itself) and the "external congruence" (with external sources, including other relevant policies and procedures within the organisation and relevant laws and regulations). In relation to internal congruence within individual documents, Karlsson et al. (2017) consider, in particular, the coherent and consistent use of definitions, terminology and descriptions.

This approach is particularly instructive when comparing multiple texts at both a micro and macro level. Karlsson et al. (2017, p.272) also explores the inconsistencies between the "regulative" content of formal texts and the "educational" materials used to communicate them. There are parallels here with the policy-based and values-based texts in the study.

Framing and naming

The way in which a problem or situation is framed and named influences how people interpret or process information about it. Framing is a way of setting the agenda and the importance of framing has been explored by a number of academics in the context of policy creation (see for example, Bateson, 1955 and Goffman, 1974).

Frames can operate as discursive 'tools' that aid, and indeed drive, the understanding of a problem or situation (Goffman, 1974, p.8). Rein and Schön (1993, p.146) consider the normative and formative quality of policy frames and describe them as a way of, "selecting, organizing, interpreting and making sense of a complex reality to provide guideposts for knowing, analyzing, persuading and acting".

This formative power means that they can be used by policy-makers to anchor a problem or situation within a particular social reality, thus favouring a particular

social reality or perspective (Baumgartner and Mahoney, 2008). In other words, "Whatever is said of a thing, denies something else of it" (Rein and Schön, 1977, p.239). Policy makers are privileged here as they select the frame which enables them to position a problem or situation in a particular way and to drive the discourse in a particular direction.

Coherence, discussed above in relation to policy content, is also relevant in relation to framing (Hajer and Laws, 2006, p.257). Frame coherency adds strength and efficacy when communicating beliefs in a policy (Chong and Druckman, 2007), particularly when establishing the definition of the problem, interpreting the cause, making moral evaluations and recommending responses (Entman, 1993, p.52 and Tewksbury and Scheufele, 2009, p.24). The combination of multiple frames proposed by different stakeholders may lead to "struggles over the naming and framing of a policy situation […] (as well as) symbolic contests over the social meaning of an issue domain, where meaning implies not only what is at issue but what is to be done" (Schön and Rein, 1994, pp.28-29). Policy actors, at a micro as well as macro level within an organisational field, may therefore compete for their frame to become dominant in order to increase consistency and claim a "policy monopoly" (Baumgartner and Jones, 1993, p.6). The concept of competing frames resonates with the dual Prescriptive and Conceptual Discourses identified in this study and discussed in Section 1 of the Literature Review.

Decker (2017, p.130) suggests that policy frames only change when there is a shift in political power or external events force the adoption of a new frame in relation to policy issue (see also Schön and Rein, 1994). This is relevant in relation to the creation of a new institution of institutionalised whistleblowing within the UK banking industry at the final stage of the Phillips et al. (2004) discursive analysis model.

The clarity and ambiguity of frames is also discussed in the literature. A number of academics have considered why ambiguity emerges in policy frames, with particular reference to political policies (Stone, 1988, Yanow, 1996 and Hajer and

Wagenaar, 2003). Two potential explanations for ambiguity in political policies have been put forward that may apply more widely in relation to other types of policies. The first looks to the presence of 'bounded rationality' (Simon, 1957 and March, 1978). Bounded rationality promotes ambiguity where policy makers are making decisions based on information that is "limited, uncertain or contradictory" as "ambiguous framing reflects uncertainties in the future consequences and preferences related to the problem" (Decker, 2017, p.131 and see March, 1978). The second sees ambiguity as a means to "placate multiple political actors in a policy controversy" and to resolve conflict or political differences (Stone, 1988, p.157). Newman (2013, p.105) suggest that ambiguity may, on occasion, be a deliberate strategy to deal with contested policy issues.

Schön and Rein (1994) focus on public policy controversies and argue that "frames" are critical to the study of controversy. Schön and Rein (1994, pp.3-4) distinguish between policy disagreements, where the question can be resolved by examining the facts, from policy controversies, where the question is "immune to resolution by appeal to the facts". They argue that policy controversies are "disputes in which the contending parties hold conflicting frames" and that "such disputes are resistant to resolution by appeal to facts (…) because the parties' conflicting frames determine what counts as a fact and what arguments are taken to be relevant and compelling" (p.23). Schön and Rein (1994, p.xiii) goes on to distinguish between "Policy Frames" that provide "a normative-prescriptive story that sets out a problematic policy problem and a course of action to be taken to address the problematic situation" (Rein and Laws, 1999, p.3) and "Institutional Action Frames" that provide "the beliefs, values, and perspectives held by particular institutions and interest groups from which particular policy positions are derived" (Schön and Rein (1994, p.xiii). These headings reflect Kerr's (1975) "operative" and "official" goals, and the positioning of whistleblowing under these goals, discussed in Section 1 of the Literature Review.

Dunford and Jones (2000) also explores framing through narrative and uses a pragmatic discourse approach to study the response of three organisations to a period of deregulation through the analysis of the content of corporate training

videos and other secondary data sources. They examine "recurring narrative" and, in particular, the use of metaphor, to communicate the change process (see also Reissman, 1993 and Pentland, 1999). They identify the use of phrases such as "The 1,000-day Journey" and "We Must Stand on our Own Two Feet" and repeated themes and patterns of language. Gasper and Apthorpe (1996, p.9) also focuses on the use of stories and narratives to present and deliver messages within or about policies and suggest the phrase "policy narrative" to label this approach. Roe (1989) applies policy narrative structures to folktales in which a 'hero' tackles the problem to be addressed by the policy. The use of stories and narratives can be extended to the use of tropes (figures of speech that are not literal in their meaning), metaphors and other similar rhetorical devices. Alford (2001 and 2007) employs a similar narrative analysis approach to study how whistleblowers tell their own stories.

The process of naming is similar to framing but focuses more narrowly on the selection of specific words. Naming may operate within and support a particular frame. Gasper and Apthorpe (1996, p.6) discuss the importance of word selection in policy development and the concept of creating "frames" that can then be filled with distinct key "concepts" that can be separately identified and "named". They illustrate the power of "naming" through the example of "naming" the "rural poor" as "peasants" or the "landless" and the implications of such naming choices. Taylor (2013, p.18) agrees and suggests that "meanings will be created and changed in the process of communication". In relation to policy writing, she illustrates the relevance of word selection with the example of the choice between the phrases "terrorist" and "freedom fighter". Arnold (1937, pp.167-79) applies a similar approach to word selection within policies, referring to "polar words" that indicate clear language choices in relation to key concepts.

Criticisms of textual discursive analysis

It must be acknowledged that there are a number of criticisms in the literature of textual discursive research approaches. Alvesson and Karreman (2011, p.1196) argue that there is a risk of too much emphasis being placed on discourse; "social reality may be constructed through discursive processes but this does not

necessarily make that particular aspect of social reality always the most important and interesting". It is argued that this criticism can be mitigated by ensuring that discourse analysis is positioned within its wider social context. This study addresses this criticism by anchoring its analysis within the wider legal, regulatory and cultural environment in which the organisational field being studied operates.

Other critics of textual discursive studies argue that they are not sufficiently analytically robust and are not subject to "explicit and systematic analysis" … "based on serious methods and theories" (van Dijik, 1990, p.14). To counter these potential weaknesses, particular attention has been paid in the study to the systematic collection and analysis of the data through systematic coding using a coding frame developed from the literature (see Figure 6 below). The researcher has also ensured that the study has firm foundations in theory; the coding frame has been developed directly from the Literature Review (see Topf, 1994 and Krippendorf and Bock, 2008).

It should also be remembered that inconsistencies within qualitative studies need not be weakness; they could instead present an avenue of further exploration that serves to deepen the analysis.

The next step was to formulate a coding strategy and frame to be used by the study.

CODING STRATEGY AND FRAME

Initial coding frame and pilot

The coding strategy for the study is deductive and thematic. The content of the coding frame emerged directly from Section 1 of the Literature Review.

Coding techniques are used in discursive analysis to reduce the data without losing richness and depth, and therefore meaning. Coding involves categorising aspects of texts, such as words, phrases, themes and concepts (see Saldana, 2013), in a systematic way based on the fact that they are representative of the same phenomenon.

The study adopts a manual coding approach, labelling text manually, highlighting key words and noting analytic ideas and concepts (see Bryman, 2008). A manual approach was possible due to the manageable levels of data. This approach enabled a subtle and deep analysis of the discourse.

Deductive coding approaches can be criticised for being non-responsive to important themes that emerge from the data, but are not included in the pre-defined code. The researcher therefore remained alert to the richness of the data and to new themes that were not captured in the initial coding frame. A pilot was also carried out (see discussion of the pilot below).

The initial version of the coding frame developed for the study is contained in Appendix 4. It was constructed from the five steps - recognition, assessment, responsibility, retaliation and choice of action - taken from the model adapted from Stage 2 of Miceli and Near's Whistleblowing Model (1992, p.60) and mapped to the indicators of Prescriptive Discourse and Conceptual Discourse explored in Section 1 of the Literature Review (see Figure 2, p.41). In the coding frame, numbers are assigned to the indicators of Prescriptive Discourse and letters are assigned to the indicators of Conceptual Discourse. The coding frame is

hierarchical with the five steps as the main coding elements and the numbers and letters as sub-codes. The sub-codes provide granularity and enable specific aspects of Section 1 of the Literature Review to be explored.

HSBC, a Category 1 organisation in the study, was used to pilot the coding strategy and coding frame. It was chosen as a suitable pilot because of the high level of the data available to the study for the organisation. The populated analysis table (discussed below) for HSBC is contained in Appendix 5. As a result of the pilot, the coding frame was reduced and simplified. Firstly, the pilot suggested that "Wrongdoing" encompasses both recognition and assessment and so these two steps were combined in a single step. Secondly, the pilot suggested that "Retaliation" and "Non-retaliation were inextricably linked and therefore "Retaliation" was re-labelled as "Protection". Thirdly, "Choice of action" was replaced with "Channel" as "Choice of action" was encompassed under "Responsibility" and "Channel" was more descriptive of the options open to whistleblower-employee at that final step. Finally, the sequence of the steps was reordered to better reflect the flow of the texts analysed in the pilot.

Final coding frame and coding process

As a result of the pilot, the final wording of the four steps in the coding frame used for the study were changed to:

1. Wrongdoing: Am I concerned?
2. Protection: Am I protected?
3. Responsibility: Why should I act?
4. Channel: What should I do?

All of the texts collected as part of the data collection were accessed electronically and saved. The content was then coded using the coding frame. The presence of Prescriptive Discourse and Conceptual Discourse was marked up using the lettering and numbering system in the coding frame. For Category 1 and 2 organisations, the coded content was then used to populate analysis tables. For the

Category 3 organisations, the coded content was cut and pasted into a separate document, rather than an analysis table.

In addition to coding the content of the texts in the sample, further analysis was carried out informed by the literature on pragmatic textual discursive studies of policy content (see pp.107-113 above). As a result, the following analysis headings were added to the coding frame. These were not coded in order to enable deep and subtle analysis.

Internal congruence

The four internal congruence tests set out in Karlsson et al. (2017) were applied to all of the texts in the data. These are incomplete and inconsistent definitions, inconsistent use of terminology and descriptions, inconsistent descriptions and unclear references. Internal congruence was analysed through the comparison of the coding assigned within single texts.

External congruence

External congruence was analysed through comparing the coding of more than one text produced by a single organisation. This was only possible for Category 1 organisations as discussed above.

Framing

The study considers the way in which the whistleblowing 'problem' and the role of the whistleblower are framed (see above).

Naming

The study considers the use of "recurring narrative" and tropes in the data. Specifically, it explores how 'whistleblowing' is named within the texts (see above).

The final coding frame is shown in Figure 6 below.

Step 1: Wrongdoing: *Am I concerned?*	
Prescriptive Discourse indicators: Exclusive definition	**Conceptual Discourse indicators: Truth, criticism and dissent**
1. Exclusive and detailed, legalistic definition of the type of 'wrongdoing' that an employee 'can' blow the whistle about i.e. distinct sub-set of poor conduct	A. Inclusive: Absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)
Step 2: Protection: *Am I protected?*	
Prescriptive Discourse indicators: Non-retaliation in certain circumstances	**Conceptual Discourse indicators: Danger**
2. Circumstances in which the employee is protected 3. Reciprocal language linking disclosure to protection	D. Recognition of the need for courage
Step 3: Responsibility: *Why should I act?*	
Prescriptive Discourse indicators: Legal, regulatory, contractual duty	**Conceptual Discourse indicators: Moral choice**
4. Mandatory employee duty (4a contractual, 4b legal and 4c regulatory) 5. Responsibilisation (i.e. punishment imposed for failing to blow the whistle) 6. Punishment for malicious reports 7. Good faith of employees explicably required 8. Whistleblowing as a risk management tool (including reputational risk management) 9. Loyalty to the organisation (solely to the people and artefacts) 10. Use of a decision-making framework or similar device provided to direct choice	E. Freedom and choice F. Ethics and morality G. Rational loyalty (i.e. to the values of the organisation, not its people or artefacts)
Step 4: Channel: *What should I do?*	
Prescriptive indicators: Channel within the systems and controls	**Conceptual indicators: Channel not part of the systems and controls**
11. Definition of whistleblowing shaped by or linked to the channel used to report wrongdoing 12. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 13. Repeated disclosures within the systems and controls required i.e. whistleblowing as a process	H. Purpose of whistleblowing means that the disclosure is not linked to the systems and controls of the organisation
Additional analysis	
Congruence	
Internal congruence External congruence (where applicable)	
Framing	
How is the problem of whistleblowing framed? How is the role of the whistleblower framed?	
Naming	
Recurring narratives and tropes? How is whistleblowing named?	

Figure 6:

Coding frame used in the study

FINAL POINTS

Potential for unconscious bias

The author discusses her involvement in the UK financial services industry in the Introduction (see pp.10-11) and acknowledges that this may impact her ability to approach the study with a 'neutral gaze' (Butler, 1993, p.136). Although this can be a positive factor when conducting qualitative research, it is also important to be mindful of the possibility for unconscious bias tainting the analysis. To address this risk, the author was mindful of the importance of applying an appropriate level of challenge at every stage of the Methodology and Research Design. For example, care was taken to ensure that the coding frame was strictly developed from the literature review, a pilot was carried out and the data analysis was carried out with systematic rigour.

Potential weaknesses in the data collection

It is acknowledged that there may be potential weaknesses in the data collection. Firstly, data was not available in the public domain for all of the organisations meeting the sample selection criteria. Secondly, as discussed above, the study relies solely on data that is in the public domain and accessible via the internet. It is acknowledged that this limitation means that the data analysed for the study for the organisations in the sample may be incomplete. The organisations in the sample may have additional policy-based and values-based texts that are not included in the data collection for the study, including employee communications and training materials. This weakness may be particularly relevant for the non-UK-parented organisations where the data is generally in group-level documents, such as a group code of conduct or group policy. This means that the study may not have had access to some UK-specific material on whistleblowing produced by the UK entity in the group. This observation is addressed further in Section 1 of the Data Analysis and the Key Findings and Implications.

These potential weaknesses have been partly controlled for within the study through the inclusion of strictly comparable data for each of the organisations in the sample. As a result, it is argued that the data collected provides an instructive 'snap shot' of whistleblowing discourse of UK Banks as at the time of the data collection.

Research ethics

As a number of organisations in the sample are clients of the author's employer, meticulous steps were taken to ensure that only data in the public domain and collected as part of this study were included in the study. The board of the author's employer were fully informed of the scope and nature of the research.

SECTION 2

SAMPLE SELECTION

The design of qualitative research, including qualitative case studies, does not rely on statistically representative samples. Instead, the ability to generalise the findings is linked not to the size of the sample population, but to the patterns found in the data (see Baker and Edwards, 2012). Reliability is derived from the rigour of the data analysis and the linkage of the findings to theory (Campbell, 1975). It is the "intimate connection with empirical reality that permits the development of a testable, relevant, and valid theory" (Eisenhardt, 1989, p.532 and see Glazer and Strauss, 1967).

Section 2 of the Literature Review explores discursive approaches to neo-institutional theory and discusses the discursive model proposed by Phillips et al. (2004, p.641). This model seeks to map the process through which pressure, or actions, within an organisational field may trigger the generation of texts which in turn may become embedded in discourse and may, over time, produce a new discourse, or institution. At each stage of the process, Phillips et al. (2004, p.635) identifies the "conditions under which institutionalization processes are most likely to occur" because they are at their most potent and most formative. The final stage of the model is the production of a new institution, in the study, an institution of institutionalised whistleblowing in the UK banking industry.

The study uses a criterion-based approach to sample selection (Jacobs, 2013). The selection criteria adopted in response to Research Question 2 is determined by the generation and embeddedment stages of the discursive model proposed by Phillips et al. (2004) and discussed in Section 2 of the Literature Review. Specifically, it is comprised of texts produced and disseminated by actors within the organisational field with "discursive legitimacy" and a "right to speak" (Taylor et al., 1996, p.26). In the study, the 'action' prompting the generation of the texts is the introduction of the mandatory institutionalisation of whistleblowing for UK Banks, set within its wider legal, regulatory and cultural context (see discussion

in the Introduction); an action calling for sense-making within the organisational field (Taylor et al., 1996, p.26, Hardy and Phillips, 1998, p.219 and Phillips et al., 2004, p.641). Such texts are likely to be particularly potent when they undergo "successive phases of 'textualization' (Taylor et al., 1996) or "recontextualization" (Iedema & Wodak, 1999) by being disseminated among multiple actors" (Phillips et al., 2004, p.640).

The study identifies three groups of actors who are producers of texts with "discursive legitimacy" and whose texts are likely to be subject, because of their status, to "recontextualization". These groups are termed A. Legal Actors, B. Regulatory Actors and C. Best Practice Actors in the study.

A. Legal Actors

The Legal Actors included in the study are the Parliamentary Commission on Banking Standards (PCBS) and the UK legislators.

(1) The Parliamentary Commission on Banking Standards (PCBS)

The PCBS was established by Parliament in July 2012 to conduct an inquiry into professional standards and culture in the UK banking sector and to make recommendations for legislative and other action. Their recommendations were published in a report, entitled Changing Banking for Good, on 19 June 2013. These recommendations were subsequently passed into legislation in Part IV of the Financial Services (Banking Reform) Act 2013. Final versions of the rules implementing the legislation within the FCA and PRA Handbooks were published in July 2015.

(2) The UK legislators

The legislators, or government, are included here as Legal Actors in their role as authors of the UK whistleblowing legislation, the Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA) (referred to collectively in the study as PIDA/ERRA). This text, establishes the legislative framework for whistleblowing in the UK.

B. Regulatory Actors

The Regulatory Actors included in the study are the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

(1) The Financial Conduct Authority (FCA)

The FCA is the conduct regulator for the UK banking industry.

(2) The Prudential Regulation Authority (PRA)

The PRA is the prudential regulator for the UK banking industry.

C. Best Practice Actors

The Best Practice Actors included in the study are the Chartered Institute for Securities and Investments (CISI), the Banking Standards Board (BSB), Protect (formerly Public Concern at Work) and leading law firms advising UK Banks on their institutionalised whistleblowing arrangements. Interestingly, the FCA Handbook suggests that UK Banks should "… draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations" (FCA Handbook, SYSC 18.3.2R(1)).

(1) The Chartered Institute for Securities and Investments (CISI)

The CISI is a UK-based global professional body for those who work in the financial and investment industry, including banks. It aims to set standards of conduct and ethics for participants in the securities and investments industry, and to provide qualifications for such professionals.

(2) The Banking Standards Board (BSB)

The BSB was established in April 2015 to promote high standards of behaviour and competence for banks and building societies operating in the UK. It is a private sector body funded by membership subscriptions. It was established to provide challenge, support and scrutiny for organisations committed to rebuilding the sector's reputation in the wake of the financial crisis.

(3) Protect (formerly Public Concern at Work)

Protect is a UK charity that provides advice to whistleblowers and advice, training and support to organisations in relation to whistleblowing. There are a number of whistleblowing charities in the UK, but, as Protect is referenced in the FCA guidance as a source of information and guidance, it was selected for inclusion in the sample for the study.

(4) Leading law firms

In order to identify the leading law firms that advise UK Banks to be included in the study, an internet search was conducted using the search phrase, "Top UK law firms advisory banks". This brought up the Legal 500 listing. All of the Tier 1 and Tier 2 firms listed were included in the sample; 17 firms in total. The list of the firms is in Appendix 6.

THE DISCURSIVE MODEL

The discursive model proposed by Phillips et al. (2004, p. 641), discussed in Section 2 of the Literature Review and reproduced in Figure 5, has been adapted for the purposes of the study and is shown in Figure 7 below. It includes the actions and actors relevant to the study and indicates where Research Questions 1 and 2 are mapped to the model.

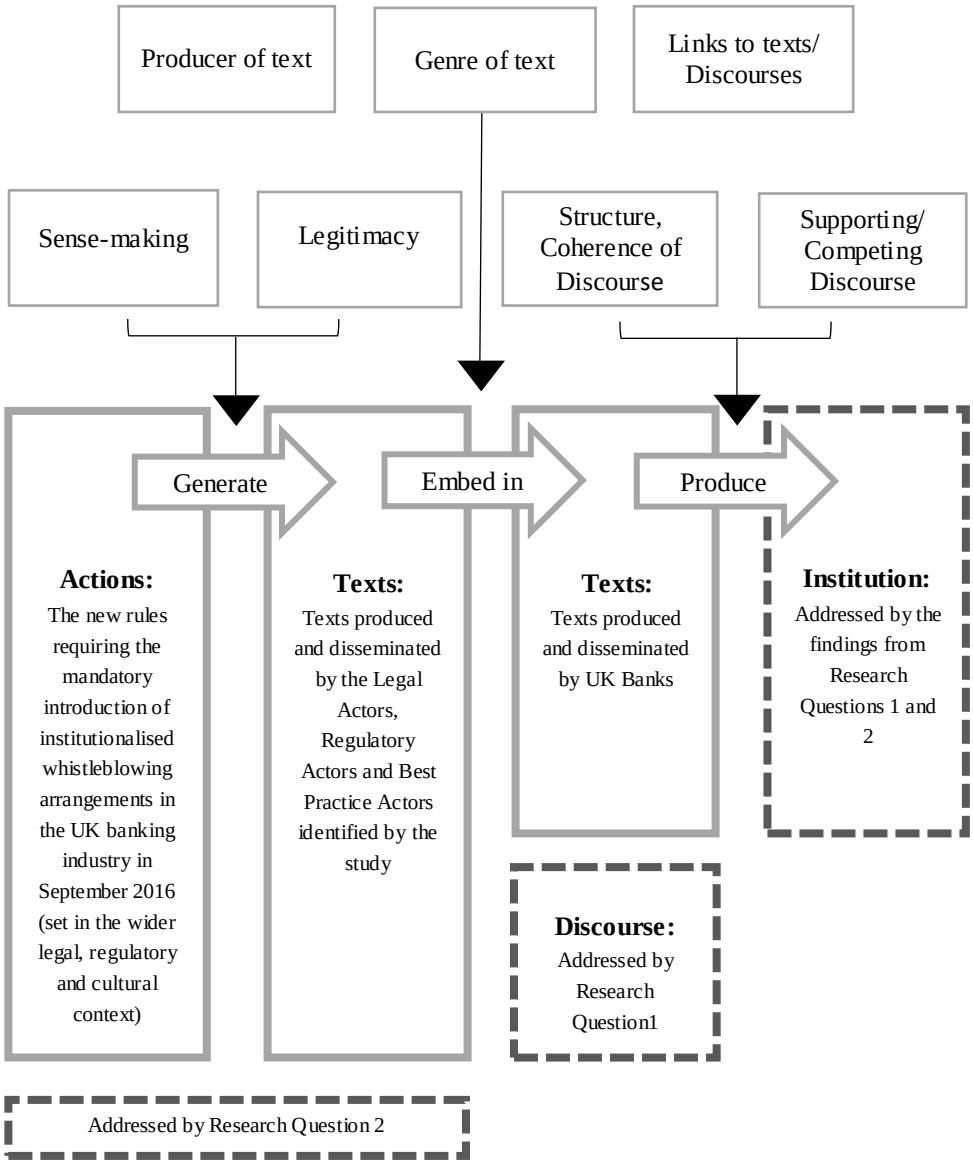

Figure 7:

Discursive model proposed by Phillips et al. (2004, p. 641) adapted for the study

DATA COLLECTION

The data collection for the Legal and Regulatory Actors was conducted between June and November 2019. The data collection for the Best Practice Actors was conducted between June 2019 and February 2020. As with the data for the UK Banks, only texts in the public domain, accessible via the internet and dated after September 2016 (the date on which the new mandatory rules on whistleblowing came into force for UK Banks) or referring to the introduction of the new rules were included in the study (unless otherwise specified).

The data collected for the Legal, Regulatory and Best Practice Actors is set out below. These texts meet the criteria of being "recognizable, interpretable and usable" by organisations within the organisation field (Phillips et al., 2004, p.644).

Legal Actors

(1) The Parliamentary Commission on Banking Standards (PCBS)

The data is comprised of the Volumes 1 and 2 of the PCBS Changing Banking for Good Report, June 2013 (PCBS, 2013).

(2) The UK legislators

The data is comprised of the Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA), together (PIDA/ERRA).

Regulatory Actors

(1) The Financial Conduct Authority (FCA)

In October 2013, the FCA provided a short written response to the PCBS report, Changing Banking for Good. Then, in July 2014, prior to the publication of the joint Consultation Paper, the FCA and PRA also published a specific paper on financial incentives for whistleblowers entitled, "Financial Incentives for

Whistleblowers: Note by the Financial Conduct Authority and the Prudential Regulation Authority for the Treasury Select Committee". This was in response to a specific request by the PCBS to consider the use of financial incentives.

The FCA and PRA published a joint Consultation Paper (FCA CP15/4 and PRA CP6/15), entitled 'Whistleblowing in deposit-takers, PRA-designated investment firms and insurers', on their proposed new whistleblowing rules in February 2015. This is their formal response to the PCBS 2013 Report.

In October 2015, Tracey McDermott, the then acting FCA chief executive, published a press release on their new whistleblowing rules.

The FCA and the PRA both then published their new rules on whistleblowing. Both regulators also added material to their websites for regulated organisations and employees of regulated organisations in relation to whistleblowing, particularly the FCA in their role as the lead conduct regulator for UK banking industry.

Specifically, the data included in the study is comprised of the FCA's response to the PCBS Report, the FCA and PRA joint Consultation Papers published in relation to the introduction of the mandatory institutionalised whistleblowing arrangements for UK Banks, the note on Financial Incentives for Whistleblowers published by the FCA and the PRA for the Treasury Select Committee, the FCA press release on the new whistleblowing rules dated October 2015, the FCA's rules on whistleblowing relevant for UK Banks (in SYSC 18.3 of the FCA Handbook), the FCA's Conduct Rules for the employees of regulated organisations (COCON Chapter of the FCA Handbook) and guidance on whistleblowing for employees of regulated organisations published by the FCA, including material on psychological safety in the workforce (FCA guidance and psychological safety).

(2) The Prudential Regulation Authority (PRA)

The data for the PRA includes a number of texts. Some of the texts were jointly published with the FCA.

The data is comprised of the joint FCA and PRA Consultation Paper entitled "Financial Incentives for Whistleblowers: Note by the Financial Conduct Authority and the Prudential Regulation Authority for the Treasury Select Committee", the FCA and PRA Joint Consultation Paper (entitled FCA CP15/4 and PRA CP6/15 Whistleblowing in Deposit-takers, PRA-designated Investment Firms and Insurers) which contained their proposed new whistleblowing rules and the final PRA rules on whistleblowing.[36]

Best Practice Actors

(1) The Chartered Institute for Securities and Investment (CISI)

A search for the following terms and phrases was conducted on the CISI website - 'whistleblowing', 'whistle blowing', 'whistle-blowing', 'raising concerns' and 'speak up'. Although some of the material on the CISI's 'Speak Up' campaign pre-dates the introduction of the FCA and PRA mandatory rules on whistleblowing introduced for UK Banks in September 2016, it was included in the data as it is still the current guidance in force from the CISI.

(2) The Banking Standards Board (BSB)

A search for the following terms and phrases was conducted on the BSB website - 'whistleblowing', 'whistle blowing', 'whistle-blowing', 'raising concerns' and 'speak up'. The data for the BSB comprises a blog dated July 2019 written by Rick Borges, Head of Assessment at the BSB and the chapter of the BSB Annual Report 2018/19 entitled 'Speaking Up and Listening'.

[36] The PRA also responded separately from the FCA to the PCBS Report in October 2013; the published text is very short, however, and is not included in the data.

(3) Protect (formerly Public Concern at Work)

The study includes material available on the Protect website. It includes text under 'About Us' and 'Frequently Asked Questions'. The material on the website on the Protect Whistleblowing Benchmark were not available to the study as it is only available to organisations for a fee.

(4) Law firms advising UK Banks on whistleblowing

A search for 'whistleblowing', 'whistle blowing', 'whistle-blowing', 'raising concerns' and 'speak up' was conducted on the material available on the websites of the law firms in the sample. All texts commenting and advising on the implementation of the FCA and PRA mandatory whistleblowing rules were included in the data. Data was available for 9 of the 17 firms. These are listed in Appendix 6.

CODING STRATEGY AND FRAME

The same coding frame used to address Research Question 1 (see Figure 6, p.117) was also used to address Research Question 2. This promotes consistency across the data analysis. The development of the coding frame is discussed in Section 1 of the Methodology and Research Design.

Coding process

Each text in the sample was analysed used the coding frame. The presence of Prescriptive Discourse and Conceptual Discourse was marked up using the lettering and numbering system discussed in Section 1 of the Methodology and Research Design.

As also discussed in Section 1 of the Methodology and Research Design, additional analysis was carried out informed by the literature on pragmatic textual discursive studies of policy content.

Internal congruence

The four internal congruence tests set out in Karlsson et al. (2017) were then applied to all of the texts in the data. These are incomplete and inconsistent definitions, inconsistent use of terminology and descriptions, inconsistent descriptions of the same rule and unclear references. Internal congruence was analysed through the comparison of the coding within single texts.

External congruence

External congruence was analysed through comparing the coding of more than one text produced by a single actor therefore making external congruence assessment possible.

Framing

The study considers the way in which the whistleblowing 'problem' and the role of the whistleblower are framed in the texts produced and disseminated by the actors include in the study.

Naming

The study considers the use of "recurring narrative" and tropes in the texts produced and disseminated by the actors include in the study. Specifically, it explores how 'whistleblowing' is named within the texts.

FINAL POINTS

Potential weaknesses in the data collection

It is acknowledged that the data included in the study may not include the whistleblowing texts produced and disseminated by all of the relevant actors in the wider organisational field with "discursive legitimacy" (Hardy and Phillips, 1998, p.219). It is argued, however, that the actors included in the sample and the data collected represent a broad and comprehensive selection of those texts, including the Legal and Regulatory Actors with the most potent "discursive legitimacy" (Taylor et al., 1996, p. 26).

Here, the reliance on data in the public domain and available via the internet is highly appropriate. This is where the relevant actors 'talk' about whistleblowing. In addition, the data searches undertaken by the study are likely to closely parallel those undertaken by UK Banks in response to the introduction of the new rules on whistleblowing.

Potential for unconscious bias

The author discusses her involvement in the UK financial services industry in the Introduction (see pp.10-11) and acknowledges that this may impact her ability to approach the study with a 'neutral gaze' (Butler, 1993, p.136). Although this can be a positive factor when conducting qualitative research, it is also important to be mindful of the possibility for unconscious bias tainting the analysis. To address this risk, the author was mindful of the importance of applying an appropriate level of challenge at every stage of the Methodology and Research Design. For example, care was taken to ensure that the coding frame was strictly developed from the literature review, a pilot was carried out and the data analysis was carried out with systematic rigour.

DATA ANALYSIS

OVERVIEW

The Data Analysis is divided into two sections.

Section 1 of the Data Analysis

Section 1 discusses the data collected in response to Research Question 1 of the study: 'How do UK Banks 'talk' about whistleblowing?' This research question seeks to address the fundamental question outlined in the Introduction, "What is whistleblowing?" for a specific industry at a specific point in its legal, regulatory and cultural development.

The data analysed is comprised of values-based, policy-based and hybrid policy/values- based texts (defined in Section 1 of the Methodology and Research Design) produced and disseminated by the UK Banks in the sample. The data is analysed using the coding frame and coding strategy discussed in Section 1 of the Methodology and Research Design (see Figure 6).

Section 2 of the Data Analysis

Section 2 discusses the data collected in response to Research Question 2 of the study: How has that discourse been shaped? This research question focuses on how the discourse identified in response to Research Question 1 may have been shaped by the discourse within the wider organisational field.

The data analysed is comprised of the texts produced and disseminated by actors within the UK banking industry that Phillips et al. (2004, p.643) argue have "discursive legitimacy" (Hardy and Phillips, 1998, p.219) and are therefore in a privileged position to shape the discourse. These actors are labelled Legal Actors, Regulatory Actors and Best Practice Actors in the study (for a description of each of these actors see Section 2 of the Methodology and Research Design). The data is analysed using the coding frame and coding strategy contained in Section 1 of the Methodology and Research Design (see Figure 6).

SECTION 1

INTRODUCTION

As discussed in Section 1 of the Literature Review, whistleblowing discourse is not settled or fixed. The discourse is specific to a defined organisational field at a specific time in its legal, regulatory and cultural development. Section 1 of the Literature Review identifies two distinct and conflicting strands of institutionalised whistleblowing discourse, termed in the study Prescriptive Discourse and Conceptual Discourse, and suggests that the bifurcation of the discourse is driven, at least in part, by the positioning of whistleblowing within organisations as both an operative (broadly, policy and procedure-orientated) and official (broadly, values and culture-orientated) problem.

Section 1 of the Methodology and Research Design discusses the coding strategy and the coding frame used by the study (see Figure 6) to analyse the values-based, policy-based and hybrid policy/values-based texts (defined in Section 1 of the Methodology and Research Design) produced and disseminated by the UK Banks in the sample.

The data analysis begins with the framing, naming and polar word selection for the terms 'whistleblowing' and 'whistleblower'. Next, the four steps contained in the coding frame are analysed in turn. For each step, the framing, naming and polar word selection for the key terms relevant to the step are analysed first followed by an analysis of the indicators for Prescriptive and Conceptual Discourse for that step contained in the coding frame. Where relevant, the analysis also considers internal congruence within individual texts, external congruence across the multiple texts (for Category 1 organisations) and the use of recurring narrative and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame.

The findings below contain extracts of some of the texts in the data set. These were selected because they either illustrate emergent patterns in the data or because they illustrate key findings.

FRAMING, NAMING, AND POLAR WORD SELECTION FOR 'WHISTLEBLOWING AND 'WHISTLEBLOWER'

The analysis begins with the framing, naming and polar word selection for the terms 'whistleblowing' and 'whistleblower'.

The data collected for the UK Banks in the sample, suggests that three words and phrases are used most frequently as alternatives 'names' for 'whistleblowing'. They are 'speaking up', 'raising concerns' and 'reporting'. As well as the phrase 'speak up', instances of 'speak out' were also found.[37] The use of the word 'reporting' here is particularly problematic within the scope of the study, as it is the word used in relation to other contractual, regulatory and legal obligations to escalate placed on employees within banks (see Introduction). As a result, each instance of the term 'reporting' in the data had to be examined in its specific context to distinguish how the term was being used.

Despite the prevalence of these alternative words and phrases, however, the term 'whistleblowing' or 'whistleblower' appeared in at least one of the texts of all except for five[38] of the Category 1 and Category 2 organisations[39] in the study.

The possibility was considered that UK Banks with their head office outside the UK may have drafted the original versions of their texts in their home country language and then translated the texts into English. This could have a potential impact on word selection. No patterns were found in the data, however, that suggested a difference between the framing and naming of whistleblowing and whistleblower, or any other terms, by UK Banks with their head office in the UK and those with their head office outside the UK.

[37] In addition, 'speak ups' is used as a noun in the Bank of Ireland Group Code of Conduct 2018).
[38]These are Standard Chartered Bank, JP Morgan, Morgan Stanley, Lloyds Bank and Bank of Ireland.
[39] Category 3 organisations are not included here as the data for these organisations is limited as discussed in Section 1 of the Methodology and Research Design.

Within the data for the Category 1 organisations, where comparison could be conducted between the values-based and policy-based texts, a tendency was noted for 'speaking up' and 'raising concerns' to be used more frequently in the values-based texts and for "whistleblowing" to be used more frequently in the policy-based texts. However, all four words and phrases (whistleblowing, speaking up, raising concerns and reporting) were found in both the policy-based and values-based texts across the sample. It was also found that these words and phrases were used interchangeably by organisations in the sample and that the difference between them was not articulated or explained by the organisations. This finding is discussed in more detail below.

Example 1: Westpac Group's Speaking Up Policy (November 2018)

In November 2018, this organisation changed the title of their policy-based text from the 'Whistleblower Protection Policy' to the 'Speaking Up Policy'. Although the term 'whistleblower' was removed from the title of the policy, it was not removed from the body of the text. It is still part of the definition of speaking up.

> "A person who speaks up under this policy, also known as a whistleblower…"

Deeper analysis of the usage of these words and phrases across the data showed that many of the organisations were using them in combination.

Example 2: DB Group Code of Conduct and Ethics (undated)

An illustrative example can be seen in this organisation's values-based text. Here all four of the terms noted above are used in a single sentence.

> "Speaking up, raising concerns and reporting misconduct, including whistleblowing".

The positioning here seems to suggest that these words and phrases have separate and distinct meanings and implies that 'whistleblowing' is a sub-set of one or more of them.

Example 3: Barclays "Raising Concerns (Whistleblowing) Group-Wide Policy" (April 2018)

Another illustrative example was found in this organisation's policy-based text. Here, the title of the text includes both 'raising concerns' and 'whistleblowing', with the positioning of the brackets implying that the two terms are interchangeable.

Example 4: Website of Access Bank UK Limited (as at August 2019)

This organisation also includes the phrase 'raising concerns' in the definition of 'whistleblowing'.

> "The term "whistleblowing" can be defined as raising a concern about a wrong doing within an organization".

Example 5: HSBC Employee Handbook (HBEU) (February 2018)

Likewise, this organisation elides 'whistleblowing' and 'raising concerns' in this hybrid policy/values-based text.

> "We have therefore developed our whistleblowing arrangements to help you raise concerns about wrongdoing at work."

Example 6: The Cooperative Bank's 'Whistleblowing Policy (March 2018)

This organisation's policy-based text takes a similar approach. It also elides 'whistleblowing' with 'raising concerns'.

> "If you need to raise a concern…" positioned under the heading "Blowing the whistle".

Example 7: The Bank of London and the Middle East Financial Statements (2018)

A similar pattern was found in relation to the use of the term 'whistleblower'. Here the organisation defines a "whistleblower" as:

> "a person who raises a genuine concern related to suspected wrong doing or dangers at work".

The data analysis also suggests that the phrase "Doing the right thing" is a recurring trope in the data, particularly within the values-based texts. This phrase is interesting in the context of the study because it makes a clear connection between 'whistleblowing' and ethical behaviour, personal choice and decision-making. As discussed in Section 1 of the Literature Review, these are central elements of Conceptual Discourse.

Example 8: DB Group Code of Conduct and Ethics (undated)

This organisation uses this phrase in their values-based text.

> "While it may be easier to say nothing when faced with potential or actual misconduct, illegal or unethical behaviour, doing the right thing means raising your concerns or questions about the conduct".

Example 9: RBS Policy Framework One Minute Policy Speak Up (21 March 2018)

The same phrase is used by this organisation's policy-based text and a direct link is made to the organisation's values.

> "Anyone raising a concern is acting in accordance with a key RBS value: Doing the Right Thing".

Example 10: Gulf International's Code of Conduct, Doing Things Right, Right Now (February 2017)

This organisation's hybrid policy/values-based text uses the phrase in the title.

Example 11: HSBC Our Approach (1 July 2019)

This values-based text also uses the same phrase.

> "We are open, dependable and connected. We want to ensure our employees feel empowered to do the right thing."

The discursive treatment of the role of whistleblowing and the whistleblower within an organisation is discussed in Section 1 of the Literature Review (see pp.33-38).

Example 12: FBN's Whistleblowing Policy and Procedure (October 2018)

Here the role of the whistleblower is framed as a preventative one. The study suggests that the framing of whistleblowing as a risk management tool is indicative of Prescriptive Discourse (see p.56). This is the framing of the role most noted in the data.

> "It is an early warning system that enables an organization to find out when something is going wrong in time to take necessary corrective action."

Example 13: Société Générale Kleinwort Benson's Group Code of Conduct (October 2016)

This values-based text also frames whistleblowing as a "warning".

> "Each of us is entitled to raise a warning if we believe we have good grounds for considering …"
>
> "…… especially if the situation giving grounds for the initial warning persist."

Example 14: FBN, in their Whistleblowing Policy and Procedure (October 2018)

This policy-based text positions 'whistleblowing' not only as a warning as a preventative measure and a deterrent.

> "To proactively prevent and deter misconduct which could impact the financial performance and damage the Group`s reputation".

A direct linkage is also made here between 'whistleblowing' and the protection of the reputation of the organisation.

Example 15: Tesco Bank

This organisation also frames whistleblowing as a preventative measure by naming their whistleblowing hotline the "Protector Line."

Example 16: Standard Chartered's Speaking Up Policy

This policy-based text also makes the link between 'whistleblowing' and the protection of the reputation of their organisation.

> [whistleblowing] "reduces the risk of financial and reputational loss caused by misconduct".

Summary

In relation to the framing of whistleblowing, the data analysis shows that the UK Banks in the sample use the phrases "speaking up" and "raising concerns" within both their policy-based and values-based whistleblowing texts. These phrases are used interchangeably with "whistleblowing" and the difference between them and "whistleblowing" is unexplained or unclear. The data analysis also shows the role of the whistleblower to be framed in a range of ways from an ethical act to a risk management tool, spanning the Prescriptive and Conceptual Discourse indicators identified by the study.

Next, the four steps contained in the coding frame are analysed in turn. An extract of the coding frame is included for each step.

STEP 1: WRONGDOING - AM I CONCERNED? [40]

Step 1: Wrongdoing: *Am I concerned?*	
Prescriptive Discourse indicators: Exclusive definition	**Conceptual Discourse indicators: Truth, criticism and dissent**
1. Exclusive and detailed, legalistic definition of the type of 'wrongdoing' that an employee 'can' blow the whistle about i.e. distinct sub-set of poor conduct	A. Inclusive: Absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)

Extract from coding frame in Figure 6 above

Overview

Next, the four steps contained in the coding frame are analysed in turn. For each step, the framing, naming and polar word selection for the key terms relevant to the step are analysed first followed by an analysis of the indicators for Prescriptive and Conceptual Discourse for that step contained in the coding frame. Where relevant, the analysis for each step also considers internal congruence within individual texts, external congruence across the multiple texts (for Category 1 organisations) and the use of recurring narrative and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame.

As discussed in Section 1 of the Literature Review (see pp.37-40), one of the challenges that organisations face when writing institutionalised whistleblowing

[40] In the Literature Review, Step 1 Wrongdoing "Am I concerned?" in the coding frame is analysed as two separate steps: Step 1 Recognition, "Have I identified wrongdoing?" and Step 2 Assessment, "Does it fall within the organisation's whistleblowing arrangements?" The reduction to a single step is discussed in Section 1 of the Methodology and Research Design (see pp.114-115).

policies and procedures and other related texts is how to describe the types of 'wrongdoing' that employees 'can' or 'should' blow the whistle about. Section 1 of the Literature Review (see pp.42-45) suggests a marked difference here between Prescriptive and Conceptual Discourse in this respect. Both discourses were identified in the policy-based and values-based texts in the data and the discourses were found to be intertwined co-mingled with no clear separation of usage between value-based and policy-based texts.

The analysis of the data at Step 1 begins with the framing, naming and polar word selection in relation to 'wrongdoing'. It then considers the indicators of Prescriptive and Conceptual Discourse found at Step 1 in the data.

Framing, naming, and polar word selection for 'wrongdoing'

The analysis of framing, naming and polar word selection in the data for 'wrongdoing' suggests that the organisations in the sample chose a wide range of words and phrases to frame and name the type of behaviours that could be the subject of a whistle blow. These include, 'inappropriate conduct', 'improper conduct', 'reportable conduct', 'reportable concern', 'when something is going wrong', 'business conduct concern', 'a concern about business conduct', 'wrongdoing', 'concerns', 'misconduct', 'wrongdoing at work', 'issues', 'something is not right' and 'values are not being applied in the right way'.

It was found that the term 'wrongdoing' was the term most frequently used within the data to frame the type of behaviours that could be the subject of a whistle blow and this is the term adopted generally within the study.

The study found that 11 of the 28 organisations in Categories 1 and 2 of the data set used a definition of 'wrongdoing' as the mechanism for, or part of, the definition of 'whistleblowing'.

Example 17: The Cooperative Bank Whistleblowing Policy (March 2018)

This organisation includes the word 'wrongdoing' in the definition of 'whistleblowing'.

> "…the term used when a colleague passes on information about wrongdoing".

Example 18: HSBC Employee Handbook (HBEU) (February 2018)

This policy/values-based text directly links wrongdoing at work to the organisation's whistleblowing arrangements.

> "We have therefore developed our whistleblowing arrangements to help you raise concerns about wrongdoing at work"

Indicators of Prescriptive Discourse in the data at Step 1

Prescriptive lists

Section 1 of the Literature Review (see p.43) suggests that Prescriptive Discourse promotes bounded definitions of wrongdoing, which may take the form of prescriptive lists of types of wrongdoing contained in the texts produced by organisations (see Lewis et al, 2015, p.312). The literature (see Section 1 of the Literature Review, p.45) also acknowledges the challenges of drafting bounded lists of wrongdoing and suggests that such lists may, as a result, include subjective elements, more indicative of Conceptual Discourse, such as references to "immoral and illegitimate" conduct (Near and Miceli, 1985, p.4) and open-ended elements, such as "other wrongdoing" (Jubb, 1999, p.78).

16 of the 28 organisations in Categories 1 and 2 of the study includes a detailed list-based definition of wrongdoing (with over 6 items listed) in one of their texts. The longest list contained 20 items (Gulf International's Code of Conduct, Doing Things Right, Right Now; See Example 20 below). However, as suggested by the literature, in most cases, these are framed as an open-ended or non-exhaustive lists of examples and also include subjective elements, more indicative of Conceptual Discourse.

It is argued by the study that this indicates that organisations struggle to define with precision and certainty what employees can and cannot blow the whistle about under their whistleblowing arrangements and that this struggle is inextricably linked to the need to differentiate between disclosures about wrongdoing for which employees will receive protection from retaliation (either under the organisation's values, contractually, legally or under applicable regulations) and other forms of disclosure and reporting where protections from retaliation don't apply. This is discussed further under Step 2 below.

Example 19: HSBC's Employee Handbook (HBEU) (February 2018)

This hybrid policy/values-based text openly presents the list of wrongdoing types, framed here as "concerns", as a non-exclusive list through the inclusion of the word "examples" under the heading, "What".

> "Under our procedure, non-exhaustive examples of concerns that can be raised include:
>
> - Theft
> - Inappropriate customer treatment
> - Poor personal conduct
> - Inappropriate trading behaviour
> - Accepting bribes
> - Not following internal procedures
> - Unsafe working environment
> - Bullying and harassment
> - Discrimination
> - Cover-ups"

This non-exclusive list also covers a broad spectrum of behaviours ranging from specific criminal acts such as "theft" and "accepting bribes" to more general, potentially less serious and subjective behaviours, such as "poor personal conduct" and "not following internal procedures". The relevance of materiality is discussed further below (see p.149).

Example 20: Gulf International's Code of Conduct, Doing Things Right, Right Now (February 2017)

This hybrid policy/values-based text labels wrongdoing as "Violations"; a defined term in the text. The defined term comprises an extensive list of behaviours numbered from a-t. Here the prescriptive list is more extensive than in Example 19 above, but is again rendered open-ended, here by the inclusion of the phrase "but are not limited to":

> "You have a duty to GIB and your colleagues to Report, but are not limited to, the following immediately (each a "Violation"):
>
> a. employee or anyone at GIB or anyone working on behalf of GIB may have violated any applicable law(s), regulation(s) or any of the provisions of the Code;
> b. fraud (either attempted or realized); any dishonest or fraudulent act of your colleague who (a) makes a false representation; (b) fails to disclose information; or (c) secretly abuses a position of trust, with intent to gain or to cause loss to another;
> c. intentional negligence or non-compliance with the Bank's internal controls and checks which results or facilitates fraudulent act;
> d. concerns about the integrity of individual colleagues based on specific incidents;
> e. deficiency in GIB's processes or controls that would allow Violations to happen or to go undetected;
> f. unlawful or illegal activity;
> g. any breach GIB's internal policies and procedures;
> h. improper or unethical or illegal conduct;
> i. if you think or are aware of unauthorised disclosure of GIB's confidential and proprietary information;
> j. known or suspected illegal conduct, or conduct that violates the underlying principles of the Code, by any of our customers, suppliers, consultants, employees, contract or temporary workers, business partners or agents;
> k. theft;
> l. corruption and bribery;
> m. acting outside proper financial accounting, reporting and auditing standards;
> n. conduct involving health and safety risks, including risks to public/employees;
> o. damage to the Bank's reputation;

p. any other conduct that could cause loss or become detrimental to the Bank;
q. the unauthorised use of Bank's funds and/or use of funds/ property/ resources for illegal, improper or unethical purpose;
r. sexual or physical abuse;
s. a deliberate concealment of information tending to show any of the above or actions or an attempt to cover up any of these types of actions; and
t. retaliatory conduct such as statements, conduct or actions involving discharging, demoting, suspending, harassing or discriminating against an individual Reporting in good faith in accordance with this Code."

Again, it should be noted that the list is not only wide-ranging but again spans a wide spectrum of behaviours from "theft", "bribery and corruption" and "fraud" to "improper or unethical conduct" and "any breach of GIB's internal policies and procedures. The inclusion of "unethical conduct" introduces an element of subjectivity. The inclusion of references to morality is discussed further below (see p.151).

Example 21: Scotiabank's Whistleblowing Policy and Procedure (supplement to the Code of Conduct) (October 2018)

This policy-based text also includes a list-based definition. Here, however, the list is presented as a series of broad headings with detailed non-exclusive examples under each heading.

"This Policy deals with reporting concerns related to the following areas:

- Financial reporting: examples include: falsification or destruction of business or financial records; misrepresentation or suppression of financial information; non-adherence to internal financial reporting policy/controls, including management over-rides; and auditor independence concerns.
- Suspected fraudulent activity: examples include: theft; defalcation; insider trading; market manipulation; and corrupt practices including giving or receiving bribes or other improper benefits.
- Breaches of the code, other compliance policies and laws and regulations: examples include: conflicts of interest; price setting, other violations of governing laws and regulations; and non-adherence to internal compliance policies.

- Retaliation or retribution against an individual who reports a concern: examples include: statements, conduct or actions involving
    - terminating, disciplining, demoting, suspending, harassing,
    - intimidating, coercing or discriminating against an individual
    - reporting a concern in good faith in accordance with this Policy"

Example 22: RBS Policy Framework One Minute Policy Speak Up (21 March 2018)

This policy-based text also adopts the approach of a lengthy, non-exhaustive list of 'wrongdoing'. It is worth noting here that the organisation openly acknowledges the difficulty of providing a 'definitive' list of types of wrongdoing.

"Whilst there is no definitive list of what counts as illegal activities or unethical behaviours, financial loss does not need to occur and examples include but are not limited to:

- Conduct and behaviour that falls short of the RBS Values and Our Code;
- Criminal activity including authorisation breaches and theft;
- Breaches of RBS policies, procedures or customer treatment standards (such as mis-selling);
- Manipulation of incentives to achieve customer needs met, targets or bonuses;
- Breaches of regulatory or legal requirements (such as financial services regulators' rules and regulations, data protection law and competition law);
- Breaches of financial accounting and auditing obligations;
- Colleagues dealing inappropriately with their own accounts or the accounts of others;
- Behaviour that harms the reputation or financial well-being of RBS;
- Other risks or dangers at work (such as breaches of IT security); and
- Any attempt to conceal any of the above points."

References to materiality

The relevance of the materiality, or seriousness, of wrongdoing is discussed in Section 1 of the Literature Review (see p.44). Jubb (1999, p.78) includes the phrase "non-trivial" in his definition of whistleblowing. The data analysis shows

that only two organisations in Categories 1 and 2 of the sample used the word "material" to caveat their definition of wrongdoing and only one organisation in Category 1 and 2 of the sample used the word "serious" to caveat their definition of wrongdoing.

Example 23: Northern Bank's Group Code of Conduct (December 2018)

This hybrid policy/values-based text contains an open-ended list of examples of "wrongdoings", two of which are caveated with the word "material".

> "The type of issues that can be reported through the whistleblower system include the following: (potential) breaches of laws and regulations, fraud and false documentation, material violations of workplace safety, material violations of environmental rules, physical violence, sexual harassment, and other wrongdoings."

Example 24: Summary of the Westpac Group Speaking Up Policy (November 2018)

In this policy-based text, the organisation uses the word "serious" three times to caveat items on the list.

> "Reportable conduct is defined as any past, present or likely future activity, behaviour or state of affairs considered to be:
>
> - Dishonest
> - Corrupt (including soliciting, accepting or offering a bribe, facilitation payments or other such benefits)
> - Fraudulent
> - Illegal (including breach of any of the financial services laws, theft, drug sale or use, violence or threatened violence and property damage)
> - In breach of any regulation, internal policy or code (such as our Code of Conduct)
> - Impeding internal or external audit processes
> - Improper relating to accounting, internal control, compliance, actuarial, audit or other matters of concern to the whistleblower
> - Serious impropriety or an improper state of affairs or circumstances
> - Endangering health or safety
> - Damaging or substantially risking damage to the environment
> - Endangering the financial system

- A serious mismanagement of Westpac resources
- Detrimental to Westpac's financial position or reputation
- Maladministration (an act or omission of a serious nature that is negligent, unjust, oppressive, discriminatory or is based on improper motives)
- Concealing reportable conduct"

However, as illustrated in Examples 19-22 above, all of the prescriptive lists of wrongdoing in the data include a wide range of conducts from serious criminal offences to less serious internal procedural breaches.

Inclusion of breaches of internal codes of conduct or ethical values in the definition of wrongdoing

The relationship between wrongdoing and ethics and between responsibility and ethics is discussed in Section 1 of the Literature Review. Responsibility is discussed further under Step 3 below.

The data analysis shows that 14 of the 28 organisations in Categories 1 and 2 in the sample include breaches of their internal codes of conduct or ethical values in their framing of 'wrongdoing'. This is illustrated in Examples 20-24 above.

This linkage is highly relevant as it not only brings organisational internal codes of conduct and values within the definition of 'wrongdoing', it also, by extension, suggests that an employee's failure to blow the whistle may itself be 'wrongdoing'. This finding is discussed further under Step 3 below.

Example 25: Tesco Whistleblowing Policy (undated)

In this policy-based text, the organisation links whistleblowing directly to the organisation's commitment to their culture.

> "We encourage whistleblowing as it plays an important role in achieving this commitment and is part of an open, honest and Values-based culture."

Inclusion of concealment of wrongdoing in the definition of wrongdoing

The study found that 8 of the 28 organisations in Categories 1 and 2 of the data set go further and include attempts to conceal wrongdoing in their framing of wrongdoing. Illustrations can be seen in Examples 20, 22 and 24 above: "covers up", "deliberate concealment" and "any attempt to conceal …"

The inclusion of concealment of wrongdoing in the definition of wrongdoing is again linked to the potential responsibilisation of employees under institutionalised whistleblowing arrangements. This is discussed further under Step 3 below. "Deliberate concealment" is included in the definition of wrongdoing in PIDA/ERRA and implicitly forms part of the FCA's definition of "reportable concern" where concealment is a breach of a policy or procedure (see the discussion in Section 2 of the Data Analysis, pp.209-212).

Inclusion of retaliation in the definition of wrongdoing

The study found that only 2 of the 28 organisations in Categories 1 and 2 of the data set explicitly include acts of retaliation against whistleblowers, or victimisation, in the definition of wrongdoing. One explicitly states that employees who engage in victimisation will be dismissed. Illustrations can be seen in Examples 20 and 21 above. Again, this is discussed further under Step 3 below and Section 2 of the Data Analysis.

Inclusion of damage to the reputation of the organisation in the definition of wrongdoing

The study found that 7 of the 28 organisations in Categories 1 and 2 of the data set include conduct that threatens the reputation of the organisation in the definition of wrongdoing. Illustrations can be seen in Examples 20 and 22 above. This positioning frames whistleblowing as a risk management tool; indicative of Prescriptive Discourse (see Section 1 of the Literature Review, p.56 and Section 2 of the Data Analysis, p.202).

Again, this framing forms part of the FCA's definition of "reportable concern" (see the discussion in Section 2 of the Data Analysis, pp. 209-212).

Inclusion of wording that reflects or mirrors PIDA/ERRA and/or FCA and PRA definitions of wrongdoing

The study found that 6 of the 28 organisations in Categories 1 and 2 of the data set seek to resolve the problem of defining the types of wrongdoing that an employee can or should blow the whistle about by reflecting or mirroring, wholly or partly, the types of wrongdoing contained in PIDA/ERRA and/or the FCA and PRA definition of a 'reportable concern'. Illustrations can be seen in Examples 26 to 29 below.

This is considered further in Section 2 of the Data Analysis.

Example 26: Barclays' Raising Concerns (Whistleblowing) Group-Wide Policy (April 2018)

This policy-based text includes a reference to the "public interest" test included in the Public Interest Disclosure Act 1998 (PIDA) as part of their definition of wrongdoing.

> "Whistleblowing is generally focused on raising concerns which fall into the wider public interest".

Example 27: Rathbone Investment Management Limited's Whistleblowing Policy (2018)

This policy-based text goes further and references both PIDA and the FCA and PRA definitions extensively. The extract below attempts to provide a summary overview of the UK legal and regulatory environment in relation to whistleblowing.

> "As part of a series of policy changes focused on strengthening individual accountability within the banking sector, the FCA and PRA have published new whistleblowing rules. These rules supplement the statutory protections all employees and workers have pursuant to the PIDA. The rules extend the coverage of

whistleblowing to all types of disclosure, from all types of people. This policy includes areas of 'reportable concern' such as the unauthorised use of company funds, fraud, bribery, corruption and insider dealing. Any reportable concerns that individuals have about any aspect of company procedures or practices or the conduct of members of staff or others acting on behalf of Rathbones can be reported under this policy. This may be something that:

- makes individuals feel uncomfortable, in terms of known standards, experience, or the standards they believe Rathbones subscribes to.
- is against Rathbones policies.
- falls below established standards of practice.
- amounts to improper conduct.

There is no requirement for a reportable concern to be in the public interest, or for the whistleblower to have a reasonable belief in its accuracy."

This framing of the UK legal and regulatory environment links the changes in the FCA and PRA whistleblowing rules directly to "strengthening individual accountability within the banking sector"[41]. It is argued that this overview is, however, confusing for an employee. For example, it does not accurately reflect the FCA and PRA rules nor the FCA definition of a 'reportable concern'. It also confuses the definition of "reportable concern" adopted by the FCA with the definition adopted by the organisation and does not clearly distinguish between those disclosures covered by the PIDA protections and those that are not. The same organisation also includes, later in the text, a full description of the 'wrongdoing' categories in PIDA. This was the most specific example of this approach found in the sample.

"The PIDA identifies specific categories, referred to as 'qualifying [protected] disclosures', which are the subject of special protection. In order for a disclosure to be a qualifying disclosure, the individual making the disclosure must reasonably believe two things:
– that they are acting in the public interest.

[41] One of the main aims of the SMCR (see Introduction).

- the individual should hold a reasonable belief that one or more of the following has been, is being, or is likely to be, committed:
    - a criminal offence
    - a failure to comply with any legal obligation
    - a miscarriage of justice
    - the health and safety of any individual endangered
    - damage to the environment
    - deliberate concealment of information relating to any of the above."

Example 28: Standard Chartered Code of Conduct, Here for Good (undated)

In this organisation's hybrid policy/values-based text, the examples of when an employee "should speak up" mirror a combination of the PIDA/ERRA categories of wrongdoing and the FCA definition of "reportable concerns".

"… Some examples of when you should speak up include if you see anyone:

• Failing to comply with laws or legal obligations, including committing fraud or other criminal acts

• Putting the health and safety of a person in danger

• Damaging the environment

• Breaching rules or regulatory requirements

• Failing to comply with codes of conduct, Group, business or country policies and procedures

• Doing anything which has or is likely to have a negative effect on our reputation or financial well-being

• Deliberately concealing any of the above"

Example 29: RBS Policy Framework One Minute Policy Speak Up (21 March 2018)

A similar approach can be seen in this organisation's policy-based text.

"Whilst there is no definitive list of what counts as illegal activities or unethical behaviours, financial loss does not need to occur and examples include but are not limited to:

- Conduct and behaviour that falls short of the RBS Values and Our Code;

- Criminal activity including authorisation breaches and theft;
- Breaches of RBS policies, procedures or customer treatment standards (such as mis-selling);
- Manipulation of incentives to achieve customer needs met, targets or bonuses;
- Breaches of regulatory or legal requirements (such as financial services regulators' rules and regulations, data protection law and competition law);
- Breaches of financial accounting and auditing obligations;
- Colleagues dealing inappropriately with their own accounts or the accounts of others;
- Behaviour that harms the reputation or financial well-being of RBS;
- Other risks or dangers at work (such as breaches of IT security); and
- Any attempt to conceal any of the above points."

Inclusion of geographic location in the definition of wrongdoing

As discussed in Section 1 of the Literature Review (see p.43), references to applicable regulation and legislation presents a particular challenge for international organisations that are required to comply with different legislation and regulations in different jurisdictions (see Lewis et al, 2015, p.312) and want to develop a single global policy and approach that applies across multiple jurisdictions. This is another practical challenge to closed-ended definitions of wrongdoing and adds another layer of complexity for the employee.

Example 30: Barclays' Raising Concerns (Whistleblowing) Group-Wide Policy (April 2018)

This problem is acknowledged and illustrated in this organisation's policy-based text.

> "… what types of conduct can fall into the scope of a whistleblowing process is limited by local regulation and legislation".

The provision of separate texts or appendices containing jurisdictionally-bounded definitions of wrongdoing is one way of addressing this challenge.

Example 31: Gulf International's Code of Conduct, Doing Things Right, Right Now (February 2017)

This hybrid policy/values-based text acknowledges this challenge and directs employees to a further text that includes jurisdictionally-bounded definitions.

> "You are encouraged to be aware of Whistleblowing Policy and Program [note that this document was not available to the study] of each jurisdiction which provides more details in case of anonymous Reports."

Indicators of Conceptual Discourse in the data at Step 1

The literature suggests that Conceptual Discourse is not concerned with an organisation's institutionalised whistleblowing arrangements; it operates outside them and, as result, has no need for prescriptive and bounded definitions of wrongdoing (see Section 1 of the Literature Review, pp. 42). Rather, Conceptual Discourse focuses on the role of whistleblower-employees as parrhesiastes and the speakers of the 'truth'. As a result, at Step 1, a prospective whistleblower-employee uses as their reference point their perception of the 'truth' and their desire to challenge and disrupt the act or situation that they perceive to be 'wrong', even if this puts them in danger. The answer to the question "Wrongdoing – Am I concerned?" is therefore purely subjective and not shaped in anyway by the values-based and policy-based texts produced by their organisation.

Subjective framing of 'wrongdoing'

There are a number of examples of the subjective framing of 'wrongdoing' in the data. The word 'truth' (from the perspective of the whistleblower-employee), however, was found in only 5 of the 28 texts of the organisations in Categories 1 and 2 of the sample.

Example 32: Standard Chartered Code of Conduct, 'Here for Good' (undated)

This organisation's policy/values-based text uses subjective and emotive language, including "see", "feel" and "right".

> "Speaking Up is a safe, confidential way to let us know if you see anything that doesn't feel right."

Example 33: The Barclays Way (July 2018)

This organisation's values-based text also contains highly subjective framing and includes the word "believe".

> "If you believe that something is not right…"

Example 34: Tesco Whistleblowing Policy (undated)

This organisation's policy-based text again adopts a highly subjective approach through the use of the phrase "that you think".

> "You can report concerns about any conduct that you think might be a breach of the law, our Code or our Values."

Example 35: HSBC's Employee Handbook (HBEU) (February 2018)

This organisation's hybrid policy/values-based text refers to situations where an employee:

> "… reasonably believes that the matter they are reporting is true".

Where truth or belief is referenced in the data, a tendency was noted to link the reference to the requirement for the whistleblower-employee to act in "good faith" or to hold a "reasonable belief". The use of these phrases is discussed further under Step 2 below.

External and internal congruence: Category 1 organisations

The study also considered external and internal congruence in relation to Step 1. As discussed in Section 1 of the Methodology and Research Design, external

congruence could only be analysed for the Category 1 organisations in the sample[42].

External incongruence

Example 36: Northern Bank's Group Code of Conduct (December 2018) and Whistleblowing Policy (September 2018)

This organisation's values-based text lists the types of 'wrongdoing' that "can be reported through the organisation's 'Whistleblower System'. As noted above, two of the behaviours are caveated with the word "material" and the list ends with "any other wrongdoings" rendering the definition open-ended.

> "The type of issues that can be reported through the whistleblower system include the following: (potential) breaches of laws and regulations, fraud and false documentation, material violations of workplace safety, material violations of environmental rules, physical violence, sexual harassment, and other wrongdoings."

The same organisation's policy-based text includes the headings "What can be reported" and "What cannot be reported" via the "Whistleblowing System" clearly establishing a binary distinction between the two. It also capitalises and defines the term "Wrongdoing", which is not the case in the values-based text, giving the term a more legalistic frame. However, the definition contained in the policy-based text is no more granular or legalistic than in the values-based text, although the definitions in the two texts do not match.

> "… failures to comply with applicable laws and regulation, and concerns of breach of internal standards, irregularities, criminal offences, including fraud and sexual harassment to which the Group's employees might become aware (below referred to as 'Wrongdoings')."

[42] This was restricted to Category1 organisations because for these organisations there was more than one text available to the study.

Example 37: Barclays Raising Concerns (Whistleblowing) Group-Wide Policy (April 2018) and The Barclays Way (updated July 2018)

The external incongruence is more marked in the texts of this organisation. The policy-based text contains a detailed definition of "Inappropriate Conduct" in a legalistic appendix. Again, in line with the discussion above, the list is positioned as "Examples of potential Inappropriate Conduct" and therefore is non-exclusive and open-ended.

> "Examples of potential Inappropriate Conduct:
>
> - Questionable accounting practices or any other financial impropriety by Businesses or Employees;
> - Endangering the health and safety of Employees or Customers or causing damage to the environment;
> - Conflicts of Interest that result from the Businesses' activities or practices or Employees' positions or duties which have been managed contrary to any applicable legislation, regulatory requirement or Barclays policies
> - and procedures;
> - Behaviour that harms, or is likely to harm, the reputation or financial well-being of Barclays;
> - A breach of any internal Control or regulatory and legal requirements."

In contrast, the values-based text contains an inclusive and broadly drafted definition.

> "If you believe something is not right – like misconduct, fraud or illegal activity – or if you feel that our standards are not being met …"

Internal incongruence

Example 38: Standard Chartered Bank's Code of Conduct, entitled "Here for Good", and Speaking Up Policy

This organisation's values-based text adopts the type of inclusive and subjective framing of 'wrongdoing' discussed above and indicative of Conceptual Discourse towards the beginning of the document.

> "Speaking Up is a safe, confidential way to let us know if you see anything that doesn't feel right"

However, later in the same text, there is a detailed list of examples of 'wrongdoing' more indicative of Prescriptive Discourse.

> "Some examples of when you should speak up include if you see anyone:
>
> - Failing to comply with laws or legal obligations, including committing fraud or other criminal acts
> - Putting the health and safety of a person in danger
> - Damaging the environment
> - Breaching rules or regulatory requirements
> - Failing to comply with codes of conduct, Group, business or country policies and procedures
> - Doing anything which has or is likely to have a negative effect on our reputation or financial well-being
> - Deliberately concealing any of the above"

Summary

Both Prescriptive and Conceptual Discourses were identified in the policy-based and values-based texts in the data. The two discourses were found to be intertwined co-mingled with no clear separation, promoting high levels of both internal and external incongruence. Many of the organisations in the sample include detailed, prescriptive definitions of wrongdoing in the form of lists. These lists are often, however, open-ended, providing space for the inclusion of subjective elements. Further, these definitional lists were found to include a broad range of types of wrongdoing, often drawing on applicable regulation and legislation, and, in a number of instances, were found to include breaches of the organisation's internal code of conduct or values and/or a failure to speak up. The data analysis suggests that 'wrongdoing' is one of the most contentious aspects of the data. This supports Section 1 of the Literature Review.

STEP 2: PROTECTION - AM I PROTECTED?

Step 2: Protection: *Am I protected?*	
Prescriptive Discourse indicators: Non-retaliation in certain circumstances	**Conceptual Discourse indicators: Danger**
2. Circumstances in which the employee is protected 3. Reciprocal language linking disclosure to protection	D. Recognition of the need for courage

Extract from coding frame in Figure 6 above

The analysis of the data at Step 2 begins with the framing, naming and polar word selection for 'retaliation'. It then considers the indicators of Prescriptive and Conceptual Discourse found at Step 2 in the data.

Framing, naming and polar words for 'retaliation'

The analysis shows that the term "retaliation" is used consistently within the data to describe a negative response towards a whistleblower. A limited number of organisations use the terms "victimisation" or "retribution". The word 'retaliation' is used within the study.

Indicators of Prescriptive Discourse at Step 2

As with the need to define the types of wrongdoing about which an employee can/should blow the whistle, Prescriptive Discourse requires a clear delineation between the circumstances in which an employee will/will not be protected from retaliation for blowing the whistle, either under the values of the organisation, contractually or under applicable regulation or legislation. As a result, there is potential for the availability of protection from retaliation to become integral to the meaning of 'whistleblowing'.

Example 39: HSBC Employee Handbook (HBEU) (February 2018)

This organisation's hybrid policy/values-based text makes it clear to employees that not all "disclosures" will receive "legal protection".

> "Not all disclosures made through HSBC Confidential will receive this legal protection."

Example 40: Summary of the Westpac Group Speaking Up Policy (November 2018)

This organisation's policy-based text implies that whistleblowing protections can be claimed by an employee who "wish[es] to use" the whistleblowing process. It does not make it clear that the protections are not optional and a matter of law or, potentially contract, in which case the employee would be required to trust the organisation to benefit from them.

> "Employees are encouraged to use normal business channels first for issues relating to their own personal circumstances or where normal business procedures exist, except where a whistleblower believes they may suffer personal disadvantage or wish to use the protections under this policy."

The potential paradox created by the provision of protections by an organisation as a matter of contract is discussed in Section 1 of the Literature Review (see p.18 and p.38) (see also Contu, 2014, Vandekerckhove and Tsahuridu, 2010 and Grant, 2002).

The data also shows that a number of organisations in the sample link protection from retaliation to the presence or lack of 'good faith' on the part of the employee. This phrase was found in the texts of 13 of the 28 organisations in Categories 1 and 2 and was found in both the policy-based and values-based texts.

The use of the phrase "good faith" is of particular interest as this is no longer a requirement under the PIDA. It was removed by the introduction of the Enterprise and Regulatory Reform Act 2013 (ERRA) in July 2013. Under current legislation, the putative whistleblower is not required to show that they are acting in "good

faith". They must, however, demonstrate a reasonable belief that the disclosure is in the public interest. Although disclosures made in "bad faith" are still protected under PIDA (as amended by ERRA), the amount of any compensation received by the whistleblower may be reduced accordingly as part of legal proceedings.

Example 41: Tesco Whistleblowing Policy (undated)

This policy-based text links "good faith" directly to protection from retaliation.

> "Any colleague who raises their concerns in good faith will be supported for doing so and will be protected from retaliation."

> "This means that as long as you're acting in good faith and your concerns are genuine, you are legally protected from victimisation and will not be at risk of any form of retribution …"

Example 42: The Scotiabank's Whistleblowing Policy and Procedure (supplement to the Code of Conduct) (October 2018)

This organisation's policy-based text also makes the connection between retaliation and 'good faith'.

> "An action of harm to any person for having raised issues or reports concerns in good faith in accordance with the methods described in the Code or in accordance with this Policy"

> "Retaliation against any individual who raises a concern, in good faith, is not tolerated,.."

> "Scotiabank will protect from retaliation any employee, director or officer who, in good faith, reports".

Example 43: FBN's Whistleblowing Policy and Procedure (October 2018)

This organisation's policy-based text provides employees with a definition of 'good faith'.

> "This is evident when a report or concern is made without malice or consideration of personal benefit and the employee has a reasonable basis to believe that the report is true; provided, however, a report does not have to be proven to be true to be made in good faith. Good faith is lacking when the disclosure is known to be malicious or false."

The study also found that other organisations in the sample had substituted the term 'good faith' for other terms, such as "genuine concern", "based on truth and fact", "reasonable grounds" or alternatively used antonyms for "good faith" such as "false and malicious".

As discussed in Section 1 of the Literature Review, an indicator of Prescriptive Discourse is the framing of retaliation as a reciprocal right; an organisation offers protection in return for employees agreeing to blow the whistle. This reciprocity is discussed further under Step 3 below.

Indicators of Conceptual Discourse at Step 2

As discussed in Section 1 of the Literature Review (see p.71), Conceptual Discourse is concerned with courage in the face of retaliation rather than protection from retaliation. Indeed, there is an expectation of danger and potential harm. As discussed in the Literature Review, some academics have suggested that the experience of retaliation may be one of the determining factors used to determine whether 'whistleblowing' has occurred (Kenny, 2019).

Inclusion of references to courage in the definition of wrongdoing

The study found that 2 of the 28 organisations in Categories 1 and 2 of the data set explicitly include references to 'courage' in their texts.

Example 44: The Barclays Way (undated)

This organisation's values-based text includes the word 'courage' and also frames 'wrongdoing' subjectively through the use of the phrase "… that you believe to be wrong".

> "If we think that this is happening, we must show courage ..."

> "… we must show the courage to challenge actions, decisions or behaviours that we believe to be wrong."

Summary

The data analysis shows the circumstances in which protection is available to whistleblowers to be often unclear in the texts in the sample, potentially leaving employees uncertain as to whether they are protected or not. The different protections provided by law, regulation and contract were found to be insufficiently and/or poorly explained.

STEP 3: RESPONSIBILITY – WHY SHOULD I ACT?

Step 3: Responsibility: *Why should I act?*	
Prescriptive Discourse indicators: Legal, regulatory, contractual duty	**Conceptual Discourse indicators: Moral choice**
4. Mandatory employee duty (4a contractual, 4b legal and 4c regulatory) 5. Responsibilisation (i.e. punishment imposed for failing to blow the whistle) 6. Punishment for malicious reports 7. Good faith of employees explicably required 8. Whistleblowing as a risk management tool (including reputational risk management) 9. Loyalty to the organisation (solely to the people and artefacts) 10. Use of a decision-making framework or similar device provided to direct choice	E. Freedom and choice F. Ethics and morality G. Rational loyalty (i.e. to the values of the organisation, not its people or artefacts)

Extract from coding frame in Figure 6 above

Overview

The literature suggests that the discourse in relation to Step 3 is complex and problematic. The data supports this.

Section 1 of the Literature Review (see p.69) suggests that legal, regulatory or contractual duties to blow the whistle, together with the positioning of a right to blow the whistle by an organisation in return for a reciprocal offer of protection from the organisation, are likely to be framed by a Prescriptive Discourse, but that the prescriptive framing may be cloaked in the language of morals, ethics or choice more associated with Conceptual Discourse. The literature further suggests that Prescriptive Discourse is associated with responsibilisation and punishments for failing to comply with institutionalised whistleblowing arrangements.

The analysis of the data at Step 3 begins with the framing, naming and polar word selection for the 'duty' to blow the whistle. It then considers the indicators of Prescriptive and Conceptual Discourse found at Step 3 in the data.

Naming, framing and polar words for the 'responsibility' to blow the whistle

One of the main themes discussed in the literature is the framing of whistleblowing, especially institutionalised whistleblowing, as a duty (legal, regulatory or contractual), right or moral choice.

The language of choice, indicative of Conceptual Discourse, was identified in a number of the texts in the sample, with employee 'choice' most frequently framed by the word 'encourage'. The word "encourage" is used in the texts of 14 of the 28 organisations in Categories 1 and 2 in the sample.

Example 45: The Cooperative Bank Whistleblowing Policy (March 2018)

This organisation's policy-based text includes the word "encourage". It is interesting to note the use of the word 'encourage' within a policy-based text.

> "If you're concerned that any of the things below are happening, have happened or are likely to happen, we encourage you to raise this as soon as possible".

Other phrases selected by organisations in the sample include: "we will [in terms of this is the behaviour that people work here exhibit]", "the right thing to do", "your willingness to report", "can be raised", "opportunity", "it is really important [that you speak up]".

Example 46: Barclays Way (updated July 2018)

This organisation's values-based text frames speaking up as a choice that it is "really important" for an employee to make.

> "If you believe something is not right – like misconduct, fraud or illegal activity – or if you feel that our standards are not being met, it is really important that you speak up".

The language of legal, regulatory and contractual duty, indicative of Prescriptive Discourse was also identified across both the values-based and policy-based texts in the sample. Illustrations of this framing include the following words and phrases: "you are required to comply with this code", "obligation", "you must

report", "you have a responsibility", "required to immediately report", "we expect", "should" and "you must speak straight away". This is discussed further below.

Framing, naming and polar word selection was found to be highly problematic and complex at Step 3. In order to express this, the analysis for Step 3 is structured differently from the approach taken for Steps 1 and 2 above. It is not divided into separate headings for Prescriptive and Conceptual Discourse; instead, they are discussed together under themed headings.

Indicators of Prescriptive and Conceptual Discourse at Step 3

Choice, duty and responsibility

The study found the nature of the 'choice', 'duty' or 'responsibility' placed on employees to be unexplained or not fully articulated by many organisations in the sample. This was seen in the high levels of internal and external (for Category 1 organisations[43]) incongruence in the texts within the sample.

Freedom of choice on the part of the employee, especially moral choice, is one of the key indicators of Conceptual Discourse suggested in Section 1 of the Literature Review.

Example 47: The RBS, This is Our Code (undated)

This values-based text explicitly articulates whistleblowing as an individual choice and emphasises it through exhortation.

> "We are confident in using our judgment."
>
> "We do not give up, or walk past the problems, or people who need our help".

[43] This was restricted to Category1 organisations because for these organisations there was more than one text available to the study.

Example 48: HSBC's Charter (2016)

The same approach is used here in this organisation's values-based text.

> "We will speak up when we see something's wrong and respect those who do the same."
> "Do you have the courage to do the right thing" Consider: What is stopping you?"

Example 49: Crédit Suisse website (August 2019)

This organisation's website explicitly frames 'choice' through the word "encourages".

> "Crédit Suisse encourages its employees to report violations of laws, rules, regulations or the Code of Conduct internally".

Example 50: Northern Bank's Group Code of Conduct (December 2018)

The same approach is used by this organisation in their hybrid policy/values-based text.

> "The Group encourages all employees to share any concerns of irregularities, criminal offences, and suspicions of non-compliance with the applicable laws, regulations, and internal standards."

The study found that 15 of the 28 organisations in Categories 1 and 2 of the data set adopt the word "encourage" to express the concept of choice.

Example 51: The JP Morgan Code of Conduct (2019)

This organisation's values-based text frames the 'duty' to blow the whistle as a negative duty, using the word "required" twice in the same paragraph.

> "You are required to promptly report any potential or actual violations of the Code, any internal Company policy or any law or regulation related to our business. Reporting is required whether the violation involves you or someone else subject to the Code."

Example 52: The Cooperative Bank Code of Business Conduct (6 February 2018)

This organisation's values-based text also uses the word 'duty' but does not articulate the nature of the duty.

> "If you discover or suspect that a breach of this Code or a criminal activity such as theft or fraud is being committed, is being planned, or has occurred, you have a duty to report it".

Example 53: The Deutsche Bank Compliance Statement (March 2018) and the Code of Conduct and Ethics for the DB Group (undated)

This policy-based text contains conflicting statements referencing both "must" and "encourages".

> "Any material issues or concerns about conduct must be reported and addressed …"
>
> "… encourages employees to raise questions and concerns"

The values-based text of the same organisation expresses 'duty' in three different ways, each suggesting an ethical duty and an individual choice: "encouraged", "doing the right thing" and "should".

> "Each of us is encouraged to raise issues of concern…"
>
> "While it may be easier to say nothing when faced with potential or actual misconduct, illegal or unethical behaviour, doing the right thing means raising your concerns or questions about the conduct …"
> "… you should speak up when you suspect potential wrongdoing …"

Example 54: Standard Chartered Bank's Speak Up Policy

This policy-based text moves from 'encouragement' to 'responsibility' in the first two paragraphs.

> "We encourage Staff and any other person who has a genuine concern about misconduct to raise it through our Speaking Up programme."

> "Staff have a responsibility to Speak Up through the Speaking Up programme"

Example 55: The Bank of New York Mellon, Code of Conduct 2018

This values-based text includes the wording of both individual choice, "being willing to take a stand", indicative of Conceptual Discourse,

> "Being willing to take a stand to correct or prevent any improper activity or business mistake"

and 'responsibility', which potentially spans both Conceptual and Prescriptive Discourse,

> "Take responsibility for talking to someone if you see a problem."

and 'obligation', indicative of Prescriptive Discourse:

> "IT'S YOUR OBLIGATION TO *DO WHAT'S RIGHT"* [Sic].

The capitalisation emphasises the obligation and exhortation to "do what is right". However, "doing the right thing" seems to imply a choice. The phrase "Take responsibility for talking to someone if you see a problem" encapsulates a duty to do good and seeks to strengthen the connection between the putative employer-whistleblower and the wrongdoing and encourage an informative response. This is discussed in Section 1 of the Literature Review (see pp.51-52) with reference to the Schlenker Triangle (1994, p.632); in particular the Situation/Event point of the triangle.

Rights versus duties

The difference between a 'right' and a 'duty' at Step 3 is also discussed in Section 1 of the Literature Review (see pp.46-47). The data shows whistleblowing to be framed almost exclusively as a 'duty' in the data. Despite the predominance of this framing, however, the difference between duties and rights in the data is not always clear in the texts in the sample, blurring the distinction.

Example 56: Société Générale Kleinwort Benson's Group Code of Conduct (October 2016)

This organisation's values-based text expressly frames whistleblowing as a 'right' that an "employee" is "entitled" to exercise.

> "Each of us is entitled to raise a warning if we believe we have good grounds"
>
> "This right must be exercised responsibly, with restraint, and in a non-defamatory manner."

Example 57: JP Morgan in their Code of Conduct (2019)

This values-based text confusingly frames whistleblowing as both a "right" and "obligation" in the same sentence.

> "If you see or suspect that something is illegal or unethical, you have not only the right, but also the obligation, to speak up and share your concerns."

The data also shows that, where 'whistleblowing' is expressed as a 'duty' or 'responsibility', the nature of that duty (ethical, contractual, legal or regulatory) is generally not articulated by the organisation.

Example 58: The RBS's Policy Framework One Minute Policy Speak Up (21 March 2018)

This organisation's policy-based text uses the term 'responsibility' and imperative language expressed as direct speech, "I must". The nature of the 'responsibility' is not, however, explicitly specified.

> "We all have a responsibility to speak up if something is wrong …"
>
> "I must … report any known or suspected illegal activities or unethical behaviours of which I become aware or are made known to me within RBS."

Example 59: The Bank of New York Mellon's Code of Conduct – Doing What's Right (2019)

This hybrid policy/values-based text explicitly frames the 'responsibility' as a non-contractual, ethical duty.

> "The Code of Conduct does not alter the terms and conditions of your employment. Rather, it helps each of us to know what must be done to make sure we always Do What's Right."

Decision-making frameworks

The use of decision-making frameworks is discussed in Section 1 of the Literature Review (see p.66). Decision-making frameworks can be used by organisations as a vehicle for shaping and directing employee choice. The study found only 3 decision-making frameworks in the data. Only 1 of these was explicitly linked to whistleblowing; the other 2 were linked to ethical decision-making more widely.

Example 60: Yes Check" in the RBS, This is Our Code (undated)

This organisation includes a decision-making framework in their code of conduct, a values-based text.

> **"**We use the YES check for guidance. Decisions are not always straightforward. The YES check can help us. It's a tool, not a rule.
> Ask yourself…
>
> 1. Does what I am doing keep our customers and the bank safe and secure?
>
> Consider the impact of what you are doing. Rehearse a briefing with your boss.
>
> 2. Would customers and colleagues say I am acting with integrity?
>
> Consider: would I do this to someone in my family or a friend? Would I do it to myself?
>
> 3. Am I happy with how this would be perceived on the outside?
>
> Consider the impact of this in the outside world. Try writing the press release – does it sound good for customers?
>
> 4. Is what I am doing meeting the standards of conduct required?
>
> Think. If you are unsure then seek a second opinion.

5. In 5 years' time would others see this as a good way to work?

6. Will this have a positive impact? Imagine writing it on your CV."

Linkage to codes of conduct and statements of values and purpose

As discussed above in relation to Step 1 above, a direct linkage was found in the data between the definition of 'wrongdoing' adopted by organisations and breaches of the organisation's ethical values and statements of purpose (contained in texts such as codes of conduct). The data analysis shows that 14 of the 28 organisations in Categories 1 and 2 in the sample include breaches of their internal codes of conduct or ethical values in their framing of 'wrongdoing'. As illustrated in Examples 61 and 62 below, this linkage suggests, by extension, that there is an explicit or implicit duty to blow the whistle in the organisation's internal code of conduct or similar statement of values.

Example 61: JP Morgan's Code of Conduct (2019)

This organisation's values-based text, frames the 'duty' to "speak up" as not only the "right thing to do" but also an action that is required by their Code of Conduct. It is unclear if this is a contractual requirement.

> "Speak Up! If you see or suspect misconduct, don't ignore it. Say something. The Code of Conduct requires it, and it's the right thing to do".

Example 62: Gulf International's Code of Conduct – Doing Things Right, Right Now (February 2017)

This organisation's hybrid policy/values-based text requires a positive affirmation from new employees that they will "Report suspected Violations as required by the Code". This appears to be overtly framed as a contractually requirement.

> "Prior to joining the Bank, new hires are required to provide an affirmation that they have read and understood the Code, will comply with it and will Report suspected Violations as required by the Code."

In the same document, the organisation expresses the duty as one owed not just to the organisation but also to the whistleblower's colleagues:

> "You have a duty to GIB and your colleagues to Report… immediately".

Linkage to legal and regulatory duties

The connection between the framing of 'wrongdoing' and the definitions contained in PIDA/ERRA and the FCA rules was discussed above in relation to Step 1 and is covered further in Section 2 of the Data Analysis.

The Introduction (see pp.23-24) discusses a range of other individual regulatory and legal duties imposed directly on the employees of UK Banks, namely the FCA's Individual Conduct Rules, UK anti-money laundering and UK market abuse legislation, and organisational-level regulatory and legal duties passed on to the employees of UK Banks by their organisations, for example, in relation to sanctions breaches, bribery and corruption legislation and anti-competition law legislation.

The study found that most organisations in the sample did not reference these legal and regulatory duties in the texts included in the data. It is suggested by the study that these direct and indirect legal and regulatory duties are most likely to be contained in separate and standalone texts (not included in the study data). This makes it difficult for employees of UK Banks to have a complete and holistic picture of their legal and regulatory duties in relation to reporting. It also means that where 'wrongdoing' is defined to include behaviours or actions covered by specific legal or regulatory duties to report, this is not specified or clarified. One of the reasons for this approach may be the local jurisdictional nature of such legal and regulatory duties and the difficulty of including them in a global whistleblowing policy or procedure or set of organisational values or principles. Another reason may be the fact that whistleblowing arrangements, policies and procedures are the responsibility of a different department from the departments

responsible for anti-money laundering, sanctions, market conduct etc. This means that policies and procedures become written in siloes.

A small number of exceptions were found, although the references in the data were implied rather than explicit.

Example 63: The RBS Policy Framework One Minute Policy Speak Up (21 March 2018)

This policy-based text refers to regulatory duties (for example, under the FCA's Individual Conduct Rules). This is implied through the reference to reporting employees to the regulators.

> "RBS treats failure to comply with this policy very seriously and where inapplicable, in accordance with local policy and laws may discipline those who do not follow the policy. This could result in dismissal if the conduct is considered to be a breach of conduct rules, and where applicable, RBS may report disciplinary action to the regulators."

Example 64: The Barclays Way (July 2018)

This organisation's values-based text uses the phrase "personal accountability"; a phrase that directly links to the FCA's SMCR regime without referencing it explicitly.

Responsibilisation

The responsibilisation of employees to blow the whistle is discussed in Section 1 of the Literature Review (see pp.53-56). Employees can be responsibilised in relation to whistleblowing through duties imposed by legislation, regulation or contract, or, indeed, by ethical standards. The risk of responsibilisation and the opportunity it provides for organisations and their management to pass the responsibility for wrongdoing onto employees who do not report wrongdoing is one of the main arguments in the literature against imposing duties on employees to blow the whistle.

The data showed that some of the organisations in the sample were using their codes of conduct and ethical values to responsibilise employees for the wrongdoing of others through a failure to take action. This is facilitated, as discussed above, through including breaches of the organisation's ethical values and principles within the scope of 'wrongdoing' and making adherence to those ethical values and principles an explicit or implicit contractual obligation.

The examples below are taken from values-based texts.

Example 65: JP Morgan's Code of Conduct (2019)

This values-based text uses the word 'responsible' and overtly responsibilises employees who fail to report the actions of others which they knew about or "should have known about".

> "Just as you will be held responsible for your own actions, you can also be held responsible for not reporting the actions of others if you knew or should have known that they were in violation of any applicable policy, law or regulation."

Example 66: The Group Code of Conduct of the Bank of Ireland (2018)

This values-based text lists the "serious personal consequences" of failing to report. It includes internal disciplinary action which appears to imply that this is a matter of contract.

> "What if I don't follow the Code? If you don't follow the Code, or if you fail to report something that has not met the principles or spirit of the Code, you may face the following serious personal consequences:
>
> - Internal disciplinary action - up to and including dismissal;
> - External fines or sanctions;
> - Exclusion from taking certain roles, for example directorships; or
> - Prison Sentence"

This is in stark contrast to other parts of the same document that imply that 'speaking up' is a choice, for example:

> "If you want to raise a concern, follow the guidance in the Speak Up policy."

The word here "want" implies a choice.

Example 67: The Scotiabank Code of Conduct (November 1, 2018)

This organisation's values-based text contains repeated warnings to employees.

> "… failing to report is grounds for immediate termination of your employment for cause"
> "… any breach, or wilful ignorance of the breaches of others, will be treated as a serious matter, and may result in discipline up to and including termination of your employment."

> "You are required to immediately report any actual, suspected or potential breaches of the Code including [list here]. Failing to report is grounds for immediate termination of your employment for cause."

Example 68: The Gulf International Code of Conduct – Doing Things Right, Right Now

In the hybrid policy/values-based text of this organisation, the responsibilisation is again overt and stark.

> "Wilfully or purposefully ignoring this code or failing to raise a known or suspected violation of this Code is violating this Code"

Rational loyalty

Section 1 of the Literature Review discusses the concept of rational loyalty and its relevance to whistleblowing (pp.56-58). Whistleblowers who exhibit rational loyalty remain loyal to the values and purpose of their organisation, rather than its management, employees and artefacts. The study suggests that the articulation of powerful ethical and values-based language could be one of the drivers of rational loyalty.

Example 69: RBS, This is Our Code (undated)

An illustrative example of this type of wording can be seen this organisation's values-based text:

> "We do not remain silent when we see others behaving in ways that contradict Our Values".

Summary

The data analysis shows 'responsibility' to be one of the most contentious aspects of the data containing both Prescriptive and Conceptual Discourse indicators. The study found the nature of the 'choice', 'duty' or 'responsibility' placed on employees to be unexplained or not fully articulated by many organisations in the sample. High levels of both internal and external incongruence were found. The data analysis suggests that a number of organisations include an explicit or implicit duty to blow the whistle in their codes of conduct or other statements of values. The data analysis also identifies multiple examples of responsibilisation. Contrary to the Literature Review, where responsibilisation is identified closely with operative goals and Prescriptive Discourse, the most striking examples of responsibilisation in the data were found in the values-based texts in the sample.

STEP 4: CHANNEL SELECTION: WHAT SHOULD I DO?

Step 4: Channel: *What should I do?*	
Prescriptive indicators: Channel within the systems and controls	**Conceptual indicators: Channel not part of the systems and controls**
11. Definition of whistleblowing shaped by or linked to the channel used report wrongdoing 12. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 13. Repeated disclosures within the systems and controls required i.e. whistleblowing as a process	H. Purpose of whistleblowing means that the disclosure is not linked to the systems and controls of the organisation

Extract from coding frame in Figure 6 above

Overview

As discussed in Section 1 of the Literature Review, a range of channels through which to report concerns, usually structured as a hierarchy, is a feature of institutionalised whistleblowing arrangements (see pp.71-74). An organisation typically offers one or more channels for disclosure to a prospective whistleblower-employee as an alternative to them blowing the whistle outside the organisation. As also discussed in the Literature Review, the provision of institutionalised whistleblowing arrangements requires organisations to distinguish whistleblowing channels from other internal reporting and escalation channels.

Prescriptive Discourse (see pp.71-74 of Section 1 of the Literature Review) specifies the channels that must be used by a whistleblower-employee. Conceptual Discourse is silent in this regard as it conceptualises the act of whistleblowing as operating outside the systems and controls of the organisation. Its sole concern is with bringing about change rather than the channel selected.

The analysis of the data at Step 4 begins with the framing, naming and polar word selection for 'channel selection'. It then considers the indicators of Prescriptive and Conceptual Discourse found at Step 4 in the data.

Naming, framing and polar words for channel selection

The study found that the majority of the organisations in the sample had set up an anonymous whistleblowing line for employees or had contracted to use a line run by an external provider. These lines were labelled in a number of ways: "InTouch", "the Protector Line", "HSBC Confidential", "EthicsPoint", "Speak Up line", "Staff Hotline", "the Whistleblowing Scheme", "Speak Up framework" (independent and confidential 24/7 telephone and web-based service), "[name of provider] external Hotline", "Whistleblower Protection Line", "Code Helpline" and "Whistleblower Hotline".

The data analysis shows that the terms 'reporting' and 'report' (as a noun or a verb) were frequently used in both the values-based and policy-based texts in connection with contacting one of these whistleblower hotlines. This is of particular interest to the study as blurs the distinction between 'whistleblowing' and other forms of reporting and escalation. The use of the term "report" is particularly confusing for employees in the context of the term "reportable concern", the term used by the FCA to delineate 'wrongdoing' under their rules. This is discussed further in Section 2 of the Data Analysis.

As channel selection is of low relevance for Conceptual Discourse (see pp. 71-74 of Section 1 of the Literature Review), the indicators of Prescriptive and Conceptual Discourse are discussed together below under themed headings and the focus is primarily on the Prescriptive Discourse in the data.

Channel hierarchy

The data shows that the organisations in the sample provide a range of channels for their employees to report or escalate, including specific channels for whistleblowing. These options form a hierarchy.

Inclusion of line managers in the hierarchy/whistleblowing as a process

The study found that 16 of the 28 organisations in Categories 1 and 2 of the data set explicitly include speaking to a line manager as an act of 'whistleblowing'.

Illustrations can be seen in Examples 70 and 71 below. This approach makes it particularly hard to distinguish whistleblowing from other forms of reporting and responsible employee behaviour.

The study also found that 9 of the 28 organisations in Categories 1 and 2 of the data set explicitly require employees to repeat their disclosures by progressing up the hierarchy. Illustrations can be seen in Examples 72 and 73 below. The framing of whistleblowing as a process rather than a one-off disclosure is discussed in Section 1 of the Literature Review (see. p.71).

Example 70: Société Générale Kleinwort Benson's Group Code of Conduct (October 2016)

This organisation's values-based text explicitly includes "contacting the line management" within the whistleblowing hierarchy.

> "The whistle-blowing policy may be applied at several levels: contacting the line management; direct referral to the Compliance Department, or to a senior manager designated for that purpose; lastly, issues can be referred to the Group general Secretary (email address: alert.alert@socgen.com), especially if the situation giving grounds for the initial warning persist."

Example 71: Policy for the Ethical Standards in the Handelsbanken Group (March 2019)

This organisation's values-based text also includes the line manager and states that where "normal channels" are "not appropriate" the "special system for whistleblowers" should be used.

> "An employee who discovers or suspects irregularities or other unacceptable conditions within the Group must report this first to his/her line manager or to a senior manager within their own or another unit. A report can also be made, for example, to the compliance function, or to Group Audit at Handelsbanken.
>
> If the normal channels described above are not appropriate, the employee can use Handelsbanken's special system for whistleblowers, whereby identity protection can be guaranteed as far as is legally possible."

Example 72: The Macquarie Code of Conduct 2018

This organisation takes this approach in their values-based text through the inclusion of the phrase "not been dealt with appropriately".

> "If you feel that the issue has not been dealt with appropriately or you feel uncomfortable about raising an issue, you can contact the Integrity Office, which is an internally independent function to enable you to raise concerns safely and confidentially. Alternatively, contact the Macquarie Staff Hotline if you wish to remain anonymous."

Example 73: Scotiabank in their Code of Conduct (November 1, 2018)

This approach is also taken in this organisation's policy/values-based text.

> "… if you do not receive what you consider to be a reasonable response from the first person."

Confidentiality and anonymity

The study also found that, in addition to using a specific whistleblowing channel when other channels are unavailable or inappropriate, 9 of the 28 organisations in Categories 1 and 2 of the data set also distinguish a specific 'whistleblowing' channel from other channels by stating that it is the channel to use if the employee wants their report to be confidential or they want to remain anonymous. Illustrations can be seen in Examples 74 and 75 below.

Example 74: The CIBC Code of Conduct (2018)

This organisation's values-based text reserves their whistleblower channel for employees that would like to remain anonymous or who have not been able to illicit a response by reporting to other channels:

> "If you wish to remain anonymous, or if you feel that someone has not responded appropriately to the Code issue that you have reported, you may contact the confidential Whistleblower Hotline".

Example 75: Rathbone Investment Management Limited's Whistleblowing Policy (2018)

This organisation's policy-based text goes further and defines whistleblowing as "confidential reporting" through the positioning of the brackets, thus equating the two.

> "The purpose of this policy is to provide a formal document which represents Rathbones' approach to whistleblowing [confidential reporting]."

Inclusion of the channel selected in the definition of whistleblowing

The study also found that 4 of the 28 organisations in Categories 1 and 2 of the data set go further and make channel selection part of the definition of whistleblowing (see Section 1 of the Literature Review, pp.71-74). Illustrations can be seen in Example 76 and Example 77 below.

Example 76: HSBC's Statement on Whistleblowing Arrangements (24 April 2017)

This organisation defines "whistleblowing" by describing the channels used in their policy-based text.

> "HSBC Confidential provides employees with a safe, simple, and globally consistent way to raise concerns when normal channels for escalation are unavailable or inappropriate. This is commonly referred to as 'whistleblowing'"

Example 77: Scotiabank in their Whistleblowing Policy and Procedure (supplement to the Code of Conduct) (October 2018)

This organisation's policy-based text takes this approach and makes the channel selected part of the definition of 'whistleblower'.

> "Whistleblower - Any individual who informs on another or discloses concerns with respect to the areas noted in Section 6.1 of this Policy through any of the channels noted in section 6.2 and identifies themselves as a Whistleblower."

It should be noted here that the employee must also identify themselves as a whistleblower as part of the definition.

Inclusion of the channel selected in the provision of protection to employees

The study found that 5 of the 28 organisations in Categories 1 and 2 of the data make a link between the channel selected and the availability of protection.

Example 78: SMBC'S Whistleblowing Policy (undated)

In this example, the organisation links adhering to the policy, including the selection of the correct channel, to the protection of the employee in their policy-based text.

> "Whistleblower, who whistle-blows in accordance to the policy, shall not be dismissed or treated unfairly in any way."

Inclusion of the type of wrongdoing in channel selection

The study also found that 4 of the 28 organisations in Categories 1 and 2 of the data make a link between the type of wrongdoing and the channels open to a putative whistleblower-employee. Illustrations can be seen in Examples 79, 80 and 81 below.

Example 79: The Northern Bank's 'Group Code of Conduct' (December 2018)

This organisation's values-based text also takes this approach.

> "The type of issues that can be reported through the whistleblower system include the following …"

Example 80: The HSBC Employee Handbook (HBEU) (February 2018)

This organisation also takes this approach in their hybrid policy/values-based text. It not only states that their whistleblowing line, "HSBC Confidential", can only

be used for certain types of report, it also implies that that decision lies with the organisation. This gives the organisation power over how a particular report will be classified.

> "Individuals whose reports fall outside the scope of HSBC Confidential will be advised of this."

Example 81: Northern Bank Whistleblowing Policy (September 2018)

This organisation's policy-based text states that inappropriately directed 'concerns' will be redirected by the organisation.

> "Where a report about such concerns and issues are directed to Group Compliance under the Whistleblowing Scheme [i.e. ones not covered by the definition of Wrongdoing], the concern will be handed over to the relevant function for further actions."

Summary

The data analysis shows that the organisations in the sample provide a range of channels for their employees to report or escalate, including specific channels for whistleblowing. More than half of the organisations in the sample include speaking to a line manager as an act of 'whistleblowing'. Instances were also in the data of linkages being made between channel selection, the availability of confidentiality and/or anonymity and protection from retaliation.

INTRODUCTION

This section of the Data Analysis discusses the texts produced and disseminated by actors, other than banking organisations, included in the study (see Section 2 of the Literature Review, pp.85-86). These are actors with "discursive legitimacy" (Hardy and Phillips, 1998, p.219) and who are therefore in a privileged position to shape the discourse. The actors identified and included in the study are termed Legal Actors, Regulatory Actors and Best Practice Actors (see Section 2 of the Methodology and Research Design). Each of these is examined in turn.

As discussed in the Methodology and Research Design, "language is not neutral" and "meanings will be created and changed in the process of communication" (Taylor, 2013, p.18). Gasper and Apthorpe (1996, p.6) discuss the concept of "framing" within policy documents and the specific key "concepts" that can be separately identified and "named". Arnold (1937, p.167-79) calls these "polar words" that indicate clear language choices in relation to key concepts. Chaney (2014, p.277) notes that frames "influence opinions by stressing specific values, facts and other considerations, endowing them with greater apparent relevance than under an alternative frame (see also Nelson and Oxleya, 1999, p.75).

The data for each category of actor is analysed in turn (see Section 2 of the Methodology and Research Design). These texts meet the tests proposed by Phillips et al. (2004, p.640) for texts that are most likely to leave "traces" in discourse. They have been widely disseminated and consumed within the organisational field (Phillips et al., 2004, p.640) and, as such, are likely to have undergone "successive phases of 'textualization' (Taylor et al., 1996) or 'recontextualization' (Iedema and Wodak, 1999) by being disseminated among multiple actors" (Phillips et al., 2004, p.640). They have been produced and disseminated during a time of change that called for material levels of "sense-making" (Phillips et al., 2004, p.640) and at a time when the whistleblowing 'problem' was a threat to the organisational legitimacy of UK Banks, particularly in the wake of the financial crisis and at a time of cultural and conduct crisis in

the UK banking industry. These factors are discussed in detail in Section 2 of the Literature Review.

The analysis for each category starts with a general analysis of the framing, naming and polar word selection in the texts for each actor in that category for to the terms whistleblowing and whistleblower. Next, indicators for Prescriptive and Conceptual Discourse for each of the four steps in the coding frame are analysed, including, where relevant, internal congruence within individual texts, external congruence across the multiple texts (Karlsson et al., 2017) and the use of "recurring narrative" and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame.

LEGAL ACTORS

Overview

There are two Legal Actors included in the study. These are (1) The Parliamentary Commission on Banking Standards (PCBS) and the (2) UK legislators, or government, in their role as authors of the UK whistleblowing legislation, the Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA) (collectively referred in the study as PIDA/ERRA).

Structure of the analysis

The data for each of the Legal Actors is analysed in turn. The analysis starts with a general analysis of the framing, naming and polar word selection in the texts for each of the Legal Actors in relation to the terms whistleblowing and whistleblower. Next, each of the four steps in the coding frame are analysed in turn for each of the Legal Actors. The analysis considers the indicators for Prescriptive and Conceptual Discourse at each step including, where relevant, framing, naming and polar word selection for the key terms relevant to the step, internal congruence within individual texts, external congruence across the multiple texts (Karlsson et al., 2017) and the use of "recurring narrative" and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame.

Framing, naming, and polar word selection: 'whistleblowing/'whistleblower'

(1) The Parliamentary Commission on Banking Standards (PCBS)

In Volume 1 of the PCBS report, Changing Banking for Good, the term 'whistleblowing' is used throughout. In the relevant section of the volume, there are 15 instances of 'whistleblowing' and no instances of 'raising concerns', 'speak(ing)-up' or 'speaking out'.

In Volume 2 of the same report, 'whistleblowing' is still the predominant word used, with 46 instances, but there are also 2 instances of 'raising concerns', 3 instances of 'speaking out' and 1 instance of 'speak(ing)-up'.

Example 82: Paragraph 143 of Volume 1 of Changing Banking for Good

Here the PCBS text defines 'whistleblowing' as a "report [of] an instance of wrongdoing".

> "Institutions must ensure that their staff have a clear understanding of their duty to report an instance of wrongdoing, or 'whistleblow', within the firm".

Example 83: Paragraph 144 of Volume 1 of Changing Banking for Good

In the next paragraph, the text includes the word "complaints" twice as an alternative framing for 'report'.

> "That Board member must be satisfied that there are robust and effective whistleblowing procedures in place and that complaints are dealt with and escalated appropriately. This reporting framework should provide greater confidence that wider problems, as well as individual complaints, will be appropriately identified and handled."

Example 84: Paragraph 778 of Volume 2 of Changing Banking for Good

Here the PCBS acknowledges that the financial industry has a poor record of treating whistleblowers well and, again, whistleblowing is framed as "complain[ing] about wrongdoing.

> "Employees in the financial services industry, because of its particular characteristics, may fear for their employability and reputation if they complain about wrongdoing of all sorts".

Example 85: Paragraph 132 of Volume 2 of Changing Banking for Good

Here, the PCBS text differentiates "raising concerns" from "whistleblowing" without explaining the distinction.

> "Ian Taplin noted the extraordinary fact that "there is no public record of any banking employee raising concerns or whistle-blowing" with regards to PPI."

Example 86: Paragraph 772 of Volume 2 of Changing Banking for Good

Here, the text also contains the phrase 'tipping off' to frame 'whistleblowing'. This is a phrase that is usually reserved in the financial services sector for an employee letting a person under investigation for money laundering know that they are under investigation, an act that is subject to a specific offence (Section 333 of the Proceeds of Crime Act 2002).

> "As well as this failure of formal control systems, the firms concerned were also apparently not tipped off about wrongdoing by their own employees. Had this occurred, the firms might have been able to shut down the wrongdoing much earlier and prevent much of the penalties and reputational damage they incurred."

(2) Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA) (collectively, PIDA/ERRA)

The term 'whistleblowing' does not appear in PIDA/ERRA. Nor do the phrases 'raising concerns' or 'speak up'. The legislation uses the word "qualifying disclosure" throughout.

Summary

Although references to "speaking up" and "raising concerns" were found in the data, the data analysis indicates that the Legal Actors included in the study predominantly use the word 'whistleblowing'.

Next, the four steps contained in the coding frame are analysed in turn for each of the Legal Actors. An extract of the coding frame is included for each step.

Step 1: Wrongdoing - Am I concerned? [44]

Step 1: Wrongdoing: *Am I concerned?*	
Prescriptive Discourse indicators: Exclusive definition	**Conceptual Discourse indicators: Truth, criticism and dissent**
1. Exclusive and detailed, legalistic definition of the type of 'wrongdoing' that an employee 'can' blow the whistle about i.e. distinct sub-set of poor conduct	A. Inclusive: Absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)

Extract from coding frame in Figure 6 above

(1) Parliamentary Commission on Banking Standards (PCBS)

The word 'wrongdoing' is used throughout both Volumes 1 and 2 of the PCBS report, Changing Banking for Good. The PCBS do not attempt to define 'wrongdoing'. There are no prescriptive definitions or lists.

Example 87: Paragraph 778 of Volume 2 of Changing Banking for Good

Here the PCBS leave the definition of 'wrongdoing' open by referring to "wrongdoing of all sorts".

> "Employees in the financial services industry, because of its particular characteristics, may fear for their employability and reputation if they complain about wrongdoing of all sorts".

[44] In the Literature Review, Step 1 Wrongdoing "Am I concerned?" in the coding frame is analysed as two separate steps: Step 1 Recognition, "Have I identified wrongdoing?" and Step 2 Assessment, "Does it fall within the organisation's whistleblowing arrangements?" The reduction to a single step is discussed in Section 1 of the Methodology and Research Design pp.114-115.

The PCBS do, however, make some references to materiality (see Section 1 of the Literature Review, p.44) and they draw a distinctions between wrongdoing and personal grievances (see discussion under the Regulatory Actors heading below).

Example 88: Paragraph 143 of Volume 1 of Changing Banking for Good

Here the PCBS use the phrase "substantive whistleblowing allegations" which appears to denote a level of materiality in relation to wrongdoing and specifically distinguish these from reporting "individual grievances".

> "Banks should be given an opportunity to conduct and resolve their own investigations of substantive whistleblowing allegations. We note claims that 'whistleblowing' being treated as individual grievances could discourage legitimate concerns from being raised".

There are also multiple references to culture and values, particularly from those giving evidence to the Committee. The focus on "good" behaviour is also evident in the title of the report.

Example 89: Paragraph 785 of Volume 2 of Changing Banking for Good

Here, the PCBS suggest that concerns raised by employees may be less "specific" than "typically associated with whistleblowing", thereby suggesting a two tier definition of wrongdoing.

> "Concerns reported by employees may be less specific than those typically associated with whistleblowing".

Example 90: Paragraph 786 of Volume 2 of Changing Banking for Good

Here, the PCBS expand on this distinction and distinguish between "formal whistleblowing" and raising concerns where there is "no specific allegation of wrongdoing".

> "In addition to procedures for formal whistleblowing, banks must have in place mechanisms for employees to raise concerns when they feel discomfort about products or practices, even where they are not making a specific allegation of wrongdoing".

(2) Public Interest Disclosure Act 1998 (PIDA) and the Enterprise and Regulatory Reform Act 2013 (ERRA), (collectively, PIDA/ERRA)

In contrast to the PCBS, PIDA/ERRA takes a highly prescriptive approach to the framing of wrongdoing. Only those types of wrongdoing prescribed by the legislation can be the subject of a Protected Disclosure. This is central to the structure of the legislation.

Example 91: Types of 'wrongdoing' that can be subject to a Protected Disclosure under PIDA/ERRA (PIDA Section 1 s.43B)

PIDA/ERRA contains a bounded, closed-ended list of the types of wrongdoing that can be covered by a Protected Disclosure.

1. A criminal offence; or
2. A failure to comply with any legal obligation; or
3. A miscarriage of justice; or
4. The putting of the health and safety of an individual in danger; or
5. Damage to the environment; or
6. Deliberate concealment relating to any of the above.

A further condition imposed by Section 17 of ERRA is that, to be a Protected Disclosure, an employee[45] must have a "reasonable belief" that their disclosure is in the "public interest". The inclusion of a public interest test is of interest to the study because it contrasts "public interest" with the private interest of the organisation. There is no protection for disclosing wrongdoing that is only of interest within the organisation. This is a complex matter for an organisation to address in an organisational level text. It is challenging for organisations to distinguish, in either a values-based or policy-based text, between reports about wrongdoing that are in the "public interest" and those that are not. It is also challenging to explain to employees that they are only protected under UK legislation where the report is about wrongdoing in the "public interest".

[45] The legislation refers to 'worker' which is a wider category.

Section 18 of ERRA removed the requirement that an employee must make a protected disclosure 'in good faith'. Instead, Employment Tribunals in the UK have the power to reduce compensation by up to 25% for detriment or dismissal relating to a Protected Disclosure that was not made 'in good faith'. The use of the phrase 'good faith' by UK Banks is discussed in Section 1 of the Data Analysis.

Step 2: Protection - Am I protected?

Step 2: Protection: *Am I protected?*	
Prescriptive Discourse indicators: Non-retaliation in certain circumstances	**Conceptual Discourse indicators: Danger**
2. Circumstances in which the employee is protected 3. Reciprocal language linking disclosure to protection	D. Recognition of the need for courage

Extract from coding frame in Figure 6 above

(1) The Parliamentary Commission on Banking Standards (PCBS)

The PCBS does not recommend any addition provisions in regard to the protection of employees. It does, however, recommend that UK Banks be required to inform the appropriate regulator should they lose an employment case that relies on PIDA/ERRA. This enables the regulators to take action against the organisation or individuals within the organisation.

Example 92: Paragraph 799 of Volume 1 of Changing Banking for Good
Their approach is explained in the extract below and is later incorporated into the new FCA and PRA rules (see Regulatory Actors heading below).

> "… where the tribunal finds in the employee's favour. The regulator can then consider whether to take enforcement action against individuals or firms who are found to have

> acted in a manner inconsistent with regulatory requirements set out in the regulator's handbook. In such investigations the onus should be on the individuals concerned, and the non-executive director responsible within a firm for protecting whistleblowers from detriment, to show that they have acted appropriately."

Example 93: Paragraph 791 of Volume 1 of Changing Banking for Good

The PCBS recommend that a single member of the Board of UK Banks be made responsible for ensuring that whistleblower employees are protected.

> "The Commission recommends that the Board member responsible for the institution's whistleblowing procedures be held personally accountable for protecting whistleblowers against detrimental treatment. It will be for each firm to decide how to operate this protection in practice, but, by way of example, the Board member might be required to approve significant employment decisions relating to the whistleblower (such as changes to remuneration, change of role, career progression, disciplinary action), and to satisfy him or herself that the decisions made do not constitute detrimental treatment as a result of whistleblowing. Should a whistleblower later allege detrimental treatment to the regulator, it will be for that Board member to satisfy the regulator that the firm acted appropriately."

Again, this approach is incorporated later into FCA and PRA rules (see the Regulatory Actors heading below)[46].

Example 94: Paragraph 790 of Volume 2 of Changing Banking for Good

In Volume 2 of Changing Banking for Good, the PCBS recognise the fear of retaliation that prospective whistleblower-employees experience in UK Banks.

> "In many cases whistleblowers will act anonymously, but where whistleblowers are not anonymous they need particular protection, because a key barrier to effective

[46] UK Banks must appoint a Whistleblowers' Champion, who will usually be the senior non-executive director for the organisation (see Introduction).

whistleblowing is the fear that staff will face repercussions from their employer for having drawn attention to wrongdoing."

(2) Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA), (collectively, PIDA/ERRA)

The focus of the legislation is on protection. The act of the blowing the whistle itself does not give rise to a legal claim by an employee; there has to be victimisation as a result of the employee making a Protected Disclosure as defined by the legislation.

Step 3: Responsibility – Why should I act?

Step 3: Responsibility: *Why should I act?*	
Prescriptive Discourse indicators: Legal, regulatory, contractual duty	**Conceptual Discourse indicators: Moral choice**
4. Mandatory employee duty (4a contractual, 4b legal and 4c regulatory) 5. Responsibilisation (i.e. punishment imposed for failing to blow the whistle) 6. Punishment for malicious reports 7. Good faith of employees explicably required 8. Whistleblowing as a risk management tool (including reputational risk management) 9. Loyalty to the organisation (solely to the people and artefacts) 10. Use of a decision-making framework or similar device provided to shape choice	E. Freedom and choice F. Ethics and morality G. Rational loyalty (i.e. to the values of the organisation, not its people or artefacts)

Extract from coding frame in Figure 6 above

(1) The Parliamentary Commission on Banking Standards (PCBS)

The 'duty' to blow the whistle is discussed and explored in both volumes of the PCBS report.

Example 95: Paragraph 143 of Volume 1 of Changing Banking for Good

Here, the PCBS refer to the "duty to whistleblow" and argue that it is important to ensure that employees in the UK banking industry have a "clear understanding" of that duty. They do not, however, articulate the nature of that duty (i.e. legal, regulatory, contractual, ethical etc.).

> "Institutions must ensure that their staff have a clear understanding of their duty to report an instance of wrongdoing, or 'whistleblow', within the firm".

Example 96: Paragraph 782 of Volume 2 of Changing Banking for Good

Despite framing whistleblowing as a "duty", the PCBS also discuss the need for firms to provide "greater encouragement" to their employees to blow the whistle, implying that whistleblowers have a choice or a right to do so, rather than a negative duty.

The use of the term "encouragement" here is interesting given the frequency of the usage of the term by the organisations in the sample (see the discussion in Section 1 of the Data Analysis, pp.167-168).

> "… practical steps that we expect banks to take to provide greater encouragement and protection for internal whistleblowers."

Example 97: Paragraph 795 of Volume 2 of Changing Banking for Good

When referring to the "duty" to blow the whistle, the PCBS also refer to the Financial Services Authority (FSA)'s[47] Approved Persons Principles[48].

> "Approved Persons are currently obliged to "deal with the FSA and with other regulators in an open and cooperative way and must disclose appropriately any

[47] The predecessor of the Financial Conduct Authority (FCA).

[48] The predecessor of the FCA's Conduct Rules under the SMCR. The FCA's Conduct Rules introduced in response to the PCBS Report is discussed under the Regulatory Actors heading below.

> information of which the FSA would reasonably expect notice." (Principle 4 of the Statement of Principles for Approved Persons).

They also make explicit reference to Tracey McDermott, former CEO of the FSA, making reference to Principle 4 imposing an "obligation to whistleblow" on Approved Persons, but suggest that the FSA had not been sufficiently assertive in enforcing the obligation. This interpretation of Approved Persons Principle 4 is disputed and discussed in more detailed below under the Regulatory Actor heading below.

Example 98: Paragraph 796 of Volume 2 of Changing Banking for Good

The PCBS also recommend that all "senior persons" should have an "explicit duty" to disclose wrongdoing to the regulators. This is framed here as a duty to do good (see Section 1 of the Literature Review, pp.48-49).

> "All Senior Persons should have an explicit duty to be open with the regulators, not least in cases where the Senior Person becomes aware of possible wrongdoing, regardless of whether the Senior Person in question has a direct responsibility for interacting with the regulators".

The author would argue, that this has, in fact, always been the case for those undertaking Significant Influence Function[49] roles under the Approved Persons regime and continues to be the case under the SMCR. This is discussed in more detail below under the Regulatory Actors heading. Under neither regime, is this responsibility ever referred to or framed as 'whistleblowing', however.

Example 99: Paragraph 143 of Volume 1 of Changing Banking for Good

The PCBS also makes a recommendation that employees' contracts and internal codes of conduct should make their 'duty' to blow the whistle clear. This reflects the discussion in Section 1 of the Data Analysis (see p.151).

[49] These are specified senior roles within financial services organisations.

> "Employee contracts and codes of conduct should include clear references to the duty to whistleblow and the circumstances in which they would be expected to do so."

Example 100: Paragraphs 151-2 of Volume 1 of Changing Banking for Good

Here the PCBS positions institutionalised whistleblowing arrangements firmly within the systems and controls and risk management tools of an organisation, framing them as an "essential element of an effective compliance and audit regime" and a "valuable addition to its internal controls". This reflects the discussion in Section 1 of the Literature Review (see pp.55-56) and Section 1 of the Data Analysis (see pp.140-141).

> "We have said earlier in this Report that the financial sector must undergo a significant shift in cultural attitudes towards whistleblowing, from it being viewed with distrust and hostility to one being recognised as an essential element of an effective compliance and audit regime. Attention should focus on achieving this shift of attitude."

> "A poorly designed whistleblowing regime could be disruptive for a firm but well-designed schemes can be a valuable addition to its internal controls."

(2) Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA) (collectively, PIDA/ERRA)

There are no references to a 'duty' to blow the whistle referenced in PIDA/ERRA.

Step 4: Channel selection: What should I do?

Step 4: Channel: *What should I do?*	
Prescriptive indicators: Channel within the systems and controls	**Conceptual indicators: Channel not part of the systems and controls**
11. Definition of whistleblowing shaped by or linked to the channel used report wrongdoing 12. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 13. Repeated disclosures within the systems and controls required i.e. whistleblowing as a process	H. Purpose of whistleblowing means that the disclosure is not linked to the systems and controls of the organisation

Extract from coding frame in Figure 6 above

(1) Parliamentary Commission on Banking Standards (PCBS)

Example 101: Paragraphs 146 of Volume 1 of Changing Banking for Good

Here the PCBS discuss a hierarchy of internal channels acting as a "filter".

> "Whistleblowing reports should be subjected to an internal 'filter' by the bank to identify those which should be treated as grievances. Banks should be given an opportunity to conduct and resolve their own investigations of substantive whistleblowing allegations. We note claims that 'whistleblowing' being treated as individual grievances could discourage legitimate concerns from being raised."

They suggest that the "internal filter" can be used to separate out "grievances" from "whistleblowing" and envisage a role for the organisation in deciding whether a disclosure is a 'whistleblow' or not. This reflects the approaches discussed in Section 1 of the Data Analysis (see p.194).

Example 102: Paragraphs 794 of Volume 2 of Changing Banking for Good

The PCBS support the role of "robust whistleblowing procedures" and the important role that whistleblowers play.

> "As explained above, one of the challenges facing regulators is that they are not as well placed as those within banks to spot problems. Whistleblowers therefore play an

important role in bringing concerns to the attention of regulators. Banks must implement and administer appropriate and robust whistleblowing procedures."

(2) Public Interest Disclosure Act 1998 (PIDA) as amended by the Enterprise and Regulatory Reform Act 2013 (ERRA), (collectively, PIDA/ERRA)

In order to be protected by PIDA/ERRA, a disclosure must meet a number of tests. One of these is that it must be made through the channels prescribed by the legislation. This means to an employer, to a Prescribed Person or to one of the other specified persons listed in the legislation (subject to certain legal tests being met). The FCA and the PRA are both Prescribed Persons for UK Banks under PIDA. Disclosure outside these channels may render the employee unprotected. The expectation is that the employee should make the disclosure to his organisation in the first instance.

Summary

The study shows a marked difference between the framing of wrongdoing by the PCBS and in PIDA/ERRA. The former adopts a values-based and conceptual framing, whereas the latter is highly legalistic and prescriptive. The PCBS acknowledges the fear of retaliation for whistleblowing within the industry and recommends some additional procedural safeguards to be introduced within organisations. PIDA/ERRA is focused solely to the protection of whistleblowers, but its scope is limited. The 'duty' to blow the whistle is discussed and explored in both volumes of the PCBS report. They support an explicit duty to blow the whistle being imposed on employees of financial services organisations, discussing both a regulatory duty under the FCA's Approved Persons Principles and the inclusion of contractual duties in organisational level employment contracts, codes of conduct and values. There are no references to a 'duty' to blow the whistle referenced in PIDA/ERRA. The PCBS supports internal whistleblowing arrangements within organisations and PIDA/ERRA provides for whistleblowers to make their disclosure to their organisation in the first instance.

REGULATORY ACTORS

Overview

There are two Regulatory Actors included in the study. These are (1) the Financial Conduct Authority (FCA) and (2) the Prudential Regulation Authority (PRA). The FCA and the PRA are the main regulatory bodies for UK Banks. Both bodies have rules in relation to whistleblowing, although the lead regulator for conduct-related matters is the FCA and their rules are therefore much more comprehensive in this area. The data includes in the analysis for each of the Regulatory Actors is discussed in Section 2 of the Methodology and Research Design.

Structure of the analysis

The data for each of the Regulatory Actors is analysed in turn. The analysis starts with a general analysis of the framing, naming and polar word selection in the texts for each of the Regulatory Actors in relation to the terms whistleblowing and whistleblower. Next, each of the four steps in the coding frame are analysed in turn for each of the Regulatory Actors. The analysis considers the indicators for Prescriptive and Conceptual Discourse at each step including, where relevant, framing, naming and polar word selection for the key terms relevant to the step, internal congruence within individual texts, external congruence across the multiple texts (Karlsson et al., 2017) and the use of "recurring narrative" and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame.

Joint texts published by the FCA and the PRA are included under the FCA heading.

Framing, naming, and polar word selection: 'whistleblowing/'whistleblower'

(1) The Financial Conduct Authority (FCA)

FCA press release on the new whistleblowing rules (October 2015)

In the press release the FCA use the words "whistleblowers", "raising concerns", "voice concerns" and "speak out".

FCA Response to the PCBS Report (October 2013)

Example 103: Paragraph 23

Here, the framing of 'whistleblowing' is supportive of the PCBS' approach in their report (see Legal Actors above).

The FCA mirror the language of the PCBS report and refer to "informal and formal channels" and emphasise the importance of culture within an organisation. The references to employees being "prepared to speak up" implies employee choice.

> "We agree with these principles and believe a culture where people are prepared to speak up can significantly improve behaviour throughout a firm, and ultimately improve consumer outcomes. Formal whistleblowing practices play an important role in creating this culture but should not be a first port of call. If staff have a good understanding of conduct standards, and feel secure about speaking out, they will inform senior management when they see malpractice occurring, through both informal and formal channels."

Example 104: Paragraph 784

Here the FCA mirror the PCBS' phrase "duty to report wrongdoing" but do not articulate the nature of that duty. This should be contrasted with the framing used later in their Consultation Paper on whistleblowing (see below).

> "We support the Commission's recommendation that staff must understand their duty to report wrongdoing, and will consider building this into the new Individual Standards Rules[50]".

FCA and PRA Joint Consultation Paper (February 2015)

Example 105: Chapter headings

In the index, the four chapters of the paper have the following headings:

> "1. Overview
>
> 2. Whistleblowing requirements
>
> 3. The whistleblowers' champion
>
> 4. The 'duty' to blow the whistle"

Example 106: Introduction

The introduction to the paper frames blowing the whistle as "raise concerns internally" through the positioning of brackets.

> "The Parliamentary Commission on Banking Standards (PCBS) recommended that banks put in place mechanisms to allow their employees to raise concerns internally (i.e. to "blow the whistle"), and that the FCA and the PRA ensure these mechanisms are effective. (See Annex 5 for the recommendations."

Example 107: Para 1.5

Here the document focuses on "culture", "open dialogue" and "challenge" which are all indicators of Conceptual Discourse. The phrase 'speak out' is also used here in place of 'whistleblowing'.

Interestingly, the word "disloyal" is also used here (see discussion of loyalty and rationality in Section 1 of the Literature Review, pp.56-58).

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[50] These later became the Individual Conduct Rules when the FCA's final rules were published.

> "A well-run financial institution will seek to foster a culture that welcomes discussion and challenge. Employees should feel comfortable having an open dialogue in the workplace. Individuals may, however, be reluctant to speak out about misconduct because of the possibility of suffering personally as a consequence: they may worry about being labelled disloyal or as troublemakers, or face a realistic prospect of being bullied, victimised or otherwise disadvantaged, particularly if reporting on their superiors."

Example 108: Para 1.7

Although the word 'whistleblowing' is used throughout the document. The phrases "voice concerns" and "speaking up" (and "speak out" – see above) are also included in the text.

> "Mechanisms to encourage people to voice concerns, by, for example, offering confidentiality to those speaking up, can provide further comfort to whistleblowers."

Example 109: Para 1.9

The FCA and PRA frame all those making a "disclosure" about any topic a "whistleblower". This approach disconnects the discourse from PIDA and thus creates a distinct regulatory discourse within the organisational field concerning the meaning of being a whistleblower.

The FCA are not, however, consistent in their framing. In the same paragraph, they undertake to prohibit the inclusion of clauses prohibiting making protected disclosures in employment contracts and settlement agreements, which anchors the discourse back in PIDA, and they refer to an employment tribunal finding in favour of a "whistleblower", which also connects the framing back to PIDA.

> "Offer **protections to all whistleblowers** [Sic], whatever their relationship with the firm and whatever the topic of their disclosure."

> "Include a passage in **new employment contracts and settlement agreements** [Sic] clarifying that nothing in that agreement prevents an employee, or ex-employee, from making a protected disclosure."

> "… reporting to the FCA where, in a case before an employment tribunal contested by the firm, the tribunal finds in favour of a whistleblower."

Example 110: Para 2.9

In this paragraph, the FCA and PRA set out "What might be expected to feature in a firm's whistleblowing arrangements?" The discourse here includes a mixture of references to "whistleblowing" and "raising concerns" and "speaking out". There seems to be an implication in the second sentence that blowing the whistle means making a disclosure in confidence.

> "The FCA and PRA want relevant firms to have internal procedures that reassure all employees that they can raise concerns and be listened to. Ideally, employees should feel comfortable speaking openly to management, but, where employees do wish to blow the whistle in confidence, there must be a route available to them."

FCA Handbook

SYSC Chapter 18

The FCA's mandatory rules requiring UK Banks to have institutionalised whistleblowing arrangements in place were introduced in September 2016. The rules are contained in Chapter 18 of the Senior Arrangements, Systems and Controls (SYSC) section of the FCA Handbook. The title of the chapter in SYSC is 'Whistleblowing'. The terms 'whistleblowing' and 'whistleblower' are used throughout.

In the purpose statement for SYSC Chapter 18, internal whistleblowing arrangements are clearly positioned as a risk management tool. Other topics covered in SYSC include risk management, stress testing, operational risk and record keeping. This is indicative of Prescriptive Discourse and clearly positions them as part of the systems and controls of an organisation (see the discussion in Section 1 of the Literature Review (pp.55-56) and Section 1 of the Data Analysis (see pp.140-141).

It is interesting to note, in the context of the study, that the only FCA rules that specifically reference 'whistleblowing' are aimed exclusively at organisations and are linked directly to the organisations systems and controls. None of the FCA rules that reference 'whistleblowing' are addressed to employees of UK Banks.

Example 111: Glossary: Whistleblower

The FCA Handbook Glossary contains a definition of a 'whistleblower'. It contains indicators of Prescriptive Discourse.

> "… any person that has disclosed, or intends to disclose, a reportable concern:
> (a) to a firm; or
>
> (b) to the FCA or the PRA; or
>
> (c) in accordance with Part 4A (Protected Disclosures) of the Employment Rights Act 1996"

Guidance on the FCA website for employees

Psychological Safety

The FCA website also contains guidance for the UK financial services industry on building a culture that offers "psychological safety" for employees. Psychological safety is defined in the text as 'the willingness to express an opinion in the workplace'[51] and is therefore highly relevant in the context of the study.

The guidance includes multiple references to "speaking up". There are no references in the text to PIDA/ERRA or whistleblowing, other than the inclusion of Wendy Addison in a video, who is described as a "whistleblower" as well as the founder of 'SpeakOut, SpeakUp'[52]. In contrast to SYSC above, the discourse here is indicative of Conceptual Discourse.

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[51] The FCA credit Harvard academic, Amy Edmondson, with this phrase and definition.

[52] A whistleblowing consultancy, established and run by a whistleblower.

Step 1: Wrongdoing - Am I concerned? [53]

Step 1: Wrongdoing: *Am I concerned?*	
Prescriptive Discourse indicators: Exclusive definition	**Conceptual Discourse indicators: Truth, criticism and dissent**
1. Exclusive and detailed, legalistic definition of the type of 'wrongdoing' that an employee 'can' blow the whistle about i.e. distinct sub-set of poor conduct	A. Inclusive: Absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)

Extract from coding frame in Figure 6 above

The FCA and PRA Joint Consultation Paper (February 2015)

Example 112: Para 2.15

Here, the FCA and PRA argue that organisations' whistleblowing arrangements should cover disclosures of all kinds, not limited to the PIDA wrongdoing categories or breaches of FCA or PRA rules and that all whistleblowers should be protected regardless of the type of wrongdoing.

> "Whistleblowers may choose to contact a firm's internal whistleblowing line to make disclosures on many topics. The FCA and the PRA propose that relevant firms' whistleblowing arrangements should cover all types of disclosure. Relevant firms' whistleblowing mechanisms should offer the same protections to anybody blowing the whistle on any type of concern, including those that do not relate to breaches of

[53] In Section 1 of the Literature Review, Step 1 Wrongdoing "Am I concerned?" in the coding frame is analysed as two separate steps: Step 1 Recognition, "Have I identified wrongdoing?" and Step 2 Assessment, "Does it fall within the organisation's whistleblowing arrangements?" The reduction to a single step is discussed in Section 1 of the Methodology and Research Design, pp.114-115.

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> FCA or PRA rules and which do not qualify as protected disclosures under PIDA. This approach is most consistent with the desire to encourage insiders with knowledge of wrongdoing to feel comfortable speaking up."

FCA Handbook

SYSC Chapter 18

In SYSC, the scope of "reportable concern" (see definition below) is wider than the scope of "Protected Disclosure" under PIDA/ERRA (see Legal Actors above). It is interesting, however, that the glossary frames the act as a "disclosure", mirroring the wording in PIDA/ERRA.

It is also interesting that the word 'report' is embedded in the term "reportable concern". The result is that the discourse of whistleblowing for FCA-regulated organisations is distinct and different from that of organisations that are not regulated by the FCA.

Example 113: SYSC 18.1.2

The term "reportable concern" is linked here directly to 'whistleblowing' through the phrase, "reportable concerns made by whistleblowers".

> "… adoption, and communication to UK-based employees, of appropriate internal procedures for handling reportable concerns made by whistleblowers as part of an effective risk management system".

Example 114: Glossary 'Reportable Concerns'

"Reportable concerns" are defined in the FCA Handbook Glossary. The definition forms a list, indicative of Prescriptive Discourse. It is, however, broadly drafted and non-exhaustive as it contains the word "including". This reflects the discussion in Section 1 of the Literature Review (see p.34) and in Section 1 of the Data Analysis (see p.149).

> "a concern held by any person in relation to the activities of a firm, including:

(a) anything that would be the subject-matter of a protected disclosure, including breaches of rules;
(b) a breach of the firm's policies and procedures; and
(c) behaviour that harms or is likely to harm the reputation or financial well-being of the firm."

The definition clearly extends beyond the scope of PIDA/ERRA (see above). Breaches of internal policies and procedures under (c) are likely to fall outside the scope of PIDA[54].

Code of Conduct (COCON)

The Conduct Rules are part of the COCON chapter of the FCA Handbook. There are no references to 'whistleblowing' in this chapter

Step 2: Protection - Am I protected?

Step 2: Protection: *Am I protected?*	
Prescriptive Discourse indicators: Non-retaliation in certain circumstances	**Conceptual Discourse indicators: Danger**
2. Circumstances in which the employee is protected 3. Reciprocal language linking disclosure to protection	D. Recognition of the need for courage

Extract from coding frame in Figure 6 above

[54] PIDA refers to "legal obligations" which would encompass statutory requirements, contractual obligations, common law obligations, such as negligence and administrative (government or public) law requirements. Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT suggests that an individual making the disclosure because they considered that their employer's actions were morally wrong, professionally wrong or contrary to its own internal rules may not be sufficient to meet this test.

The FCA and PRA Joint Consultation Paper (February 2015)

Example 115: Para 1.5

This extract recognises that the employee may be concerned by "a realistic prospect of being bullied, victimised or otherwise disadvantaged". Interestingly, the word "disloyal" is also used here (see discussion of loyalty in Section 1 of the Literature Review, pp.56-57).

> "A well-run financial institution will seek to foster a culture that welcomes discussion and challenge. Employees should feel comfortable having an open dialogue in the workplace. Individuals may, however, be reluctant to speak out about misconduct because of the possibility of suffering personally as a consequence: they may worry about being labelled disloyal or as troublemakers, or face a realistic prospect of being bullied, victimised or otherwise disadvantaged, particularly if reporting on their superiors. The possibility of losing their job and being unable to find another in the industry may be a particular concern."

FCA Handbook: SYSC Chapter 18

Example 116: SYSC 18.3.1(C)

The FCA rules make explicit reference to protection from victimisation.

> "… include reasonable measures to ensure that if a reportable concern is made by a whistleblower no person under the control of the firm engages in victimisation of that whistleblower".

Example 117: SYSC 18.3.1R(2)(e)(ii)

The FCA explicitly permit UK Banks to take action against employees who make "false or malicious disclosures". However, it is not clear how this determination is made.

> "… may wish to clarify in its written procedures for the purposes of SYSC 18.3.1R(2)(e)(ii), that:
>
> (a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out

> in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and
> (b) nothing prevents firms taking action against those who have made false and malicious disclosures" (SYSC 18.3.2R(3)).

The distinction between issues labelled as "employee grievances" and other types of wrongdoing has become more unclear since the FCA have suggested that non-financial misconduct, such as harassment and discrimination, may fall within the scope of the SMCR (see discussion in the Introduction).

Step 3: Responsibility – Why should I act?

Step 3: Responsibility: *Why should I act?*	
Prescriptive Discourse indicators: Legal, regulatory, contractual duty	**Conceptual Discourse indicators: Moral choice**
4. Mandatory employee duty (4a contractual, 4b legal and 4c regulatory) 5. Responsibilisation (i.e. punishment imposed for failing to blow the whistle) 6. Punishment for malicious reports 7. Good faith of employees explicably required 8. Whistleblowing as a risk management tool (including reputational risk management) 9. Loyalty to the organisation (solely to the people and artefacts) 10. Use of a decision-making framework or similar device provided to direct choice	E. Freedom and choice F. Ethics and morality G. Rational loyalty (i.e. to the values of the organisation, not its people or artefacts)

Extract from coding frame in Figure 6 above

The FCA and PRA Joint Consultation Paper (February 2015)

Example 118: Para 1.5

The introduction to the Consultation Paper includes references to 'allow' and encourage', suggesting that it is a right or a choice to blow the whistle.

> "These proposals aim to move towards a more consistent approach, building on existing good practice in firms. They aim to ensure that all employees are encouraged to blow the whistle where they suspect misconduct, confident that their concerns will be considered and that there will be no personal repercussions."

Example 119: Chapter 4, paragraphs 4.1, 4.2 and 4.4

Chapter 4 of the document is headed "the 'duty' to blow the whistle". The word duty is in inverted commas, but the meaning of the wording is left unclear.

Although the FCA's initial response to the PCBS report supports the PCBS stance, their position appears to have shifted here. Here, the FCA and PRA state that they do not "propose to place a regulatory requirement on individuals who work for financial firms to blow the whistle on wrongdoing". They go on to attempt to distinguish 'whistleblowing' from the "long standing obligation" of employees of UK Banks under the FCA Approved Persons Principle 4 (in place at the time that this text was written – see below) "to be open and transparent with the regulators", the responsibilities of those in Significant Influence Functions (in place at the time that this text was written) and the circumstances in which the employees of UK Banks are under a legal obligation to make reports, for example in relation to financial crime (see Introduction).

> "The PCBS recommended employment contracts, codes of conduct and staff handbooks should include clear references to the 'duty' staff have to blow the whistle internally. The FCA and the PRA do not, however, propose to place a regulatory requirement on individuals who work for financial firms to blow the whistle on wrongdoing."

> "This does not affect the long-standing obligation on approved persons to be open and transparent with the regulators. Also, staff in firms regulated by the FCA and the PRA remain under a legal duty to report knowledge or suspicion of money laundering or the financing of terrorism."

Example 120: Chapter 4, paragraphs 4.1, 4.2 and 4.4

Here the FCA and PRA repeat their opinion that the employees of UK Banks were under no "explicitly-expressed" obligation to blow the whistle either under

regulation or law prior to the introduction of their new whistleblowing rules in 2016. They also reject the idea of such an "explicitly-expressed" obligation being introduced through regulation, but leave open the possibility of such obligations being introduced by UK Banks, through, for example, "contractual terms in employment contracts that place an obligation on employees to report misconduct they are aware of".

This position is of particular interest in relation to the examples found in the data where UK Banks had taken the decision to include such a 'duty' in codes of conduct and in employment contracts, implicitly or explicitly (see the discussion in Section 1 of the Data Analysis, p.175).

> "At present, employees in financial firms have no explicitly-expressed obligation set out either in regulation or law to speak up when they see wrongdoing, whether internally or to a regulator. The FCA and the PRA could require firms to include contractual terms in employment contracts that place an obligation on employees to report misconduct they are aware of. Amending those parts of the FCA Handbook and the PRA Rulebook that apply to individual employees in financial firms is another means by which new obligations could be placed on individuals. But the FCA and the PRA do not propose to take either course."

Example 121: Chapter 4, paragraph 4.3

Here, the FCA and PRA state that to impose a 'duty' to blow the whistle would responsibilise employees or lead to over-reporting. This reflects the arguments in the literature (see Section 1 of the Literature Review, pp.53-56).

> "The FCA and the PRA are concerned a requirement on employees to speak up may place individuals in a position where they feel they face being penalised whatever course of action they take. It may also lead worried employees to make defensive reports of little value that overwhelm whistleblowing services and damage their ability to function effectively. Informal discussions with stakeholders such as firms, trade unions and trade bodies indicated such misgivings were shared by others."

Example 122: Chapter 4, paragraph 4.3

The last sentence of Chapter 4, paragraph 4.3 emphasises that the "decision to speak up" is a matter of personal choice." This stance seems to be categorical and firmly anchors whistleblowing in Conceptual Discourse.

> As a consequence, the FCA and the PRA take the view that the decision to speak up should remain a matter for the individual."

The Financial Incentives for Whistleblowers: Note by the Financial Conduct Authority and the Prudential Regulation Authority for the Treasury Select Committee

Example 123: Section 5

Here the FCA and PRA list the reasons why they are against the use of financial incentives for whistleblowers (see Section 1 of the Literature Review). They refer to such incentives creating "moral hazards".

> "In our view, financial incentives could create a number of moral and other hazards:"

Paragraph 5d seems to contradict the FCA and PRA stance in the joint Consultation Paper (see Examples 118-122 above). Interestingly, the paragraph contains the word "arguably" as a caveat, in relation to the existing "regulatory duty", increasing the uncertainty.

> "Rewarding whistleblowers for performing what is arguably their regulatory duty would be difficult to reconcile with the requirements that firms and Approved Persons deal with their regulators in an open and cooperative way, and with the requirement that firms should conduct their business with integrity. It could also undermine the existing personal responsibility of individuals, as well as firms, to report wrongdoing to the regulators."

FCA Handbook

SYSC Chapter 18

The FCA rules in SYSC 18 are focussed purely on the requirements placed on organisations. The duty of an employee to blow the whistle is not addressed.

Code of Conduct (COCON)

The Conduct Rules are part of the COCON chapter of the FCA Handbook. As discussed in the Introduction, the Conduct Rules, which form part of the Senior Manager and Certification Regime (SMCR), were introduced for UK Banks at the same time as the new FCA and PRA rules on whistleblowing. The Conduct Rules were introduced in the wake of the financial crisis and a series of conduct scandals in the UK financial services industry to improve conduct standards[55]. Their introduction, in common with the rest of the SMCR, was in response to the PCBS report, Changing Banking for Good and so their origin is linked to the discussion in relation to whistleblowing in that report (see above).

Unlike SYSC (see above), the Conduct Rules are addressed to individuals working for UK Banks, rather than organisations. The FCA's Individual Conduct Rules apply to all employees (and contingent workers, such as contractors), subject to a narrow exemption for ancillary staff[56]. Under the Approved Persons Regime, the predecessor of the SMCR, the Statements of Principle for Approved Persons only applied to limited group of employees, broadly, those in management and in client-facing and market-facing roles. The application of regulatory conduct standards for individuals was therefore extended in 2016.

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[55] The Conduct Rules in COCON replaced the Approved Persons Principles for UK Banks in September 2016.

[56] Broadly, those who are not directly involved in the operation of the main business of the organisation, for example, catering and security staff. Despite this narrow exemption, many organisations covered by the SMCR require ancillary staff to comply with the Conduct Rules as a matter of contract.

FCA Individual Conduct Rules

Rule 1: You must act with integrity.

Rule 2: You must act with due skill, care and diligence.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

Rule 5: You must observe proper standards of market conduct.

The first three of the Individual Conduct Rules are particularly relevant in the context of institutionalised whistleblowing arrangements and could all potentially be associated with the disclosure of wrongdoing by an employee. A deliberate failure to report wrongdoing is potentially within the scope of Individual Conduct Rule 1 and a negligent failure to report wrongdoing is potentially within the scope of Individual Conduct Rule 2. Individual Conduct Rule 3 addresses openness with the regulators and could be interpreted as encompassing whistleblowing. However, the wording of Individual Conduct Rule 3 is a reduced version of its counterpart under its predecessor, the Approved Persons Regime, as Statement of Principle for Approved Persons 4 used to additionally include the phrase "… and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice." The latter imposed an explicit obligation for employees to report concerns about wrongdoing through their organisation's internal reporting channels. The introduction of Individual Conduct Rule 3 has rendered this obligation less explicit.

The FCA's Senior Manager Conduct Rules apply only to those designated as Senior Managers under the SMCR.[57]

FCA Senior Managers Conduct Rules

Rule 1: You must take reasonable steps to ensure that the business of firm for which you are responsible is controlled effectively.

[57] The Board and a small number of senior individuals reporting to the Board.

Rule 2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

Rule 3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

Rule 4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

The last of these rules, Senior Manager Conduct Rule 4, imposes an explicit obligation on Senior Managers (plus all non-executive directors, even if they are not designated as a Senior Manager under the SMCR) to inform the FCA and/or PRA of a wide range of matters. This could be interpreted as a regulatory obligation for this population to blow the whistle to the regulators.

Step 4: Channel selection: What should I do?

Step 4: Channel: ***What should I do?***	
Prescriptive indicators: Channel within the systems and controls	**Conceptual indicators: Channel not part of the systems and controls**
11. Definition of whistleblowing shaped by or linked to the channel used report wrongdoing 12. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 13. Repeated disclosures within the systems and controls required i.e. whistleblowing as a process	H. Purpose of whistleblowing means that the disclosure is not linked to the systems and controls of the organisation

Extract from coding frame in Figure 6 above

FCA press release on the new whistleblowing rules (October 2015)

Example 124

The text of the press release frames ‘blowing the whistle’ as the act of employees raising concerns internally (see Section 1 of the Literature Review, pp.71-72). It

is also interesting to note here the use of the word "allow" in this context, suggestive of a right (see the discussion of rights in Section 1 of the Literature Review, pp.46-47)

> "The Financial Conduct Authority (FCA), alongside the Prudential Regulation Authority (PRA), has today published new rules in relation to whistleblowing. These changes follow recommendations in 2013 by the Parliamentary Commission on Banking Standards (PCBS) that banks put in place mechanisms to allow their employees to raise concerns internally (i.e., to 'blow the whistle') and that they appoint a senior person to take responsibility for the effectiveness of these arrangements."

Example 125

Here, the FCA us the word "encourage" in relation to "mechanisms within firms", suggesting choice on the part of the employee (see the discussion in Section 1 of the Data Analysis, p.168).

The phrases "voice concerns", "speak out" and "whistleblowing" are used interchangeably here.

> "Individuals working for financial institutions may be reluctant to speak out about wrongdoing for fear of suffering personally as a consequence. Mechanisms within firms to encourage people to voice concerns - by, for example, offering confidentiality to those speaking up - can provide comfort to whistleblowers. It is, however, important that individuals also have the confidence to approach their employers."

FCA Handbook

Example 126: Glossary: 'Whistleblower'

The FCA Handbook Glossary includes the following sentence under the definition of 'Whistleblower'.

> "A person is not necessarily a whistleblower if they use a channel other than the internal arrangements set out in SYSC 18.3".

The meaning is unclear, but it implies that the definition of 'Whistleblower' is dependent on the channel selected. This is discussed in Section 1 of the Data Analysis, see p.181).

Example 127: SYSC 18.3.1(A) and (B)

The FCA rules require UK Banks to have arrangements in place that enable them to "handle disclosures" through a range of communication methods, including providing confidentiality and anonymity, if required. These are framed as "disclosures of reportable concerns" and so the scope is wider than disclosures under PIDA/ERRA.

> "effectively to handle disclosures of reportable concerns including:
> (i) where the whistleblower has requested confidentiality or has chosen not to reveal their identity; and
> (ii) allowing for disclosures to be made through a range of communication methods"
>
> "the effective assessment and escalation of reportable concerns by whistleblowers where appropriate, including to the FCA or PRA".

Example 128: SYSC 18.3.1R(2)(g)

The FCA rules require UK Banks to communicate their internal whistleblowing arrangements, including the internal channels, to their employees.

> "A firm's training and development in line with SYSC 18.3.R(2)(g) should include:
>
> (1) for all UK-based employees:
> (a) a statement that the firm takes the making of reportable concerns seriously;
> (b) a reference to the ability to report reportable concerns to the firm and the methods for doing so;
> (c) examples of events that might prompt the making of a reportable concern reportable concern;
> (d) examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower's confidentiality; and
> (e) information about sources of external support such as whistleblowing charities"

Example 129: SYSC 18.3.6

Here, the FCA rules require organisations to inform their employees that they can make a disclosure outside the organisation and that they do not have to use internal channels first.

> "… they may disclose reportable concerns to the PRA or the FCA and the methods for doing so [and] make clear that:
> (a) reporting to the PRA or to the FCA is not conditional on a report first being made using [their organisation's] internal arrangements;
> (b) it is possible to report using [the organisation's] internal arrangements and also to the PRA or FCA; these routes may be used simultaneously or consecutively; and
> (c) it is not necessary for a disclosure to be made to [the organisation] in the first instance."

In addition, the FCA rules require UK Banks to appoint a senior individual as the Whistleblowers' Champion, to oversee and take responsibility for the organisation's whistleblowing arrangements. This is discussed in the Introduction.

COCON Conduct Rules

Example 130: Individual Conduct Rule 1: You must act with integrity

Individual Conduct Rule 1 requires individuals to act with integrity. COCON 4.1.1 G provides a non-exhaustive list of examples of conduct that would amount to breaches. One of the examples provided by the FCA covers a breach of an organisation's personal account dealing policies and procedures[58]. This brings within scope a deliberate failure by an employee to comply with an internal policy or procedure of their organisation.

> "Failing to disclose dealings where disclosure is required by the firm's personal account dealing rules."

[58] These are internal policies and procedures covering the notification and/or approval of employees' personal investments in order to monitor potential conflicts of interest and potential market abuse.

One interpretation of this guidance is that all deliberate failures by employees to comply with internal policies or procedures, including whistleblowing arrangements that impose duties on employees, could be a breach of Individual Conduct Rule 1.

Example 131: Individual Conduct Rule 3: You must be open and cooperative with the FCA, the PRA and other Regulators

Individual Conduct Rule 3 requires employees to be open and cooperative with the FCA, the PRA and other regulatory bodies. It extends to all regulators of an organisation (inside and outside the UK).

Again, the FCA offer a list of examples of conduct that would be in breach of the required standard (COCON 4.1.10 G). The guidance clearly states that there is no regulatory duty for all employees of UK Banks to report concerns to regulators directly. They must not, however, "obstruct" or "influence" the non-reporting of information.

> "There is no duty on a person to report information directly to the regulator concerned unless they are one of the persons responsible within the firm for reporting matters to the regulator concerned. However, if a person takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the appropriate regulator will, in respect of that information, view them as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the regulator concerned."

There is, however, a regulatory duty for those designated as Senior Managers under the SMCR[59]. This is discussed further below.

Example 132: Individual Conduct Rule 3: You must be open and cooperative with the FCA, the PRA and other Regulators

[59] The Board and a small number of senior individuals reporting to the Board.

Again, the FCA provides guidance on Individual Conduct Rule 3 in the form of a non-exhaustive list of examples of conduct that would breach the required standard (COCON 4.1.11 G). This list includes the following examples.

> "(1) Failing to report promptly in accordance with his firm's internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the FCA, the PRA, or both the PRA and the FCA.
> (2) Failing without good reason[60] to:
> (a) inform a regulator of information of which the approved person was aware in response to questions from that regulator;
> (b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and
> (c) supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement."

This duty applies to all employees subject to the Individual Conduct Rules, but is limited to providing information and documents in response to questions from the regulator.

It should be noted that this duty is narrower in scope than the duty owed under the Approved Persons Principle 4 (APER 2.1A.3), the predecessor of Individual Conduct Rule 3. This is emphasised by the inclusion of the phrase "or otherwise" in the extract of the replaced Approved Persons Principle 4 below. As discussed above, under Individual Conduct Rule 3, this duty is limited to providing information and documents in response to regulatory questions.

> "An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.

---

[60] For the purposes of C-CON 4.1.12G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court, or complying with an obligation imposed by law or by a regulator.

> Failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the regulator concerned), information which it would be reasonable to assume would be of material significance to the regulator concerned), whether in response to questions or otherwise, falls within APER 4.4.3 G".

Guidance on the FCA website for employees

As well as the rules on whistleblowing arrangements in SYSC (discussed above), the FCA also publishes guidance on whistleblowing for individuals, including employees of UK Banks, on their website[61].

The guidance does not explain the difference between a "Protected Disclosure" under PIDA/ERRA and a "reportable concern" under the FCA rules. The words and phrases "inform", "blowing the whistle", "making a disclosure" and "Report" are all used within the single-paged text. There are no references to "reportable concerns" in the FCA guidance.

Example 133

In the first paragraph of the guidance, the FCA explain the aim of their rules in relation to whistleblowing. The word "urge" here implies choice on the part of an employee. "Inform the relevant team" is used here to frame the act of disclosure or reporting". The phrase "misconduct in regulated activity" is used in the place of 'wrongdoing' which is used elsewhere in the text.

> "… your firm must set up procedures that will urge staff to inform the relevant team about any internal misconduct in regulated activity".

[61] The guidance included in the study is dated 13th July 2018.

Example 134

In the next paragraph, the guidance explains the role of PIDA/ERRA. The text is explicit about the fact that an employment tribunal will determine whether your disclosure is a Protected Disclosure "after the event".

Here "blowing the whistle" is framed narrowly within the context of PIDA/ERRA as "making a disclosure". This is in conflict with other frames used in other texts by the FCA, such as "reportable concerns" and "speaking up".

> "The Public Interest Disclosure Act 1998 (PIDA) provides protection for someone if they are harmed or dismissed as a result of 'blowing the whistle' (known as making a disclosure) about a firm or individual".
>
> "Only an employment tribunal can decide after the event whether or not a disclosure was protected under PIDA, and whether it may result in compensation."

(2) The Prudential Regulation Authority (PRA)

Joint texts published by the FCA and the PRA are included under the FCA heading.

Framing, naming, and polar word selection: 'whistleblowing/'whistleblower'

PRA whistleblowing rules

The PRA use the words "whistleblowing" and "whistleblower" throughout their rules.

Steps 1-4 in the coding frame

As the texts produced and disseminated by the PRA on whistleblowing are limited, the analysis here has not been divided under the four steps in the coding frame.

PRA whistleblowing rules

Example 135: Paragraph 3

In paragraph 3, the PRA sets out the requirements for training staff in relation to whistleblowing arrangements. Here, the PRA refer to a "report" of "instances of wrongdoing" but also require organisations to inform employees about "what would constitute a protected disclosure" under PIDA/ERRA and therefore in what circumstances an employee is protected under PIDA/ERRA.

> "All staff - training about the need to report instances of wrongdoing, the methods for doing so, and examples of events that might prompt a report, and action that might be taken. In accordance with the rules, they should also be informed of what would constitute a protected disclosure and how they should go about disclosing this to the PRA and the FCA."

Guidance on the PRA website

Example 136: Framing of whistleblowing

The guidance on the PRA website on whistleblowing contains a definition of whistleblowing. It is closely linked to PIDA/ERRA.

> "Whistleblowing is when a worker reports suspected wrongdoing at work. This is officially referred to as 'making a disclosure in the public interest'".

It then goes on to use the word "worker" (a specific legal term taken from PIDA/ERRA, rather than employee) in the context of the broadly drawn description of what a worker "can report". Despite the apparent Prescriptive Discourse linked closely to the legislation, the phrase "aren't right" and the word "can" implies choice and a subjective and broad framing of wrongdoing more indicative of Conceptual Discourse.

> "A worker can report things that aren't right, are illegal or if anyone at work is neglecting their duties, including:"

This is followed by the list of the types of wrongdoing taken directly from PIDA /ERRA.

- A criminal offence (this may include, for example, types of financial impropriety such as fraud)
- a breach of a legal obligation
- a miscarriage of justice
- danger to the health or safety of any individual
- damage to the environment; or
- the deliberate covering up of wrongdoing in the above categories

Example 137: Public interest

The PRA guidance also makes references to the "public interest" test. It is expressly used to exclude "personal grievances" that it says "aren't covered by whistleblowing law".

> "Personal grievances (e.g. bullying, harassment, discrimination) aren't covered by whistleblowing law, unless your particular case is in the public interest".

Example 138: Contacting the PRA

> "We encourage whistleblowers to use the procedures in their own workplace, but they may contact us instead if they think their employer:
> - will cover it up
> - would treat them unfairly if they complained
> - hasn't sorted it out and they've already told them, and
> - there is a public interest element"

The implication of the latter reference, in particular, is that the PRA is only interested in hearing from a whistleblower if "there is a public interest element". The use of the word "complained" is also of interest here.

Summary

The study found that the FCA adopts a range of ways to frame whistleblowing. In addition to the term 'whistleblowing', they also use the phrases 'voice concerns', 'speaking up' and 'speak out'. The usage appears to be driven by the

context; in SYSC (the risk management section if the FCA Handbook that contains their whistleblowing rules for organisations) the term 'whistleblowing' is used throughout and the language is prescriptive. In other areas of their website and publications where the FCA is talking about the importance of whistleblowing and the role of the whistleblower, a less prescriptive and more conceptual framing is adopted. A similarly inconsistent and context-driven approach to wrongdoing was also found. The PRA uses the term 'whistleblowing' only and their whistleblowing content is highly reflective of the wording of PIDA/ERRA.

The FCA and PRA express concerns over the imposition of a regulatory or contractual duty for employees to blow the whistle and the danger of responsibilisation. They use words such as "encourage" and "urge" to indicate that employees have a choice.

The FCA Conduct Rules, which are directed at individuals rather than at organisations, do not reference 'whistleblowing' specifically, but there is an implication that turning a 'blind eye' would be a breach of Individual Conduct Rule 1 and Senior Managers are required under Senior Manager Conduct Rule 4 to 'disclose' information to the regulators.

BEST PRACTICE ACTORS

Overview

The four Best Practice Actors included in the study are: (1) the Chartered Institute for Securities and Investments (CISI), (2) the Banking Standards Board (BSB), (3) Protect (formerly Public Concern at Work) and (4) law firms engaged in advising UK Banks on whistleblowing. A description of each is contained in Section 2 of the Methodology and Research Design.

Structure of the analysis

The data for each of the four Best Practice Actors is analysed in turn.

For (1) the Chartered Institute for Securities and Investments (CISI), (2) the Banking Standards Board (BSB) and (3) Protect (formerly Public Concern at Work), the data available to the study was limited. A separate analysis of the framing, naming and polar word selection in the texts in relation to the terms whistleblowing and whistleblower has therefore been omitted and the four steps in the coding frame are considered collectively for each of the actors in turn.

For (4) law firms engaged in advising UK Banks on whistleblowing, the analysis starts with a general analysis of the framing, naming and polar word selection in the texts in relation to the terms whistleblowing and whistleblower. Next, the indicators for Prescriptive and Conceptual Discourse for each of the four steps in the coding frame are analysed, including, where relevant, internal congruence within individual texts, external congruence across the multiple texts (Karlsson et al., 2017) and the use of "recurring narrative" and tropes, specifically, how the whistleblowing 'problem' is framed at each of the four steps in the coding frame. An extract of the coding frame is included for each step.

(1) The Chartered Institute for Securities and Investments (CISI)

CISI Speak Up campaign material; "Why Speak up?"

In 2014, the CISI launched a whistleblowing campaign which they framed as a "Speak Up" campaign. Although this campaign pre-dates the introduction of the FCA and PRA rules on whistleblowing, it is a source that UK Banks would have turned to and the campaign was active at the time of the PCBS report discussed above.

Example 139

The campaign launch material contains a definition of 'whistleblowing' which frames it as an act of disclosure which makes the wrongdoing "public".

> "The term WHISTLEBLOW [Sic] is used when referring to the reporting, often via a regulator and sometimes via the media, of an action or activity which is being carried out, usually illegally and which wrongdoing the observer feels should be made public."

Example 140

The campaign text also explains the CISI have chosen to use the phrase 'Speak Up' because 'whistleblowing' suggests that there are "serious wrongs to be uncovered". The relevance of materiality in relation to wrongdoing is discussed in Section 1 of the Literature Review, see p.44).

> "This is perhaps understandable. Use of the term 'whistleblow' conveys that there are serious wrongs to be uncovered. SPEAK UP [sic], on the other hand, carries fewer negative implications and supports a more open culture, which is one of the aims of having a speak up/whistleblowing policy or programme."

Example 141

Throughout the text of the campaign, the discourse is indicative of Conceptual Discourse, referring to "a problem", "courage", "moral courage", "culture", "standards" and "failings both large and small".

> "To support a 'speak up' culture in financial services, the CISI has developed a new suite of resources. These focus on the importance of professionals having the knowledge and courage to speak up when they witness failings, large or small, which impact the standards set by their organisation.
>
> When you see a problem, speaking up takes moral courage. It helps your organisation maintain integrity and supports long-term sustainability. Speaking up is a positive action, highlighting failings both large and small, which can impact the standards within an organisation."

The text does, however, does then go on to give include an explanation of PIDA/ERRA and the limited circumstances in which employees are protected under the legislation.

Example 142

The text also includes the phrase "raise concerns".

> "Instead, a speak up culture needs to be developed and embedded – where individuals see it as a matter of course to raise concerns when they have them."

CISI Speak Up workshop material

Example 143

Here, the framing is again indicative of Conceptual Discourse. The text includes the phrase "encourage staff" and no references to 'duty'.

> "The interactive workshop has been developed to encourage staff across your company to consider how to approach challenges and dilemmas. Colleagues will have the opportunity to discuss and debate a series of true to life scenarios, and understand how to speak up with confidence."

(2) The Banking Standards Board (BSB)

The texts produced and disseminated by the BSB on whistleblowing are limited. The analysis here is brief as a result.

The BSB uses the terms "raising concerns" and "speaking up".

Speaking Up and Listening chapter of the BSB Annual Report (2018-19)

Here, the BSB uses 'speaking up' throughout the text and also includes "listening" in the chapter heading.

Example 144

The sentence below suggests that 'whistleblowing' is distinct from 'speaking up'.

> "Speaking up, in the context of the BSB's work, is about much more than whistleblowing."

The emphasis in the text is on culture and listening to employees.

(3) Protect (formerly Public Concern at Work)

The terms 'whistleblowing' and 'whistleblower' are used throughout the charity's website. As indicated by the name of the charity, the focus is on the protection of whistleblowers.

Protect declaration (made at the time of the charity's name change on 5 September 2018)

Example 145

Here the charity refer to "safe and responsible whistleblowing".

"We aim to protect workers' rights, organisations' reputations, and wider society, by encouraging safe and responsible whistleblowing.

Extract from Protect's Mission Statement

Example 146

The charity introduces the phrase 'speak up arrangements' when referring to organisations' institutionalised whistleblowing arrangements.

"We also work with organisations supporting, advising and training teams on improving their speak up arrangements."

Extract from Protect's Frequently Asked Questions

The charity's Frequently Asked Questions section is detailed and highly prescriptive, containing legalistic explanations of each of the elements that must be met in order for an employee to be protected under PIDA/ERRA.

Example 147: How do I disclose to a "Prescribed Person"?

The charity uses the phrase "raise concerns" here when referring to PIDA/ERRA protected disclosures.

"The law says you can raise your concerns outside your employer to a "prescribed person" such as a suitable regulator or inspector."

Example 148: What disclosures qualify for protection?

Here, specific case law is explained.

"Public interest would generally mean that a concern has an impact on more than one individual's employment contract (which may be better dealt with by a grievance). However, there may be matters which affect both you and other individuals, and for which there is sufficient public interest. For example, if you are being bullied then that's about your private contract. But if your team is being bullied, people are off work with stress and your vulnerable clients are at risk as a result, that may engage the public interest."

> "There are no hard and fast rules but in the case of Chesterton v Nurmohamed the Court of Appeal identified four factors that may be relevant:
> 1) the numbers in the group whose interests the disclosure served (the larger the group, the more likely that the public interest is engaged);
> 2) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
> 3) the nature of the wrongdoing disclosed (a more serious wrongdoing is more likely to be in the public interest); and
> 4) the identity of the alleged wrongdoer."

Summary

The CISI's and BSB'S framing of whistleblowing is almost exclusively conceptual. Attempts are made, however, to distinguish whistleblowing under PIDA/ERRA from a wider concept of 'speaking up'. Protect uses the term 'speak up' when referring to internal whistleblowing arrangements, but otherwise refers to whistleblowing, and provides very detailed guidance on the PIDA/ERRA.

(4) Law firms engaged in advising UK Banks on whistleblowing

Framing, naming, and polar word selection: 'whistleblowing/'whistleblower'

In general, the texts produced and disseminated by the law firms in the sample contain references to 'whistleblowing' and 'whistleblower'. There are also some references to 'speak up' and 'raising concerns' as noted below.

Example 149: Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer acknowledge the role of the 'whistleblower' but 'whistleblowing' and 'whistleblower' are not defined in the text.

> "In the age of Wikileaks, 'whistleblowing' is a term with which we are all familiar and the role of the whistleblower is more prominent now than ever."

Example 150: Eversheds Sunderland International LLP

Eversheds Sunderland International LLP entitle their text on the new FCA and PRA rules, "The wind of change - New whistleblowing rules in the financial services sector" and refer specifically to the FCA's "change in attitude" towards whistleblowing and the move to use alternative 'names' for whistleblowing.

> "This change in attitude is reflected similarly in terminology used to describe whistleblowing, with the phrase "speaking-out" increasingly replacing "whistleblowing" in policies".

Example 151: Eversheds Sunderland International LLP

The same law firm also acknowledges the potential conflict between "corporate and legalistic" policies and "employee-friendly" communications. This mirrors the conflict between Prescriptive Discourse and Conceptual Discourse discussed in the study.

> "One of the challenges many firms face is transforming internal policies, which are frequently drafted in somewhat corporate and legalistic language, into something more employee-friendly and welcoming to those wishing to make their concerns known."

Example 152: Allen & Overy

Allen & Overy focus on the cultural change that the FCA and PRA rules on whistleblowing introduced in September 2016 seek to introduce. The firm uses the phrase "speak up" here, alongside "whistleblower".

> "The regulators are, therefore, seeking to create an environment where employees speak up more freely and firms will want to ensure that this environment is created".
>
> "A shift in culture to one where a whistleblower is welcomed with open arms and viewed as an asset will not happen overnight".

Example 153: Simmons and Simmons

Simmons and Simmons have produced and disseminated a template whistleblowing policy for a UK Banks to follow.

Their template has an interesting opening. It positions whistleblowing in the context of employee access to confidentiality information and organisational information. It commits the organisation to complying with its "statutory obligations" (directly referencing PIDA/ERRA) and "good business practice" (a much more general reference open to very broad interpretation and potentially beyond the scope not only of PIDA/ERRA, but also the FCA and PRA rules).

> "During the course of your employment with the Company, you will become party to information which may be of a highly confidential nature, or which is connected in some way with the Company, its internal or external procedures or its contact with the financial and commercial markets or business community in general. While the Company will make every effort to conduct its business strictly in accordance with its statutory obligations and good business practice, you may consider, from time to time, that the Company has failed to adhere to its obligations in some way. In that situation you are urged to report your concerns and to follow the procedure set out below."

Step 1: Wrongdoing - Am I concerned? [62]

Step 1: Wrongdoing: *Am I concerned?*	
Prescriptive Discourse indicators: Exclusive definition	**Conceptual Discourse indicators: Truth, criticism and dissent**
1. Exclusive and detailed, legalistic definition of the type of 'wrongdoing' that an employee 'can' blow the whistle about i.e. distinct sub-set of poor conduct	A. Inclusive: Absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)

Extract from coding frame in Figure 6 above

The word 'wrongdoing' is used throughout the texts produced and disseminated by the law firms in the sample alongside both the types of wrongdoing categories included in PIDA/ERRA and the "reportable concerns" used in the FCA Rules.

Example 154: Eversheds Sunderland International LLP

Eversheds Sunderland International LLP use the word "wrongdoing" throughout their text.

> "… employees [ ] blow the whistle if they become aware of any wrongdoing."
>
> "… those who report alleged wrongdoing by their employer"

[62] In the Literature Review, Step 1 Wrongdoing "Am I concerned?" in the coding frame is analysed as two separate steps: Step 1 Recognition, "Have I identified wrongdoing?" and Step 2 Assessment, "Does it fall within the organisation's whistleblowing arrangements?" The reduction to a single step is discussed in Section 1 of the Methodology and Research Design pp.114-115.

Example 155: Simmons and Simmons

The Simmons and Simmons template whistleblowing policy reproduces the wording of PIDA/ERRA to explain the scope of "protected disclosures" and the FCA rules to explain the scope of "reportable concerns".

> "A protected disclosure is a qualifying disclosure made by a worker in accordance with the Employment Rights Act 1996. Under the Act, protected disclosures may be made to, amongst (specified) others, a worker's employer, or to a prescribed person if the worker reasonably believes that the failure falls within the remit of the prescribed person and that the information disclosed and any allegation contained in it are substantially true.
>
> Prescribed persons are "prescribed" by legislation. The PRA and the FCA are prescribed persons in relation to what may be described, broadly, as financial matters.
>
> A qualifying disclosure is a disclosure made in the public interest, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following has been, is being, or is likely to be, committed:
>
> - a criminal offence
> - a failure to comply with any legal obligation
> - a miscarriage of justice
> - the putting of the health and safety of an individual in danger
> - damage to the environment, or
> - deliberate concealment relating to any of the above.
>
> A reportable concern is a concern by any person in relation to the activities of the Company, including:
>
> - any matter that, if disclosed, would be the subject matter of a protected disclosure including a breach of any PRA or FCA rules
> - a failure to comply with the Company's policy and procedures, and
> - behaviour that has or is likely to have an adverse effect on the Company's reputation or financial well-being."

Step 2: Protection - Am I protected?

Step 2: Protection: *Am I protected?*	
Prescriptive Discourse indicators: Non-retaliation in certain circumstances	**Conceptual Discourse indicators: Danger**
2. Circumstances in which the employee is protected 3. Reciprocal language linking disclosure to protection	D. Recognition of the need for courage

Extract from coding frame in Figure 6 above

The texts in the sample produced and disseminated by the law firms in the sample refer to "protection" and "detriment" and "victimisation". The Simmons and Simmons template document provides the fullest content in relation to Step 2.

Example 156: Simmons and Simmons

The Simmons and Simmons template whistleblowing policy frames protection in a highly legalistic way. It uses the word "disclosure", mirroring PIDA/ERRA, and makes it clear that employees are only protected under "statutory protections" where they "… reasonably believe that the disclosure is made in the public interest".

A distinction is not drawn, however, between the protections available for PIDA/ERRA disclosures and for "reportable concerns".

> "You will be protected by the relevant statutory protections in relation to any disclosure raised by you in accordance with this procedure only where you reasonably believe that the disclosure is made in the public interest. In particular, in those circumstances, you have the right not to be subjected to any detriment by any act, or any deliberate failure to act by the Company on the grounds that you have made a qualifying disclosure. You will not be subject to disciplinary action as a result of your disclosure unless the Company considers that you have made the disclosure or raised the issue maliciously and that you do not reasonably believe that your disclosure is in the public interest."

In the same template, under the next heading, "Victimisation" the emphasis moves to the organisation rather than the statutory protections and refers to "reportable concerns".

Here "victimisation" is framed as a type of wrongdoing in itself that should be reported through the "internal whistleblowing channel"

> "The Company will not tolerate intimidation, victimisation or unfair discrimination against an employee who discloses a reportable concern or who assists in an investigation of a reportable concern. Retaliation against an employee who discloses a reportable concern can be expected to lead to disciplinary action, including, in appropriate cases, dismissal.
>
> Whistleblowers who believe that they have been subject to victimisation should report this through the Company's internal whistleblowing channel."

This implies that the organisation offers employees contractual protections from victimisation beyond those provided by PIDA/ERRA.

Step 3: Responsibility – Why should I act?

Step 3: Responsibility: *Why should I act?*	
Prescriptive Discourse indicators: Legal, regulatory, contractual duty	**Conceptual Discourse indicators: Moral choice**
4. Mandatory employee duty (4a contractual, 4b legal and 4c regulatory) 5. Responsibilisation (i.e. punishment imposed for failing to blow the whistle) 6. Punishment for malicious reports 7. Good faith of employees explicably required 8. Whistleblowing as a risk management tool (including reputational risk management) 9. Loyalty to the organisation (solely to the people and artefacts) 10. Use of a decision-making framework or similar device provided to direct choice	E. Freedom and choice F. Ethics and morality G. Rational loyalty (i.e. to the values of the organisation, not its people or artefacts)

Extract from coding frame in Figure 6 above

One of the most marked trends in the texts disseminated by the law firms is the number of references made to the FCA's position (discussed under Regulatory Actors above) that the employees of UK Banks are under no regulatory 'duty' to blow the whistle.

This is supported in some cases by references to cultural change that emphasise 'encouragement' and 'choice'. The use of the word 'encourage' is discussed in Section 1 of the Data Analysis, see pp.168-172.

Example 157: Eversheds Sunderland International LLP

Here, the FCA's stance is set out explicitly (see discussion under Regulatory Actors above).

> "Interestingly, however, the regulators steered clear of placing a positive duty on employees to blow the whistle if they become aware of any wrongdoing."

Example 158: Allen & Overy

Allen & Overy use the word "encouraged" in this context, implying choice.

> "… so that individuals feel encouraged to raise concerns."

Example 159: Hogan Lovells

Hogan Lovells also talk about "encouraging employees" and state that there is no "generalised duty on staff of relevant firms to "blow the whistle"." It is interesting that the phrase "blow the whistle" is in inverted commas but remains undefined.

> "… codifying a set of measures aimed at encouraging employees to blow the whistle on malpractice."

> "Of significance, however, is the fact that the PRA and FCA have decided not to impose a generalised duty on staff of relevant firms to "blow the whistle"".

Example 160: BCLP

BCLP also explain that there is no regulatory duty to blow the whistle.

> "The new rules do not impose a regulatory duty on a firm's staff to blow the whistle (beyond any other rules which may require individuals to escalate certain matters)."

Example 161: Mischon De Reya LLP

Mischon De Reya LLP refer here to "culture" and employees feeling "comfortable".

> "One of the stated aims of the new rules is to encourage a culture in which individuals working at every level in the industry feel comfortable raising concerns and challenging poor practice and behaviour."

Example 162: Simmons and Simmons

Simmons and Simmons use the word "urged" rather than encourage, and also make a reference to the view of the employee, implying subjectivity.

> "… you may consider, from time to time, that the Company has failed to adhere to its obligations in some way. In that situation you are urged to report your concerns and to follow the procedure set out below."

Example 163: Eversheds Sunderland International LLP

Eversheds Sunderland International LLP use the phrase "wishing", thereby implying choice.

> "… welcoming to those wishing to make their concerns known."

Step 4: Channel selection: What should I do?

Step 4: Channel: *What should I do?*	
Prescriptive indicators: Channel within the systems and controls	**Conceptual indicators: Channel not part of the systems and controls**
11. Definition of whistleblowing shaped by or linked to the channel used report wrongdoing 12. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 13. Repeated disclosures within the systems and controls required i.e. whistleblowing as a process	H. Purpose of whistleblowing means that the disclosure is not linked to the systems and controls of the organisation

Extract from coding frame in Figure 6 above

Example 164: Simmons and Simmons

The template whistleblowing policy disseminated by Simmons and Simmons mirrors the FCA rules in relation to channel selection and specifically refers to employees speaking to their line managers first.

> "Employees should seek to resolve concerns in discussion with their line manager. If this is not possible then employees should raise the reportable concern with [Compliance] or [the Company's whistleblowing function] which is on [tel number] or at [email address]."

It is interesting here that the term "concerns" is used for speaking to the line manager, but that this becomes "reportable concern" (a defined term under FCA rules) for "where this is not possible".

The template also contains two lists copied from the FCA and PRA rules regarding the options open to employees.

> "We are required by the PRA to inform you of the following:
>
> - Employees may disclose directly to the PRA and/or the FCA anything that would be the subject matter of a protected disclosure.
> - What constitutes a protected disclosure is explained above.
> - The PRA and the FCA are prescribed persons.
> - Broadly speaking, a worker has certain protections against being

subjected to a detriment and/or being dismissed for making a protected disclosure.

- The means available to make a protected disclosure to the PRA and/or FCA are as following:
    - the PRA may be contacted for the purposes of making a protected disclosure on 0203 461 8703 or at PRAwhistbleblowing@bankofengland.co.uk
    - the FCA may be contacted for the purposes of making a protected disclosure on 020 7066 9200 or at whistle@fca.org.uk.

If you would like further detail on the PRA and/or FCA in relation to whistleblowing please visit their websites.

We are required by the FCA to communicate to you the following:

- Employees may disclose reportable concerns to the PRA and/or the FCA using the means referred to above.
- Reporting to the PRA and/or the FCA is not conditional on a report first being made using the Company's internal arrangements.
- It is possible to report using the Company's internal arrangements and also to the PRA or FCA; these routes may be used simultaneously or consecutively.
- It is not necessary for a disclosure to be made to the Company in the first instance.

Notwithstanding the above, employees are encouraged to use the Company's internal whistleblowing arrangements, prior to contacting the PRA or the FCA."

Summary

In general, the study found that the texts produced and disseminated by the law firms in the sample mainly refer to 'whistleblowing' and 'whistleblower'. Some references to 'speak up' and 'raising concerns' were also identified, however, particularly when referring to the FCA's conduct agenda. It is interesting to note that one of the law firms acknowledges the potential conflict between "corporate and legalistic" policies and "employee-friendly" communications (see Example 151 above). One of the most marked trends in the texts disseminated by the law

firms is the number of references made to the FCA's position that the employees of UK Banks are under no regulatory 'duty' to blow the whistle. This assertion is supported in some cases by references to 'encouragement' and 'choice'.

KEY FINDINGS AND IMPLICATIONS

OVERVIEW

The study explores the impact of the institutionalisation of whistleblowing in a highly regulated sector and addresses a gap in the literature in relation to industry-specific, pragmatic textual discursive studies of institutionalised whistleblowing. It also aims to test, and further develop, theoretical understanding of the discursive processes underpinning institutional theory, by exploring the role of whistleblowing texts produced and disseminated by actors with "discursive legitimacy" (Hardy and Phillips, 1998, p.219) as the mediator between action and discourse and the connection between discourse and institution.

As discussed in Section 1 of the Literature Review, the literature suggests that there is "no universally accepted concept of whistleblowing" (Lewis, 2001, p.1). In response, the study proposes that the contingent quality of whistleblowing discourse means that the question, "What is whistleblowing?" can only ever be answered for a specific organisational field, at a specific point in its legal, regulatory and cultural development.

The study is timely in light of the growing global trend towards the institutionalisation of whistleblowing; the implementation of institutionalised whistleblowing arrangements intrinsically requires an organisation to answer the question, "What is whistleblowing?" for their organisation. It is hoped that the findings will be instructive for all those concerned with the institutionalisation of whistleblowing, both organisations, and legislators and regulators.

The study's findings are set out in Sections 1 and 2 of the Data Analysis. This chapter discusses the key findings and their implications, grouped under the two Research Questions, as well as potential areas for further research.

RESEARCH QUESTION 1:
HOW DO UK BANKS 'TALK' ABOUT WHISTLEBLOWING?

In response to Research Question 1, the study seeks to answer the question, "What is whistleblowing?" for the UK banking industry through a pragmatic textual discursive analysis of the values-based and policy-based whistleblowing texts[63] produced and disseminated by UK Banks[64].

Dual strands of discourse

Section 1 of the Literature Review identifies and explores two distinct and conflicting strands of whistleblowing discourse, termed Prescriptive Discourse and Conceptual Discourse in the study, and suggests that the bifurcation in the discourse is particularly marked in highly-regulated environments. The Literature Review then compares and contrasts these dual strands of discourse (see pp.33-38).

In summary, it is suggested that Prescriptive Discourse has an exclusive frame which is primarily focused on the circumstances in which whistleblowers are protected, not on what whistleblowing 'is' or on the role of the whistleblower. Conversely, it is suggested that Conceptual Discourse has an inclusive frame which is primarily focused on what whistleblowing "is" and the role of the whistleblower, rather than on circumstantial details or whether the whistleblower will be protected by regulation, legislation or policy. As a result, Prescriptive Discourse is associated with prescriptive definitions and prescribed responsibilities (see pp.33-35 of Section 1 of the Literature Review). It is further noted that, although high levels of prescription are perhaps most associated with negative duties, they may also be adopted for positive duties, such as duties to blow the whistle, in order to emphasise an employee's personal responsibility and

[63] Defined in Section 1 of the Methodology and Research Design.

[64] Defined in Section 1 of the Methodology and Research Design.

connection to an event (see pp.51-53 of Section 1 of the Literature Review). Conversely, Conceptual Discourse is associated with choice, speaking truth to power and Foucault's concept of parrhesia (Foucault, 2011 and 2001) (see Section 1 of the Literature Review, pp.36-38).

As discussed in the Data Analysis, the study found indicators of both Prescriptive Discourse and Conceptual Discourse in the texts produced and disseminated by the UK Banks in the study and in the texts produced and disseminated by the Legal, Regulatory and Best Practice Actors in the study. Prescriptive and Conceptual Discourse indicators were found for all four decision making steps addressed by putative whistleblower-employees – wrongdoing, retaliation, responsibility and channels (see Section 1 of the Literature Review). The intertwining of both Prescriptive and Conceptual Discourse indicators was found to be particularly marked in relation to the first and third of these steps, in relation to the discourse of wrongdoing and responsibility (see below).

The problematic positioning of discourse

The study proposes that the bifurcation in the discourse may be driven by the complex positioning of whistleblowing in an organisational context (see Section 1 of the Literature Review, pp.30-32). The literature suggests that there are two closely linked drivers for this; the first operates at an organisational level and the second at an employee level (see the discussion about levels of discourse pp. 32-33). The first is that institutionalised whistleblowing spans both "operative" (broadly, policy and procedure-orientated) and "official" (broadly, values and culture-orientated) organisational goals (Kerr, 1975). As a result, the discourse competes to position whistleblowing as both an operative and official organisational problem. Kerr (1975) proposes that operative and official goals elicit different discursive treatments. The former expresses legal and regulatory requirements and contractual relationships through policies and procedures with a high degree of precision and detail, whereas the latter expresses organisational culture and values in a way that is "purposely vague and general" (Kerr, 1975, pp.769-770). The second, is that institutionalised whistleblowing spans all three of Ellickson's (1991) behavioural constraints. It spans an employees' personal

ethics, their formal contractual relationship with their employer (expressed through policies and procedures that also articulate applicable legal and regulatory constraints) and the culture of their organisation.

Presence in values-based and policy-based texts

Section 1 of the Literature Review suggests that the indicators for Prescriptive Discourse would be predominantly present in the policy-based texts of the UK Banks in the sample and that the indicators for Conceptual Discourse would be predominantly present in the values-based texts. However, as discussed in Section 1 of the Data Analysis, the study found that both Prescriptive and Conceptual Discourse indicators were present, almost equally, in both the policy-based and values-based texts and that the strands of discourse have become coexistent and intertwined.

Intertwining strands

The literature suggests that, although the discourse is bifurcated, the complex positioning of institutionalised whistleblowing may result in the dual strands becoming intertwined, unsettling the discourse and promoting incoherence and ambiguity. The potential for the intertwining of the two strands of discourse is discussed in Section 1 of the Literature Review (see p.45). Specific drivers include the co-existence of discourse addressing both operative and official organisational goals, the problems associated with framing closed-ended definitions of wrongdoing and the introduction of values and ethics at Step 3 (Why should I act?).

As discussed in Section 1 of the Data Analysis, the study found that the dual strands of discourse were intertwined within the texts produced by the UK Banks in the sample and that the intertwining was particularly evident in the most contentious aspects of the discourse, namely Wrongdoing and Responsibility. The study suggests that this is for three reasons. Firstly, as discussed in Section 1 of the Literature Review, these are the areas where the conflict between prescriptive and conceptual approaches to whistleblowing is most acute and this conflict is reflected in the texts. Secondly, this is also where the 'struggle' between the actors

with ‘voice’ within UK Banks is most marked. In relation to wrongdoing, legal and compliance actors within UK Banks are reflecting the detail and prescription in relevant legal and regulatory texts, whereas the conduct and values actors, in conduct, ethics and human resource teams, favour less prescription and a more conceptual framing. Thirdly, these are the areas of the discourse that are the most conflicted and inconsistent in the texts produced by the Legal, Regulatory and Best Actors in the study. It follows that the most contentious aspects of the discourse were found to be the most unsettled, incoherent and ambiguous.

The study further proposes that the intertwining of the strands of Prescriptive and Conceptual Discourse may result in prescription being cloaked in the discourse of morals, ethics and choice, indicative of Conceptual Discourse. This finding is discussed in detail below under Wrongdoing and Responsibility heading.

The framing and naming of whistleblowing

As discussed in Section 2 of the Literature Review, framing is a way of setting an agenda and, as such, is highly relevant in the context of policy creation (Bateson, 1955 and Goffman, 1974). Frames operate as discursive ‘tools’ that aid, and indeed drive, the understanding of a problem or situation (Goffman, 1974, p.8). The process of naming is similar to framing, but focuses more narrowly on the selection of specific words; frames are populated by distinct key “concepts” that are separately identified and “named” (Gasper and Apthorpe, 1996, p.6).

The study found that the complexity and ambiguity of the discourse discussed above was also reflected in the ‘framing’ of whistleblowing and the ‘naming’ words selected to populate those frames.

The study found a pattern in the data for the term ‘whistleblowing’ to be ‘renamed’ with alternative words and phrases, such as “speak up”, “raising concerns” and “reporting”. However, it also found that these alternative words and phrases were often combined with the term ‘whistleblowing’ without the different terms and phrases being sufficiently distinguished (or indeed distinguished at all) (see Examples 1-7 inclusive in Section 1 of the Data Analysis). The study suggests

that this pattern both reflects and further promotes the conflict and ambiguity in the discourse.

An unresolved struggle

Schon and Rein suggest that competing frames, proposed by different stakeholders, result in "struggles over the naming and framing of a policy situation" (1994, pp.28-29). The study suggests that the co-existence of "multiple frames" for whistleblowing within UK Banks, and the resultant "struggles", may be driven by the fact that there are multiple stakeholders with an interest in whistleblowing. These stakeholders may include legal, compliance, conduct, ethics and human resource teams, the Whistleblowers' Champion (see Section 1 of the Literature Review, pp.19-22) and specialist whistleblowing investigation and handling teams. All of these stakeholders are privileged actors within their organisations with the opportunity, and the requisite status, to select a particular frame for the whistleblowing problem (Baumgartner and Mahoney, 2008). Some stakeholders, such as legal and compliance teams, are more likely to adopt a Prescriptive perspective and others, such as conduct and ethics teams, are more likely to adopt a Conceptual perspective. They therefore encapsulate the struggle between whistleblowing being framed as an official or an operational problem for their organisation. These stakeholders then compete to claim a "policy monopoly" (Baumgartner and Jones, 1993).

Deliberate ambiguity

Stone (1998, p.157) proposes that ambiguity may be a deliberate strategy adopted by policy-writers where there is uncertainty and that it can be used as a deliberate strategy to "placate multiple political actors in a policy controversy." Schön and Rein (1994, pp.3-4) distinguish between policy disagreements, where the question can be resolved by examining the facts and policy controversies, where the question is "immune to resolution by appeal to the facts" (see Section 1 of the Methodology and Research Design, pp.110-111).

The study suggests that the ambiguity, incoherence and conflict found in the texts of the UK Banks in the samples is shaped by the discourse in the texts produced

and disseminated by the Legal, Regulatory and Best Practice Actors included in the study (see Section 2 of the Data Analysis). It also suggests that the striking ambiguity, incoherence and conflict found in the whistleblowing discourse of the UK Banks in the sample may be acknowledged and accepted by the various organisational stakeholders within UK Banks (see, by way of illustration, Examples 36-38, 53 and 55 in Section 1 of the Data Analysis). As discussed below (see p.275), further research in this area would be instructive. Firstly, such research could explore whether the UK Banks in the study, and indeed the Regulatory Actors in the study, are aware of the ambiguity, incoherence and conflict in the discourse. Secondly, such research could explore whether the UK Banks 'accept' it in the sense that it is the best approach, and one that they support, or 'accept' it in the sense that this is what the regulators require of them. If the latter, then this becomes a matter of compliance.

The study further suggests that the discourse of institutionalised whistleblowing is a policy controversy in the UK banking industry which is "resistant to resolution by appeal to facts (Schön and Rein, 1994, p.23) and so one addressed by the industry with "bounded rationality" (Simon, 1957 and March, 1978). Policy-writers with UK Banks are making decisions based on information that is contradictory; the unsettled discourse reflects the ambiguity in the wider organisational field.

The framing and naming of wrongdoing

Section 1 of the Literature Review (see pp.42-45) suggests that one of the most contentious areas in the whistleblowing literature relates to the scope of 'wrongdoing'. This is of particular interest to the study for two reasons. Firstly, the framing and naming of wrongdoing is central to the difference between the exclusivity indicative of Prescriptive Discourse and the inclusivity indicative of Conceptual Discourse. Secondly, the framing and naming of 'wrongdoing' is a perquisite to the institutionalisation of whistleblowing; it is a key component of whistleblowing legislation and regulation as well as of the organisational level texts establishing institutionalised whistleblowing arrangements.

As discussed in Section 1 of the Literature Review (see pp.42-43), Conceptual Discourse is unconcerned with definitions of wrongdoing beyond the subjective perception of the whistleblower-employee. Prescriptive Discourse, in contrast, promotes both detailed and bounded definitions of wrongdoing. In the texts that comprise institutionalised whistleblowing arrangements, these definitions are likely to take the form of prescriptive lists. The literature, however, acknowledges the challenges faced by organisations (and indeed other actors) in constructing such lists (see pp.42-43).

As discussed in Section 1 of the Data Analysis (see pp.143-149), the study's findings support the literature. The data analysis shows that the texts produced and disseminated by the UK Banks in the sample contain both Prescriptive and Conceptual Discourse indicators in relation to 'wrongdoing'. A number of patterns emerged from the data.

Firstly, the study found that over 50% of the UK Banks in Category 1 and Category 2 in the sample attempt to place boundaries around the scope of wrongdoing in their whistleblowing texts by providing a prescriptive list containing six or more specified types of wrongdoing that employees 'could' or 'should' blow the whistle about. However, the study found that the organisations struggle to establish the binary exclusivity indicative of Prescriptive Discourse and, as a result, the lists were rendered open-ended, exemplary and non-definitive, by phrases such as "non-exhaustive examples" (see Example 19) and "but are not limited to" (see Example 20). This framing introduces subjectivity to an otherwise exclusive and prescriptive list and potentially leaves employees unprotected, particularly where the definition of wrongdoing is linked to legal protection from retaliation.

Secondly, the study found that the majority of the prescriptive lists of wrongdoing in the data contain references, in whole or in part, to the definitions of wrongdoing contained in the texts produced by relevant Legal and Regulatory Actors; specifically the definitions of wrongdoing contained in PIDA/ERRA and the definition of "reportable concern" contained in the FCA Handbook (see, by way

of illustration, Examples 27 and 28 in Section 1 of the Data Analysis). As a result, a two tier meaning of wrongdoing has been generated; at a legal level in terms of legal protection and at a regulatory level in terms of the FCA rules.

The study further found that the generation of these two tiers of wrongdoing left it unclear when an employee would have a potential right of action under PIDA/ERRA. This is particularly important as employees have no direct right of action under the FCA rules; although the FCA have stated that it would be a matter of regulatory relevance if incidents of retaliation were brought to their attention.

In addition, the study found that the interpretation of certain aspects of PIDA/ERRA were problematic, specifically the phrases "reasonable belief" and "public interest" that were not clearly articulated and the phrase, "good faith", which is no longer part of PIDA/ERRA, but was found to be present in the texts produced and disseminated by 13 of the 28 of the organisations in Category 1 of the sample.

The creation of these two tiers of wrongdoing was found to be particularly problematic for global organisations and groups attempting to draft globally applicable texts. There organisations face the prospect of including references to 'wrongdoing' definitions from multiple legal and regulatory sources (see Examples 30 and 31 in Section 1 of the Data Analysis).

Thirdly, the study found that a number of the UK Banks in the sample had created a third tier of wrongdoing (in addition to the legal and regulatory tiers). This is of particular interest to the study as the scope of this tier is not shaped by, or at least is not shaped directly by, relevant legislation or regulation.

A third tier of wrongdoing

The study found this third tier to be particularly associated with breaches of the organisation's values or code of conduct (or similar text). As discussed in Section 1 of the Data Analysis, 50% of the organisations in Category 1 and Category 2 of the sample include breaches of their organisation's ethical standards or values in

their framing of wrongdoing (see Examples 20-25 and Examples 61-2 in Section 1 of the Data Analysis). Here, this type of wrongdoing is not covered by applicable legislation (PIDA/ERRA) nor regulation (as the definition of "reportable concerns" under the FCA rules includes "policies and procedures", but does not extend further). Where wrongdoing is extended to this third tier, employees who 'blow the whistle' are only able to rely on the contractual protection from retaliation offered by their organisation.

The study suggests that this extension of wrongdoing may be driven by the culture and conduct-related meta-regulatory initiatives of the FCA discussed in Section 1 of the Literature Review, namely the FCA's Conduct Rules introduced under the SMCR and the SMCR's focus on individual accountability and responsibility. The study also suggests that the FCA's current focus on non-financial misconduct is likely to drive this third tier even further into the ethical space (see Section 1 of the Data Analysis, pp.215-216).

As an extension of the third tier of wrongdoing, the study also found that some of UK Banks in the sample specify that a failure to report a breach of the organisation's values or code of conduct is in itself wrongdoing (Examples 61 and 62 of Section 1 of the Data Analysis). This is highly significant. It renders the employees of those organisations contractually (explicitly or implicitly) required to blow the whistle on a colleague who breaches the organisation's values or code of conduct. This creates a positive duty to "do good" for which non-compliance can be punished. It also drives ethical responsibilisation (see below).

It should be noted that the inclusion of this third tier of wrongdoing and the contractual obligation to blow the whistle about breaches of an organisation's for values or code of conduct operates purely at an organisational level and is not driven by legal or regulatory obligations. In Example 120[65] in Section 2 of the

[65] The FCA and PRA Joint Consultation Paper (February 2015), Chapter 4, paragraphs 4.1, 4.2 and 4.4. This also supports the approach proposed by the PCBS (see Example 99, Section 2 of the Data Analysis, p.201).

Data Analysis, the FCA and PRA clearly state that employees of UK Banks are not under any "explicitly-expressed" obligation to blow the whistle in their rules introduced in 2016, but leave open the possibility of such obligations being imposed by UK Banks through, for example, "contractual terms in employment contracts that place an obligation on employees to report misconduct they are aware of". This is an invitation for UK Banks to create a third tier of wrongdoing at an organisational level and a clear indication of the discourse being shaped by the texts of the Legal and Regulatory Actors in the organisational field.

The framing and naming of responsibility

As discussed in Section 1 of the Literature Review (pp.46-47), indicators of Prescriptive Discourse in relation to responsibility include duties to blow the whistle (with punishments for not doing so) and rights to blow the whistle linked to the availability of protections. In contrast, the indicators of Conceptual Discourse are unfettered choice and rights free from reciprocity. As with wrongdoing (see above), both Prescriptive and Conceptual Discourse indicators were found in the texts of the UK Banks in the sample in relation to the framing and naming of 'responsibility'.

The responsibility to blow the whistle, especially in an organisational setting, is perhaps the most contentious aspect of the literature (see Section 1 of the Literature Review, pp.45-57). The study found this conflict to also be reflected in the data. Section 1 of the Data Analysis suggests that the responsibility discourse within the UK Banks in the sample is ambiguous and unresolved, with high levels of both internal and external incongruence. High levels of employee responsibilisation, particularly ethical responsibilisation, were also evident in the data (see below).

Duties and rights

The data shows the responsibility of employees of UK Banks to blow the whistle being framed as both a duty and also as a right. Where it is framed as a duty, the nature of that duty is unclear and inconsistent and, in many cases, left unexplained (see Section 1 of the Data Analysis, pp.168-172). The study found instances within the data of the duty being expressed as a regulatory, contractual and ethical duty. Where the duty or right is expressed as an ethical one, the discourse spans virtue, consequential and deontological ethics (see Section 1 of the Literature Review, pp.59-64).

As with wrongdoing above, the study suggests that this aspect of the discourse of UK Banks diverges from legal and regulatory requirements. As discussed above, the FCA and PRA have rejected the option of an "explicitly-expressed" obligation to blow the whistle that applies to the UK banking industry[66].

Ethical responsibilisation

As discussed under wrongdoing above, the study found that some UK Banks in the sample impose a contractual duty on employees to blow the whistle through an obligation to comply with their values or code of conduct. It was unclear from the data in the study whether, and if so how, this is expressed in the employees' contracts of employment. This study proposes that such contractual duties result in ethical responsibilisation (see above and Section 1 of the Literature Review, pp.53-56). The ethical dimension to the responsibilisation is supported by the study's finding that a responsibilisation discourse was more evident in the values-based texts than the policy-based texts in the sample and the FCA's assertion that there is no "explicitly-expressed" regulatory duty to do so (see Example 120 in the Data Analysis).

[66] See the discussion in Section 1 of the Literature and Sections 1 and 2 of the Data Analysis in relation to individual and organisational level duties to report certain offences such as market abuse and money laundering.

It is proposed by the study that this ethical responsibilisation is potentially driven by three factors. Firstly, UK Banks attempting to strengthen the connection between the putative whistleblower-employee and the act of wrongdoing by a colleague in order to elicit an informative response. As discussed in Section 1 of the Literature Review, the Situation/Event element of the Schlenker Triangle (Schlenker, 1997, p.632) is particularly problematic in relation to whistleblowing as it requires making an individual feel 'responsible' for the conduct of others. Secondly, the challenges discussed above in relation to the scope of wrongdoing, in relation to exclusive or open-ended lists, particularly when drafting globally applicable texts. Thirdly, the discourse of individual accountability and responsibility connected with the SMCR, as well as the wider discourse within the UK banking industry in relation to conduct and culture expressed in texts such as the PCBS report, Changing Banking for Good (see Section 2 of the Data Analysis and the discussion in the Introduction). These themes encourage, or require (an important distinction which is explored in the study), employees to take greater personal responsibility for their own conduct and the conduct of their colleagues.

The study further suggests that the ethical responsibilisation of employees through contractual obligations relating to ethical conduct in relation to whistleblowing is perhaps an unintended consequences of the meta-regulatory approach adopted by the FCA to drive conduct standards higher within the industry and of the discourse struggles in the texts produced and disseminated by the Regulatory Actors included in the sample, particularly the FCA (see Section 2 of the Data Analysis, Examples 118-123).

It should be noted that ethical responsibility may also be used by organisations as a means of protecting senior management and the reputation of the organisation; it potentially provides a double shield. Firstly, employees have a negative duty not to commit wrongdoing. Secondly, their colleagues have a negative duty to report them if they do. These shields operate collectively to convert an organisational failure into an individual failure and to frame institutionalised whistleblowing as a risk management tool.

RESEARCH QUESTION 2:
HOW HAS THAT DISCOURSE BEEN SHAPED?

In response to Research Question 2, the study utilises the model proposed by Phillips et al. (2004, p.641). The model, discussed in detail Section 2 of the Literature Review, theorises how pressures and actions within an organisational field, including the types of legal, regulatory and cultural change relevant to this study, promote the generation of texts that, in turn, may become embedded in discourse. The final stage of the model further theorises that the discursive embeddedment process may, over time, produce a new and coherent "social construction", or institution, for that organisational field.

Research Question 2 of the study examines the texts produced and disseminated by actors with "discursive legitimacy" (Hardy and Phillips, 1998, p.219) within the UK banking industry, the role that they have played as mediator between action and discourse and the extent to which they have shaped the whistleblowing discourse of UK Banks. The actors identified and included in the study are termed Legal Actors, Regulatory Actors and Best Practice Actors (see Section 2 of the Methodology and Research Design, pp.121-124) and the data collected for each of these actors is discussed in Section 2 of the Methodology and Research Design, pp.126-129).

The study includes a pragmatic textual discursive analysis of the whistleblowing texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in the study. The findings from both research questions are used to explore whether, and, if so, to what extent, the whistleblowing discourse within UK Banks has been shaped by these actors and whether that discourse has become sufficiently embedded to produce a coherent social construction; an institution of institutionalised whistleblowing for the UK banking industry.

Leaving traces in discourse

Phillips et al., (2004, p.640) set out the circumstances in which texts are more likely to "leave traces" in discourse. They identify three factors (see Section 2 of the Literature Review).

The first is where the texts have been generated in response to pressures and actions that demand material levels of "sense-making" (Phillips et al., 2004, p.640) and which, as a result, are likely to be subject to "successive phases of 'textualization' (Taylor et al., 1996) or 'recontextualization' (Iedema and Wodak, 1999) by being disseminated among multiple actors" (Phillips et al., 2004, p.640). The texts analysed by the study meet these criteria. The introduction of rules requiring UK Banks to implement institutionalised whistleblowing arrangements within the context of the FCA's wider conduct and culture regulatory agenda called for, and indeed still call for, high levels of "sense-making" and have resulted in "successive phases" of 'textualization' and 'recontextualization' through the texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in the study and the texts (some of which have been subject to updates and revisions) produced and disseminated by the UK Banks in the sample. The resultant discursive struggles played out in the texts of the UK Banks in the sample are discussed above in relation to Research Question 1.

The second relates to the form or genre of the text itself. Phillips et al. argue that texts that are "recognizable, interpretable, and usable in other organizations, are more likely to become embedded in discourse" (Phillips et al., 2004, p. 644). This is because they can be used by organisations as tools for "interpretation, motivating them to use these texts and incorporate them into their own actions and texts" (Phillips et al., 2004, p.643). The texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in this study meet this criterion too. Legislation, rules and model texts, such as pro forma policies and procedures, are "recognizable, interpretable, and usable" and suited to incorporation in other texts.

The final factor identified by Phillips et al. (2004) is the consistency of the texts generated both within the organisational field and outside the organisational field. The existence of competing discourses in the form of "structured set[s] of interrelated texts offering alternative social constructions of the same aspect of social reality" disrupt embeddedment (Phillips et al., 2004, p.645). This factor is discussed further below.

As discussed in Section 2 of the Literature Review (see p.88), institutional theory has been criticised for favouring a conservative approach. The author recognises that the framework adopted by the study could be accused of limiting itself to the exploration of a 'closed loop' that focuses solely on actors that have already gained legitimacy within a bounded organisational field, producing texts in recognisable formats that link to other legitimate texts. It is important, therefore, to acknowledge that other forces may operate from outside the 'black box' that are potent in terms of sense-making and institution-shaping.

The problematic positioning of discourse

As discussed above in relation to Research Question 1, the study suggests that the bifurcation of whistleblowing discourse is driven by the complex positioning of whistleblowing within organisations and that this complex positioning has promoted an unresolved discursive struggle in the texts produced and disseminated by UK Banks. Research Question 2 explores whether this discursive struggle is also evident in the texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in the sample and to what extent that may, therefore, be the source and driver of the discursive struggle at an organisational level.

The study found that the discursive "struggles" identified in the texts produced and disseminated by UK Banks (see discussion above) mirror the struggles in the texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in the study. Again the most striking areas of ambiguity and

incoherence were related to wrongdoing and responsibility (see the discussion in Section 1 above).

These struggles were found to be particularly marked in the texts produced and disseminated by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), the actors with, perhaps, the strongest "discursive legitimacy" within the organisational field (Hardy and Phillips, 1998, p.219). The FCA and PRA are privileged actors and are in a powerful position to select a discursive frame with a formative impact (Baumgartner and Mahoney, 2008).

The study further suggests that the driver for these struggles at a Regulatory Actor level is the same as for the UK Banks; the interplay between the discursive treatment of operative and official goals. The "purposely vague and general" discourse (Kerr, 1975, pp.769-770) associated with official goals was found particularly in the FCA's texts concerning psychological safety, the discussion in their Consultation Papers and the material on their website directed at the employees of financial services organisations. The prescriptive language associated with operative goals was found in the FCA whistleblowing rules themselves (see Section 2 of the Data Analysis). The study proposes that this problematic positioning has shaped the conflict and ambiguity in the discourse of the UK Banks within the sample (see above).

As also discussed above in relation to the UK Banks in the sample, the study further proposes that this ambiguity may again be a deliberate strategy adopted by the Regulatory Actors included in the study. It reflects the need to manage the "operative" goal of providing clear and precise rules on institutional whistleblowing arrangements, whilst still maintaining and promoting the "official" goal of individual responsibility and accountability as part of their conduct and culture agenda (Stone, 1998, p.157) (see also Introduction).

The study found the resultant ambiguity and incoherence produced by this struggle was deepened further by the fact that the FCA whistleblowing rules are directed solely at organisations (and are contained within the SYSC chapter of the

FCA Handbook, a chapter that focuses on governance, risk and systems and controls) whereas the FCA Conduct Rules and the themes of individual accountability and responsibility are directed at employees. The study found both the discourse contained in SYSC and the discourse of individual accountability and responsibility associated with the SMCR and the Conduct Rules to be clearly evident in the whistleblowing texts produced and disseminated by the UK Banks in the study (see Examples 27 and 28 in Section 1 of the Data Analysis).

The renaming of whistleblowing

The renaming of 'whistleblowing' as "speaking up" and "raising concerns and "reporting" noted in the texts produced and disseminated by the UK Banks in the sample was also found in the texts produced and disseminated the Legal, Regulatory and Best Interest Actors included in the study (see, pp.191-193, pp.206-210 and pp.233-235 in Section 2 of the Data Analysis).

The third tier of wrongdoing

The third tier of wrongdoing (the extension to breaches of internal values and codes of conduct) and the ethical responsibilisation of employees (through implicit or explicit obligations to comply with internal values and codes of conduct) found in the texts of UK Banks in the sample was not found in the texts produced and disseminated by the Legal, Regulatory and Best Practice Actors included in the study.

As discussed under Research Section 1 above, however, it is suggested by the study that this aspect of the discourse of UK Banks has been shaped, at least in part, by the ambiguity and conflict in the discourse of the Legal, Regulatory and Best Practice Actors included in the study, particularly the FCA and the PRA; it is a way of responding to and managing that ambiguity.

This approach may represent an attempt by the UK Banks to include a conceptual approach to whistleblowing to support their ethical values. The move could also, however, represent an attempt by the organisations to 'cover their own backs' by orchestrating a vague contractual obligation that does not exist in law or

regulation, but which provides them with an opportunity to scapegoat employees for organisational failings on the grounds that they have not discharged their duty to blow the whistle.

There are therefore clear dangers in relegating the third tier of wrongdoing further into the ethical space. The scope is unclear, open to interpretation and left to organisations to determine. These factors potentially leave employees at risk; both at risk of punishment for failing to blow the whistle and at risk of being unprotected under the law if they do.

This analysis may have wider implications for the ethical responsibilisation of employees in other areas of culture and conduct, beyond whistleblowing, and to the meta-regulatory approaches to employee conduct.

A new institution of whistleblowing?

The final stage of the Phillips et al. (2004, p.643) model suggests that the final stage of formative discursive embeddedment is the generation of a new "*fact* - just part of reality in that organizational world" (see Taylor et al., 1996, p.27); a new and coherent social construction. Phillips et al. (2004) further argues that the existence of competing discourses in the form of "structured set[s] of interrelated texts offering alternative social constructions of the same aspect of social reality" will disrupt embeddedment (2004, p.645) and therefore the generation of a new social construction.

As discussed above in relation to Research Questions 1 and 2, the study found the discourse of whistleblowing within the UK banking industry (at both levels analysed in the study - UK Banks and Legal, Regulatory and Best Practice Actors) to be ambiguous, conflicted and incongruous. All of the actors included in the study include the ambiguities, conflicts and inconsistencies in some or all of their whistleblowing texts. It is argued that the competing discourses, and "alternative social constructions" under-pinning them, are accepted by the Legal, Regulatory

and Best Practice Actors and the UK Banks included in the study, with no overt attempts to reconcile or clarify them.

This study suggests that, although the ambiguity and incongruence in the discourse has rendered the discourse "negotiable" (see Section 2 of the Literature Review, p.87), that negotiability has itself become embedded. The study proposes that inconsistency and ambiguity in the discourse may not be impediments to embeddedment, especially where that inconsistency and ambiguity are overt and widespread. Stone (1988, p.157) proposes that "policy controversies", such as these, may be accepted in order to "placate multiple political actors".

It is acknowledged that the level of inconsistency and ambiguity may not be fully understood by the Legal, Regulatory and Best Practice Actors in the study (see the discussion above in relation to the acceptance by the organisations in the study, p.256). Again, further research here would be instructive.

FURTHER RESEARCH AND CONCLUSION

Further research

The study explores the impact of the institutionalisation of whistleblowing, with specific reference to the discursive challenges that it poses for the UK banking industry. Its findings indicate that there are dangers and that these are likely to apply in other sectors, particularly where there are high levels of regulation.

The author of the study urges others to use the coding frame developed by the study to analyse the discourse of institutionalised whistleblowing in the texts generated within other organisational fields, both regulated and non-regulated.

The study focuses on organisation-level discourses in relation to whistleblowing. It would be instructive to conduct a similar analysis of employee-level discourses through interviews, surveys and focus-groups using a similar coding strategy in order to determine whether the 'talk' is consistent across these levels and whether employee-level discourses are influenced by the types of texts included in the study (see discussion in the Methodology and Research Design chapter, p.102, and Appendix 7).

It would also be instructive to explore the level of awareness that the Regulatory Actors and the UK Banks in the study have of the incoherence and inconsistency in their whistleblowing texts.

Conclusion

The study explores how we 'talk' about whistleblowing, specifically institutionalised whistleblowing. It seeks to answer two questions for a single organisational field at a specific point in its legal, regulatory and cultural development: 'What is whistleblowing?' and 'How has the discourse been shaped?'

The study uses the coding frame developed from the Literature Review to address these questions for the UK banking industry through the systematic and pragmatic analysis of the whistleblowing texts produced and disseminated by UK Banks and Legal, Regulatory and Best Actors within the organisational field.

The study reaches four main conclusions.

Firstly, the study concludes that the institutionalisation of whistleblowing has a formative impact on the discourse. It further concludes that the discourse of institutionalised whistleblowing is bifurcated, comprising Prescriptive and Conceptual Discourse, and that the bifurcation is driven by the complex positioning of institutionalised whistleblowing as both an operative and official problem at both an organisation and industry level. For the UK Banking industry, this bifurcation has resulted in the discourse being unsettled, ambiguous and conflicted, particularly in relation to Wrongdoing and Responsibility.

Secondly, it concludes that the discourse within the whistleblowing texts produced and disseminated by UK Banks has been shaped by the whistleblowing texts produced and disseminated by the Legal, Regulatory and Best Practice Actors within the organisational field. Those texts have left "traces" in the discourse and have influenced the way in which UK Banks 'talk' about whistleblowing (Phillips et al., 2004, p.640).

Thirdly, it concludes that the incoherent and unresolved quality of a discourse does not necessarily prevent the process of discursive embeddedment suggested by Phillips et al. (2004, p.644) from producing a new "social construction", or institution. For the UK banking industry, the study shows the emergence of an institution of institutionalised whistleblowing at the level of organisational discourse, although that discourse is incoherent and inconsistent.

The study suggests that the ambiguity and conflict in the discourse in the texts produced by the Legal, Regulatory and Best Practice Actors in the study is also reflected and reproduced in the texts produced and disseminated by the UK Banks

in the study. It is a "policy controversy" (Stone, 1998, p.157) created by the problematic positioning of institutionalised whistleblowing, that is, for now at least, too hard to resolve for the banking industry at this point in its legal, regulatory and cultural development. Further, it is, in part at least, driven by regulatory and cultural developments in relation to conduct introduced since the financial crisis. It is "a *fact* - just part of reality" for the industry (see Taylor et al., 1996, p.27).

As discussed above, the study was not able to explore whether this ambiguity and conflict is also reflected in the discourse at an employee-level within the industry and so whether the new institution of whistleblowing extends beyond what is written in 'official' documents produced within the sector. Regardless, the incoherence of the discourse in the texts included in the study is likely to have a real impact at both an employee-level and an organisational-level. Both employees and organisations must manage the incoherence and operate within it.

Fourthly, it concludes that the only material point of divergence between the discourse of the Legal, Regulatory and Best Practice Actors and of the UK Banks in the sample is the ethical responsibilisation of employees in relation to whistleblowing through implicit or explicit contractual obligations linked to organisational values and codes of conduct. As discussed above, ethical responsibilisation provides organisations with an opportunity to scapegoat employees for organisational failings on the grounds that they have not discharged their duty to blow the whistle.

The study suggests that, although the ethical responsibilisation of employees is not overtly prescribed by the Legal and Regulatory Actors in the sample, it is supported through their conduct-related regulatory initiatives and the Conceptual Discourse in the texts they produce. Specifically, the ethical responsibilisation of employees suggested by the study may result from the meta-regulatory approach to conduct and culture adopted by the FCA in the wake of the financial crisis and the high profile scandals in the industry, specifically the FCA's Conduct Risk

initiative and the SMCR (see Introduction). This finding potentially has wider implications, outside whistleblowing research, for meta-regulatory approaches to conduct and culture within organisations.

Final thoughts

The UK banking industry has avoided resolving the legal, regulatory and organisational problems raised by the institutionalisation of whistleblowing by accepting a social construction, at an organisational-level at least, that is conflicted, ambiguous and unsettled. This raises a number of concerns for employees within the industry (and, by extension, for employees in other highly-regulated industries). Employees are faced with ambiguity and incoherence at every step of the whistleblowing decision-making process.

At Step 1, in relation to wrongdoing, the employee is faced with multiple and conflicting definitions of relevant wrongdoing, ranging from "anything that doesn't feel right" (see Example 32 in Section 1 of the Data Analysis) to highly prescriptive lists of up to 20 types of wrongdoing (see Example 20) drawn from legislation, regulation and organisational level criteria. This means that at Step 2, in relation to protection, there is ambiguity over when they will be protected from retaliation and whether this protection is afforded by the law or only under their organisation's values or code of conduct. The later requiring a high degree of trust on the part of the employee. At Step 3, in relation to responsibility, an employee is faced with discourse that is ambiguous and conflicted; moral and ethical language intertwined with the prescriptive language of legal, regulatory and contractual obligations. In many organisations, employees are also caught 'between a rock and a hard place'; ethical responsibilisation means that they must choose between the risk of blowing the whistle and the risk of being punished for staying silent. At Step 4, in relation to channel selection, an employee is faced with a range of options from speaking to their line manager to accessing a dedicated whistleblowing hotline with no clarity over how to discharge their 'responsibility' to blow the whistle and how to distinguish between whistleblowing and other forms of reporting and escalation.

The author hopes that the study's findings will increase understanding of the limits of institutionalised whistleblowing arrangements, especially those introduced by legislators or regulators in response to scandals and incidents (as in financial services) as a means of improving conduct and culture. It is also hoped that the findings will be useful to advocacy organisations calling for change in whistleblowing law (in financial services but also beyond) and for increased protection for whistleblowers.

The study acknowledges that both prescriptive and conceptual approaches have advantages and disadvantages. Neither provides the ideal solution and both have a place. Understanding this is an important first step. The next step is to consider how institutionalisation can best be achieved. This requires legislators, regulators and organisations to acknowledge and address the problems identified in the study collectively.

The author proposes three practical ways in which the issues identified in the study could be alleviated. Firstly, regulators introducing sector-specific whistleblowing regulations should ensure that those regulations complement rather than conflict with applicable legislation. This will reduce incoherence and uncertainty. For example, the introduction of the definition of a "reportable concern" by the FCA has proved difficult for the financial services sector in the UK. This problem may be addressed by requirements for internal whistleblowing arrangements to be established in legislation rather than in industry-specific regulation (as in the EU Whistleblower Protection Directive). Secondly, it should be made clear that there is no legal or regulatory duty to blow the whistle. This means that, where applicable, any industry-specific duties to report imposed on individuals in specific circumstances, for example suspicions of money laundering, should be clearly labelled as reporting, rather than whistleblowing. Thirdly, organisations should not be permitted to impose a contractual duty to blow the whistle or to punish employees who fail to blow the whistle. If individual reporting obligations can be justified in specific circumstances, these should be clearly framed as reporting, not whistleblowing.

In the Introduction, the author explains that the main driver for the study is the difficulty of answering the question, 'What is whistleblowing?' when challenged by the employees of financial services organisations. At the end of the study, the author is perhaps no closer to answering that question with any clarity for the UK banking industry, but has a better understanding of why the question is so problematic for the sector at this stage in its legal, regulatory and cultural development and the consequences of this for both employers and prospective whistleblower-employees.

The author's own approach to developing whistleblowing training materials has been influenced by the study. The author strives to introduce clarity to those materials and to explain the multiple dimensions at which whistleblowing operates; clearly separating out the legal, regulatory and organisational dimensions and the protections afforded to employees at each level.

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APPENDICES

APPENDIX 1

LIST OF BANKS AS COMPILED BY THE BANK OF ENGLAND AS AT 30th June 2019

(Amendments to the List of Banks since 31st May 2019 can be found below)

Banks Incorporated in the United Kingdom

Abbey National Treasury Services Plc
ABC International Bank Plc
Access Bank UK Limited, The
ADIB (UK) Ltd
Ahli United Bank (UK) PLC
AIB Group (UK) Plc
Al Rayan Bank PLC
Aldermore Bank Plc
Alliance Trust Savings Limited
Alpha Bank London Limited
Arbuthnot Latham & Co Limited
Atom Bank PLC
Axis Bank UK Limited

Bank and Clients PLC
Bank Leumi (UK) plc
Bank Mandiri (Europe) Limited
Bank Of Baroda (UK) Limited
Bank of Beirut (UK) Ltd
Bank of Ceylon (UK) Ltd
Bank of China (UK) Ltd
Bank of Ireland (UK) Plc
Bank of London and The Middle East plc
Bank of New York Mellon (International) Limited, The
Bank of Scotland plc
Bank of the Philippine Islands (Europe) PLC
Bank Saderat Plc
Bank Sepah International Plc
Barclays Bank Plc
Barclays Bank UK PLC
BFC Bank Limited
Bira Bank Limited
BMCE Bank International plc
British Arab Commercial Bank Plc
Brown Shipley & Co Limited

C Hoare & Co
CAF Bank Ltd
Cambridge & Counties Bank Limited
Cater Allen Limited
Charity Bank Limited, The
Charter Court Financial Services Limited
Chetwood Financial Limited
China Construction Bank (London) Limited
CIBC World Markets Plc
ClearBank Limited
Close Brothers Limited
Clydesdale Bank Plc
Commonwealth Trade Bank Plc, The
Co-operative Bank Plc, The
Coutts & Company
Credit Suisse (UK) Limited
Credit Suisse International
Crown Agents Bank Limited
Cynergy Bank Limited

DB UK Bank Limited

EFG Private Bank Limited
Europe Arab Bank plc

FBN Bank (UK) Ltd
FCE Bank Plc
FCMB Bank (UK) Limited

Gatehouse Bank Plc
Ghana International Bank Plc
Goldman Sachs International Bank
Guaranty Trust Bank (UK) Limited
Gulf International Bank (UK) Limited

Habib Bank Zurich Plc
Hampden & Co Plc
Hampshire Trust Bank Plc
Handelsbanken PLC
Havin Bank Ltd
HBL Bank UK Limited
HSBC Bank Plc
HSBC Private Bank (UK) Limited
HSBC Trust Company (UK) Ltd
HSBC UK Bank Plc

ICBC (London) plc
ICBC Standard Bank Plc
ICICI Bank UK Plc
Investec Bank PLC
Itau BBA International PLC

J.P. Morgan Europe Limited
J.P. Morgan Securities plc
Jordan International Bank Plc
Julian Hodge Bank Limited

Kexim Bank (UK) Ltd
Kingdom Bank Ltd

Lloyds Bank Plc
Lloyds Bank Corporate Markets Plc

LIST OF BANKS AS COMPILED BY THE BANK OF ENGLAND AS AT 30th June 2019

Banks Incorporated in the United Kingdom (continued)

Macquarie Bank International Ltd
Marks & Spencer Financial Services Plc
Masthaven Bank Limited
Mell Bank plc
Methodist Chapel Aid Limited
Metro Bank PLC
Mizuho International Plc
Monzo Bank Ltd
Morgan Stanley Bank International Limited

National Bank of Egypt (UK) Limited
National Bank of Kuwait (International) Plc
National Westminster Bank Plc
NatWest Markets Plc
Nomura Bank International Plc
Northern Bank Limited

OakNorth Bank plc
OneSavings Bank Plc

Paragon Bank Plc
PCF Bank Limited
Persia International Bank Plc
Philippine National Bank (Europe) Plc
Punjab National Bank (International) Limited

QIB (UK) Plc

R. Raphael & Sons Plc
Rathbone Investment Management Limited
RBC Europe Limited
RCI Bank UK Limited
Redwood Bank Ltd
Reliance Bank Ltd
Revver Limited
Royal Bank of Scotland Plc, The

Sainsbury's Bank Plc
Santander UK Plc
State Bank Of India (UK) Limited
Schroder & Co Ltd
Scotiabank Europe Plc
Secure Trust Bank Plc
SG Kleinwort Hambros Bank Limited
Shawbrook Bank Limited
Smith & Williamson Investment Services Limited
Sonali Bank (UK) Limited
Standard Chartered Bank
Starling Bank Limited
Sumitomo Mitsui Banking Corporation Europe Limited

Tandem Bank Limited
TD Bank Europe Limited
Tesco Personal Finance Plc
Triodos UK Ltd
TSB Bank plc
Turkish Bank (UK) Ltd

Ulster Bank Ltd
Union Bank of India (UK) Limited
Union Bank UK Plc
United Bank for Africa (UK) Limited
United National Bank Limited
United Trust Bank Limited
Unity Trust Bank Plc

Vanquis Bank Limited
Virgin Money plc
VTB Capital plc

Weatherbys Bank Limited
Wesleyan Bank Limited
Westpac Europe Ltd
Wyelands Bank Plc

Zenith Bank (UK) Limited
Zopa Bank Limited

APPENDIX 2

UK Banks on the list of UK incorporated banks contained in Appendix 1 that meet the size criteria for the study.

Notes

- The Bank of England's official list of UK incorporated Banks as at 30 June 2019 was checked in July 2019.
- The asset size of each organisation (checked against the total assets figure shown in latest published Annual Report) was checked between July and August 2019.

No.	Name	Data	Comments/Notes
1	Abbey National Treasury Services Plc	See comment	Now part of the Santander Category (see below)
2	Access Bank UK Limited, The	Yes	
3	Ahli United Bank (UK) PLC	No	
4	AIB Group (UK) Plc	No	
5	Al Rayan Bank PLC	No	
6	Aldermore Bank Plc	Yes	
7	Alliance Trust Savings Limited	No	
8	Alpha Bank London Limited	Yes	Non-UK specific policy
9	Arbuthnot Latham & Co Limited	No	
10	Axis Bank UK Limited	No	
11	Bank Leumi (UK) plc	No	
12	Bank of Beroda (UK) Limited	No	New; not on 31 October 2017 list
13	Bank of Beirut (UK) Ltd	Yes	
14	Bank of Beroda (UK) Limited	No	
15	Bank of China (UK) Ltd	No	
16	Bank of Ireland (UK) Plc	Yes	
17	Bank of London and The Middle East plc	Yes	

18	Bank of New York Mellon (International) Limited, The	Yes	
19	Bank of Scotland plc	Yes	See Lloyds Bank
20	Bank Saderat Plc	No	
21, 22	Barclays Bank Plc		Also covers Barclays Bank (UK) PLC
23	BMCE Bank International plc	No	
24	British Arab Commercial Bank Plc	No	
25	Brown Shipley & Co Limited	No	
26	C Hoare & Co	No	
27	Cambridge & Counties Bank Limited	No	
28	Charter Court Financial Services Limited	No	
29	China Construction Bank (London) Limited	No	
30	CIBC World Markets Plc	Yes	
31	Close Brothers Limited	Yes	
32	Clydesdale Bank Plc	No	
33	Commonwealth Trade Bank Plc, The	No	
34	Co-operative Bank Plc, The	Yes	
35	Coutts & Company	Yes	Part of RBS – see RBS
36, 37	Crédit Suisse (UK) Limited	Yes	Also includes Crédit Suisse International.

38	Crown Agents Bank	Yes	
39	Cynergy Bank Limited	No	
40	DB UK Bank Limited	Yes	
41	EFG Private Bank Limited	No	
42	Europe Arab Bank plc	No	
43	FBN Bank (UK) Ltd	Yes	
44	FCE Bank Plc	Yes	
45	FCMB Bank (UK) Limited	Yes	
46	Gatehouse Bank Plc	No	
47	Ghana International Bank Plc	No	
48	Goldman Sachs International Bank	Yes	
49	Guaranty Trust Bank (UK) Limited	Yes	
50	Gulf International Bank UK Limited	Yes	
51	Habib Bank Zurich Plc	No	
51	Hampshire Trust Bank Plc	No	
52	Handelsbanken PLC	Yes	
53	HBL Bank UK Limited	Yes	
54, 54, 55, 56	HSBC Bank Plc	Yes	Also includes HSBC Private Bank (UK) Limited, HSBC Trust Company (UK) Limited and HSBC UK Bank Plc

57, 58	ICBC Standard Bank Plc	No	Also includes ICBC (London) plc
59	ICICI Bank UK Plc	No	
60	Investec Bank PLC	No	
61	Itau BBA International plc	No	
62, 63	J.P. Morgan Europe Limited	Yes	Also includes JP Morgan Securities plc
64	Jordan International Bank Plc	No	
65	Julian Hodge Bank Limited	No	
66	Kexim Bank (UK) Ltd	No	
67, 68	Lloyds Bank Plc	Yes	See also Lloyds Bank Corporate Markets Plc and Bank of Scotland Plc
69	Macquarie Bank International Ltd	Yes	
70	Marks & Spencer Financial Services Plc	Yes	Covered under HSBC
71	Melli Bank plc	No	
72	Metro Bank PLC	Yes	
73	Mizuho International Plc	No	
74	Morgan Stanley Bank International Limited	Yes	
75	National Bank of Egypt (UK) Limited	No	
76	National Bank of Kuwait (International) Plc	Yes	
77, 78	National Westminster Bank Plc	Yes	Also includes NatWest Markets Plc See RBS

79	Nomura Bank International Plc	No	
80	Northern Bank Limited	Yes	
81	Oak North Bank Limited	No	
82	One Savings Bank Plc	No	
83	Paragon Bank Plc	No	
84	Persia International Bank Plc	No	
85	Philippine National Bank (Europe) Plc	No	
86	Punjab National Bank (International) Limited	Yes	
87	QIB (UK) Plc	No	
88	R. Raphael & Sons Plc	No	
89	Rathbone Investment Management Limited	Yes	
90	RBC Europe Limited	No	
91	RCI Bank UK Limited	No	
92	Reliance Bank Ltd	No	
93	Royal Bank of Scotland Plc, The	Yes	Also includes Ulster Bank Limited See also National Westminster Bank Plc and NatWest Markets PLC
94	Sainsbury's Bank Plc	No	
95, 96	Santander UK Plc	Yes	Also includes Cater Allen Limited
97	Schroder & Co Ltd	Yes	

98	Scotiabank Europe Plc	Yes	
99	Secure Trust Bank Plc	No	
100	SG Kleinwort Hambros Bank Limited	Yes	
101	Shawbrook Bank Limited	Yes	
102	Smith & Williamson Investment Services Limited	No	
103	Sonali Bank (UK) Limited	No	
104	Standard Chartered Bank	Yes	
105	State Bank of India (UK) Limited	Yes	
106	Sumitomo Mitsui Banking Corporation Europe Limited	Yes	
107	Tandem Bank Limited	No	Previously Harrods Banks
108	TD Bank Europe Limited	Yes	
109	Tesco Personal Finance Plc	Yes	
110	Triodos UK Ltd	No	
111	TSB Bank plc	No	
112	Turkish Bank UK Ltd	No	
113	Ulster Bank Limited	Yes	Part of RBS
114	Union Bank of India (UK) Limited	No	
115	Union Bank UK Limited	No	

116	United Bank for Africa (UK) Limited	No	
117	United National Bank Limited	No	
118	United Trust Bank Limited	No	
119	Unity Trust Bank plc	No	
120	Vanquis Bank Limited	Yes	Part of Provident Financial
121	Virgin Money plc	No	
122	VTB Bank plc	No	
123	Weatherbys Bank Limited	No	
124	Wesleyan Bank Limited	No	
125	Westpac Europe Ltd	Yes	
126	Zenith Bank (UK) Limited	Yes	

APPENDIX 3

Table showing descriptions of the legal entities and corporate groups in categories 1, 2 and 3 together with details of the texts collected.

Category 1: 18 entities/10 separate corporate groups

Name/legal entities	Description	Values-based texts/ number of pages	Policy-based texts/ number of pages	Hybrid Policy/ values-based texts/ number of pages
UK Parent				
1. Barclays* Includes Barclays Bank Plc and Barclays Bank (UK) Plc	A British multinational investment bank and financial services company headquartered in the UK. Barclays is a multi-service bank.	1/12	2/69	1/2 **
2. HSBC Includes HSBC Bank Plc, HSBC Private Bank (UK) Limited, HSBC Trust Company (UK) Ltd and HSBC UK Bank Plc and Marks and Spencer Bank (latter owned by HSBC and so no separate analysis undertaken)	HSBC Holdings plc is a British multinational ban king and financial services holding company. HSBC is a multi-service bank.	1/5 ***	1/3	1/3***
3. RBS The Royal Bank of Scotland Plc (also includes National Westminster Bank PLC, Coutts &	The Royal Bank of Scotland Group plc (also known as RBS Group) is a private, but partly taxpayer-owned and subsidised, British banking and insurance holding company, based in	1/14	1/4	-

Company and Ulster Bank Ltd)	Edinburgh, Scotland. RBS is a multi-service bank.			
4. Cooperative The Cooperative Bank Plc	The Co-operative Bank plc is a retail and commercial bank in the United Kingdom, with its headquarters in Manchester. The bank markets itself as an ethical bank, and seeks to avoid investing in companies involved in certain 'unethical' business.	1/15	1/3**	1/28
5. Standard Chartered Standard Chartered Bank	Standard Chartered PLC is a British multinational and financial services company headquartered in the UK. Standard Chartered Bank is a multi-service bank. Despite its UK base, it does not conduct retail banking the UK, and around 90% of its profits come from Asia, Africa and the Middle East.	-	2/3	1/33
6. Tesco Tesco Personal Finance Plc	A British retail bank which was formed in July 1997, and which has been wholly owned by Tesco plc since 2008.	1/32	1/5	-
7. Northern Bank Northern Bank Limited	Danske Bank UK (formerly Northern Bank) is a commercial bank in Northern Ireland. Northern Bank was one of the oldest banks in Ireland. It took on the name of its parent company Danske Bank as its trading name in November 2012. Danske Bank UK is a standalone business unit within the Danske Bank Group and operates under a UK banking licence.	1/7	1/5	-

Non-UK Parent				
8. Scotiabank Scotiabank Europe Plc	The Bank of Nova Scotia, operating as Scotiabank, is a Canadian multinational bank. It is the third largest bank in Canada by deposits and market capitalisation.	-	1/11	1/34
9. Westpac Westpac Europe Ltd	Westpac Banking Corporation, commonly known as Westpac, is an Australian bank and financial-services provider headquartered at in Sydney. It is one of Australia's "big four" banks and is Australia's first and oldest banking institution.	1/3	1/7	-
10. Macquarie Macquarie Bank International Ltd	Part of the Macquarie Group Limited, an Australian multinational independent investment bank and financial services company. Headquartered and listed in Australia.	1/24	1/3 **	-

* The public statements made by Barclays in response to the investigation of their CEO, Jes Staley, were also included in the data.

** Webpage; page number given is approximate.

*** Only relevant pages included.

Category 2: 23 legal entities/18 separate corporate groups

Name/legal entities	Description	Values-based texts	Policy-based texts	Hybrid Policy/ values-based texts
UK Parent				
1. Close Brothers Close Brothers Limited	Close Brothers UK is a leading merchant banking group providing lending, deposit taking, wealth management services and securities trading.	-	-	2
2. Lloyds Lloyds Bank Plc, Lloyds Bank Corporate Markets Plc and Bank of Scotland Plc	Lloyds Bank plc is a British retail and commercial bank with branches across England and Wales. It has traditionally been considered one of the "Big Four" clearing banks.	1	-	-
3. Bank of Ireland Bank of Ireland (UK) Plc	Bank of Ireland Group plc is a commercial bank operation in Ireland and one of the traditional 'Big Four' Irish banks.	1	-	-
4. Rathbones Rathbones Investment Management Limited	Rathbone Brothers Plc is a UK provider of personalised investment management and wealth management services for private investors and trustees.	-	1	-
Non-UK Parent				
5. Bank of New York Mellon The Bank of New York Mellon (International) Limited	UK arm of the Bank of New York Mellon Corporation, an American worldwide banking and financial services holding company headquartered in New York City. It was formed on July 1, 2007, as a result of the merger of The Bank of New York and Mellon Financial Corporation.	-	2*	-
6. Goldman Sachs Goldman	Goldman Sachs International Bank is the UK part of the Goldman Sachs Group, Inc., an American multinational investment bank	1	-	1

Sachs International Bank	and financial services company headquartered in New York City. It offers services in investment management, securities, asset management, prime brokerage, and securities underwriting.			
7. JP Morgan JP Morgan Europe Limited and JP Morgan Securities plc	JPMorgan Chase & Co. is an American multinational investment bank and financial services company headquartered in New York City. JPMorgan Chase is the largest bank in the United States, and is ranked by S&P Global as the sixth largest bank in the world.	1	-	1**
8. Morgan Stanley Morgan Stanley Bank International Limited	UK entity in the Morgan Stanley group, an American multinational investment bank and financial services company headquartered in New York City.	-	-	1
9. Sumitomo Mitsui Sumitomo Mitsui Banking Corporation Europe Limited	Sumitomo Mitsui Banking Corporation Europe Limited is the UK part of the SMBC Japanese multinational banking and financial services company headquartered in Tokyo, Japan. It is a wholly owned subsidiary of Sumitomo Mitsui Financial Group. SMBC is the second largest bank in Japan by assets.	-	1	-
10. Santander Santander UK Plc, Abbey National Treasury Services Plc and Cater Allen Limited	Santander UK Plc is a Spanish multinational commercial bank and financial services company based in Madrid and Santander in Spain. It is the 16th-largest banking institution in the world.	1***	1	-
11. Gulf International Gulf International Bank UK Limited	Gulf International Bank was established in 1976 during the first oil boom and is incorporated in the Kingdom of Bahrain as a conventional wholesale bank. It is licensed by the Central Bank of Bahrain and is headquartered in Manama in Bahrain.	-	-	1
12. SG Kleinwort (SocGen)	SG Kleinwort Hambros Limited is a private bank owned by Société Générale that offers	1	-	-

SG Kleinwort Hambros Bank Limited	financial services from offices throughout the United Kingdom and Channel Islands. The bank has its headquarters in London.			
13. **Bank of Beirut** Bank of Beirut (UK) Ltd	Bank of Beirut is a commercial bank in Beirut, Lebanon. It was founded in 1963 as Realty Business Bank S.A.L. and 10 years later, in 1973, changed its name to the current name.	-	-	1
14. **FBN Bank** FBN Bank (UK) Ltd	Specialist bank set up to facilitate trade between Africa and Europe. Head quartered in Nigeria.	-	1	-
15. **Alpha Bank** Alpha Bank London Limited	Part of the Alpha Bank Group. Alpha Bank is the second largest Greek bank by total assets, and the largest by market capitalization.	-	1	-
16. **CIBC** CIBC World Markets Plc	CIBC World Markets is the investment banking subsidiary of the Canadian Imperial Bank of Commerce. The firm operates as an investment bank both in the domestic and international equity and debt capital markets.	1	-	1****
17. **Deutsche Bank** DB UK Bank Limited	Deutsche Bank AG is a German multinational investment bank and financial services company headquartered in Frankfurt, Germany.	1	1 *****	-
18. **FCMB** FCMB Bank (UK) Limited	FCMB Bank (UK) Limited is an independently incorporated, wholly-owned subsidiary of First City Monument Bank Ltd (FCMB), a member of the FCMB Group PLC, a leading financial services group based in Nigeria.	-	-	1

* These are very similar. One is an updated version of the other.

** The policy/values-based text is very short and relates solely to the organisation's hotline.

*** The values-based text is limited.

**** One is a small amount of text on the organisation's website.

***** The policy-based text is limited to a single paragraph.

Category 3: 18 legal entities/17 separate corporate groups

Name/legal entities	Description	Extract of text
UK Parent		
1. Metro Bank Metro Bank Plc	Metro Bank plc is a retail bank operating in the United Kingdom, founded in 2010. At its launch it was the first new high street bank to launch in the United Kingdom in over 150 years.	2
2. Aldermore Aldermore Bank Plc	Aldermore Group PLC is a specialist bank offering straightforward products to Small and Medium-sized Enterprises (SMEs), homeowners, landlords and individuals. In March 2018, Aldermore became part of FirstRand Group, one of the largest financial institutions in South Africa.	1
3. Crown Agents Crown Agents Ltd	Crown Agents Ltd is an international development company with head office in the United Kingdom. Its main focus is to help governments around the world to increase prosperity, reduce poverty and improve health by providing consultancy, supply chain, financial services and training.	2
4. Schroder Schroder & Co Ltd	Schroders plc is a British multinational asset management company, founded in 1804.	1
5. Shawbrook Shawbrook Bank Limited	Shawbrook Bank Limited is a retail and commercial bank in the United Kingdom.	1
Non-UK Parent		
6. TD Bank TD Bank Europe Limited	The Toronto-Dominion Bank is a Canadian multinational banking and financial services corporation headquartered in Toronto, Ontario.	2
7. The Access Bank The Access Bank UK Limited	Part of the Access Bank Group. The head office is based in Nigeria.	1
8. BLME Bank of London and the Middle East plc	BLME is an independent UK wholesale Sharia' compliant bank and is the largest Islamic bank in Europe. It was founded in 2006 and offers financial services in three core areas: wealth management, corporate banking and treasury.	1

9. **Crédit Suisse** Crédit Suisse (UK) and Crédit Suisse International	Crédit Suisse Group AG is a Swiss multinational investment bank and financial services company founded and based in Switzerland.	1
10. **FCE** FCE Bank plc	FCE Bank plc is part of the Ford group. It is a direct subsidiary of FCSH Gmbh (FCSH), which in turn is a direct subsidiary of Ford Credit International (FCI).	1
11. **Handelsbanken** Handelsbanken PLC	Handelsbanken PLC is part of the Svenska Handelsbanken AB group, a Swedish bank providing universal banking services including traditional corporate transactions, investment banking and trading as well as consumer banking including life insurance.	1
12. **National Bank of Kuwait** National Bank of Kuwait (International) Plc	Wholly owned subsidiary of The National Bank of Kuwait (NBK).	2
13. **Vanquis Bank** Vanquis Bank Limited	In 2002, Provident Financial formed Vanquis Bank Limited, with a full banking licence. Vanquis Bank Limited specialises in pre-paid credit cards.	1
14. **Zenith Bank** Zenith Bank (UK) Limited	Zenith Bank (UK) Ltd is a UK subsidiary of Zenith Bank PLC, one of the leading banks in Nigeria.	1
15. **Guaranty Trust** Guaranty Trust Bank (UK) Limited	Guaranty Trust Bank (UK) Limited is a fully owned subsidiary of Guaranty Trust Bank Plc, one of the leading financial services providers in Nigeria. GT Bank and GT Bank UK are the trading names of Guaranty Trust Bank (UK) Limited.	1
16. **HBL Bank** HBL Bank UK Limited	Habib Bank (HBL) was established in Pakistan in 1947. Habib Bank provides products and services in retail and consumer banking, corporate banking, and investment banking at its domestic market and internationally.	1
17. **Punjab National** Punjab National Bank Limited	Punjab National Bank Limited is the wholly owned subsidiary of Punjab National Bank (PNB), India. PNB is a leading public sector bank in India having more than 100 million customers and a network of over 6900 branches.	1

APPENDIX 4

Coding frame: Initial version

Indicators of a Prescriptive Discourse	Indicators of a Conceptual Discourse
Steps 1 and 2: Recognition and Assessment	
Prescriptive Discourse: Poor Conduct and Wrongdoing	**Conceptual Discourse: Truth, Criticism and Dissent**
1. Exclusive detailed, legalistic definition of 'wrongdoing' under the policy i.e. distinct sub-set, creating a binary distinction	A. Inclusive, absence of detailed definition of wrongdoing (focus on the role of the whistleblower) B. Truth from the perspective of the whistleblower C. Criticism of the organisation – challenge/ dissent/disruption (speaking truth to power)
Step 3: Responsibility	
Prescriptive Discourse: Duty	**Conceptual Discourse: Moral Choice**
3. Mandatory employee duty (3a contractual, 3b legal and 3c regulatory) 4. Responsibilisation (i.e. punishment if fail to blow the whistle) 5. Punishment for malicious reports 6. Good faith of employees 7. Whistleblowing as a risk management tool (including reputational risk management) 8. Loyalty to the organisation (solely to the people and artefacts) 9. Decision-making framework or a similar device to shape choice	D. Freedom and choice E. Ethics and morality F. Rational loyalty (i.e. to the values of the organisation)
Step 4: Retaliation	
Prescriptive Discourse: Protection	**Conceptual Discourse: Danger**
10. Will I be protected from retaliation? In what circumstances? 11. Reciprocal language linking disclosure to protection	G. Courage
Step 5: Choice of Action	
Prescriptive Discourse: Channel and Process	**Conceptual Discourse: Purpose**
12. Definition of whistleblowing linked to channel used to report wrongdoing 13. Clear distinction between whistleblowing channels and other reporting and escalation channels - disclosure hierarchy within the specified systems and controls 14. Repeated disclosures within the systems and controls i.e. whistleblowing as a process	H. Purpose to bring about change

APPENDIX 5

Example of completed analysis table: HSBC pilot

Document	Framing/Prescription Discourse/Conceptual Discourse
Employee Handbook (HBEU) February 2018 (pp.30-33) **Framing** Policy/Values-based	***Framing of the act*** "We have therefore developed our whistleblowing arrangements to help you raise concerns about wrongdoing at work" (p.30) "whistleblowing arrangements" "raise any concerns" "raise concerns" Those arrangements are call "HSBC Confidential" – interesting that the name of the whistleblowing line is linked directly to confidentiality "malicious reports" – changes to reports on page 31 When talks about PIDA and FCA, changes to "disclosures" Becomes "cases" when talks about what happens once an employee contacts HSBC Confidential In the retaliation section, the term "whistleblower" is used "occasionally, an individual may feel…." Makes whistleblowing the exception (p.31) "… reasonably believes that the matter they are reporting is true" (p.31) – change to "reporting" and "matter" Starts to use "reports" Then becomes "cases" "if you want to raise a case with HSBC Confidential, please do not raise a case via other routes" (p.31) "All reports falling within the remit of HSBC Confidential will be dealt with in a manner which aims to protect the person raising the concern from any retaliation caused by their decision to make a disclosure" (p. 31) Note the reference to "their decision to make a disclosure" "Individuals whose reports fall outside the scope of HSBC Confidential will be advised of this" (p.31) "HSBC encourages all staff to raise concerns through their normal reporting or escalation channels." – fails to clearly distinguish between the two. ***Framing of the employee*** Starts active "… help you", but then becomes passive "that can be raised" (p. 30) Changes from "you" to "staff"… encourages all staff …" (p. 31) and then to "individual" i.e. "individual's line management" (p. 31), "an individual may feel" (p.31) and "they" (p.31) Also uses the term "person" (p.31) Under the "How" heading, framing returns to "you", "If you feel unable …" etc. and becomes active again Then returns to "individual" again when discusses confidentiality and anonymity

	"Deliberate misuse, or the making of malicious reports to HSBC Confidential may result in disciplinary action." (p.31 – note no reference to the employee in that sentence). Returns to "you" again when talks about where to go for support In the retaliation section, the term "whistleblower" is used (p.32) and then becomes ""… a person …. A user of HSBC Confidential" ***Framing of the organisation*** The first word of the section is "We" – "We are committed to being a fair and objective employer." (p.30) P.30 contains multiple references to "we" and "our" On page 31, changes to HSBC or no pronoun used for the organisation at all Becomes "an investigator" on page 32 "an investigator will give you feedback" and "HSBC Group member" Protection from retaliation section uses "HSBC"
Our Charter 2016 (pp. 2, 13-17) **Framing** **Values-based**	***Framing of the act*** "Do the right thing" (p. 2) – values based and beyond compliance with the law and regulation – concludes words such as "sense of right and wrong", "who is the decision good for", "treating people with respect" Distinguishes between "Speaking up if you think there is a better way" (HSBC Exchange is a forum for that) and speaking up if you think there is a problem" (p.15) "The first thing to do is to speak to your line manager, HR or compliance" and "report" when refers to HSBC Confidential (p. 15) *Does not include the term "whistleblowing"* ***Framing of the employee*** "We", "our", "us" all pages ***Framing of the organisation*** "We", "our", "us" all pages

HSBC Statement on Whistleblowing Arrangements 24 April 2017 **Framing** **Policy-based**	***Framing of the act*** References "whistleblowing arrangements" in the title "speak up" (p.1) "concerns or issues can be escalated and dealt with effectively" (p.1) "raise concerns" (p.1) "HSBC Confidential provides employees with a safe, simple, and globally consistent way to raise concerns when normal channels for escalation are unavailable or inappropriate. This is commonly referred to as 'whistleblowing'. (p.1) – Defines whistleblowing "HSBC prohibits retaliation against a whistleblower or other user of HSBC confidential who reasonably …." "Raise matters of concern" (p.1) "cases" (p.1) – when refers to HSBC Confidential ".. against a whistleblower or other user of HSBC Confidential"– implies some users of HSBC Confidential are not defined as whistleblowers (p.1) "… the whistleblower's decision to speak out" (p.2) "… they can speak up. This includes through HSBC Confidential" Seems to imply that HSBC Confidential is part of "speak up" "HSBC prohibits retaliation against a whistleblower or other user of HSBC confidential who reasonably …." ***Framing of the employee*** "employees", "staff", ***Framing of the organisation*** References to "HSBC" throughout	
Employee Handbook (HBEU) February 2018 (pp.30-33) **Steps 1 and 2: Recognition and Assessment** **Policy/Values-based**	**Prescriptive Discourse:** **Poor Conduct and Wrongdoing** *Note that the first two headings reflect the Near and Miceli steps i.e. "What" and "How"* *No use of "speak up" in this document* **1** Grievance procedure carved out (but may be included now due to speech on diversity)	**Conceptual Discourse:** **Truth and Criticism** *Truth from the perspective of the employee and yet linked to "reasonable belief" and truth linked to protection from retaliation* **B** "… reasonably believes that the matter they are reporting is true" "Reasonably believes that the concern that they have raised is true" (p.32)

	Non-exhaustive "examples of concerns" listed (p. 30) – very wide as covers "theft" and "accepting bribes" through to "poor personal conduct" and "Not following internal procedures" "Raise concerns outside their normal reporting of escalation channels" (P.31) **2** "We have therefore developed our whistleblowing arrangements to help you raise concerns about wrongdoing at work" (p.30) "Those arrangements are called HSBC Confidential." "All reports falling within the remit of HSBC Confidential …" (p. 31) – carves out a specific set of reports "Individuals whose reports fall outside the scope of HSBC Confidential will be advised of this" (P.31) "If you want to raise a case with HSBC Confidential, please do not raise a case via other routes" (p.31) *Starts to be called a "case" when refers to HSBC Confidential* "Not all disclosures made through HSBC Confidential will receive this legal protection" *Also makes it clear that it is not a prerequisite to legal protection that use HSBC Confidential* "HSBC prohibits retaliation against a whistleblower or other user of HSBC confidential who reasonably …." *Confusing as seems to imply that can be a whistleblower if don't use HSBC Confidential but also implies that a "whistleblower" is a defined term*	

Our Charter 2016 (pp. 2, 5, 6, 14 and 15 **Steps 1 and 2: Recognition and Assessment** **Values-based**	**Prescriptive Discourse:** **Poor Conduct and Wrongdoing** *No use of term "whistleblowing"*	**Conceptual Discourse:** **Truth and Criticism** **C** "… if we are breaking the law, regulations or our policies" – specific reference to organisational wrongdoing (p.15)
HSBC Statement on Whistleblowing Arrangements 24 April 2017 **Steps 1 and 2: Recognition and Assessment** **Policy-based based**	**Prescriptive Discourse:** **Poor Conduct and Wrongdoing** *Use of "speak up" here but not in the Handbook document* **2** "HSBC Confidential provides employees with a safe, simple, and globally consistent way to raise concerns when normal channels for escalation are unavailable or inappropriate. This is commonly referred to as 'whistleblowing'. (p.1) – Defines whistleblowing and links the definition to the escalation route	**Conceptual Discourse:** **Truth and Criticism** **B** "… reasonably believes that the concern that they have raised is true" (p.1)
Employee Handbook (HBEU) February 2018 (pp.30-33) **Step 3: Responsibility** **Policy/Values-based**	**Prescriptive Discourse:** **Duty** **5** "Deliberate misuse, or the making of malicious reports to HSBC Confidential may result in disciplinary action" (p.31) "It is important to note that the making of malicious or false claims is incompatible with HSBC's values and may result in disciplinary actions" (p.33) *No specific reference to a duty*	**Conceptual Discourse:** **Moral Choice** **D** "encourages employees to raise concerns …" (p.31) *Implies choice* "We have therefore developed our whistleblowing arrangements to help you raise concerns about wrongdoing at work" (p.30) *Implies choice*

Our Charter 2016 **Step 3: Responsibility** **Values-based**	**Prescriptive Discourse:** **Duty** *No reference to duty*	**Conceptual Discourse:** **Moral Choice** **E** "Do the right thing" "We all have the opportunity to make decisions that shape a better future." "Doing the right thing earns trust" (p. 5) "We will speak up when we see something's wrong and respect those who do the same" (p. 17) **F** ".. safeguard our customers and colleagues tomorrow" / "... shape a better future for our customers and colleagues" (p.2) **E and G** With regard to the Charter, "not a new set of rules or principles but is a reminder of what is important when we are faced with tough choices" (p.2) **D and E** ".. make decisions that shape the future for better or worse. It is a privilege but also a responsibility." *[in connection with wider values]*
HSBC Statement on Whistleblowing Arrangements 24 April 2017 **Step 3: Responsibility** **Policy-based based**	**Prescriptive Discourse:** **Duty** **5** "HSBC considers the making of malicious or false claims to be incompatible with HSBC's values" (p.2)	**Conceptual Discourse:** **Moral Choice** **D** "... they can speak up" (P.1) "... the whistleblower's decision to speak out" (p.2) **F** "In the interests of HSBC, its employees, shareholders, and other stakeholders" (p.1)

Employee Handbook (HBEU) February 2018 (pp.30-33) **Step 4: Choice of Action** **Policy/Values-based**	**Prescriptive Discourse:** **Response and Channel** **10** "… encourages all staff …. Normal reporting lines" (p.31) "HSBC Confidential is designed to help individuals raise concerns outside their normal reporting or escalation channels" (p.31) Range of routes set out (p.31) – phones, portal etc.	**Conceptual Discourse:** **Danger and Purpose**
Our Charter 2016 **Step 4: Choice of Action** **Values-based**	**Prescriptive Discourse:** **Response and Channel** **10** "The first thing to do is to speak to your line manager, HR or compliance. But you can also report issues anonymously through HSBC Confidential." (p.15) – *Implication is that it is only whistleblowing if use HSBC Confidential and anonymity is linked to HSBC Confidential* *Hierarchy established*	**Conceptual Discourse:** **Danger and Purpose** **J** "Courage to do the right thing" (p. 2) "Do you have the courage to do the right thing" Consider: What is stopping you?" (p. 14) "courageous integrity" (p.6) "tough choices" (p.2)
HSBC Statement on Whistleblowing Arrangements 24 April 2017 **Step 4: Choice of Action** **Policy-based based**	**Prescriptive Discourse:** **Response and Channel** **10** Provides a separate line for accounting and internal financial controls as well as line manager, HR and compliance	**Conceptual Discourse:** **Danger and Purpose**

APPENDIX 6

Best Practice Actors: Law firms

Included in the sample:

Allen & Overy LLP

BCLP LLP

Clifford Chance

Eversheds Sutherland (International) LLP

Freshfields Bruckhaus Deringer LLP

Herbert Smith Freehills LLP

Hogan Lovells International LLP

Mischon de Reya LLP

Simmons and Simmons

Excluded from the sample due to lack of data:

Brown Rudnick LLP (no data)

CMS (no data)

Linklaters LLP (no data)

Macfarlanes LLP (no data)

Norton Rose Fulbright (no data)

Slaughter & May (no data)

Stephenson Harwood (no data)

Travers Smith LLP (no data)

APPENDIX 7

Research note

As discussed in Section 1 of the Methodology and Research Design, in the early stages of the study's development, the researcher intended to collect data directly from the organisation in the sample. A letter was sent to the organisations (see below) that introduced and positioned the study and requested copies of the recipient organisations' whistleblowing policies and procedures and other related texts.

The letter was addressed to the organisations' Whistleblowers' Champion. This is a mandatory role established by the FCA and introduced in September 2016 (see Introduction). The holder is held responsible by the FCA and the PRA for overseeing the integrity, independence and effectiveness of an organisation's whistleblowing policies and procedures (See SYSC 18.4 of the FCA Handbook). The role is usually held by a senior non-executive director.

The letter received an extremely low response rate. In fact, there was only one organisation[67] responded positively. The researcher set up a meeting with the Whistleblowers' Champion of this organisation. They suggested that the reason for the poor respond rate was likely to be a reluctance on the part of Whistleblowers' Champions, who are non-executive directors without full time roles, to take on any additional work together with significant concerns over confidentiality. They provided a number of contact names at legal firms and consultancies who work with the non-executive director community in the financial services industry. Contact was made with them and access assistance

[67] This organisation was not included in the final sample as they were no longer on the list of banks as at 30 June 2019 when the final sample for the study was taken.

requested. Again, there were no positive responses from this line of enquiry and it was not pursued further by the researcher.

Ethics approval was obtained from the Management Departmental Research Ethics Officer at the University of London, Birkbeck on 24 October 2017 for the letters sent to the organisations in the sample and on 22 January 2018 for the face to face meeting with the one organisation in the sample that agreed to a meeting.

A follow up letter was then sent (see below). The second letter was sent to the Compliance Department for each organisation, rather than the Whistleblowers' Champion. The second letter explained that contact had already been made with their Whistleblowers' Champion. In order to try and allay concerns over confidentiality, the follow up letter further emphasised the confidentiality and anonymity of the research. It also noted that many organisations make their whistleblowing policies and procedures and other related information public on their websites. The response to the follow up letter was equally disappointing as for the first. None of the organisations in the sample were willing to take part in the study. A small number of organisations replied by email, phone or in writing explaining that they were unable to take part in the research due to confidentiality. All of those that responded were, however, supportive of the research.

The reluctance of the organisations to participate in the research was unexpected, but instructive in itself. It gave a strong indication of the sensitivity of UK Banks in relation to whistleblowing. It also posed a challenge for the researcher and forced the direction of the study to be changed.

Letter and Information Sheet sent to Whistleblowers' Champions

20 November 2107

Recipient Name
Recipient Company Name
Recipient Address

Dear Recipient Name

PhD research study: How do organisations 'talk' about whistleblowing? A discourse analysis of institutionalised whistleblowing in the UK Banking industry

I am writing to you in your capacity as Whistleblowers' Champion for your organisation. I am a part-time PhD student at Birkbeck, the University of London and have worked all of my career in the financial services industry.

My research study is a discourse analysis of the way in which UK Banks 'talk' about whistleblowing in the current regulatory and cultural environment. I am sure that you will agree that this is a timely research topic, given the new rules introduced by the Financial Conduct Authority (FCA) last September, and I hope that it will of interest to you and your organisation. The aim of the research is to better understand the way in which we, as an industry, 'talk' about whistleblowing, how that discourse has developed and the potential impact of that discourse on the conduct of employees.

If you would like to take part, please read the enclosed Information Sheet carefully and then respond via email or by post. By agreeing to take part, you are confirming that your organisation is subject to the mandatory whistleblowing rules of the FCA that came into force on the 7 September 2016 and that you have the authority of your organisation to provide the materials requested.

If you have any questions, I would be very happy to discuss the research with you and/or provide you with more information.

Yours faithfully

Elizabeth Hornby

PhD research study: How do organisations 'talk' about whistleblowing? A discourse analysis of institutionalised whistleblowing in the UK Banking industry

Information Sheet

Overview

You have been contacted in relation to a PhD research study at Birkbeck, the University of London. The research is looking at the institutionalisation of whistleblowing within the UK Banking industry, through an analysis of the related discourse. The data for the initial stage of the research comprises whistleblowing policies and procedures and related employee training and communication materials. In order to collect this data, the Whistleblowers' Champions of all UK incorporated banks (covered by the new whistleblowing rules introduced by the Financial Conduct Authority last year) are being contacted and asked to take part.

Participation

Participation is on a purely voluntary basis and you have the right to withdraw your materials from the research at any time before the end of the data analysis process.

Participation in the initial stage of the research involves providing access to your organisation's whistleblowing policies and procedures and any related training and employee communication materials. The materials can be sent via email to [*deleted*], if you would prefer, sent in hard copy to the address shown below (SAE enclosed) or collected in person from your offices. It would be helpful to receive the materials by the end of January 2018.

The second stage of the research will involve collecting primary data through, for example, interviews, questionnaires or focus groups. Participation in the initial stage of the research will not be taken as a commitment to participate any further. However, if you are interested in taking part in the second stage, it would be helpful if you could indicate this.

Anonymity

All contributions are anonymous; the name of the Whistleblowers' Champion, the name of the contributory organisation and the name of any other person contributing materials or appearing in the materials themselves will not appear in the PhD thesis or any related documents and will only be known to the PhD researcher, their supervisors and their examiners. The information will be anonymised and will used to show trends and patterns.

Confidentiality and use of the information provided

All materials will be treated in confidence and will not be used for any purpose other than as data for the PhD research and any publications or presentations relating to it. The original data will be stored securely and all contributors will be anonymised in the thesis itself and any subsequent publications. Only the PhD researcher, their supervisors and their examiners will have access to the original data.

Findings

The general findings/conclusion of the research will be shared with you and your organisation upon your request.

Further Information

[*Deleted*]

Follow up letter and Information Sheet sent to Compliance Departments

16 April 2018

The Compliance Department

Dear Sir/Madam

PhD research study: How do organisations 'talk' about whistleblowing? A discourse analysis of institutionalised whistleblowing in the UK banking industry

I am a PhD student at Birkbeck, the University of London, and have worked all of my career in the financial services industry. In November of last year, I contacted the Whistleblowers' Champion for your organisation to ask if they would be willing to take part in the above research study. The study is a discourse analysis of the way in which UK Banks 'talk' about whistleblowing in the current regulatory and cultural environment. I am sure that you will agree that this is a timely research topic.

In my initial letter, I requested a copy of your organisation's whistleblowing policy and procedures and any other related employee training and communication materials. Unfortunately, I did not receive a response at that time. This may be because it did not reach the Whistleblowers' Champion or because your organisation did not wish to take part. If your organisation chose not to take part because of concerns over confidentiality, I would like to take this opportunity to address those concerns and to ask you to reconsider.

The aim of the research is to better understand the way in which we, as an industry, 'talk' about whistleblowing, how that discourse has developed and the potential impact of that discourse on the conduct of employees. Participation in the research would be a good opportunity for organisations and their Whistleblowers' Champions to demonstrate engagement with best practice in this area and, to this end, I would be pleased to share the general findings/conclusion of the research with you upon your request.

All contributions are confidential and anonymous. No individual nor organisation will be named in the research; they will only be known to me, my supervisors and my examiners. More details are provided in the enclosed Information Sheet. It is also worth noting that many organisations choose to make their whistleblowing policies and procedures available to the public and clients via their website; the content in itself is not inherently confidential. The research does not address any specific whistleblowing cases, nor how whistleblowing cases are dealt with in practice by individual organisations or by the industry as a whole.

If you are willing to take part, please read the enclosed Information Sheet and then respond via email or by post. By agreeing to take part, you are confirming that your organisation is subject to the mandatory whistleblowing rules of the FCA that came into force on the 7 September 2016 and that you have the authority of your organisation to provide the materials requested.

If you have any questions, I would be very happy to discuss the research with you and/or provide you with more information.

Yours faithfully

Elizabeth Hornby

[*Information sheet the same as above*]