

ORR's policy and guidance on responding to health, safety and welfare complaints

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1 ORR policy on complaints relating to health, safety and welfare arising from the operation of Britain's railways

1.1 ORR considers that complaints about matters affecting the health and safety and welfare of persons at work in the railways industry, and the health and safety of other persons who may be affected by the conduct of the railways, are a serious matter. We will respond to those complaints in a proportionate manner, investigate where appropriate and work with duty holders to make sure they take any necessary corrective action. This policy explains our approach to handling complaints about health and safety and welfare on Britain's railways.

1.2 In deciding what resources to devote to these investigations, ORR will have regard to the principles of enforcement set out in the Enforcement Policy Statement and the priorities in its Corporate Strategy.

1.3 We will focus investigation resources on complaints that indicate there has been, or could be, systemic failings in risk control affecting workers, passengers or the public, and organisational failures to comply with health and safety law or relevant non-H&S legislation. We will, however, also consider the public interest in making our decisions about how we will respond to all complaints.

1.4 In selecting which complaints to investigate, and in deciding the level of resources to be used, ORR will take account of the following factors:

- (a) the severity and scale of potential or actual harm;
- (b) the seriousness of any potential or actual breach of the law;
- (c) knowledge of the duty holder's past performance in terms of compliance with the law;
- (d) ORR's enforcement priorities as set out in its Corporate Strategy and Business Plan;
- (e) whether the substance of the complaint aligns with a topic of current relevance, or relates to a particular duty holder that we wish to look at closely, and an investigation would help our assessment of the SMS in this area;
- (f) the wider relevance of the event, including serious public concern; and
- (g) whether another body has the remit and capability to respond.

Whistle-blowers

1.5 The official name for whistleblowing is ‘making a disclosure in the public interest’. A whistle-blower is a worker who reports wrongdoing in the workplace, for example, a maintenance engineer alleging that proper inspection and maintenance is not being carried out.

1.6 Government advice to potential whistle-blowers strongly advises them to consider making the disclosure to their employer first, and we echo that advice. The disclosure may be made to a prescribed person or body, and ORR is on the list of prescribed bodies (see the Department for Business, Innovation and Skills document “Blowing the whistle to a prescribed person - List of prescribed people and bodies, February 2013”):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641)

1.7 We will normally always follow up a complaint from a whistleblower where the allegation concerns potential serious breaches of health, safety or welfare legislation.

1.8 We may decide not to investigate complaints where:

- the complainant wishes to remain anonymous, withholds contact details and/or requests that we do not reveal that a complaint has been made;
- it has been made by an employee and has not already been taken up with the duty holder or trade union/employee representative, (unless it involves a whistle-blower);
- it is from a serial or potentially vexatious complainant and a team manager (Grade B) or above decides no further action is required; or
- the complaint concerns a range of issues that are not HSWA related for example, terms and conditions of employment, or passenger fares, and the health and safety matters in the complaint are not substantive.

1.9 We will always respond to a complainant letting them know what action we have taken, or explaining our decision not to investigate.

1.10 When we decide not to investigate a complaint, there are other bodies who can give advice. These are listed in the annex to this policy.

2. RSD's process and guidance on handling health safety and welfare complaints

2.1 The following guidance lays out principles for how we will handle complaints about health safety and welfare matters on the railways. The guidance should not be treated as prescriptive as judgements will need to be made about the appropriate course of action in individual cases.

Receipt of complaint

2.2 ORR may receive a complaint relating to health, safety or welfare through several routes. The most usual ways are by phone, email or letter to either ORR's Customer Correspondence Team (CCT) or direct to an operational team.

2.3 We may also be passed complaints from another agency such as the Health and Safety Executive (HSE) or a Local Authority.

2.4 The information may come direct from a complainant or whistleblower, or via a trade union or other employee representatives on behalf of a member.

2.5 It may be necessary to obtain further information from the complainant to establish more details on the issue before a decision can be made about how to proceed. This should be done at the point of receipt whenever possible. It should be explained, by the person taking the complaint, that if they do not provide us with their contact details we may not be able to investigate the complaint.

Is ORR the appropriate body to deal with this issue?

2.6 On receipt of a complaint, it should be reviewed by the first point of contact within ORR or where there is doubt by the Principal Inspector, to ensure it meets ORR's definition of a complaint, and that it is for ORR enforcement. The following documents are useful in determining this:

- The Memorandum of Understanding (MoU) between the Health & Safety Executive (HSE) and ORR - <http://www.rail-reg.gov.uk/upload/pdf/279.pdf>;
- The Health & Safety (Enforcing for Railways and Other Guided Transport Systems) Regulations 2006 (EARR 06) as amended -

http://www.opsi.gov.uk/si/si2006/uksi_20060557_en.pdf; http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082323_en.pdf;

- To find out demarcation between HSE and local authorities, refer to the Health & Safety (Enforcing Authority) Regulations 1998 - www.opsi.gov.uk/si/si1998/19980494.htm.

2.7 A complaint received as a health, safety or welfare complaint may be more appropriately dealt with by our competition and consumer protection functions or by another railways related body - see the annex below.

2.8 Where the complaint falls outside of ORR's remit, the complainant should be advised as soon as possible with a recommendation that their complaint be passed to the appropriate authority. We should provide the complainant with the details of the appropriate body and encourage them to make contact themselves. If they wish us to pass the details on, on their behalf, we can only do so when we have their written consent to do so, otherwise we may be infringing the provisions of The Data Protection Act.

2.9 Once we have decided that the matters reported to us come within our scope, then this policy and guidance applies.

Complaints from employees

2.10 Where an employee makes a complaint, they should be asked by the first point of contact within ORR, if the issue has been raised with company management before progressing. It is important to communicate the message that all reasonable efforts should be made between the employee and management of the duty holder to resolve the issue before they approach ORR.

2.11 If the employee has not raised the issues with management and they are able to do so either directly or via their union / H&S representative, they should do this in the first instance. In many cases, resolution will be quicker via this route rather than involving ORR: it also gives the employer intelligence about potential risks and an opportunity to take corrective action.

2.12 The complainant should provide details of all correspondence they have relating to the issue as evidence that they have raised it with management of the duty holder or relevant H&S / union representative. The person assigned the complaint should review the correspondence before deciding on the method of follow up.

2.13 If the complainant feels vulnerable about raising the issue with the duty holder as future employment may be threatened, they should be treated as a whistleblower (see 2.14 below) and can ask to remain anonymous.

Complaints from a vulnerable person/whistleblower:

2.14 The definition of a vulnerable person is either:

- an employee who may be easily identified and whose identification may cause them to be victimised or endanger future employment. When such a person wishes to make a complaint, they should be treated as a whistleblower; or
- A member of the public, including a person whose property borders the railway, who is being exposed to potentially significant risk to their health and safety.

2.15 All complaints from a whistleblower or other vulnerable person should be referred to the team manager to decide the most appropriate method of follow up. 2.16 We will always investigate such complaints, unless there are clear reasons not to, and these will be explained to the person(s) concerned.

Other complaints from members of the public

2.17 Complaints from this group usually arrive via CCT as opposed directly to the local team in RSD. The common types of complaint tend to relate to train service quality or issues with infrastructure, for example, fencing or level crossings.

2.18 The first person within ORR who makes contact with a potential complainant should encourage members of the public to raise issues directly with the duty holder wherever possible and look to resolve via that method, **unless** there appears to be a significant risk of serious personal injury or safety of train operations that we believe warrants our urgent intervention. Most duty holders now have customer relations functions within their organisation to deal with complaints from members of the public. ORR should not normally take complaints of a routine nature until the complainant has been via the duty holder's customer relations function first.

2.19 If the complaint has been raised directly with the duty holder, the complainant should be asked for copies of correspondence for review by ORR to decide if anything further can be achieved through follow up. For those complaints reported via the Network Rail helpline, a

reference number will have been provided by NR and the complainant should inform ORR of this.

Serial complainants

2.20 RSD may receive a number of related complaints from persons who would be classified as serial complainants. The complaints may relate to issues that are not always within our enforcement remit or they have unrealistic expectations on how we can resolve the issues they raise.

2.21 Complaints from serial complainers can often appear trivial but should not be disregarded, as they may be raising valid health and safety concerns. However, team managers should consider the resource implications of repeat complaints when considering how to proceed, and are empowered to decide that we will take no further action once we are satisfied that significant risks are being controlled.

Complaints not for follow up by RSD

2.22 When a team manager has decided, in line with our policy, that a complaint should not be followed up, the complainant should be informed and a note made in Mosaic, under complaints investigation explaining the reason, together with copies of any relevant correspondence.

2.23 We should advise the complainant if we have identified other organisations that may be able to assist them.

3. Following up complaints with duty holders

3.1 Once the team manager has considered a complaint and decided that it should be investigated, he/she will allocate it to the appropriate member of staff, with an indication of how to proceed e.g. make telephone enquiries, letter to duty holder or visit. A complaint may be followed up by:

- Grade G administrative support;
- Railway Industry Contact Officer (RICO);
- HM Inspector of Railways;
- Permissioning & Divisional Support Team Manager (Operators Division); or
- Team Manager (Principal Inspector).

3.2 Providing the complaint is within ORR's policy and enforcement remit; it should be followed up with the identified duty holder. This might be by an unannounced site visit, a visit by arrangement, by means of a telephone call or written communication with the duty holder.

3.3 Complaints that reveal potential substantive failings of risk management should be investigated in line with the Investigation Process. Some initial enquiries may be necessary before the extent of the risk gap becomes clear, in which case the INV2 investigation plan, should be drafted as soon as the team manager is satisfied that an investigation is warranted and enforcement action is a possible outcome.

Follow-up by telephone or written communication

3.4 Where contact is made with the duty holder by telephone, initially an email should be sent to confirm discussions and what is required from the duty holder to close out the complaint.

3.5 The duty holder should be provided with as much information as possible to enable them to investigate the issue further.

3.6 An initial response is required within 3 weeks from the duty holder although the final response with all relevant supporting information may take longer.

3.7 Where the final response does not address all the issues raised, a discussion should be held with the duty holder to determine why they have not responded with all the

information required. If the duty holder is unable or is refusing to provide it, a discussion should be held with the team manager to determine next steps.

3.8 If during the review of the response and supporting documentation, there are concerns about its suitability, these should be shared with the lead inspector for the duty holder as it could be identifying gaps within the SMS.

3.9 Where the complaint requires more than one team to follow up, as the issue is both infrastructure and operations; i.e. Network Rail & Operators division, they should keep each other updated on progress.

3.10 All correspondence should be recorded on the Mosaic case.

4. Site Visits

4.1 Whilst most complaints will be able to be closed out via exchanging correspondence with a duty holder, some complaints may require a site visit, usually by an inspector or RICO.

4.2 If going lineside, visiting a station or other premises managed by a duty holder, it is advisable to give advance notice as the duty holder may wish to be represented during the visit. Where the substance of the complaint may affect the health, safety or welfare of employees, whenever possible, the local safety representative should be invited to meet the investigator during the visit. Where this is not possible, the safety representatives should be contacted and informed about relevant matters.

4.3 A professional judgement should also be made as to whether the complaint can be covered as part of other inspection work at the location. If it can but a visit isn't planned in the immediate future, the complaint could be dealt with by correspondence and observed physically at a later date.

All significant investigations should follow the investigation process and be concluded with a form INV1 signed off by the line manager.

5. Wider implications and RM3 linkage

5.1 Complaints can also be a valuable source of intelligence about a duty holder's health and safety performance, as part of our techniques for evaluating management systems. If the information received from the duty holder raises concerns about their overall approach to managing its SMS, the team manager or lead inspector should be made aware at the earliest opportunity.

5.2 If there is potential for the issue to be national or affecting multiple operators, the team manager should be informed for them to decide the next course of action.

5.3 As part of the end of year RM3 summary and scoring process, lead inspectors should review the amount of complaints received and more importantly, the issues being raised to decide if elements of the RM3 criteria need to be reviewed to determine an overall score.

5.4 Depending on the number of complaints received on a particular issue or underlying factors behind the complaints, the lead inspector may wish following discussion with their line manager / head of inspection to target further work with the duty holder to establish why this is happening. This should be discussed as part of the planning phase for determining what topics will be covered in the ROGS / RM3 supervision inspections.

6. Responding to complainants

6.1 Once all information has been received from the duty holder and it addresses the issues raised, a response should be prepared for sending to the complainant. Where the operational team has followed up the complaint, they should report back to the complainant.

6.2 Where the complaint has been received from CCT originally, and they have asked for help in drafting a reply, the response to the complainant should be sent by CCT. All documents should be saved into Mosaic.

6.3 CCT should be provided with a draft response in situations where the complainant has written directly to the Chief Executive of ORR but the local RSD team has carried out follow up work. CCT will then arrange for the Chief Executive to sign the response and provide a copy to the local team.

6.4 The response should explain the measures the duty holder has taken to resolve the issue. Information which is commercially sensitive or could cause reputational harm to the duty holder or ORR should be omitted from the response. Also, responses should wherever possible, refrain from using jargon or technical detail.

6.5 The case can be closed on Mosaic once the response has been sent to the complainant and all relevant documentation has been added to the case file.

7 Timescales

7.1 There are performance standards which have to be met when following up complaints from both ORR and the duty holder.

7.2 All complaints received by operational teams should be passed to the team manager for decision, unless the team manager has delegated authority for certain categories of complaint to others. Wherever there are risks of serious personal injury or safety to the operational railway, the team manager must be informed immediately for them to decide on the most appropriate course of action to follow up the complaint. Likewise, notification to the duty holder should be made immediately once the decision has been taken on how the complaint will be followed up.

7.3 We endeavour to make decisions about how we will respond to a complaint within one day of receipt.

7.4 The person assigned the complaint to follow up should contact the relevant duty holder within 3 working days unless a visit is proposed.

7.5 The duty holder should provide an initial response within 3 weeks of receiving the complaint from ORR or if they can provide a full response within this time then they should do so. If no response is received, after the initial 3 week period, the duty holder should be sent a reminder.

7.6 If the response from the duty holder doesn't adequately address the issues raised, the relevant team manager should be notified within 3 working days for a decision to be made on the next steps.

Annex A

Concern	Enforcing body / Contact
Health & Safety Issue – Railway Employee NR Close Call System (CCS) is an online, web-based system that allows organisations to record and manage their close call events hosted by RSSB.	CIRAS or NR hotline (Network Rail employees only – 01908 723 500)
Employment issues – including bullying and harassment at work	Advisory, Conciliation and Arbitration Service (ACAS)
Network Rail Emergency hotline – for emergency situations on the railway 24 hours a day	08457 11 41 41
British Transport Police - To report a crime or for general enquiries	0800 40 50 40
Pollution, including nuisance noise	Environmental Health (Local Authority)
Waste disposal, contaminated ground, some air pollution issues	Environment Agency
Guidance which may help members of the public with other issues relevant to our competition and consumer protection functions is found on our website	http://www.rail-reg.gov.uk/server/show/nav.86
Unsatisfactory response from TOC	Passenger Focus / London Travel Watch