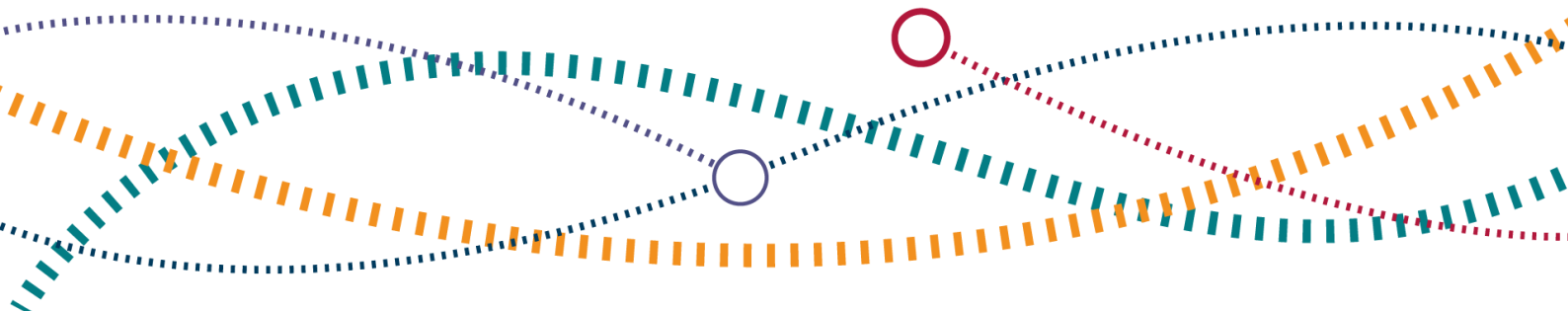




# Whistleblowing & Employee Health & Safety Annual Report – 2019-2020

23 March 2021



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## Background

ORR's whistleblowing policy is designed to provide an avenue for staff in the rail and road industries to raise concerns about perceived wrongdoings, illegal conduct or fundamental misconduct that may endanger others.

ORR is a prescribed person under the Public Interest Disclosure Act (1998) (PIDA). We are required to provide workers with a way to make a public interest disclosure ('blow the whistle') where they do not feel able to disclose to their employer and they think that the ORR might be in a position to act on their disclosure.

PIDA is narrowly focused on giving employment protection to those who raise legitimate public interest concerns with us about:

Matters relating to –

- (a) the provision and supply of railway services; and
- (b) any activities not covered by (a) in relation to which the Office of Rail and Road has functions.

Workers (including contractors) can talk to us about anything they have seen that causes them concern if they think it raises a matter of public interest that they feel unable to discuss with their employer.

In order for ORR to be able to consider whether it needs to investigate further or take action on the disclosure, the Board Secretary will:

- work with the whistleblower to clarify and understand the information offered (the disclosure), including the degree of urgency and the need for anonymity;
- discuss the disclosure confidentially with appropriate staff, including our legal team;
- advise the relevant director who will determine the course of action to be undertaken with the disclosed information;
- explain to the whistleblower what they can expect following the disclosure.

ORR publishes step by step guidance on how it follows up on whistleblower information. Our website gives three different portals:

- Workers should contact the ORR Board Secretary with their concerns, making clear that they consider themselves to be a whistleblower. She can be contacted on 0207 282 2175 or [boardsecretariat@orr.gov.uk](mailto:boardsecretariat@orr.gov.uk).

- [Whistleblowing | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk/guidance-compliance/road/whistleblowing) – rail issues
- <https://www.orr.gov.uk/guidance-compliance/road/whistleblowing> - road issues

## Whistleblowing Complaints

In 2019-20 we received 33 whistleblowing complaints raised by railway employees, an increase of 79% when compared to seven complaints received in 2018/19. An outline of the types of cases received are as follows:

- Plans to train gate line staff to assist limited mobility passengers has led to concern about employees' safety
- Competence concerns around a train maintenance depot
- Construction site health & safety concerns
- Safety standards on power supplies on construction sites
- Allegation of unsafe practice for facilitating works
- Volunteer expressing safety concerns on railway
- Railway issues in relation to competency, incident reporting, operating regime, governance and culture
- Passenger injury at a London station
- Allegation of insufficient COSS training and falsification of records
- Claim of false training and qualifications
- Safety issue - cases for continued safe operation
- Failure to circulate updated Railway rulebook
- Concerns about safety of hired lighting equipment
- Fire safety on construction sites
- Adequacy of training for contingent guards during industrial action
- Systemic Health and Safety culture failure

- Control staff competency
- Freight site near miss (being investigated)
- Allegation of fraud
- Potentially unsafe introduction of a new rule book
- Concerns about standards in a machine shop
- Allegation of unsafe operation in driver training and assessment
- Whistle blowing on an employee who is allegedly a regular drug user
- Whistleblowing complaint about levels of legionella on a Train Operating Company's (TOC) trains
- Whistleblowing on a former employee allegedly sacked due to 'gross misconduct', and thinks the person is now with ORR (incorrect)
- An employee sat on the back of a moving RRV while using a Palfinger (a type of lifting equipment) in breach of railway standards and guidance
- Whistleblower complaint about working hours
- Formal complaint against ORR regarding our investigation of whistleblowing concerns raised in March 2019
- FOI Request - All information supplied to ORR concerning the requestor in relation to our investigation of their original whistleblowing complaint
- Query whether ORR is a prescribed person for the purpose of whistleblower disclosures under the Public Interest Disclosure Act 1998
- Whistleblowing complaint against a TOC regarding employees' safety operation / lack of competency / competency assessment of their safety critical staff
- Whistleblowing concern regarding a depot
- A former employee wishing to whistleblow, following a 'near death' experience at their site

As well as raising issues through safety representatives and their trade union, railway employees can raise concerns through CIRAS, a confidential report line:

<http://www.ciras.org.uk/>.

## **Action taken by the relevant prescribed person during the reporting period in respect of the workers' disclosures:**

For each contact, the relevant safety inspector or senior staff member is notified and will work with the contact to consider whether the issue needs to be followed up immediately or included as evidence to inform a future scheduled inspection or discussion.

ORR will always protect the identity of a whistleblower as far as possible. Before we undertake any investigation we will talk to the whistleblower about their concerns. If we think an investigation into a matter of concern may reveal their identity to their employer or others (for example because they are the only person who may have key information so an employer could work out who the whistleblower was) we will discuss the approach we intend to take with the whistle blower and agree it with them.

## **How workers' disclosures impacted on the prescribed person's ability to perform its functions and meet its objectives during the reporting period:**

Every safety disclosure on the railway adds to the evidence base which ORR relies on to perform its safety inspection and enforcement functions and meet its objectives to encourage continuous improvement in health and safety on the railway.

Workers' disclosures are received via telephone, email and post. Some workers choose to disclose information anonymously. On occasion, workers call to discuss their concern in which case, notes are taken throughout the discussion. This practice can risk misinterpretation of the concern, particularly if the worker chooses to be anonymous or not to provide contact details. In both scenarios, once investigation is underway, the prescribed person is neither able to agree the way forward with the worker's view and consent acknowledged, inform the worker on decision made, nor offer an update on our findings.

There may also be situations where to pursue a disclosure, could result in the identity of the worker being identified. Should this present as a risk, there is a frank discussion with the worker about this with a rationale to implement a strategy that they are comfortable with.

Each individual plan of action is balanced against the nature of concern and risk to the whistleblower being identified.

However, there may be situations in which the whistleblower could be identified when, for example, they have voiced concerns previously or are the sole person associated with the whistleblow.

Where a breach of the law is alleged, investigated and subsequently prosecuted, the identity of the original whistleblower may have to be revealed as part of the legal process, regardless of their wishes. This could be an outcome which may deter a potential whistleblower to provide full information which impacts on the prescribed person's functions during the reporting period.

## Employee Health & Safety

ORR received 250 enquiries relating to employee health, safety and welfare and three enquiries regarding employee employment matters. This is an increase of 17% (from 207 cases) when compared to enquiries received in 2018-19. The 250 enquires generated 298 concerns (see Table 1 for breakdown). The enquiries relating to health, safety and welfare concerns were looked into by ORR's Railway Safety Directorate in accordance with our published guidance: [http://orr.gov.uk/data/assets/pdf\\_file/0016/6442/safety-complaints-policy-and-guidance-web.pdf](http://orr.gov.uk/data/assets/pdf_file/0016/6442/safety-complaints-policy-and-guidance-web.pdf)

**Table 1**

<b>Employee health, safety and welfare issues:</b>	
Train Driver Licensing	56
Operational concerns	48
Reporting of injuries and incidents	32
Supervision and Training	29
Occupational Health	23
Whistleblowing general	19
Working Conditions	18
Hours of Work	14
Track Safety	12
Drugs and alcohol	7
Occupational Health – Covid-19	6
Safe Working Leader	6
Employment contract matters	6
Alleged fraud	5
Provision of PPE	4
Welfare facilities	4
Electrification	3
Rule book	3
Trade Union Recognition/Representation	3
<b>Total</b>	<b>298</b>





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