



OFFICE OF RAIL AND ROAD

# **Advice and guidance for victims of incidents on the railways**

## **Scotland**

**If you have suffered physical, mental or emotional harm or economical loss due to an incident on the railway, this leaflet can provide you with guidance on what ORR can do to support you through this difficult time and your rights as a victim of such an incident.**

## **About ORR**

ORR is a government department which, along with other enforcing authorities (the Health and Safety Executive and local authorities), enforces health and safety at work law, as well as certain railway laws. This role includes the investigation of certain types of incidents arising out of, or in connection with, work activities in the railway industry.

## **Your rights as a victim**

The Scottish government has published a Victims Code for Scotland which lays down out the rights of victims. <https://www.mygov.scot/victims-code-for-scotland/> This Code ensures that victims are treated with respect, sensitivity and in a professional manner without discrimination, being provided with support and information following an incident that has affected them or their family

ORR is not a *relevant authority* for the purposes of this Code as the duties will normally be carried out in Scotland by the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service and Police Scotland. However we wish to follow the spirit of the Code during our investigations and the way in which we keep those who have been affected by an incident informed.

## **What do I have to do to report a criminal offence?**

Most offences are reported to us automatically as it is a legal requirement for employers and other responsible persons to report serious injuries, diseases or dangerous occurrences at work. Therefore we may make contact with you as a victim without the need for you to make a complaint first.

You also have the right to contact us if you consider that a criminal offence has been committed, or have specific concerns about health and safety associated with the running of railways. Our contact details are contained at the end of this leaflet or alternatively you can find details on how to make a health and safety complaint on our website at <http://orr.gov.uk/info-for-passengers/complaints>.

## **What happens during an ORR investigation?**

Investigations into incidents on the railway can be lengthy and complex, involving a number of parties. This leaflet tells you about the people you may meet in the near future and their responsibilities and the process involved. Each case is different, so the inspector investigating will keep you up to date with which stage of the process they are in.

## What will the ORR do?

The ORR will conduct an investigation to find out whether action either has been taken, or needs to be taken, to prevent a recurrence and to ensure that the law is being followed. We will find out what caused the incident and determine whether any lessons can be learnt which can influence future law or guidance, and whether another party was at fault for the incident. If ORR decides that another party was at fault they will then have to decide if it is appropriate to pursue enforcement action, which could take the form of a formal notice or in some instances, a prosecution.

If the investigation is in relation to a work related death, ORR will liaise with other relevant enforcing authorities in order to conduct a full and thorough investigation as set out in the Work Related Death Protocol, a copy of which can be found on ORR's website (<http://orr.gov.uk/what-and-how-we-regulate/health-and-safety/health-and-safety-enforcement>).

## The Police

The British Transport Police are automatically called to any death on the mainline railway and some other railways, and may attend for other serious incidents where injury has occurred. Elsewhere, such as on a tramway or heritage railway, the local police will attend. The police will initially lead the investigation into a death to determine if a serious criminal offence has occurred, such as manslaughter by an individual or company. In these instances the Procurator Fiscal Service will decide whether or not a prosecution is appropriate. The ORR will still conduct its own investigation.

## The Rail Accident Investigation Branch

The Rail Accident Investigation Branch (RAIB) is the independent body for investigating accidents and incidents on mainline railways, metros, tramways and heritage railways throughout the UK. They will investigate any such incidents and determine the cause, without apportioning any blame, and will make recommendations to the industry to improve future safety. You may be asked to provide a witness statement to the RAIB, which will be done in confidence with one of their inspectors.

## Will ORR keep me informed of the progress of its investigation?

Yes, the inspector investigating the incident will keep you up to date with the progress of their investigation. However we may not be able to give you all the information during an investigation or prior to a trial, this is because disclosure of information at an earlier stage could be detrimental to one or more parties involved and could prejudice a fair trial.

As a victim, you have the right to receive the following information:

- A decision not to proceed with, or to end, an investigation or a decision not to prosecute a suspect and the reasons why; and

- The time and place of the trial and the nature of the charges against the suspect.

If you are also a witness to the incident and have provided a witness statement, you also have the right to receive the following additional information:

- Information about the state of the criminal proceedings (unless in exceptional cases where to do so would affect the proper handling of the case); and
- The final outcome of any trial.

## Witness Service

If you are attending court as a victim or witness to give evidence or if you are attending in your capacity as a bereaved family member then you can receive support from Victim Support Scotland. Victim Support Scotland is an independent service providing practical and emotional support and information to witness so that they feel valued, respected and informed and able to give their best evidence in court. A referral in advance to the witness service will allow you to receive preparation for going to court including visiting the court before the day to have a look around. They provide support on the trial day and also a sentence hearing if you want to attend. Their website gives more information: <https://www.victimsupportsco.org.uk/help-for-witnesses-of-crime/>

## How do we decide whether to make a report to the Procurator Fiscal or not?

When considering whether to make a report to the Procurator Fiscal Service, we have regard to the two tests set out in the Code for Crown Prosecutors. First, we have to be satisfied that there is sufficient evidence of an offence to provide a realistic prospect of conviction. If there is, we will then consider whether it is in the public interest to proceed and whether prosecution is in accordance with our Health and Safety Compliance and Enforcement Policy Statement and Enforcement Management Model (Broadly speaking, the more serious the alleged offence, the more likely it is that a prosecution will be in the public interest). These documents can be found on the ORR website ([www.orr.gov.uk](http://www.orr.gov.uk)).

When deciding whether it is in the public interest to prosecute, we will take into account what this means for the victim, or the victim's family, and also any views they have expressed.

The Procurator Fiscal Service will make the decision whether or not to take a prosecution following receipt of a report from ORR. Information can be found on the Crown Office & Procurator Fiscal Service website (<http://www.crownoffice.gov.uk/>).

## Who should I contact if I want any more information?

For general information, or if you have any questions you can contact the inspector dealing with your case directly on the following contact details:

|                           |  |
|---------------------------|--|
| <b>Name of Inspector:</b> |  |
| <b>Contact number:</b>    |  |
| <b>Email address:</b>     |  |
| <b>Postal address:</b>    |  |

Further general information can also be found on ORR's website – [www.orr.gov.uk](http://www.orr.gov.uk)

You can write to ORR directly at the following address: Office of Rail and Road, 25 Cabot Square, London, E14 4QZ. Fax number: 020 7282 2040.

Or telephone us directly on 020 7282 2000.

## What if I am unhappy with a decision not to prosecute?

If you are informed that we will not be making a report to the Procurator Fiscal Service, you will be informed of the reasons why. However, if you are unhappy with this decision then you may have the right to request a review of this decision.

Where the Procurator Fiscal Service, decides not to take further action following a report from ORR, you should contact them. Information can be found here:

[www.copfs.gov.uk/publications/victims-and-witnesses](http://www.copfs.gov.uk/publications/victims-and-witnesses)

Please use this space to make a note of any questions you may have.

## What if I do not live in the UK?

If you do not normally reside in the UK you are still entitled to the same rights and to receive the same information set out in this leaflet. The inspector investigating the incident will discuss with you how best to obtain a witness statement.

If you do not understand or speak English, you are entitled to request interpretation into a language you understand when reporting an offence and when being interviewed by our inspectors in relation to the incident. You are also entitled to receive translated written information of the rights contained within this leaflet.

## Am I entitled to compensation?

If you have been injured or have lost a relative due to a work related incident then you may be entitled to compensation. In general seeking compensation will be through civil proceedings in a county or high court. You are likely to need the help of a solicitor. Some trade unions will give their members and/or their families' legal help or alternatively legal aid may be available.

In general, we will be unable to release certain documents in full until after the conclusion of criminal proceedings in order to ensure a fair trial.

ORR does not normally take part in civil proceedings although they will appear in court as a witness if required by the court to do so.

## How can I complain if I am unhappy with what ORR does?

ORR always aims to give the best possible standard of service it can and will try to help you as much as possible. We hope that this leaflet helps to explain why there may be limits on what we can do by law. But if you are not happy with the way you have been dealt with, you can do the following:

- If you cannot sort out the problem with the person you have been dealing with, ask them for the name of their manager;
- You can then speak or write to this person. They will then investigate and tell you what they are going to do. We find that most issues are settled this way. Usually we respond straight away but always aim to get back to you within ten working days.

If you are still not satisfied, you are free to write to ORR's Chief Executive Officer at the following address, who will ensure that your complaint is followed up promptly and fairly:

**John Larkinson CEO, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ.**

You can also ask your MP to take up your case with ORR or with ministers. They may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

## Where can I go for further advice and support?

Listed below are some organisations that can offer counselling and advice but there may be others, both local and national, who can help you. The inclusion of an organisation on this lists does not imply any endorsement by ORR. Your local Citizen's Advice Bureau may be able to suggest other sources of support available in your area:

### Scotland

For incidents which occur in **Scotland**, support can be found on the Scottish Government website [www.mygov.scot/victim-witness-support/](http://www.mygov.scot/victim-witness-support/)

**Victim Support Scotland:** Provide support and information services to victims and witnesses of crime - 0800 160 1985

**Criminal Injuries Compensation Authority:** Administer compensation for innocent victims of violent crime - 0300 003 3601

**Scottish Legal Aid Board:** Provide funding for people who qualify to get legal advice and representation - 0131 240 2037 [general@slab.org.uk](mailto:general@slab.org.uk)

**PETAL Support:** Support families and friends of murder and suicide victims - 01698 324502 [info@petalsupport.com](mailto:info@petalsupport.com)



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