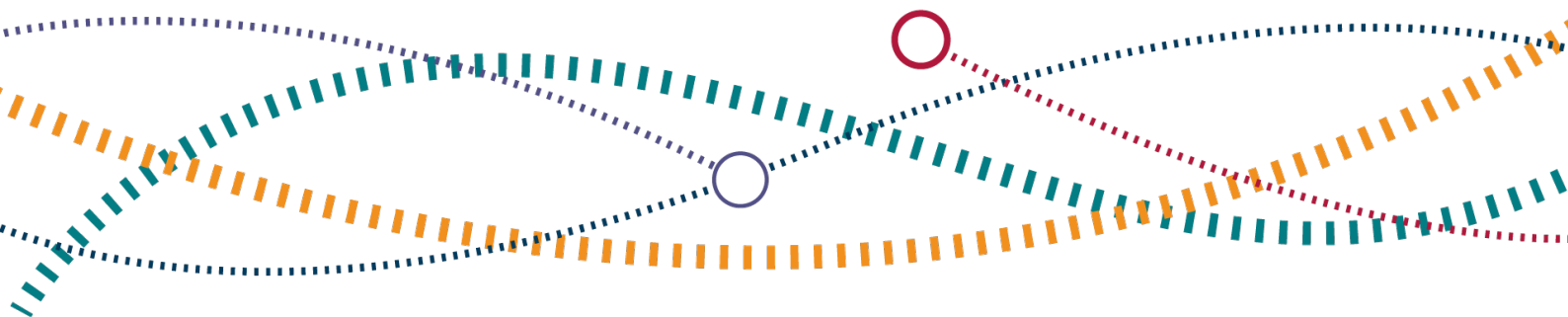




Whistleblowing & Employee Health & Safety Annual Report - 2020-2021

20 October 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 ORR might be able 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. They can be contacted on 0207 282 2175 or boardsecretariat@orr.gov.uk.

- <https://www.orr.gov.uk/guidance-compliance/rail/whistleblowing> – rail issues
- <https://www.orr.gov.uk/monitoring-regulation/roads-monitoring/about-our-highways-monitor-role> - road issues

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

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

Whistleblowing Complaints

In 2020-21 we received 42 whistleblowing complaints raised by railway employees. In addition, we received two contacts in relation to our work as highways monitor. This represents an increase of 25% when compared to the types of cases received from 2019-20 to include concerns about implementation of COVID-19 working practices, staff treatment, fatigue, non-reporting of incidents, bullying and improper working practices.

An outline of the types of cases received are as follows:

- Signalling risks during COVID-19 staff shortages
- Employment reference
- Railway staff working without social distancing
- Railway onsite working during lockdown
- Staff treatment
- Risk of train service derailment
- Management interference in safety critical functions
- COVID-19 dispatcher shortage
- Fatigue management
- Railway management
- Allegation of nepotism and favouritism
- Non-compliant works at underground station
- 12-hour rosters for safety critical staff
- Non-reporting of RIDDOR incidents
- Improper use of not for public use coaches
- Non-enforcement of COVID-19 rules for staff and passengers
- Management issues – COVID-19
- Wagon maintenance
- Employment dispute
- Staff performance
- Falsified records
- Concerned with workers on sites when they shouldn't be, due to COVID-19 issues and ORR guidance

- Bullying and intimidation by management means that drivers are unlikely to report safety issues when they arise
- Concerns regarding signalling safety issues
- Fatigue due to long periods of travel to and from shifts necessitated by the current non-availability of hotel accommodation
- Driver complaint re colleague's alleged misconduct
- Concerns regarding Unqualified Rail Labour Provider (Whistleblowing)
- ORR's processes in whistleblowing complaints
- Concerns about passengers gathering near their office on train coach
- Data breaches
- Required to falsify door safety checks by signing fake paperwork
- Serious and dangerous faults
- Alleged falsification of records to obtain ultrasonic testing certification
- Misuse of public funds.
- In-cab driver assessment, in relation to COVID-19
- Unnecessary journeys to do non-critical tasks during COVID-19 period
- Roads issues
- Required to falsify door safety checks by signing fake paperwork
- Complaint handling process

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 whistleblower 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 issue.

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 278 enquiries relating to employee health, safety and welfare in 2020-21. This amounts to an increase of 11% (from 250 cases) when compared to enquiries received in 2019-20.

Of these 278 enquiries, 44 whistleblowing complaints generated 83 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: <https://www.orr.gov.uk/media/10722>

Table 1 - Employee health, safety and welfare issues:

Type of issue	Number of enquiries received
Operational concerns	6
Reporting of injuries and incidents (RIDDOR)	1
Supervision and training	2
Occupational health	7
Whistleblowing general	18
Working conditions	6
Hours of work	3
Occupational health – COVID-19	6
Employment contract matters	3
Alleged fraud	1
Environmental noise	1
Structures and signals	1
Track alarm including whistle boards	1
Network maintenance	1
Employee health, safety & welfare issues	24
Roads	2
Total	83



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