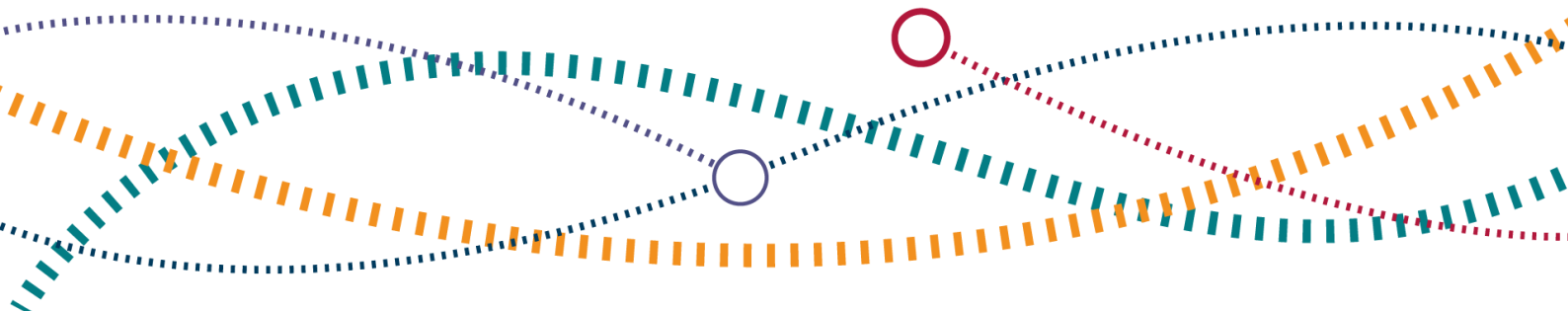




# Whistleblowing Annual Report 2023 to 2024

31 October 2024



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# Background

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Whistleblowing law is found in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). It is narrowly focused on giving **employment protections** to those who raise public interest concerns.

ORR is a **prescribed person** under the [Public Interest Disclosure Act 1998](#) ('PIDA'), by virtue of inclusion in [The Public Interest Disclosure \(Prescribed Persons\) Order 2014](#), for:

*"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." \**

\* Further information on ORR's functions can be found at:

<https://www.orr.gov.uk/about/how-we-work/strategy-duties/our-functions>

This may include, for example:

- breaches of health and safety regulation on the railways;
- anti-competitive practices in the railway industry;
- compliance with regulations on accessible travel; or
- delivery of major programmes of investment and other performance commitments on the strategic road network.

As a prescribed person, the ORR is obliged to provide workers with a way to make a public interest disclosure ('blow the whistle') where they do not feel able to disclose directly to their employer (or have done so with no/inadequate action taken in response) and think that ORR might be in a position to act.

Only workers are protected under the Public Interest Disclosure Act 1998 (PIDA). In addition, ORR welcomes the reporting of concerns by heritage railway volunteers whilst recognising that they are not afforded the same legal protection. ORR accepts reports from individuals with a demonstrable need for the confidentiality that our whistleblowing processes provide.

Disclosures may be made by contacting the Board Secretary (0207 282 2093 (Mon-Fri, 10am to 4pm); or [board.secretariat@orr.gov.uk](mailto:board.secretariat@orr.gov.uk)

## Prescribed Person Reporting Duty

The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 enabled the Secretary of State to require “Prescribed Persons” to produce an annual report on whistleblowing disclosures made to them by workers. This duty to report aims to increase transparency in the way that whistleblowing disclosures are dealt with and to reassure whistleblowers that their disclosures are taken seriously.

No information is included in this report that would enable whistleblowers or the subjects of disclosures to be identified.

## Our approach to whistleblowing

Whistleblowing reports are a vital source of information for the ORR, providing us with valuable insight and intelligence into areas we regulate.

People who work on the railways and England’s strategic roads network may decide to contact ORR with concerns about something that they have seen, or experienced, while working on the networks, that raises a matter of public interest. Disclosures may be confidential or anonymous, and are dealt with on a case-by-case basis.

In order for ORR to consider what action may need to be taken in response to a disclosure, the Board Secretary will:

- work with the whistleblower to clarify and understand the information provided including the degree of urgency of the concerns;
- discuss the disclosure confidentially with appropriate staff, including our legal team;
- arrange for a case officer to determine the course of action to be undertaken with the disclosed information; and
- explain to the whistleblower what they can expect following the disclosure.

Information provided via a disclosure is shared internally on a need-to-know basis and with consideration of whether it is necessary to share details of the whistleblower’s identity and means of contact. When whistleblowers request it and we can contact them, we provide feedback on the outcome of their report.

ORR will always protect the identity of a whistleblower as far as possible. Before any investigation is undertaken, ORR will talk to the whistleblower about their concerns. If there is a concern that an investigation may reveal the whistleblower’s identity to their employer or others (for example, because they are the only person who is aware of the issue so are easily identifiable), the intended approach will be discussed and agreed with

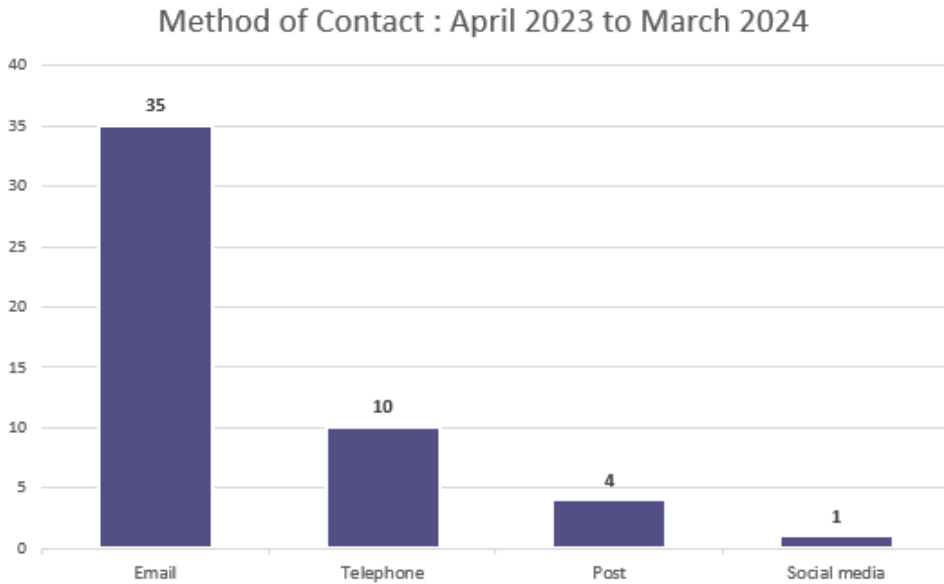
the whistleblower. Nonetheless, there remain situations where ORR may have to reveal a whistleblower's identity by law.

A whistleblower can choose to remain anonymous when making a report through any of our reporting channels. However, anonymity may make it more difficult for an individual to receive legal protections. This is because there would likely be no evidence to link any detriment they may suffer to the disclosure of information to ORR. In addition, if the whistleblower only contacts ORR once, with no line of communication (e.g. an anonymous email), and they do not provide a sufficient level of information, this can make investigation more difficult (as follow up questions cannot be asked).

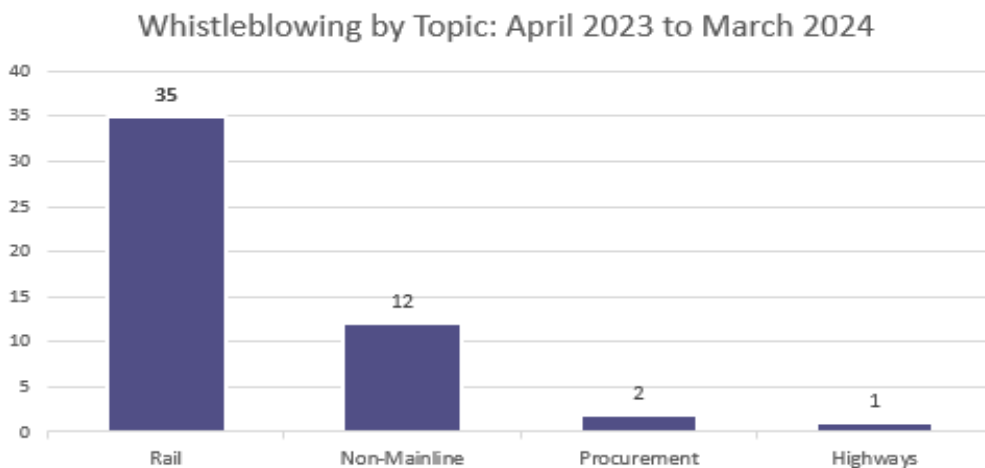
# Whistleblowing disclosures

Between April 2023- March 2024, ORR’s Board Secretariat received total of 50 whistleblowing disclosures subject to assessment against the Public Interest Disclosure Act 1998 (‘PIDA’).

**Figure 1** Disclosures were received via several channels, including email, telephone, post and social media



**Figure 2** Disclosures broadly related to the following thematic areas



Source: Office of Rail and Road

Every report we receive will contain one or more allegations of wrongdoing. Of the 50 disclosures received:

- 7 were not considered whistleblowing, as they either related to individual employment matters (grievances) outside of the public interest, or, to functions outside of ORR's remit. Advice was provided as to more relevant sources of assistance as appropriate, and no further action was taken.
- 11 did not meet the criteria to qualify as being protected under PIDA but were still considered and handled in line with our investigation procedures. These largely related to disclosures from heritage railway volunteers.
- 32 were reasonably believed to be 'protected' within the meaning of s43B Employment Rights Act 1996, falling within the matters the ORR is prescribed for:
  - 31 disclosures related to the provision and supply of railway services; and
  - 1 disclosure related to other functions, namely highways.

The allegations received in protected disclosures related to, for example:

- Health and safety concerns on the mainline railway;
- Health and safety concerns on the non-mainline railway;
- Working conditions and patterns, including management of fatigue;
- Training and competency of railway workers;
- Fitness to work and medical screening of railway workers;
- Asset management and structural inspections;
- Fraud and conflicts of interest in the supply chain; and
- Emergency planning procedures.

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

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

In 2022-23 we received a total of 29 disclosures (protected and non-protected under PIDA). Recent refinement in processing whistleblowing disclosures within ORR may have contributed to an increase of 13 in the overall number of disclosures received (protected and non-protected under PIDA) during the reporting period for 2023-2024.

# Action taken by the ORR during the reporting period in respect of whistleblowing disclosures received

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Prescribed Persons with investigatory and regulatory functions, such as ORR, can consider acting on the information that has been disclosed to them. We are prescribed to accept and act upon concerns about matters which fall within our remit.

Sometimes we are unable to act or respond directly to a whistleblowing disclosure. This may be because there is insufficient information, or our review does not identify any regulatory issues.

Where we can act on a whistleblowing disclosure, possible actions include:

- seek to gather further information before reaching a decision on whether to investigate;
- requesting information about an organisation's processes and procedures for the purposes of a desk-based review;
- undertaking site visits and meetings;
- opening an investigation which may lead to enforcement action, depending on the seriousness of the findings;
- addressing the allegations without opening a formal investigation;
- passing the information to a more appropriate regulator; or
- deciding not to investigate further.

ORR is not legally required to investigate every disclosure received. When deciding whether or not to investigate, we consider how well we are using the resources at our disposal to protect the public interest.

ORR cannot offer advice to whistleblowers about what protection is offered to them. However, other sources of support are available and include:

- Protect, the whistleblowing charity;
- ACAS;
- Citizens Advice; and
- The whistleblower's own trade union, if a member.

ORR cannot determine whether a disclosure qualifies for protection or intervene in employment relations.



The Department for Business and Trade is currently reviewing the law in relation to whistleblower protections. The ORR has participated in this review to support the enhancement of the wider whistleblowing framework. This table shows what actions were taken and the outcomes for the 32 qualifying disclosures made during the period 1 April 2023 to 31 March 2024.

**Table 1 Outcome of disclosure – October 2024**

Action taken	Outcome	Total
Concerns investigated	outcome shared with subject of disclosure	19
Following initial enquiries, concluded the concerns raised are outside the remit of ORR’s functions	redirected	3
Further information not provided by subject of disclosure	discontinued	2
Enquiries being made	ongoing	7

Source: Office of Rail and Road

# How whistleblowing disclosures have impacted on the ORR's ability to perform its functions and meet its objectives during the reporting period

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ORR highly values the role whistleblowers can play to help us achieve our objectives and ensure that rail and road are regulated effectively. Whistleblowing can provide a vital source of information which helps ORR to identify risks by providing useful insights that we might not otherwise receive. Disclosures have the potential to offer useful intelligence and contribute to ORR's knowledge about what is happening on the networks, or, provide evidence that something has gone wrong.

Every whistleblowing disclosure to the ORR can add to the evidence base which ORR relies on to perform its duties:

- Schedule 3 of the Railways Act 2005 gives ORR a general duty to do such things and make such arrangements as it considers appropriate for the purposes of railway safety, and to assist and encourage persons concerned with matters relevant to those purposes to further those purposes.
- Section 1 of the Health and Safety at Work etc. Act 1974 (HSWA) also gives ORR a general duty to secure the health, safety and welfare of persons at work, and of those who might be put at risk as a result of the activities of persons at work.
- For economic regulation our duties are set out under section 4 of the Railways Act 1993.
- The Infrastructure Act 2015 gives ORR functions in relation to monitoring and enforcing in its role as regulator for National Highways.

Disclosures also support ORR to further its strategic objectives, namely:

- A safer railway;
- Better rail customer service;
- Value for money from the railway; and
- Better highways



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