

Whistleblowing policy

Our whistleblowing policy explains how to raise any concerns you have over past, present or future malpractice within the Office of Rail Regulation (ORR). (By 'malpractice', we mean poor, inefficient or dishonest business practices.) Raising concerns in this way is often called 'whistleblowing'.

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Whistleblowing policy

Who does this policy apply to?

1. This policy applies to all our employees. By 'employees', we mean permanent, fixed-term and casual employees, consultants, contractors and agency staff. The word 'employees' also applies to non-executive directors who follow the guidance given in this policy as it forms part of their terms and conditions of service.
2. The kind of issues you would raise under this policy are issues of public concern. In other words, matters that may affect other organisations or individuals, such as members of the public, other industries or other staff who do not work for the ORR, and matters that might affect our reputation.
3. If you want to raise an issue that affects you personally, you should use our grievance policy.

What does whistleblowing mean?

4. At one time or another, you may have concerns about what is happening at work. Usually these concerns can easily be sorted out. However, when they are about unlawful conduct, financial malpractice or dangers to the public or the environment, you may not know what to do.
5. You may be worried about raising such issues or you may want to keep them to yourself. Perhaps you feel that it is none of your business or that you have no proof. You may feel that raising the matter would be disloyal to colleagues, managers or to the organisation. Or, you may already have said something but feel that you may have spoken to the wrong person or raised the issue in the wrong way and you are not sure what to do next.
6. We recognise that the decision to report a concern can be a difficult one to make. This policy aims to:
 - encourage you to raise serious concerns, and to question the way we do things if you do not agree with them;
 - explain how you can raise your concerns and get feedback on any action you take;
 - make sure that you get a reply after raising your concerns and that you know how to follow it up if you are not satisfied; and
 - reassure you that we will take any appropriate action if you suffer any victimisation from your colleagues if you have raised your concerns in good faith, and you believe that they are true.
7. This policy also explains:
 - what a 'qualifying disclosure' is and how you can 'blow the whistle' (see paragraphs 23 and 26 to 30 – 'How do I go about making a disclosure?');
 - what legal protection is available for you as a whistle-blower (see paragraphs 10 to 14 and 18 to 25); and

- the procedures and circumstances for making ‘internal’ and ‘external’ disclosures (see paragraphs 26 to 39 – ‘How do I go about making a disclosure?’).

What are my responsibilities in relation to whistleblowing?

8. It is the responsibility of all our employees to report matters that they consider to be malpractice. By 'malpractice', we mean poor, inefficient or dishonest business practices.

9. Our Human Resources (HR) department will monitor how this policy is used. If you have any questions about how this policy is applied or interpreted, you must discuss them with HR before you take any action.

What protection will I get if I ‘blow the whistle’?

10. Under the terms of the Civil Service Code and the Public Interest Disclosures Act 1998 (PIDA), employers must not treat whistle-blowers unfairly or victimise them in any way as long as they have made a ‘qualifying disclosure’ (see ‘Qualifying disclosures’ on the next page), in good faith, even if they have no proof to support their claim.

11. However, as well as making the right kind of disclosure for the right reasons, you should have been through the internal disclosure procedure (see paragraphs 26 to 38) before you make an external disclosure (see paragraphs 40 to 42), in line with the exceptions for making disclosures listed in paragraphs 43 to 47.

12. If you do not use the internal procedure (apart from the exceptions), you will lose your protection under the law.

13. We will not accept any harassment or victimisation towards you (including informal pressure, such as deliberately leaving you out of discussions or meetings) if you have raised concerns in line with this policy. We will take appropriate steps to make sure that you do not suffer any harassment as a result of raising concerns in line with this policy.

14. We will not let our investigations of any concerns you have raised in line with this policy influence, or be influenced by, any disciplinary or redundancy action that you may be facing.

Will my confidentiality be protected?

15. We will treat all disclosures made in line with this policy in complete confidence. However, we may have to reveal your identity for our internal investigations, in the interest of all sides receiving a fair hearing. If we cannot sort out your concerns without revealing your identity, we will discuss with you what you want us to do.

What if I raise a concern in good faith but no evidence is found to support it?

16. If you have raised a concern in good faith, but an investigation does not find any evidence to support it, we will not take action against you. However, if you make an allegation:

- for your own benefit;
- that you know is not true; or

o to cause trouble or to damage someone else's reputation;
we may take disciplinary action against you.

Whistleblowing and the Official Secrets Act

17. As civil servants, we are covered by the Official Secrets Act. If you make a disclosure of information to someone outside the ORR and break any of the terms of the Official Secrets Act, you will lose the protection of the Public Interest Disclosures Act (PIDA) and you may face criminal or disciplinary proceedings.

How do I qualify for protection under the whistleblowing policy?

18. You must make a 'qualifying disclosure' to qualify for protection against any harassment or victimisation from your employer.

How does this policy apply to permanent, fixed-term and casual employees?

19. As a civil servant, you have a duty under the Civil Service Code to report any situations where you are being asked to act in a way that:

- is illegal, improper or unethical (unprofessional);
- goes against any company rules or professional codes;
- may involve possible maladministration; or
- goes against the Civil Service Code in any other way.

20. You should report anyone who acts in any of the ways described above or report situations when you are asked to do things that you are uncomfortable with.

21. The code meets the recommendations of the Nolan Committee on Standards in Public Life and the terms of the PIDA, but civil servants are also directly covered by the PIDA itself.

How does this policy apply to consultants, agency staff, and non-executive directors?

22. The Civil Service Code does not apply to consultants, contractors, agency staff and non-executive directors because they are not civil servants. This means that only the PIDA governs their behaviour relating to whistleblowing.

23. The PIDA lists the 'qualifying disclosures' for which you would be entitled to protection under the Act if you raised a concern. Contractors, agency staff and non-executive directors are responsible for making disclosures in the following areas of malpractice.

- A criminal act.
- Failing to carry out a legal duty (such as negligence or failing to meet the terms of a contract).
- A miscarriage of justice.
- Danger to health and safety.
- Damage to the environment.

- Deliberate cover-up of any of these activities.

24. An employment tribunal will not allow you to be protected under the PIDA if your disclosure is not included in the list in paragraph 23, although you may be able to make your disclosure to the Civil Service Commissioners under the Civil Service Code.

25. You should get independent advice about making internal and external disclosures if you are not sure under which heading your disclosure should be. This could include contacting your trade union representative or the Employee Advisory Service for advice.

How do I go about making a disclosure?

26. Under the Civil Service Code and the Public Interest Disclosure Act (PIDA), you must follow all internal procedures before external ones when you are making disclosures, or you risk losing your protection under the PIDA. However, there are some occasions when you can make a disclosure to someone outside the ORR and still be protected by the PIDA. Paragraphs 44 to 47 below explain the procedure for external disclosures in more detail.

27. We hope that you could raise your concerns about malpractice with your line manager in the first place.

28. If you do not feel that you can do this, you should raise your concerns with the Director of Corporate Services by calling 020 7282 2136. If, for some reason, it would not be appropriate for you to raise your concerns with the Director of Corporate Services, you can talk to any director within the ORR. Once you have done this, you will be protected by this policy. The Director of Corporate Services or any other director will pass your concerns on to the Chief Executive immediately.

29. If you have followed this process but you still have concerns, or, if you do not feel that you can discuss the matter with your line manager or the Director of Corporate Services, you should go straight to the Chief Executive or another director, or to the Chairman of the Audit Committee. The ORR Chairman and Chief Executive need to be told whenever a matter has been raised.

30. You should put your concerns in writing. Or, we can take and agree with you the minutes from any discussions that take place. We would keep these minutes in case they are needed as evidence at a later stage.

How we will handle the matter

31. The person you raise your concerns with will consider the information you have provided. To protect you and those you have accused of possible malpractice, we will make enquiries to decide whether an investigation is appropriate. We may be able to come to an agreement without needing to carry out an investigation.

32. If an investigation is needed, the person you contacted will decide what kind of investigation to carry out and who should do it. The main consideration in deciding whether an investigation is needed, and how it should be done, will be whether it is in the public interest.

33. Options for the kind of investigation we will carry out include:
- an investigation by management or by HR through our disciplinary process;
 - referring the matter to the police;
 - referring the matter to the National Audit Office; or
 - an independent inquiry.

34. In very exceptional circumstances, for example when there may be an immediate danger to health and safety, the investigator may take urgent and immediate action without a formal investigation.

35. The amount of contact between you and the investigator will depend on:

- the matters you have raised (in particular, whether they involve 'trade secrets' or other sensitive information);
- the possible difficulties involved in investigating the issues; and
- the quality of the information you have provided.

If necessary, the investigator will ask you for more information.

36. Meetings between you and the investigator can take place away from our premises if either of you prefer. You can take a 'companion' with you to any meetings if you want to. (For a definition of 'companion', please see our grievance policy.)

37. We will do what we can to sort out any difficulties that you may face as a result of raising a concern. If you have to give evidence in court or at disciplinary proceedings, we will arrange for you to get appropriate advice about the procedures involved.

38. We recognise that you need to be confident that any concerns you have raised have been properly dealt with. So, within 10 working days of you raising a concern, the person you spoke to will write to you to:

- acknowledge that they have received your concerns in writing;
- tell you how they will deal with the matter;
- give you an estimate of how long it will take to produce our final response;
- tell you what enquiries they have made so far; and
- tell you whether they will be making any further investigations and, if not, why not.

Independent advice

39. If you are not sure whether to use this policy, or if you want independent and confidential advice at any stage, you can contact:

- your trade union representative if you are a union member; or

- the independent charity Public Concern at Work (call 020 7404 6609), whose lawyers can give you free and confidential advice at any stage about how to raise a concern about malpractice at work.

What if I am not satisfied with the action that has been taken?

40. This policy tells you how to raise concerns within ORR. We hope that any of our employees who use this policy will be satisfied with any action we take. However, if you are not satisfied with the way we dealt with your concerns, or if you do not feel able to raise a concern within ORR, the Public Interest Disclosure Act (PIDA) offers you protection if you make an external disclosure.

Civil Service Commissioners

41. If you have raised a concern internally (within ORR) under this policy about the terms of the Civil Service Code being broken, and you believe that our response is unreasonable, you can report the matter in writing to the Civil Service Commissioners, 35 Great Smith Street, London, SW1P 3BQ (phone 020 7276 2613).

42. In certain circumstances, the Civil Service Commissioners will accept a complaint made direct to them (in other words, a complaint that has not gone through our internal procedure first).

Regulators

43. If you feel that you would be victimised at work if you made an internal disclosure, you can make a disclosure to a regulatory body (see paragraph 44 for examples of regulators). To make sure you still meet the conditions for protection against making the disclosure, you must make a 'qualifying disclosure' and honestly believe that your information is true.

44. The regulators include:

- the Health and Safety Executive (HSE);
- the Office of Communications (Ofcom);
- the Office of Water Services (Ofwat);
- the Office of Gas and Electricity Markets (Ofgem);
- the Financial Services Authority (FSA);
- HM Treasury;
- HM Revenue & Customs;
- the National Audit Office (NAO);
- the Department for Business, Enterprise and Regulatory Reform (formerly the Department of Trade and Industry);
- the Office of Fair Trading; and
- local authorities.

45. You can get a full list of regulators, and their addresses, at www.pcaw.co.uk/legislation/p_regulators.html

Wider disclosures

46. You may decide to make a disclosure to an external organisation, such as to the police or to an MP. However, to qualify for protection under the

Public Interest Disclosure Act, you must make a qualifying disclosure that you honestly believe to be true, and which is reasonable in all of the circumstances and not for your own benefit.

47. It is important that, before you make a disclosure to an external organisation, you get independent and confidential advice from Public Concern at Work to make sure that you will be fully protected.

Who keeps a record?

48. The Director of Corporate Services will keep a record of concerns raised by all employees under this policy and the outcomes (in a confidential form that does not reveal identities), and will report them as necessary to the Chief Executive.

Who keeps this policy up to date?

49 Our Human Resources (HR) department is responsible for regularly reviewing and updating this policy. HR will only make revisions, amendments or changes to the policy after they have been approved by staff, directors and the ORR Board. HR will tell all employees about any changes they make to this policy.