

<b>Whistleblowing: Process for Handling Protected Disclosures</b>			
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### TABLE OF CONTENTS

1	INTRODUCTION .....	2
2	ONR'S ROLE AS A PRESCRIBED BODY .....	4
3	ONR'S ROLE AS AN EMPLOYER.....	5
4	HOW ONR HANDLES PROTECTED DISCLOSURES .....	6
5	HOW TO MAKE A PROTECTED DISCLOSURE TO ONR .....	7
6	OBTAINING FURTHER INFORMATION AND/OR EVIDENCE.....	8
7	PROVIDING FEEDBACK TO THE WHISTLEBLOWER.....	9
8	APPEALS .....	9
9	REPORTING .....	10
10	GOVERNANCE ARRANGEMENTS.....	11
11	SUPPORTING DOCUMENTS .....	12
	APPENDIX A – WHISTLEBLOWING PROCESS FLOW.....	13

## 1 INTRODUCTION

### 1.1 Purpose

1. The purpose of this document is to outline ONR's principles, role, and approach for handling protected disclosures (whistleblowing). It takes account of the [Public Interest Disclosure Act 1998](#) and [Public Interest Disclosure \(Prescribed Persons\) Order 2014](#) and supports our mission, to protect society by ensuring safe and secure nuclear operations.
2. We use a wide range of data sources and intelligence to achieve our mission, inform our work and drive a positive safety and security culture for our staff and stakeholders. Whistleblowers can be a valuable source of intelligence on potential internal malpractice or regulatory non-compliance and breaches of legislation.
3. This Procedure enables and supports nuclear industry workers (or those otherwise involved in handling/transport of nuclear materials), the supply chain and ONR staff to report serious wrongdoing, in the public interest - known as a 'protected disclosure'.
4. Making a protected disclosure can often be difficult or distressing, particularly when it relates to potentially illegal, unsafe, or unethical malpractice. We will handle all protected disclosures fairly, sensitively, with utmost discretion, and do all we can to protect whistleblowers. More information for anyone making a protected disclosure can be found on GOV.UK's whistleblowing guidance.
5. All protected disclosures will be handled in accordance with the associated processes and guidance.
6. A process map summarising how we handle protected disclosures can be found at the end of this document (see **Appendix A**).

### 1.2 Scope & Applicability

7. Under the Public Interest Disclosure Act (PIDA) 1998, workers are protected if they tell the relevant 'prescribed body' about suspected wrongdoing by their employer. This is called making a protected disclosure, or whistleblowing.
8. ONR is a 'prescribed body' under the terms of [Schedule 1 of the Public Interest Disclosure \(Prescribed Persons\) Order 2014](#), for the purpose of receiving protected disclosures and is responsible for considering and, if appropriate, acting on the information.

### 1.3 Definitions

**Table 1 - Table of Definitions**

Term	Definition
Nuclear industry worker	Someone who works, has worked, or is contracted to work in the nuclear industry, for example performing activities on a licensed nuclear site, or otherwise involved in handling/transport of nuclear materials. This includes ex/employees, independent contractors, agency workers or trainees.
Prescribed body (or person)	Independent bodies or individuals that can be approached by whistleblowers where an approach to their employers would not be appropriate.
Protected disclosure	A disclosure – or whistleblowing report - made by an employee or worker that fulfils certain requirements under the <a href="#">Public Interest Disclosure Act 1998</a> , including meeting the public interest test. Employees who make a protected disclosure are protected against dismissal and both employees and workers are protected against victimisation on grounds of having made a protected disclosure.
Public interest	to meet the public interest test, a disclosure would typically impact more than one individual. The public interest is not necessarily the same as what interests the public, for example a topic that is discussed in the media does not automatically meet the test.
<a href="#">Public Interest Disclosure Act 1998</a>	Protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they blow the whistle on wrongdoing.
Whistleblower	A worker who reports certain types of wrongdoing to their employer or a prescribed person/body. The wrongdoing disclosed must be in the public interest, which means it must affect others, for example the general public. Whistleblowers are protected by law.

## 2 ONR'S ROLE AS A PRESCRIBED BODY

9. As a prescribed body, we can look into a protected disclosure pertaining to a matter we regulate (insofar as our statutory functions ([Energy Act 2013; Part 3](#)) permit), and recommend how an employer could rectify certain issues or in some cases take action as appropriate.
10. This Procedure applies when a report made to ONR meets **all** the following criteria:
  - a. The individual making the disclosure is a nuclear industry worker (for example performing activities on a licensed nuclear site, or otherwise involved in handling/transport of nuclear materials). This includes ex/employees, independent contractors, agency workers or trainees;
  - b. The wrongdoing disclosed is in the public interest (which means it must affect others, for example the general public<sup>1</sup>);
  - c. The disclosure shows that one or more of the following has occurred, is occurring or is likely to occur: a criminal offence; a breach of a legal obligation; a miscarriage of justice; danger to the health or safety of any individual; damage to the environment; or the deliberate covering up of wrongdoing in any of these categories;
  - d. the disclosure is in relation to a matter that ONR regulates, in accordance with the statutory functions outlined in the [Energy Act 2013; Part 3](#).
11. If we find evidence of an enforceable breach in relation to our statutory powers, we may be able to act. We will make risk-based decisions when deciding what action to take, in accordance with our published policies, procedures and guidance.

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<sup>1</sup> See: [https://ico.org.uk/media/for-organisations/documents/1183/the\\_public\\_interest\\_test.pdf](https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf)

### **3 ONR'S ROLE AS AN EMPLOYER**

12. We want to create a culture of inclusion where staff (directly employed or contracted) are empowered to speak up and raise issues openly without fear of reprisal. This is supported by our values: accountable, open-minded, fair, and supportive.
13. ONR staff can report wrongdoing about illegal, unethical, or improper conduct or actions by colleagues, employers, or anyone else working on behalf of ONR.
14. ONR staff may also report discrimination, bullying, harassment, victimisation or inappropriate behaviours, for example as an additional recourse where they feel unable to follow an existing ONR process or where they feel they would benefit from the additional protection afforded by this Procedure.
15. ONR staff raising a genuine, qualifying disclosure will be protected and will not suffer any detriment, reprisal, or adverse treatment as a result - even if we decide there is no case to answer or the outcome is not in their favour.
16. Victimisation, bullying, or harassment of colleagues for making a protected disclosure will not be tolerated and disciplinary action will be taken. In addition, legally, staff may be personally liable if they victimise a colleague engaged in whistleblowing.

## 4 HOW ONR HANDLES PROTECTED DISCLOSURES

17. We consider all disclosures fully, fairly, confidentially, and in a timely manner. All protected disclosures will be handled sensitively, with utmost discretion, and by the least possible number of ONR staff, to protect anonymity.
18. Protected Disclosures will be handled by the Whistleblowing Team in the Chief Executive's Office (unless the report concerns the Chief Executive or any member of the Chief Executive's Office; in this case, an independent lead will be appointed). A Whistleblowing Lead will be responsible for co-ordination and oversight and will be supported by a Business Lead acting as subject matter expert. A decision maker will also be appointed in accordance with the risk profile.
19. In handling protected disclosures, we will apply this Procedure and associated processes and guidance, as well as internal and regulatory policies and procedures to decide if any action is needed. For example, we will work in line with our published [Enforcement Policy Statement](#) in order to determine whether a regulatory investigation may be required.
20. In most cases, we will need to consult the whistleblower further and request evidence to assess:
  - a. if the issues fall within our remit;
  - b. the level of risk and impact, for example on nuclear safety, security, or safeguards;
  - c. any evidence of an enforceable breach that would require a formal internal or regulatory investigation;
  - d. and any appropriate regulatory or organisational response.
21. We will make every effort to protect a whistleblower's identity, even when they waive their right to confidentiality, for example, we can attempt to uncover information in such a way that does not compromise it. While we accept anonymous disclosures and do all we can to progress them, in some cases, it may not be possible to reach a satisfactory conclusion without further contact.
22. We will not tolerate inappropriate behaviour, either in person, by phone or by correspondence, for example: abusive/aggressive language, placing an excessive burden/disproportionate effort to the risk presented, unreasonable persistence, intransigence, and frequent/overlapping requests. Should our staff experience such behaviour, the [ONR Unreasonable Behaviour Policy](#) will apply.
23. Personal information will be handled in accordance with the Data Protection Act 2018, which implements the General Data Protection Regulations (GDPR).

### 4.1 When We Can't Help

24. ONR cannot always help. For example, if it's something we're not responsible for (for example it's not a matter we regulate), or the whistleblower hasn't provided sufficient information to progress.

25. We will not progress reports that we consider to be malicious, vexatious, or are litigious in nature, for example in pursuit of a claim for compensation or to assist a civil or employment case.
26. Matters that are not covered by whistleblowing law, such as personal grievances or reports that do not have the potential to cause harm to workers, the public, or the state, are not covered by this Procedure.
27. Legally, we are unable to become involved in a grievance between workers and employers, other than to confirm a disclosure was made. In addition, we are not responsible for deciding whether an individual qualifies for legal protection: this would be decided by the Employment Tribunal.
28. When reports do not meet the criteria set out in this Procedure, or when we receive complaints about ONR, or reports made by other members of the public, we will be apply the most relevant ONR policies and processes, or refer the individual to the appropriate body.

## **5 HOW TO MAKE A PROTECTED DISCLOSURE TO ONR**

29. Before making a protected disclosure, whistleblowers should attempt to raise the matter with their employer or follow an internal procedure. If the whistleblower has done this and there has been no satisfactory response, or they feel they would be victimised or fear reprisal for raising the matter internally, they may report their concerns to ONR.
30. Nuclear industry workers and ONR staff can submit a protected disclosure to us through an online form, email, or post. Details are available on the [ONR website](#). Requests for face-to-face meetings will be considered at ONR's discretion.
31. Further guidance for internal whistleblowers is available on the ONR staff intranet, and guidance for external whistleblowers is available on the [ONR website](#). These provide more details for whistleblowers on what to expect.

## 6 OBTAINING FURTHER INFORMATION AND/OR EVIDENCE

32. As an evidence-based regulator, and within the legal parameters we operate in, we need adequate supporting information to substantiate any allegations we receive. In most cases, we cannot solely rely on verbal allegations, especially when these are anonymous reports, even from multiple individuals.
33. Evidence may include (but not be limited to) documentation, correspondence, emails, and photographs. Copies can be accepted for the purposes of considering appropriate action. We may need to retain this information should we progress the matter to formal investigation. Any information provided will be held in accordance with our [Data Retention Policy](#) and evidence procedures.
34. Although we make every effort to keep information confidential, exceptionally we may need to release it, if we consider it necessary to prevent serious harm.
35. Whistleblowers may have other legal obligations, for example over handling of classified/confidential information. Sharing such data could in some cases be a breach of the law or security regulations. If a whistleblower breaks the law by disclosing information, for example under the Official Secrets Act, their disclosure will not be protected. ONR cannot provide assurances as to whether the information a whistleblower chooses to provide would breach legislation, security regulations or compromise ongoing/future litigation. Independent legal advice to ensure compliance with the law/obligations should be sought.
36. In some cases, where particularly serious, highly technical, or complex allegations are made, a face-to-face meeting may be required. These should only take place on ONR premises, and with another ONR member of staff present as a witness.
37. ONR will reimburse any reasonable costs the whistleblower may incur, for example, if we have asked them to travel to a meeting, or post evidence to us, in accordance with our expenses policies.

## 7 PROVIDING FEEDBACK TO THE WHISTLEBLOWER

38. We will always inform the whistleblower of the outcome of their report, including whether or not we have taken action as a result of their disclosure.
39. However, we may not always be able to provide details of action taken, due to:
- a. sensitivities surrounding an ongoing investigation or regulatory action;
  - b. the need to keep the confidence of other people involved;
  - c. any risk of compromise to nuclear safety, security, or safeguards;
  - d. relevant legislative restrictions, including data protection and disclosure of information provisions any relevant legislation.
40. If our enquiries progress to formal investigation stage, we can usually (but not always) confirm that such an investigation is ongoing or has concluded. In most cases, it will not be appropriate to provide specific details.
41. If the outcome is that disciplinary proceedings should be commenced against another person, the whistleblower will not be advised of any penalty given.

## 8 APPEALS

42. If a whistleblower is unhappy with how ONR has dealt with their disclosure, they can appeal to the Chair of ONR's Audit, Risk and Assurance Committee (ARAC) - a non-executive director of the ONR Board - within 10 working days of receiving notification, clearly setting out the basis for their appeal.
43. We will only progress an appeal in relation to the incorrect or unfair application of ONR policies and processes (for example this Whistleblowing Procedure, or the [Enforcement Policy Statement](#)). The appeal cannot be progressed on the grounds that the whistleblower simply disagrees with the outcome or is challenging a regulatory decision.
44. If the whistleblower is still not satisfied with the way in which we have handled their disclosure following the ARAC Chair's response, they can [make a complaint about ONR](#), or they can notify their MP, who may choose to refer us to the [Parliamentary and Health Service Ombudsman](#) (PHSO).

## 9 REPORTING

45. As a prescribed body, ONR is legally obliged to report annually, in writing, on protected disclosures received under the [Prescribed Persons \(Reports on Disclosures of Information\) Regulations 2017](#).
46. Reporting on protected disclosures also supports ONR's vision to be a modern, transparent regulator delivering trusted outcomes and value. Reporting raises confidence and provides assurance to whistleblowers and the public that ONR takes protected disclosures seriously.
47. Timely and meaningful reporting of information on protected disclosures enables us to monitor progress, identify trends and secure any necessary action and improvement.
48. ONR's report on protected disclosures is included in the Annual Report and Accounts (ARA). The ARA is laid in Parliament and published on the [ONR website](#) every year. Providing that no information identifies the whistleblower or the subject disclosed, the report shall include, for the reporting period:
- a. an explanation of our functions, objectives, and statutory powers;
  - b. the number of disclosures received (those we reasonably believe qualify)
  - c. the number we have decided to take further action or enforcement on
  - d. a high-level summary of the action taken (for example, "recommendation issued" or, "enforcement action taken");
  - e. the number of cases where we found evidence of wrongdoing and what the outcomes were; and
  - f. how the disclosures have impacted on our ability to perform our functions and meet our objectives (for example, how the disclosures have led to ONR's influencing of proportionate improvements).
49. In order to protect the confidentiality of whistleblowers and other parties involved, ONR will not include any case specific information in the report that could have the potential to:
- a. identify the whistleblower, their employer, or third parties involved;
  - b. reveal the subject of the protect disclosure; and/or
  - c. compromise confidentiality of any ongoing investigations.

## 10 GOVERNANCE ARRANGEMENTS

50. The [ONR Scheme of Delegation](#) requires approval of this Procedure by the ONR Board.
51. ONR's Audit and Risk Assurance Committee (ARAC) is responsible for advising the Board on the adequacy of internal whistleblowing arrangements and keeping these under review, ensuring they allow proportionate and independent action. The Chair of ARAC has oversight of the appeals process.
52. ONR's Senior Leadership Team (SLT) is responsible for advising the Board on the adequacy of external whistleblowing arrangements and keeping these under review, ensuring they allow proportionate and independent action.
53. Judgements on the regulatory effectiveness of these arrangements falls to those with delegated regulatory powers. Regulatory authority delegations and outcomes resulting from follow-up of protected disclosures may lead to changes in regulatory interventions, enforcement, and investigation. Such regulatory decisions regarding such changes will be made only by those with delegated authority.
54. The handling of protected disclosures aligns with ONR's Organisational Effectiveness Indicators (OEI). It is measured through an indicator on timescales for handling of protected disclosures under Characteristic 5 - stakeholders and dutyholders are confident in our regulation of the industry.
55. Costs for whistleblowing activity will be recovered in line with ONR's standard charging model and will include the costs associated with any appointed expert advisers.
56. The adequacy of this Procedure will be tested and reviewed **every three years** unless amendments are required in line with any legislative changes or relevant experience from its application.

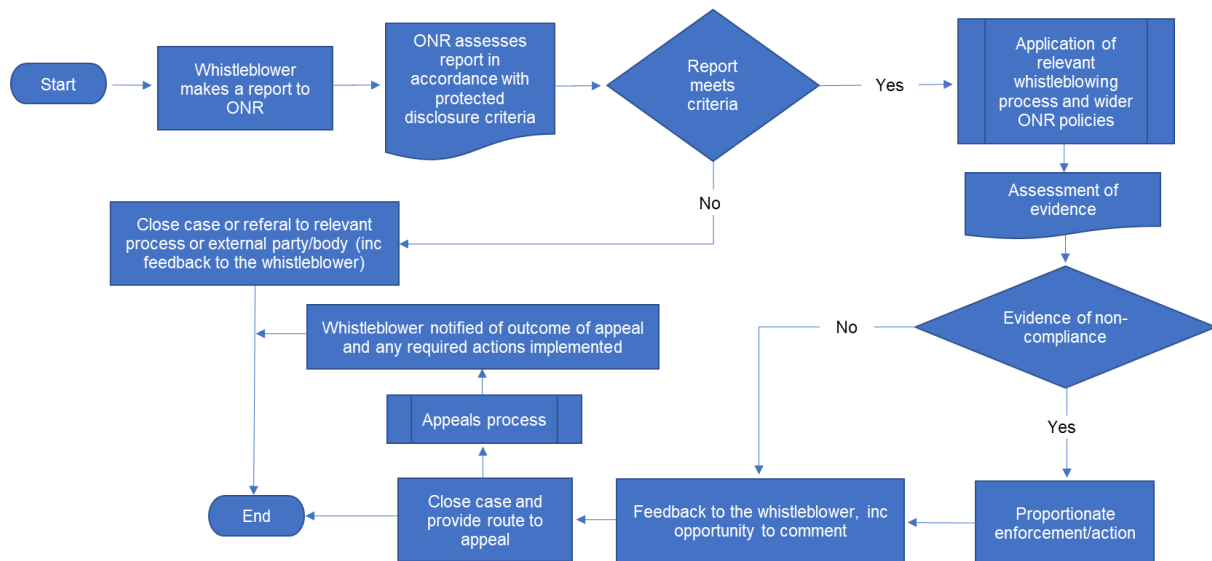
## 11 SUPPORTING DOCUMENTS

The following table lists all the arrangements which support this Procedure.

**Table 2 - Supporting Documents/Templates.**

No.	Doc. Ref.	Record Ref.	Title
1	ESO-WB-PROC-001	2020/107266	ONR Procedure: Whistleblowing: Process for Handling Protected Disclosures
2	ESO-WB-IN-001.01	2020/115067	ONR Instruction: Whistleblowing: How to Make a Disclosure to ONR (Internal)
3	ESO-WB-IN-001.02	2020/107274	ONR Instruction: Whistleblowing: How to Make a Disclosure to ONR (External)
4	ESO-WB-IN-001.03	2020/107278	ONR Instruction: Whistleblowing: Handling Protected Disclosures
5	ESO-WB-IN-001.04	2020/110430	ONR Instruction: Whistleblowing: Appeals Process

## APPENDIX A – WHISTLEBLOWING PROCESS FLOW



**Figure 1 - Whistleblowing process at ONR.**

### START

**Step 1 -** Whistleblower makes a report to ONR.

**Step 2 -** ONR assesses report in accordance with protected disclosure criteria.

- If the report does meet the criteria, the process continues to step 3.
- If the report does not meet the criteria, the process continues to step 5.

**Step 3 -** Application of relevant whistleblowing process and wider ONR policies and assessment of evidence.

- If there is evidence of non-compliance this may lead to proportionate enforcement/action.
- If there is no evidence of non-compliance, feedback is provided to the whistleblower including the opportunity to comment.

**Step 4 -** A route to appeal is provided and, if appropriate, the appeals process is conducted.

If an appeals process is conducted, the whistleblower is notified of the outcome and any required actions to be implemented.

**Step 5 -** The case is closed or, if relevant, referred to the relevant process or external body/party including feedback to the whistleblower.

### END