|  |
| --- |
|  |
| ONR Instruction  Whistleblowing: How to Make a Disclosure to ONR (External) |



ONR Instruction

Whistleblowing: How to Make a Disclosure to ONR (External)

**Process Owner** – Head of Executive Office

Authored by – Executive Office

Approved by – ONR Executive Team (OET)

Publication Date: Oct-23

Next Major Review Date: Oct-26

Issue No.: 1.3

Doc. Ref. No.: ONR-WB-IN-001.02

Record Ref. No.: 2020/107274

Table 1: Revision commentary

|  |  |
| --- | --- |
| Issue No. | Description of Update(s) |
| 1 | New document. |
| 1.2 | Revised to reflect policy and process amendments. |
| 1.3 | Minor updates. |

# Introduction

This instruction provides information about what happens when you make a protected disclosure to ONR, in accordance with our Whistleblowing Procedure [1].

## Purpose

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 regulatory non-compliance and breaches of legislation.

Whistleblowing, also known as a protected disclosure, is when a worker (i.e. ex/employee, independent contractor, agency worker or trainee) reports information about wrongdoing by their employer, typically, although not necessarily, in the workplace.

A step-by-step summary of how we handle protected disclosures can be found at [Appendix A](#_Appendix_A_–).

## Scope and Applicability

Under the [Public Interest Disclosure Act (PIDA) 1998](https://www.legislation.gov.uk/ukpga/1998/23/contents), as a worker, you are protected if you tell the relevant ‘prescribed body’ about suspected wrongdoing by your employer. This is called making a protected disclosure, or whistleblowing.

ONR is a prescribed body, which means we can receive protected disclosures and are responsible for considering and, if appropriate, acting on the information. As a prescribed body, we can look into a protected disclosure and, if we find evidence that there has been an enforceable breach, we may be able to take regulatory action in accordance with our published policies and procedures, and/or recommend how an employer could rectify certain issues.

Under [Schedule 1 of the Public Interest Disclosure (Prescribed Persons) Order 2014](http://www.legislation.gov.uk/uksi/2014/2418/pdfs/uksi_20142418_en.pdf), ONR is a prescribed body for matters which may affect the health and safety of any individual at work wholly or mainly on premises which are, or are on a GB nuclear site, an authorised defence site, or a new nuclear build site; or the health and safety of any member of the public, arising out of or in connection with the activities of persons at work on premises which are, or are on, such sites.

The wrongdoing you disclose must be in the public interest, which means it must affect others (e.g., the general public) and show 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; and/or
* the deliberate covering up of wrongdoing in any of the above categories.

You must also have a reasonable belief that the information you disclose is substantially true.

For ONR to consider taking action, the disclosure you make must be in relation to a matter that we regulate, in accordance with the statutory functions outlined in the [Energy Act 2013](http://services.parliament.uk/bills/2012-13/energy.html); [Part 3](http://www.legislation.gov.uk/ukpga/2013/32/part/3).

Personal grievances (e.g. bullying, harassment, discrimination) or complaints that do not have the potential to cause harm to the general public are not covered by whistleblowing law. A prescribed body will not become involved in a grievance   
(other than to confirm that a disclosure was made), nor can they help you with relationships with your employer. If you report the issue to the media, in most cases you will lose your whistleblowing law rights.

Not all reports we receive will be handled under our whistleblowing arrangements. On occasion, ONR will receive reports or allegations that do not meet all the criteria. We will assess and deal with your disclosure under our most relevant process, on a case-by-case basis. Where ONR is not the responsible body, we will help you identify who is.

ONR cannot always help. For example, if it is something we are not responsible for, you have not given us enough information for us to make an assessment, or if we decide that it is not a problem that we should take up.

We will protect your identity wherever possible, particularly if you have asked us to do so. We will tell you if we intend to treat the matter as a protected disclosure.

## Definitions

Table 2: Table of definitions

| Term/Acronym | Description |
| --- | --- |
| 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 [Public Interest Disclosure Act 1998](https://www.legislation.gov.uk/ukpga/1998/23/contents), 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. |
| [Public Interest Disclosure Act 1998](https://www.legislation.gov.uk/ukpga/1998/23/contents) | 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. |

# Making a protected disclosure

We understand that making a disclosure can often be difficult or distressing.   
Our Whistleblowing team will handle all protected disclosures in confidence, support you through the process, and communicate regularly with you, so you know how your case is progressing.

## Anonymity and confidentiality

Providing your contact details will enable us to ask you for more information, if we need to, which may be essential to take your disclosure forward.

While we accept completely anonymous disclosures, in most cases it is not possible to progress them without contacting you, as we are unlikely to have enough information to fully understand the facts or take action. Anonymous disclosures can result in wasted effort, not just by ONR, but also for you as the whistleblower.

In addition, it is likely to be more difficult for you to receive any legal protection from victimisation you may need later on, as there would be no evidence to link any potential detriment to the disclosure of information.

Your identity can still be protected, even if you share your details with us. In fact, even if you waive your right to confidentiality, we will still do all we can to progress the case without sharing your details. We also restrict the number of ONR staff who have access to it.

However, depending on the nature and circumstances of the issue it may be possible for your employer to deduce that you notified us, particularly if you have already raised the matter with them.

## Before you make a disclosure

Before making a disclosure to ONR, you should first attempt to raise the issue with your employer/contracting authority, an appropriate manager, or safety representative, or follow your employer/contracting authority’s own whistleblowing process.

If you have done this with no satisfactory response, or you feel you would be victimised or fear reprisal for raising it in this way, you may report the disclosure to ONR.

## Making a disclosure to ONR

To make a protected disclosure to ONR you can choose one of the following options:

* complete the [online form on the ONR website](http://news.onr.org.uk/report-whistleblowing/). This can be done anonymously, although in most cases it won’t be possible to progress a report without contacting you;
* send an email with details of your concern and the information you would like to disclose to [contact@onr.gov.uk](mailto:contact@onr.gov.uk);
* send a letter to - Whistleblowing Team, Office for Nuclear Regulation, Building 4S3, Redgrave Court, Merton Road, Bootle, L20 7HS; or
* speak to a member of ONR staff, for example, an inspector on site, who will then direct the matter to ONR’s Whistleblowing team.

In the unlikely event that a protected disclosure relates to the Whistleblowing Team, the ONR Executive Team, the ONR Board, or to a situation you do not feel is appropriate to report it directly to us, you can contact the Department for Work and Pensions (DWP). DWP acts as ONR’s sponsor department but can provide independent follow up. You should email [caxtonhouse.dwppartnership@dwp.gov.uk](mailto:caxtonhouse.dwppartnership@dwp.gov.uk).

In line with our appeals process, DWP will not respond to disclosures which are made as a form of escalation, for example if you are unhappy with/disagree with the outcome of a case investigated by ONR, if you disagree with our regulatory decision, or if our decisions/approaches differ from those of other organisations (for example other regulators), even if they are on a related matter or about the same organisation.

In all cases, we need as much information as possible to determine how to categorise and handle your disclosure. You need to:

* Provide us an overview of the issue and how it relates to nuclear safety, nuclear security, or nuclear safeguards;
* tell us at which nuclear site the wrongdoing is taking place (or likely to take place), as well as the location of the incident – be as specific as possible, for example, what building or plant;
* tell us when it happened, if it’s happening now, or when it’s likely to happen;
* explain how you became aware of it;
* share the names of the people and any other organisations involved;
* reference any correspondence you’ve had in relation to the issue and whether this is available to share with us;
* tell us who it affects - be specific with names, job titles and location if you can;
* be clear if the matter has, could, or has the potential to cause harm;
* tell us about whether it affects, or has the potential to affect, single or multiple members of the public, and how;
* confirm whether you have raised this with your employer and anyone else;
* tell us what (if any) action was taken at the time or actions you know are being taken to rectify the issue; and
* tell us if you do not want anyone else to know it was you who raised the matter (you can give us your name and contact details but still request confidentiality and we will protect this).

# How we will handle your disclosure

Our Whistleblowing team is responsible for co-ordinating and overseeing all protected disclosures.

All disclosures will be dealt with on a case-by-case basis and in accordance with our published policies and processes. If we determine that we need to act,   
we will then decide how to proceed. You will not have a say in how the issue is dealt with, although we will seek your feedback.

## Stage 1 - Assessment

Upon receiving your disclosure, the Whistleblowing team will consider the information you have provided to decide if it meets the criteria (see WB-PROC-001) for protected disclosures, check if any more details are required to proceed, and if any action is needed.

Upon receiving your disclosure, the Whistleblowing team will consider the information you have provided to decide if it meets the criteria for protected disclosures. We also need to make sure the matter falls within our remit and that it is about an organisation and/or issue we can consider, in accordance with our statutory powers. We will then check if we have enough detail to proceed and if any action is needed.

Following these initial checks:

* If your disclosure does not meet the criteria, or the matter does not fall within our remit, we will contact you to advise of the next steps;
* If we are not the responsible body, we will help you identify who to refer the matter to;
* If we don’t have enough information to proceed, we will contact you to establish more details, for example information and evidence to support your allegations;
* If we have all we need to proceed, we will assess the information in detail to decide if we should begin preliminary enquiries into the matter. We will contact you to clarify our understanding of the issue and advise of the next steps.

That is why it is important for you to share your details with us, as in some cases, we cannot progress without a further discussion or evidence, and we will not be able to contact you for an update.

In some cases, it is possible to proceed directly to response stage, if the issues raised is covered by one or more of the following scenarios:

* the issue is already known to and is being handled by ONR (for example covered as part of an existing Regulatory Issue); and/or
* the issue has previously been considered or dealt with by ONR within a reasonable time period, depending on the nature of the issue; and/or
* the report provides no further information to a known issue.

If your case moves straight to response, we will keep you updated of any developments if you wish us to do so.

## Stage 2 - Preliminary enquiries

Sometimes the issue is evident and straightforward, and we can resolve it quickly by engaging with those involved and agreeing an appropriate way of addressing it. In some cases, we will need to gather more information and evidence to decide if we need take any regulatory action.

This is known as preliminary enquiries and may consist of meetings or interviews with you and/or site representatives, site visits, telephone calls/video-conferencing sessions, and other correspondence. If we need to hold a discussion with you, we will ask you to check our notes for accuracy.

Preliminary enquires will lead to one of the following outcomes:

* we establish grounds for the allegations that require further consideration, which could include formal investigation; or
* we establish some grounds for the allegations, but adequate remedial/corrective action can be (or has already been) put in place promptly to rectify the issue. Proportionate regulatory action may be taken, or recommendations issued, and the matter will be handed over to our operations team, to be handled via routine regulatory activity or intervention; or
* we establish no grounds for the allegations to merit further regulatory action or intervention. No further action will be required but we may use the information you provided as regulatory intelligence.

Preliminary enquiries will be undertaken in accordance with [ONR’s regulatory process for conducting investigations](https://www.onr.org.uk/operational/investigations/onr-enf-gd-005.pdf#:~:text=The%20ONR%20investigation%20process%20commences%20from%20when%20ONR,not%20be%20investigated%20further%2C%20or%20completes%20the%20investigation.). We may not always be able to give you precise timescales, because this varies according to the nature and complexity of each case, and the approach we choose to take. In some cases, where we believe the risk is not immediate, we may choose to wait for a more appropriate time to follow-up. This way we can also usually better protect your identity.

We will write to you when we have completed our preliminary enquiries to inform you of the outcome and the next steps. This is typically within ten working days of completing preliminary enquiries, but we aim to do so sooner, where possible.

If the action we decide to take is straightforward, we may close the case and handover any resulting routine interventions to the appropriate regulatory division in ONR. We will keep you updated via the site inspector if you wish us to do so.

## Stage 3 - Investigation

If we decide that we need to progress your case to investigation, we will write to you to notify you of our intention to do so.

The investigation will commence at the earliest opportunity, in accordance with our enforcement policies and processes. However, the time required for completing investigations will vary significantly from case to case, according to complexity, the risk presented and the need to protect your identity.

We may also need to contact you for more information, clarifications, or to seek further evidence, as we progress through the investigation. This may require face-to-face or video-conference meetings.

We may need to involve more ONR staff (and in some cases other government departments/agencies) in these discussions, but we will tell you in advance who will attend and why.

We will write to you at the end of the investigation to inform you of the outcome, typically within ten working days of the investigation report concluding. Where possible, we will tell you what action we have taken or intend to take in response. If the investigation is likely to be long, we will provide you interim updates as appropriate.

## Stage 4 - Response

We will write to you at the end of the process, to inform you of the outcome and the next steps. We can only do this if you tell us your email or postal address.

The timescales for doing so will depend on the level of response/type of action we have taken.

In doing so, we will provide you with as much feedback as we can. However, in some cases this may be limited (and any reports we share may be redacted) due to some restrictions, especially if:

* there are sensitivities surrounding an ongoing investigation or regulatory action;
* we need to follow certain ONR policies;
* we need to keep the confidence of other people involved;
* the details could compromise nuclear safety, security, or safeguards;and/or
* we need to apply certain relevant legislative restrictions, such as data protection.

We will give you the opportunity to respond to our conclusions. There is no obligation to comment, but if you wish to do so, you need to tell us within ten working days of notification. If you need longer than this, you should let us know immediately.

We will consider your comments to determine whether we need to do more work or resolve anything outstanding.

## Stage 5 - Closure

After Stage 4, or if we have not received any comments from you within the agreed timescales we will obtain approval from the relevant director and close the case. We will write to you to confirm the case is closed and share route to and requirements for appeals.

# Appeals

If you are unhappy with how ONR has handled with your disclosure, you can appeal to the Chair of ONR’s Audit and Risk Assurance Committee (ARAC), who is a non-executive director of the ONR Board, within ten working days of our notification that your case is closed, setting out the basis for your appeal and any objections to the outcome.

## Grounds for appeal

You must clearly outline the grounds for appeal and present evidence of any non-compliance or incorrect application of our policies or procedures.

Your grounds for appeal must relate to how we have failed to apply our published policies and processes. For example, where you:

* feel ONR policies or procedures have been incorrectly or unfairly applied;
* think there’s been a non-compliance with published policies and guidelines; and/or
* have a reasonable belief that we have discriminated against you.

An appeal cannot be considered if the grounds are that:

* you disagree with the outcome;
* you disagree with our regulatory decision;and/or
* our decisions/approaches differ from those of other organisations (for example other regulators), even if they are on a related matter or about the same organisation.

## Submitting your appeal

To appeal, you will need to write to us, quoting the reference number provided in our correspondence. You can do so:

* by email to: Chair of ARAC (c/o Head of Corporate Governance and Compliance) [onrsecretariat@onr.gov.uk](mailto:executive.office@onr.gov.uk)
* by post to: Chair of ARAC (Head of Corporate Governance and Compliance) Office for Nuclear Regulation Building 4, Floor 4S3, Redgrave Court, Merton Road Bootle, L20 7HS

We will contact you within 20 working days to confirm if the grounds outlined meet the criteria for appeal. If they do, we will arrange a meeting with you to hear your case.

The Chair of ARAC will decide and communicate the outcome to you, within 20 working days of your discussion.

If you are still not satisfied you can notify your MP who can chose to refer us to the [Parliamentary and Health Service Ombudsman](https://www.ombudsman.org.uk/) (PHSO). The PHSO can carry out independent investigations into complaints that injustice has been caused by maladministration on the part of public bodies such as ONR.

# 

# What you can expect from ONR

We will:

* treat all disclosures seriously, fully, fairly, and, where circumstances permit, confidentially;
* do all we can to protect your identity unless you give permission to reveal it;
* regularly inform you of progress on your case;
* reimburse any reasonable costs you incur if we have asked you to travel for a meeting, in accordance with our expenses policy;
* give you an opportunity to respond to our conclusions and discuss the outcomes; and
* process any information relating to you in accordance with UK GDPR.

We will not:

* always be able to provide full details of the action(s) we are taking;
* give you a say in how the matter is dealt with – we will decide how to proceed;
* always agree with what you believe the outcome of our enquiries should be or what action we should take;
* be able to meet you at your request, or at a location of your choice. We will use our discretion in deciding what is appropriate;
* be able to provide you with protection, or confirm if you qualify for legal protection: this is not within our legal remit and will be decided by the Employment Tribunal, where a claim of detriment or dismissal because of whistleblowing is contested;
* provide assurances as to whether the information you choose to provide could compromise any ongoing litigation, or confirm that will lead to further action; and
* tolerate inappropriate behaviour towards our staff, either in person, by phone or by correspondence, for example: abusive or aggressive language, placing an excessive burden/disproportionate effort to the risk, unreasonable persistence, intransigence, frequent or overlapping requests. Inappropriate behaviour may lead to us ceasing engagement with you, although we may continue with our enquires if we deem the matter you raised to pose a risk.

You can find more information on what to expect when you make a protected disclosure, and the importance of the following the correct process on the [GOV.UK whistleblowing pages](http://www.gov.uk/whistleblowing/who-to-tell-what-to-expect).

# 

# What ONR expect from you

We expect you to:

* raise your disclosure in good faith and act with integrity throughout;
* be available for additional contact regarding your disclosure as required;
* (in most cases) provide additional information/evidence, where required, to enable us to progress the case; and
* act respectfully with our staff handling your disclosure.

## Providing evidence

It can be very difficult, and sometimes not possible, to verify allegations without adequate detailed information. Typically, we cannot solely rely on verbal allegations, especially when these are anonymous reports, even when from multiple individuals.

In some cases, we may need to ask you for more information or evidence to substantiate your allegations. You should provide as much detailed evidence as possible, either by email or in hard copy. Evidence could include (but not be limited to) documentation, correspondence, emails, and photographs.

Whistleblowers may have other legal obligations, for example over the handling of classified or confidential information. Sharing such data could in some cases be a breach of security regulations and care should be taken. ONR cannot provide assurances as to whether the information a whistleblower chooses to provide could breach security regulations or compromise any ongoing or future litigation. Whistleblowers should seek independent legal advice.

# 

# How ONR addresses non-compliance

ONR is responsible for regulation of nuclear safety, security, and safeguards across the UK. Our [Enforcement Policy Statement](http://www.onr.org.uk/documents/enforcement-policy-statement.pdf) sets out the principles and approach by which we use our enforcement powers, in accordance with the Regulators’ Code and the regulatory principles under the Legislative and Regulatory Reform Act 2006.

When a safety or security risk arises, for example as a result of an inspection or intelligence received (such as protected disclosures) ONR inspectors take a measured approach and utilise a variety of regulatory tools to deal with it and ensure compliance with the law and a consistent response to breaches.

Depending on the circumstances, this ranges from influencing to regulatory advice, and enforcement (up to prosecution, where circumstances warrant it). ONR inspectors have discretion and use judgement in deciding what (if any) regulatory action may appropriate, when to investigate, or what enforcement action may be appropriate. ONR must be proportionate in dealing with gaps and securing compliance, be consistent in approach, and target the most serious or least well-controlled risks.

If we determine that we need to act, you will not have a say in how the matter is dealt with - we will decide how to proceed.

# 

# If you are treated unfairly by your employer after blowing the whistle

Under the PIDA, as a worker, you are protected by law if you tell the relevant prescribed body about suspected wrongdoing by your employer. That means that you can take a case to an employment tribunal if you are treated unfairly or suffer a detriment because you have blown the whistle.

In order to claim PIDA protection, you must show that you made a disclosure, that you followed the correct disclosure procedure, and that you were dismissed or suffered a detriment as a result of making the disclosure. ONR may be asked by the Employment Tribunal to confirm you made a disclosure to us. We can only do this if you provide your details.

You must raise any claim of unfair dismissal within three months of your employment ending. You must notify the [Advisory, Conciliation and Arbitration Service](https://www.gov.uk/acas) (ACAS) if you want to take your case to an employment tribunal.

If you report the issue to the media, in most cases you will lose your whistleblowing law rights.

## Roles and responsibilities

Table - Roles and responsibilities

|  |  |
| --- | --- |
| Role | Responsibilities |
| Head of Executive Office | Process Owner |
| Executive Office (Whistleblowing Team) | Responsible for procedure, case management and advice |
| Executive Director of Regulation Deputy Chief Executive Director | Responsible for signing off cases in accordance with the categories laid out in [1] |
| Chair, Audit and Risk Assurance Committee | Responsible for adjudicating appeals submitted. |

# References

|  |  |
| --- | --- |
| [1] | ONR, “ONR-WB-PROC-001 - Whistleblowing”. |

# Appendix A – Making a Disclosure at ONR

**START**

**Step 1** Submit disclosure 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, ONR will inform you of this and apply a different process or refer you to a different team/body, where possible.

**Step 3** If the report does meet the criteria ONR will inform you that your case will be progressed as a protected disclosure.

**Step 4** ONR will assess the information and write to you to confirm the next steps within ten working days.

**Step 5** Preliminary enquiries commence.

**Step 6** ONR will decide whether to proceed to investigation.

* If yes, continue to step 7.
* If no, ONR will evaluate whether any further action is necessary and take such action. Then continue to step 9.

**Step 7** ONR will write to you to confirm an investigation will take place.

**Step 8** The investigation will be conducted and concluded as soon as practicable.

**Step 9** ONR will write to you within ten working days with a decision. If you provide comments and these require further action this will be taken and once again communicated to you with opportunity for discussion.

**Step 10** Once no further action is required the case will be closed and routes to appeal will be provided. Appeals must be made within ten working days of case closure. You will be notified of the appeal outcome and required actions implemented within 20 working days.

**END**