
Annual whistleblowing report 2021-22

Ofcom's approach to managing external whistleblowing disclosures and a summary of disclosures in 2021-22

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1. Overview

Background

Ofcom is the regulator and competition authority for the UK communications industries. We regulate fixed-line and mobile telecoms, TV, radio, video-on-demand services, postal services, UK-established video-sharing platforms and the airwaves used by wireless devices.

We are independent of Government and the companies we regulate, and our duties are set out in statute, making us accountable to Parliament.¹

Our principal duty is 'to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition'.²

About this report

This is Ofcom's first standalone report on whistleblowing disclosures made to Ofcom as the relevant 'Prescribed Person'. Ofcom has been designated as the 'Prescribed Person' for whistleblowing disclosures on matters relating to:

- the provision of electronic communications networks and services and the use of the electromagnetic spectrum;
- broadcasting and the provision of television and radio services;
- media ownership and control; and
- competition in communications markets

This report covers the number of whistleblower disclosures we have received for the period from 1 April 2021 to 31 March 2022.

Ofcom has reported annually on the number of whistleblowing disclosures since the beginning of the 2014-15 financial year in the Ofcom Annual Report and Accounts³.

¹ Ofcom operates under a number of Acts of Parliament including the Communications Act 2003, the Wireless Telegraphy Act 2006, the Broadcasting Acts 1990 and 1996, the Digital Economy Acts 2010 and 2017 and the Postal Services Act 2011.

² Section 3(1) Communications Act 2003.

³ Ofcom has reported no whistleblower disclosures until this financial year, 2021-22.

2. Background

Obligations under the Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 (“PIDA”)⁴ provides legal protection to employees who disclose information in the public interest from being dismissed or penalised by their employer. Ofcom is a ‘Prescribed Person’ under PIDA, which means that individuals may benefit from the PIDA protections by making their whistleblowing disclosure (“WD”) to Ofcom on matters relating to (a) the provision of electronic communications networks and services and the use of the electromagnetic spectrum; (b) broadcasting and the provision of television and radio services; (c) media ownership and control; and (d) competition in communications markets. Individuals may also benefit from the PIDA protections by making their WD to Ofcom on other matters within Ofcom’s remit e.g., postal services and video-sharing platforms (VSPs). We discuss the wider disclosure provisions under PIDA in more detail on page 5. Ofcom has no role in deciding whether the PIDA protections apply (this would be a matter for an Employment Tribunal), and does not become involved in the employment aspects of WDs.

Ofcom has a number of obligations as a Prescribed Person⁵, including an annual reporting obligation, and the requirement to act in a manner that preserves the confidentiality and anonymity of the individual making the disclosure. Often, a whistleblower will want to protect their identity because they feel vulnerable raising the issue with their employer; or perhaps they have already raised the issue internally and they consider that it has not been handled appropriately.

About information we receive

Information about whistleblowing is available on the Ofcom whistleblowing web page⁶ and whistleblowers can make disclosures to Ofcom by an online web form⁷, by email at whistleblower@ofcom.org.uk or by writing to the following address:

Consumer Contact Team (Whistleblowing)
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

We are currently reviewing our processes, and plan to allow whistleblowers to report problems through a new online form on the Ofcom website. We plan to introduce this new process towards the end of 2022.

⁴ [Public Interest Disclosure Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁵ Prescribed Person - Department for Business, Energy & Industrial Strategy – [Schedule 1 of Public Interest Disclosure \(Prescribed Persons\) Order 2014/2418](#)

⁶ [Ofcom-whistleblowing procedure for making a disclosure](#)

⁷ [Ofcom-whistleblowing procedure for making a disclosure](#)

Whistleblowing disclosures help us to regulate the broadcasting and communication sectors. The information we receive can provide valuable information about the relevant organisations and industry sectors that we regulate. This could influence future policy decisions and could lead to an enforcement investigation.

We have various options as how to respond to information provided by whistleblowers. Upon receiving a disclosure from a whistleblower, we will make an initial assessment of whether the disclosure raises concerns about a company's compliance with its regulatory or competition obligations such that Ofcom should investigate further, in line with our Enforcement Guidelines⁸.

There are a range of possible steps/outcomes. We may:

- **seek to gather further information** before reaching a decision on whether to investigate. This may involve contacting the organisation or individual that is the subject of the allegations. We would not disclose the whistleblower's identity or contact details without their consent.⁹
- **decide to open an investigation**. We would follow the normal procedures set out in our Enforcement Guidelines, which include publishing an opening notification on our website. We may decide to open an investigation where we consider the information provided raises credible concerns about a company's compliance with its regulatory or competition obligations.
- **address the allegations without opening a formal investigation**. This may involve writing to the organisation or individual to remind them of any relevant regulatory requirements. In other cases, we can use the information provided by a whistleblower to support other projects and monitoring activities.
- **pass whistleblower information to a more appropriate regulator**, for example if the behaviour relates to a sector Ofcom doesn't regulate.
- **decide not to investigate further**. Ofcom is not legally required to investigate every disclosure received. When deciding whether to investigate, we consider how well we are using the resources at our disposal to protect the public interest.

We do not offer advice to whistleblowers about what protection is offered to them. Whilst we cannot offer legal advice, there are other sources of support, such as:

- [Protect](#), the whistleblowing charity
- [ACAS](#)
- [Citizens Advice](#)
- Whistleblower's own trade union, if a member

The whistleblowing provisions under PIDA protect any 'worker' who makes a 'protected disclosure' of information, from being dismissed or penalised by their employer because of the disclosure. This is enforceable through an Employment Tribunal. Ofcom cannot determine whether a disclosure qualifies for protection or intervene in employment relations. Whistleblowers are advised to seek advice from one of the bodies mentioned above if they have any specific concerns. Whistleblowers may also seek legal advice from a suitably qualified person, such as a solicitor.

⁸ [Ofcom Enforcement Guidelines](#).

⁹ We cannot guarantee anonymity, as an employer may independently identify a whistleblower.

We will treat any information given to us sensitively and responsibly. We will restrict knowledge of a whistleblower's identity to a very small number of people, and we would not divulge that information unless we were legally obliged to do so, for example by a judge in a court of law. But even if we do our utmost to protect a whistleblower's identity, we cannot guarantee anonymity, as an employer may identify them independently.

3. Whistleblowing disclosures

Summary of the 13 disclosures we received in 2021-22:

- 10 whistleblower disclosures
- One disclosure was passed to another Prescribed Person
- Two wider disclosures

Of the 11 whistleblower disclosures:

- one is still being investigated;
- 10 were closed during 2021-22; and
- no enforcement investigations were carried out as a result of a disclosure in 2021-22.

Both of the wider disclosures were closed in 2021-22.

Types of whistleblowing disclosures

Whistleblower disclosures to Prescribed Persons

In order for a disclosure to a Prescribed Person to be protected, the worker making the disclosure must reasonably believe that both:

- The wrongdoing falls within the remit of the Prescribed Person in question; and
- The information disclosed and any allegation contained in it are substantially true.¹⁰

Wider disclosures

The list of matters for which Ofcom is a Prescribed Person does not cover all of Ofcom's regulatory functions. For example, postal services and VSPs are not covered by the scope of the Prescribed Person designation for Ofcom. Ofcom may still accept whistleblowing complaints in respect of such matters under PIDA's wider disclosure provisions.

In order for a wider disclosure to be protected, the worker making the disclosure will also need to show (amongst other things), that they have previously disclosed substantially the same information to their employer or to a Prescribed Person, or they reasonably believed that they would have otherwise suffered a detriment or that material evidence would have been destroyed.¹¹

Whilst the assessment criteria Ofcom must undertake to accept a wider disclosure is different, the protection offered by Ofcom in terms of confidentiality and anonymity is the same as a whistleblower disclosure made to Ofcom in its role as a Prescribed Person. Also, the protections

¹⁰ <https://www.legislation.gov.uk/ukpga/1998/23/section/1>

¹¹ <https://www.legislation.gov.uk/ukpga/1998/23/section/1>

under PIDA for the whistleblower are the same for a wider disclosure as for a disclosure to a Prescribed Person.¹²

Number of whistleblower disclosures

Ofcom received 13 whistleblower cases in 2021-22:

- 10 whistleblower disclosures fell within Ofcom’s scope as a Prescribed Person;
- two wider disclosures fell outside Ofcom’s immediate scope as a Prescribed Person; and
- one whistleblower disclosure was passed to another Prescribed Person.

Protected disclosures

Protected disclosures – action taken

In 2021-22, we received and closed nine whistleblower disclosures. After an initial assessment, each of these cases was closed without requiring engagement with the whistleblower’s employer. One whistleblower disclosure was still being assessed as of 30 April 2022.

Whistleblower disclosure case	Action taken	Whistleblowing disclosures by action taken
Open cases	Ongoing enquiries	1
	Ongoing Enforcement Investigation	0
Closed cases	No Contact with Employer – No Action Required	9
	Direct Contact with Employer – No Further Action after Initial Assessment	0
	Direct Contact with Employer – Further Action Taken after Initial Assessment but no enforcement action	0
	Enforcement Investigation – No regulatory breach found	0
	Enforcement Investigation – Regulatory breach found	0
TOTAL		10

¹² To be treated as a ‘protected disclosure’ under PIDA, whistleblowing disclosures (whether they are made to a Prescribed Person and under PIDA’s wider disclosures provisions), will need to qualify for protection. Qualifying disclosures are defined in section 43B of PIDA (<https://www.legislation.gov.uk/ukpga/1998/23/section/1>).

Protected disclosures by industry sector

Of the ten protected whistleblower disclosures we received in 2021-22, nine originated from the telecoms sector and one from the broadcasting sector.

	Whistleblowing disclosures by sector
Broadcasting	1
Spectrum	0
Telecoms	9
TOTAL	10

Number of wider disclosures

We received two wider whistleblowing disclosures in 2021-22, one relating to the postal sector and one relating to VSPs.

Wider disclosures – action taken

In 2021-22, we received and closed two wider disclosures. After an initial assessment one case was closed without requiring engagement with the whistleblower’s employer and the other case was closed after engaging with the whistleblower’s employer.

Wider disclosure case	Action taken	Wider disclosures by action taken
Open cases	Ongoing enquiries	0
	Ongoing Enforcement Investigation	0
Closed cases	No Contact with Employer – No Action Required	1
	Direct Contact with Employer – No Further Action after Initial Assessment	1
	Direct Contact with Employer – Further Action Taken after Initial Assessment, but no enforcement action	0

Wider disclosure case	Action taken	Wider disclosures by action taken
	Enforcement Investigation – No regulatory breach found	0
	Enforcement Investigation – Regulatory breach found	0
TOTAL		2

Wider disclosures by industry sector

One wider disclosure was from the postal sector and the other was from the VSP sector.

	Wider disclosures by sector
Postal services	1
Video-sharing platforms	1
TOTAL	2

Number of whistleblower disclosures passed to another Prescribed Person

We received one whistleblower disclosure in 2021-22 that we identified as being within the financial services industry. We passed this disclosure to the Financial Services Authority.

4. Conclusion

Whistleblowing disclosures can be an important source of information that supports our primary duty “to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition”.

This report shows that in the 2021-22 financial year, we carried out a number of assessments on whistleblower and wider disclosures. We did not open an enforcement investigation or take specific action against an employer. However, we will use the information provided to make more informed policy decisions, and, where appropriate, take enforcement action in the future.