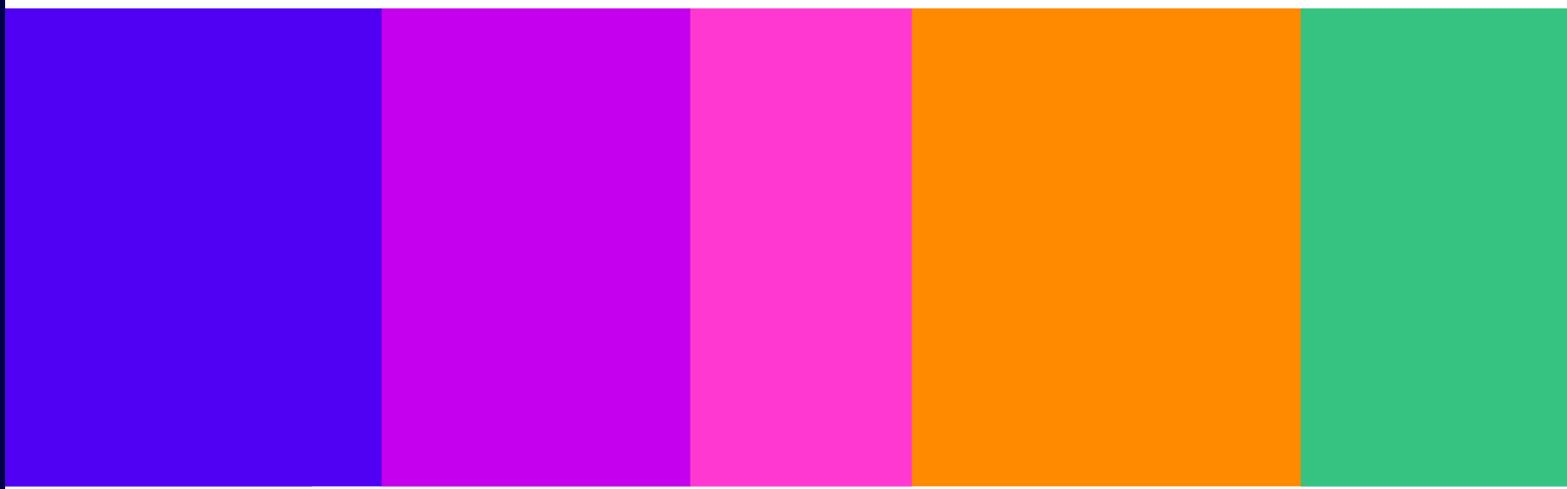


# Annual whistleblowing report 2022-23

---

Ofcom's approach to managing external whistleblowing disclosures and a summary of disclosures in 2022-23

Published 21 September 2023



# Contents

---

## Section

Overview .....	3
Background .....	4
Whistleblowing disclosures .....	7
Conclusion .....	11

# Overview

## About this report

---

This is Ofcom's second 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 electro-magnetic spectrum;
- broadcasting and the provision of television and radio services;
- video-sharing platforms;
- postal 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 2022 to 31 March 2023. In total, we received 50 whistleblower disclosures. Of these, 40 were whistleblower disclosures (one case was carried forward from the previous year) and 10 were wider disclosures. We go into these in more detail beginning on page 7.

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 Accounts.

## About Ofcom

---

Ofcom is the regulator and competition authority for the UK communications industries. We regulate fixed-line and mobile telecoms, TV and radio broadcasting, 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.<sup>1</sup>

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'.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> [Communications Act 2003, Section 3\(1\)](#).

# Background

## Obligations under the Public Interest Disclosure Act 1998

---

The Public Interest Disclosure Act 1998 (“PIDA”)<sup>3</sup> 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. This means that people 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;
- (d) competition in communications markets;
- (e) video-sharing platforms (VSPs) (since 4 January 2023); and
- (f) postal services (also since 4 January 2023).

People may also benefit from the PIDA protections by making their WD to Ofcom on other matters within Ofcom’s remit e.g., on postal services and VSPs made prior to 4 January 2023. We discuss the wider disclosure provisions under PIDA in more detail below and on page 7. 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 several obligations as a Prescribed Person,<sup>4</sup> 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.

### Wider disclosures

The list of matters for which Ofcom is a Prescribed Person does not necessarily cover all of Ofcom’s regulatory functions. Matters which fall outside of the scope of Ofcom’s obligations as a Prescribed Person may still be assessed by Ofcom as Wider Disclosures if they are within Ofcom’s remit.

Until January 2023, postal services and VSPs were not covered by the scope of the Prescribed Person designation for Ofcom. Ofcom liaised with the government department for Business, Energy and Industrial Strategy (BEIS) to amend the statutory instrument which designates Ofcom’s remit as a Prescribed Person to include postal services and VSPs. On 4 January 2023, this amendment came into effect and disclosures in the postal services and VSP sectors were counted as protected

---

<sup>3</sup> [Public Interest Disclosure Act 1998](#).

<sup>4</sup> Prescribed Person - Department for Business, Energy & Industrial Strategy – [Schedule 1 of Public Interest Disclosure \(Prescribed Persons\) Order 2014/2418](#).

disclosures from this date onwards.<sup>5</sup> We discuss the wider disclosure provisions under PIDA in more detail on page 7.

## About information we receive

---

Information about whistleblowing is available on the Ofcom whistleblowing web page<sup>6</sup> and whistleblowers can make disclosures to Ofcom by an online web form,<sup>7</sup> by telephone, or by writing to the following address:

Consumer Contact Team (Whistleblowing)  
PO Box 1285  
Warrington  
WA1 9GL

0300 123 3333 or 020 7981 3040

Whistleblowing disclosures help us to regulate the sectors that fall within our scope. The information we receive can provide valuable insight into the relevant organisations and the industry sectors in general. This could influence future policy decisions and could lead to an enforcement investigation.

We have various options for 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 Guidelines.<sup>8</sup>

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.<sup>9</sup>
- **decide to open an investigation.** We would follow the normal procedures set out in our Enforcement Guidelines, which includes publishing an opening notification on our website. We may decide to open an investigation where we believe that 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.

---

<sup>5</sup> [Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) \(No. 2\) Order 2022.](#)

<sup>6</sup> [Ofcom, Whistleblowing procedure for making a disclosure.](#)

<sup>7</sup> [Ofcom, Whistleblowing procedure for making a disclosure.](#)

<sup>8</sup> [Ofcom Enforcement Guidelines.](#)

<sup>9</sup> We cannot guarantee anonymity, as an employer may independently identify a whistleblower.

- **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. While we cannot offer legal advice, there are other sources of support, such as:

- [Protect](#), the whistleblowing charity;
- [ACAS](#);
- [Citizens Advice](#); and
- The 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 should 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.

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. However, even if we do our utmost to protect a whistleblower's identity, we cannot guarantee anonymity, as an employer may identify them independently.

# Whistleblowing disclosures

## Summary of the 50 disclosures we received in 2022-23:

- 40 whistleblower disclosures;
- 10 wider disclosures; and
- no disclosures were passed to another Prescribed Person.

Of the 40 whistleblower disclosures:

- 1 was carried forward from the previous year, and was still being assessed at the end of the year;
- 4 were still being assessed at the end of the year;
- 36 were closed during 2022-23; and
- no enforcement investigations were carried out as a result of a disclosure in 2022-23.

All of the wider disclosures were closed in 2022-23.

## Types of whistleblowing disclosures

---

### Whistleblower disclosures to Prescribed Persons

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.<sup>10</sup>

### Wider disclosures

The list of matters for which Ofcom is a Prescribed Person does not necessarily cover all of Ofcom's regulatory functions.

Prior to 4 January 2023, postal services and VSPs were not covered by the scope of the Prescribed Person designation for Ofcom, until an amendment to secondary legislation came into force on 4 January 2023.<sup>11</sup> We accepted whistleblowing complaints in respect of such matters (postal services and VSPs) under PIDA's wider disclosure provisions until this date. After 4 January 2023 we accepted these disclosures as whistleblower disclosures.

For a wider disclosure to be accepted, the worker making the disclosure will also need to show (among 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.<sup>12</sup>

---

<sup>10</sup> [Public Interest Disclosure Act 1998, Section 1.](#)

<sup>11</sup> [Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) \(No. 2\) Order 2022.](#)

<sup>12</sup> [Public Interest Disclosure Act 1998, Section 1.](#)

While 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 under PIDA for the whistleblower are the same for a wider disclosure as for a disclosure to a Prescribed Person.<sup>13</sup>

## Number of whistleblower disclosures

---

Ofcom received 50 whistleblower cases in 2022-23:

- 40 whistleblower disclosures fell within Ofcom’s scope as a Prescribed Person;
- 10 wider disclosures fell outside Ofcom’s immediate scope as a Prescribed Person; and
- no whistleblower disclosures were passed to another Prescribed Person.

## Protected disclosures

### Protected disclosures – action taken

In 2022-23, we received 40 whistleblower disclosures and closed 36. After an initial assessment, the majority (34) of these cases were closed without requiring engagement with the whistleblower’s employer. Four whistleblower disclosures were still being assessed as of 31 March 2023.

Whistleblower disclosure case	Action taken	Whistleblower disclosures by action taken
<b>Open cases</b>	Ongoing enquiries	4
	Ongoing Enforcement Investigation	0
<b>Closed cases</b>	No contact with employer – no action required	10
	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	2
	Active Monitoring	24
	Enforcement Investigation – no regulatory breach found	0
	Enforcement Investigation – regulatory breach found	0
<b>TOTAL</b>		40

---

<sup>13</sup> 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 1998](#).

## Protected disclosures by industry sector

Of the 40 protected whistleblower disclosures we received, 26 originated from the postal sector, 13 originated from the Communications sector, one of which fell under Ofcom’s concurrent competition law powers, and one originated from the broadcasting sector.

Sector	Whistleblowing disclosures by sector
Broadcasting	1
Communications	13
Spectrum	0
Post	26
Video Sharing Platforms	0
<b>TOTAL</b>	<b>40</b>

## Number of wider disclosures

We received 10 wider disclosures in 2022-23, all from the postal sector.

## Wider disclosures – action taken

In 2022-23, we received and closed 10 wider disclosures. After an initial assessment, all cases were closed without requiring direct engagement with the whistleblower’s employer.

Wider disclosure case	Action taken	Wider disclosures by action taken
<b>Open cases</b>	Ongoing enquiries	0
	Ongoing Enforcement Investigation	0
<b>Closed cases</b>	No Contact with employer – No action required	0
	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
	Active monitoring	10
	Enforcement Investigation – No regulatory breach found	0
	Enforcement Investigation – Regulatory breach found	0
<b>TOTAL</b>		<b>10</b>

## Wider disclosures by sector

All wider disclosures were from the postal sector. All these wider disclosures preceded the amendment to secondary legislation which came into force on 4 January 2023.

Sector	Wider disclosures by sector
Postal services	10
Video Sharing Platforms	0
<b>TOTAL</b>	10

## Number of whistleblower disclosures passed to another Prescribed Person

We received no whistleblower disclosure in 2022-23 that we identified as being appropriate to pass onto another Prescribed Person.

## Conclusion

Whistleblowing disclosures can be an important source of information that supports our principal duty ‘to further the interests of citizens and consumers in relation to communications matters, where appropriate by promoting competition’.<sup>14</sup>

In the 2022-23 financial year, Ofcom’s designation as a Prescribed Person expanded to include postal services and VSPs. Looking forwards, should Ofcom’s regulatory remit extend into other sectors, for example with the passing of the Online Safety Bill, we anticipate we may request further amendment to the statutory instrument to include new sectors within Ofcom’s designation as a Prescribed Person.

We received multiple whistleblowing and wider disclosures against a single issue for the postal sector in the 2022-23 financial year. This single issue impacted the reporting figures for this sector.

This report shows that during the 2022-23 financial year we carried out several assessments on whistleblower and wider disclosures. We did not open an enforcement investigation or take specific action against an employer. However, we use the information provided to make more informed policy decisions, and, where appropriate, take wider enforcement action.

---

<sup>14</sup> [Ofcom’s Plan of Work 2023–24](#), para.3.1.