

# Report

## Annual Whistleblowing Report 2020-2021

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This is our fourth annual Whistleblowing Report<sup>1</sup>, about disclosures made to us, as the relevant Prescribed Person, by workers in the gas and electricity market. Further detail on the types of disclosures that can be made to us are outlined in [the Public Interest Disclosure \(Prescribed Persons\) Order 2014](#). This report summarises the number of qualifying disclosures received and how they were taken forward in the relevant reporting period from 1 April 2020 to 31 March 2021.

The purpose of this report is to increase openness in the way that whistleblowing disclosures are dealt with and to raise confidence among whistleblowers that their disclosures are taken seriously.

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<sup>1</sup> As required by Regulation 3 of the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017

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## 1. Introduction

### Background

#### Ofgem's objectives and functions

- 1.1. Ofgem is the Office of Gas and Electricity Markets. We are a non-ministerial government department and an independent National Regulatory Authority, recognised by certain EU legislation. We are the economic regulator for gas and electricity markets in Great Britain.
- 1.2. Our principal objective when carrying out our functions is to protect the interests of existing and future electricity and gas consumers. We do this in a variety of ways including:
  - promoting value for money
  - promoting security of supply and sustainability, for present and future generations of consumers, domestic and industrial users
  - the supervision and development of markets and competition
  - regulation and the delivery of government schemes.
- 1.3. The Authority determines strategy, sets policy priorities and makes decisions on a wide range of regulatory matters, including price controls and enforcement. The Authority's powers are provided for under a number of statutes including the following:
  - Gas Act 1986
  - Electricity Act 1989
  - Utilities Act 2000
  - Competition Act 1998
  - Enterprise Act 2002

- The Electricity and Gas (Market Integrity and Transparency) (Enforcement etc) Regulations 2013 which enables Ofgem to monitor, investigate and enforce against market abuse in the wholesale market for electricity under EU Regulation on energy market and integrity and transparency No 1227/2011 (REMIT)
- measures set out in a number of Energy Acts.

### **About information we receive**

- 1.4. Disclosures can be made to Ofgem in writing (either by e-mail or letter) or by calling our whistleblowing desk. Further information on our whistleblowing process is available via this [link](#)
- 1.5. The information we receive helps us achieve our objectives (including our principal objective) and can provide us with an early indication of future issues. For example, we may be able to direct resources and tackle issues before they escalate and become more serious or widespread. Alternatively, the disclosures may provide useful information and insight about an issue that we are already aware of and may be currently investigating.
- 1.6. Disclosures help deliver our objectives and regulate the gas and electricity market effectively. A qualifying disclosure (see section 2) can provide valuable intelligence about areas where there may be problems and can inform our regulatory actions. All qualifying disclosures are taken seriously and are given due attention. There are a number of measures we can deploy to regulate effectively and can involve the use of our statutory powers. For example:
  - where licensees are potentially breaching licence conditions we may choose to open an enforcement investigation or engage in compliance activities. This helps us achieve our principal objective of protecting the interests of all energy consumers. It can also help us achieve our other objectives, depending on the nature of the potential breach.
  - where there are potential abuses of government schemes we may choose to investigate, and/or to report criminal behaviour to a relevant law enforcement authority. Through this we are able to promote value for money and safeguard the integrity of the schemes.

- we may investigate potential anti-competitive behaviour using our statutory powers under the Competition Act 1998. This helps us ensure the energy market is working effectively.

## 2. Disclosures

### About disclosures

Ofgem receives information from members of the public who raise a genuine concern about certain practices that they are aware of through their work, which they believe may constitute a criminal offence, a risk to the health and safety of a person or persons, pose a risk to the environment or a potential breach of a regulatory requirement and which affects others, usually customers, members of the public, or their employer.

On receipt of any information, we will consider whether the information falls within the definition of qualifying information, and if so, what action Ofgem should take bearing in mind its statutory duties and powers.

## Disclosures

### Number of qualifying disclosures received

- 2.1. A total of 44 qualifying disclosures<sup>2</sup> were made to Ofgem by workers in the gas and electricity energy sector in the period 1 April 2020 to 31 March 2021. This figure is a drop of around a third on the previous reporting period.
- 2.2. Our general observations over the last reporting period are broadly similar to those in previous periods. If the observations are thereafter acted on it will also improve our ability to assess what action (if any) to take on the information provided.
- 2.3. We continued to receive disclosures that contained insufficient information to act and where whistleblowers provided no contact details, or were unresponsive to requests for further information. We would encourage whistleblowers to provide contact details where possible and respond to any requests we may have for further information. Such requests can be responded to via e-mails on an anonymous basis if required. However passing information on an anonymous basis may make it difficult for us to

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<sup>2</sup> As defined in section 43B of the Employment Rights Act 1996. Section 43B was inserted by the Public Interest Disclosure Act 1998 c.23, s 1 and amended by section 17 of the Enterprise and Regulatory Reform Act 2013

link particular disclosures to individuals should the need arise in future; for example in an employment or legal dispute. Information that assists us to act are details on what is happening and where, who is responsible, why the situation has occurred, who is aware of the situation, what action is being taken to address the situation and lastly what detriment or harm is being caused. It is also helpful to know why you have decided to pass this information to us rather than raise internally.

- 2.4. We reiterate that we do not expect or encourage whistleblowers to obtain evidence of wrongdoing as the acquisition of such evidence may (in some circumstances) expose whistleblowers to risk including civil and/or criminal liability. We do have information gathering powers and may explore in follow up conversations with whistleblowers what information would be available to us if we chose to exercise those powers.
- 2.5. Where we do not have the power to act on the information provided we will endeavour to signpost whistleblowers to the correct prescribed body. This can only be achieved if contact details are provided. We would highlight there are situations where we could deem the matter serious enough to pass onto a third party directly. We also may be asked, compelled or obliged to provide disclosures to third parties to enable them to perform their functions. These parties could include other regulators and law enforcement bodies for example. If that situation arises we may contact a whistleblower to inform them that their information is being passed on. That may include any contact details we have, even if a whistleblower has requested that their details remain confidential. Further information on this is available via our Whistleblowing Policy and Ofgem's Privacy Policy which are on our website. Therefore we would strongly advise any potential whistleblower to read both policies before making a disclosure to us and be comfortable with the potential outcomes.
- 2.6. We do not provide legal advice on the legal status or definition of whistleblowers or any other aspect of employment law. We would advise those making disclosures (or considering making a disclosure) to seek independent legal advice if such guidance is required<sup>3</sup>.

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<sup>3</sup> Further details can be found in our whistleblowing guidance

- 2.7. There are legal constraints that prevent us providing updates to whistleblowers on the status of our enquiries. Therefore ongoing dialogue with whistleblowers is unlikely to be appropriate once the initial disclosure has been finalised.

## Outcomes

2.8. This table shows what actions were taken and the outcomes for the 44 qualifying disclosures<sup>4</sup> made during the period 1 April 2020 to 31 March 2021.

Action taken	Outcome	Total
Led to direct contact with employer	Led to enforcement / compliance action	5
Led to direct contact with employer	Resolved at first contact	13
Led to direct contact with employer	Resolved but not at first contact	0
Led to direct contact with employer	Ongoing contact with employer	12
Did not lead to contacting employer	Held as intelligence <sup>5</sup>	10
Did not lead to contacting employer	No further action – no breach	2
Ofgem already had ongoing enquiries and was aware of the information the whistleblower had provided but the employer was not yet the subject of any formal investigation or compliance action	Ongoing enquiries	0
Considered as part of ongoing investigation /compliance action	Ongoing investigation / compliance activities	0
Background enquiries still ongoing	Ongoing enquiries	2
Referred to another body <sup>6</sup>	Action completed	0

<sup>4</sup> All disclosures in the table were external ie they were made by workers in the energy sector to Ofgem. There was one internal disclosure made to Ofgem by its staff in the reporting period

<sup>5</sup> This is where there is insufficient evidence of breach, consumer harm or detriment in the disclosure that would warrant further action

<sup>6</sup> This includes where Ofgem forwards directly and also where the whistleblower is advised to contact another body

### 3. Conclusion

- 3.1. Ofgem's statutory function is to protect and make a positive difference for all energy consumers. We work to promote value for money, security of supply and sustainability for present and future generations. We achieve this by supervising and developing markets, regulation and delivery of government schemes. The information provided by whistleblowers can highlight problems in our areas of responsibility and we can react to the information provided. A whistleblowing disclosure can be an influential factor in any decision to exercise our range of statutory powers to ensure we fulfil our statutory functions.
- 3.2. The table of outcomes shows that whistleblowing disclosures which are deemed to be qualifying disclosures have led to a number of different actions. These include the timely resolution of issues without the need for enforcement action, highlighting issues that warranted enforcement and/or compliance action and providing useful intelligence on emerging issues. The information provided in some disclosures highlighted problems within our functional areas and were able to act accordingly. For example using the disclosure to focus research, establish trends and use our statutory powers to obtain further information from licensees.
- 3.3. Ofgem values the information provided by whistleblowers and the content of this report provides greater transparency regarding how we act on the information we receive. All qualifying disclosures are taken seriously and will be investigated. The nature of the enquiries we make are tailored to the facts of each specific disclosure.