



OUR POWER

Demand Briefing Paper

95% of 1092 offshore workers surveyed support this demand

EFFECTIVE AND TRUSTED GRIEVANCE AND WHISTLEBLOWING PROCEDURES

SUMMARY

Working offshore is a high-risk job, whether in wind, oil or gas. Prioritisation of profit over everything has led to an environment where low level reporting of issues is encouraged as a tick box exercise, while workers face reprimands for pointing out more serious issues that

may stop production. The offshore energy industry needs trusted grievance and whistleblowing policies, where workers are able to highlight problems freely without negative consequences, as well as a health and safety body and a regulator that has not been captured by the profit motive.

“ If you raise a complaint you’ll just get NRB’d. Blacklisting still happens. I used to be a spokesperson for the group and got stood down, put on standby. [On one job], two scaffolders were representatives for the workers and they got taken off the rig. ”

– Francis, Plater

CONTEXT

Offshore sites are high risk environments, health and safety breaches can be life threatening or result in serious environmental damage.¹ Workers are the eyes and ears of offshore sites; they are likely the first to spot health and safety risks before they deteriorate or lead to accidents. It is vital that offshore workers feel safe to raise concerns when they arise and that offshore companies listen and act on these concerns. However, offshore workers reported that they were expected to participate in safety procedures in a tokenistic way, but not to report genuine issues.²

“ [We were] forced to put in cards to log safety concerns even if you haven’t seen anything...Have to put the cards in to show you are participating in the safety culture. ”

– Michael, Assistant Driller

“ ...but if you have an actual concern about safety you get ignored. ”

– Phil, Marine Technician

This briefing paper forms part of a collection of resources on **Our Power: Offshore workers’ demands for a just transition**. A full report detailing the 10 demands created by offshore workers is available to read online and contains technical information, costs and a complete series of recommendations for decision makers.

A methodology paper is also available for more information on how the demands were created.

To protect their anonymity, all the names of workers quoted have been changed.

1 Offshore Drilling in the North Sea - National Whistleblower Center (whistleblowers.org), North Sea oil spills reach record high | HeraldScotland, BBC ON THIS DAY | 27 | 1965: Sea Gem oil rig collapses

2 Based on comments made by offshore workers at Platform and FOE Scotland workshops.

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“ I wrote on a hotcard form [i.e. safety issue report form] that the fire plan needed to be changed because of an error ... The next day the main guy came down and said ‘show me where’ so I showed him and he just took a sharpie and said ‘here it’s fixed,’ even though the plan was the same everywhere else. Then someone said to me ‘don’t ever put a hotcard in against a vessel again.’ So I just don’t bother anymore ... Folk fill out forms saying ‘thanks very much for the food, it was lovely.’ ”

– Brandon, Survey Engineer

Participants in the workshops reported that workers had been victimised and issued a Not Required Back status for raising concerns (i.e. unable to return to work as a contractor for the same employer)³, despite North Sea oil and gas companies having publicly committed to root out blacklisting practices.⁴

This type of treatment can have a chilling effect on whistleblowing. Many workers do not feel safe raising concerns, creating a risk to the health and safety of all offshore workers.

UK law protects workers from being dismissed or victimised when they blow the whistle.⁵ But this protection does not apply to self-employed or off-payroll workers, which constitute the majority of the offshore workforce.⁶ Nor does it apply outside UK territorial waters, which excludes any worker working on the UK Continental Shelf but outside the territorial waters and without a UK based employment contract.

There is no legal or regulatory requirement on offshore companies to have whistleblowing policies, to investigate concerns, or to train managers on how to respond to whistleblowing.

Workshop participants also reported that the raising of a grievance, particularly a collective grievance, could lead to negative treatment, even in cases where the grievance was upheld. In the UK, there is no specific law to ensure grievances are handled correctly and protect employees during the process. The ACAS statutory Code of Practice provides employers with basic practical guidance and a set of principles for handling grievances.⁷ More detailed guidance is available in the ACAS non-statutory Guide. But there is no mechanism to hold employers accountable when they fail to follow the ACAS Code or Guide.⁸

UK legislation (including the Employment Rights Act and the Public Interest Disclosure Act) should be amended to ensure that on-payroll, off-payroll and self-employed workers have legal recourse to protection as whistleblowers, protection against blacklisting, and protection against detrimental treatment in case of a grievance. Employers should be legally mandated to have whistleblowing and grievance procedures in place, in line with statutory ‘codes of practice’.

Truly independent regulators should oversee whistleblowing and grievance procedures, monitor victimisation and take enforcement action.

³ Based on comments made by offshore workers at Platform and FOE Scotland workshops.

⁴ <https://www.offshore-energy.biz/httpwww-worldmaritimenews-comarticleoffshore12665offshore-blacklisting-to-be-ended>

⁵ Employment Rights Act 1996 (ERA), as amended by the Public Interest Disclosure Act 1998 (PIDA)

⁶ Oil-Gas-Workers-Report.pdf (platformlondon.org)

⁷ <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html>

⁸ <https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work>

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PATHWAY

THE UK GOVERNMENT SHOULD:

- Task the Health and Safety Executive to have oversight of employers' whistleblowing arrangements.
- Identify an appropriate independent third party /regulator, such as ACAS, and provide it with the power to intervene and fine companies whose grievance arrangements are in breach of the ACAS Code of Practice. The body should also have the power to monitor victimisation of employees who raise a grievance and should be able to take enforcement action where this occurs such as making orders and issuing fines.
- Employers should be required to provide regular reports to the regulator on the number of grievances received and the number that are upheld.
- Grievance appeals should be handled by an independent third party.

ACAS SHOULD:

- Expand its Code of Practice to cover collective grievances.

THE RELEVANT REGULATORS (POTENTIALLY HSE AND ACAS) SHOULD:

- Integrate whistleblower support into their functioning on the level of strategy.
- Actively engage workers and trade unions in the drafting of whistleblowing and grievance guidance and procedures.
- Train trade union representatives in whistleblowing law and procedures so that they can assist workers to raise concerns safely and effectively.
- Actively collaborate with trade unions in whistleblower protection and assistance.

THE UK PARLIAMENT SHOULD:

- Legislate to make the following changes to Public Interest Disclosure Act and the Employment Rights Act 1996 (ERA):
 - Expand the scope to ensure whistleblowing rights and the right to protection against dismissal or detrimental treatment as the result of raising a grievance. This should apply to all offshore workers in UK Continental Shelf, including self-employed and off-payroll workers and job applicants (to protect against blacklisting), as well as trade union representatives who facilitate the raising of concerns.
 - Place a legal obligation on employers to have whistleblowing procedures in place and to conduct whistleblowing investigations in line with statutory rules or a statutory 'code of practice', through the expanded PIDA.
 - Create powers for a regulator to require the offshore energy industry to have effective whistleblowing and grievance arrangements, to monitor whistleblower victimisation and take enforcement action where an employer appears to have allowed or engaged in whistleblower victimisation, or failed to introduce whistleblowing arrangements. These regulatory powers could sit with the Health and Safety Executive (HSE).

THE SCOTTISH GOVERNMENT SHOULD:

- Use Crown Estate leasing auction conditions and any public funding instruments under its control to require participating employers in the offshore energy sector to have whistleblowing procedures in place covering employees, self-employed and off-payroll workers, to conduct whistleblowing investigations in line with a Code of Practice, and to have a grievance procedure that follows the ACAS Code and Guide.
- Institute a National Offshore Whistleblowing Officer position, similar to that in place in NHS Scotland,⁹ to act as a source of support for workers raising concerns in the sector where concerns are not resolved internally by an employer.

⁹ <https://inwo.spsso.org.uk>

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Legislative and regulatory reform must be coupled with cultural change within offshore companies:

EMPLOYERS SHOULD:

- Understand the important role whistleblowers have to play as an 'early warning' system that can protect business, livelihoods and lives.
- Provide all workers periodic training on how to raise concerns, and their rights in doing so.
- Engage workers and trade unions in developing organisational whistleblowing policies.
- Ensure that managers receive training on how to respond to whistleblowing concerns and how to prevent victimisation.
- Complete a victimisation risk assessment for every worker who raises concerns. Where a risk of victimisation is identified a plan should be created to minimise this risk. This should be monitored by the relevant regulator.
- Regularly check-in with the worker throughout a whistleblowing investigation.
- Provide a clear and consistent message, across all levels of the organisation, that concern raising is encouraged. Evidence this by listening and acting when concerns are raised and disciplining those that victimise whistleblowers.
- Introduce a system of whistleblowing advocates at all levels of the organisation, including very senior roles, to provide whistleblowers practical assistance and pastoral support.

COSTS

Regulators will need extra funding to ensure they have the resources for extra oversight and enforcement powers, as well as to provide training. The amount of funding would depend on the scope of the expanded powers in relation to whistleblowing and grievances i.e. whether these only apply to offshore energy (oil, gas and renewables), a wider list of sectors, or across the economy, but is likely to be on a scale of tens of millions of pounds.

Employers will need to fund training programs for both managers and workers, which will carry upfront costs and is dependent on the size of the workforce. This could also be argued to be cost neutral given the ability of whistleblowers to detect fraud and accidents early.

HAS THIS BEEN DONE ELSEWHERE?

The EU Whistleblowing Directive has improved protection to whistleblowers across the European Union, including protection to self-employed workers, job applicants and trade unions who "facilitate" whistleblower reports. Employers are required to maintain whistleblower confidentiality and provide feedback within 3 months to the whistleblower. Regulators are required to provide an impartial person to maintain communication with the whistleblower.¹⁰

France implemented the directive and provided enhanced protection to whistleblowers including the right to financial assistance for whistleblowers in certain circumstances and harsher punishments for whistleblower victimisation.¹¹

10 EUR-Lex - 32019L1937 - EN - EUR-Lex (europa.eu), EU Whistleblowing Directive: What's changing and how to be compliant? - Protect - Speak up stop harm (protect-advice.org.uk)

11 EU Whistleblowing Monitor, France goes above and beyond for whistleblowers #separator_saProtect (protect-advice.org.uk)

12 See also the Independent National Whistleblowing Officer in Scotland's NHS and the Civil Aviation Authority through their 'Just Culture rules' for more for other examples of regulators who take an active interest in whistleblowing arrangements.

13 18.pdf (fca.org.uk)

14 Silence in the City 2 | Protect - Speak up stop harm (protect-advice.org.uk)

15 Directorate General Control on Social Legislation - Federal Public Service Employment, Labour and Social Dialogue (belgium.be), Belgium (ilo.org)

The Financial Conduct Authority (FCA) - the regulator overseeing financial services firms and markets - is a good example of an active regulator requiring those they regulate to have whistleblowing arrangements, including a whistleblowing policy, procedures, and board level oversight.^{12,13} These rules led to a considerable increase in the number of whistleblowers willing to raise concerns internally with their employers, according to Protect research.¹⁴

In Belgium the Social Legislation Inspectorate is a regulator able to inspect and monitor employers' compliance with labour laws and collective agreements, as well as to provide information to employers, workers, and trade unions. If it is found that an employer has failed to comply with labour law the inspectorate is able to impose penalties such as fines.¹⁵

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CASE STUDY



Pseudonym: **Ryan**

Age: **40**

Job Title: **Offshore Steward**

Location: **Aberdeenshire**

I've seen some really unpleasant things happen to people who file grievances. There was a group of people who had gone on crucial safety training, and then found out they were eligible for pay during the days they were on training, so made claims for backdated pay. The company just weren't paying up, and were disputing what they owed, so the guys filed a grievance with union backing - it had disastrous consequences.

When you're a steward [in the services department], sometimes they downman people if the number of crew onboard drops down - you only need so many stewards per person. Usually it operates on a last in, first out basis. Well, after those guys filed the grievance, at the meeting the next morning the camp boss [head steward] went on a 15-20 minute rant about how angry he was, named and shamed the people who raised the grievance, said they weren't team players, accused them of valuing a few hundred quid in their pocket over people's jobs - essentially saying that if anyone got downmanned it was their fault.

It was intimidating, aggressive and poorly managed - I couldn't believe what I was seeing. These are meant to be confidential issues and it was really clear this was just the beginning. The boss said that, even though some of these guys weren't the last in, when they next had to downman he would

use whatever influence he had to make sure the "team players" were picked. It was obvious what he was talking about.

Since then one of the guys ended up on a year of night shifts - usually it's only meant to be one or two trips maximum, especially as a steward where fatigue is a huge issue. Another one got down-manned and basically told he should look for a job elsewhere, even though he had a contract. They just didn't give him any trips out. Another of the guys was so scared he pulled out of the union - so I guess the bosses got what they wanted.

People are definitely reluctant to file grievances on our installation now after we all saw that, and I think it's the same elsewhere. It's a culture of fear, people don't generally speak up or confront anything or anyone. This obviously benefits management and the company as a whole because then they don't have things tarnishing their reputation. If they can keep us in a state of fear the whole time, we'll just suck it up and won't put in grievances. The only way I can see grievances working is if it would be conducted through an external institution or body.

I don't know if there is a similar culture in offshore wind. But I can say for sure that if my company is operating in offshore wind, then there definitely is.