UKRIO
RESEARCH INTEGRITY OFFICE

Promoting integrity and high ethical standards in research
Providing confidential, independent and expert support

Whistleblowing and Breaches of Good Research Practice

Guidance on the intersection between raising breaches of good research practice and UK Whistleblowing law

Co-authored jointly by UKRIO and Protect

Protect
Speak up, stop harm

Version No.: 03

Publication Date: 9/10/2024

DOI: https://doi.org/10.37672/UKRIO.2024.04.whistleblowingandbreaches

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Foreword

From informing policy to influencing investment and driving advances in healthcare, technology, and beyond, research shapes the world around us and our quality of life now and into the future. That is why the integrity of research is so critical – and why it is essential that research employers and employees alike have a strong understanding of the UK's whistleblowing legislation and protections therein.

Our mission at UKRIO is to promote honesty, rigour, transparency and accountability in research, while Protect stands at the forefront of advocating for the rights and protections of whistleblowers. By working together to produce this guidance, we hope to help those working in a research environment better understand public interest disclosures, associated protections, and good practice.

It is our shared belief that when individuals step forward to report potential breaches in good research practice, they contribute not only to the integrity of their own work but also to the broader research community and to society at large. But as UKRIO's recent report *Barriers to Investigating and Reporting Research Misconduct* found, a lack of clarity and confidence in the relevant procedures as well as fears of stigma, reprisal, or reputational risk can prevent concerns from being reported or appropriately investigated.

This guidance aims to shed light on whistleblowing legislation in the context of the research environment, outline the protections available under the Public Interest Disclosure Act, and empower potential whistleblowers – and those responsible for addressing these concerns – with the knowledge they need to make informed decisions.

We encourage researchers and research employers to engage with this report, to understand the significance of integrity in their work, and to recognise that raising and addressing concerns is fundamental to the advancement of knowledge. Together, we can foster a culture of openness and accountability, ensuring that research is conducted ethically and responsibly.

Yours sincerely,

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1. Purpose of the Guide

In common with many countries, the UK has a law protecting whistleblowers from retaliation in particular circumstances. This guidance sets out what and who are covered by UK whistleblowing law, with reference to raising concerns about breaches of research conduct in the academic setting. It seeks to clarify when reporting alleged research misconduct might be covered by legislation.

This guidance has been prepared jointly by UKRIO and Protect, the Whistleblowing charity, and is intended to inform those considering making a disclosure, as well as research integrity officers and the academic community more generally.

It is not a guide to reporting research misconduct, nor is it legal advice. If you wish to be sure that what you are planning to do is covered by UK whistleblowing law, then please seek legal advice. For a guide to reporting research misconduct, please see UKRIO's guidance on reporting.

Readers will also find UKRIO's recent report: 'Barriers to investigating and reporting research misconduct' of interest in this context. Taking forward the recommendations from this report to advocate for an open research culture which destigmatises research misconduct is and will continue to be a key priority in UKRIO's work programme.

2. The UK's whistleblowing legislation

What law covers Public Interest Disclosure?

Whistleblowing/public interest disclosures in the UK are dealt with by law which sits within employment law. The Public Interest Disclosure Act 1998 creates employment right protection for whistleblowers within the Employment Rights Act 1996.

This legislation makes it unlawful to dismiss or victimise workers for speaking up. The law protects workers across both public and private sectors who make '**protected disclosures**.'

A protected disclosure has three main elements to it:

- You must provide information of a concern that you reasonably believe shows a category of wrongdoing set out in the law;
- You must reasonably believe that the concern is in the public interest;
- You must raise your concern in accordance with the law - either internally to your employer or externally to an outside body.

Only a judge - in the Employment Tribunal or Appellate Court - can ultimately determine with certainty what is and is not a 'protected disclosure.' There is always a measure of legal uncertainty as to whether public interest protections will apply. However, by understanding how the law functions – as well as what its shortcomings

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are - you can maximise your chances of being protected, as well as of having your concerns addressed.

Protection for whistleblowers is a day one right. This means protection applies as soon as a worker is hired. You do not need the same two years minimum service as required for other employment rights in the UK.

The UK research context

Government guidance states that employers should create an 'open, safe and transparent working environment where workers feel able to speak up.' Many higher education institutions and research institutes will have in place a Public Interest Disclosure, Speak Up or whistleblowing policy; sometimes the policy may go beyond the strict application of the legal position, to cover for example disclosures made by students or others not covered by the whistleblowing law.

Under the Concordat to Support Research Integrity, employers of researchers should also normally have a procedure in place for managing reports of breaches of good research practice or allegations of research misconduct. It is good practice for these two procedures to align or at least cross-refer, though responsibility for them may sit in different parts of the organisation.

Are you covered by the law?

You are protected under whistleblowing law if you are an employee or a '**worker**' - for example if you are:

- an employee such as an academic, research assistant, or member of professional services staff;
- a member of a Limited Liability Partnership;
- an agency worker.

Further guidance on who is covered by whistleblowing law as a worker can be found in this guidance.

'Worker' has a special and wider meaning under whistleblowing law, yet you may not be protected in law if you belong to one of the following groups: volunteers, trustees, non-executive directors or are a job applicant.

In the higher education/research sector, students, those on honorary contracts, visiting staff or students and research participants may not be covered by whistleblowing law. Those collaborating on a research project who are not employed by the institution responsible also would not be covered. However, as noted, many

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higher education institutions and research institutes will have procedures in place that extend beyond the coverage of the whistleblowing law. Employers should seek to maintain an open environment where whistleblowing is encouraged and act on the concerns raised as well as prevent any victimisation. If you are seeking to raise a concern you should seek to discover what, if any, procedures the institution has in place in this area.

There is also a gap in the protection available for contractors and the self-employed. If you are a self-employed contractor, you may however be able to establish yourself as a worker where you had an express or implied contract for personal service. As noted in this guidance from Protect, many unpaid work placements in the educational setting do not have employment rights and are not covered by whistleblowing law.

What reports are protected?

To qualify for protection under whistleblowing law, you may report any information that you **reasonably believe** relates to one of the following six categories of wrongdoing:

1. A criminal offence;
2. a risk to health and safety;
3. a miscarriage of justice;
4. risk or actual damage to the environment;
5. a breach of a legal obligation;
6. deliberate attempt to cover-up any of the above.

Note:

- Wrongdoing does not necessarily mean illegality, yet unethical behaviour or poor practice may not be enough on their own. You should try to identify a specific category under whistleblowing law and explain how your concern falls within it;
- A breach of a legal obligation is a broad category which may include different failures to comply with a legal obligation such as a company not having the right insurance.
- Harm need not actually have yet materialised - it is enough that you reasonably believe it is 'likely' to occur.
- You don't need to be correct about what you've raised. You can be protected even if you are mistaken - you only need to be able to show that you have a reasonable belief that there has been some wrongdoing. If after an investigation your concerns were shown to be unfounded, this will not invalidate your protection under whistleblowing law.

CAUTION: Whistleblowing law will not protect you if you break the law while making a disclosure. This includes breaching pre-existing legal duties not to disclose certain

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information, so-called 'secrecy offences' or 'statutory bars to disclosure.' For example, if you have signed the Official Secrets Act 1989 as part of your employment contract, you may be committing a criminal offence by disclosing certain types of sensitive national security information.

3. Whistleblowing and reporting alleged research integrity breaches

The definitions of research misconduct as set out in the Concordat to Support Research Integrity are provided below, along with a commentary on how they might interact with legal definitions of whistleblowing. As noted above, this is not legal advice.

a. *"**Fabrication:** **making up results, other outputs** (for example, artefacts) or aspects of research, including documentation and participant consent, and presenting and/or recording them as if they were real."*

b. *"**Falsification:** inappropriately manipulating and/or selecting research processes, materials, equipment, data, imagery and/or consents."*

Disclosures of these allegations could potentially be covered under 'health and safety', particularly if they relate to research where human health could be impacted or there is potentially an adverse impact on the environment. Falsifying results may also be a breach of any contract that the research institution has with a funder.

c. *"**Plagiarism:** using other people's ideas, intellectual property or work (written or otherwise) without acknowledgement or permission."*

Generally, people reporting plagiarism may not fall under the legal definition. As the primary victim will normally be the individual raising the concern, there may not be a public interest element to the concern. However, if there was a copyright infringement, or fraud involved this might fall within whistleblowing. If in doubt, you should seek advice.

d. *"**Failure to meet:** **legal, ethical and professional obligations,** for example:*

i. not observing legal, ethical and other requirements for human research participants, animal subjects, or human organs or tissue used in research, or for the protection of the environment

ii. breach of duty of care for humans involved in research whether deliberately, recklessly or by gross negligence, including failure to obtain appropriate informed consent

iii. misuse of personal data, including inappropriate disclosures of the identity of research participants and other breaches of confidentiality

iv. improper conduct in peer review of research proposals, results or manuscripts submitted for publication. This includes failure to disclose

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conflicts of interest; inadequate disclosure of clearly limited competence; misappropriation of the content of material; and breach of confidentiality or abuse of material provided in confidence for the purposes of peer review."

These could potentially fall under 'breach of a legal obligation'.

e. *"**Misrepresentation** of:*

i. data, including suppression of relevant results/data or knowingly, recklessly or by gross negligence presenting a flawed interpretation of data

ii. involvement, including inappropriate claims to authorship or attribution of work and denial of authorship/attribution to persons who have made an appropriate contribution

iii. interests, including failure to declare competing interests of researchers or funders of a study

iv. qualifications, experience and/or credentials v. publication history, through undisclosed duplication of publication, including undisclosed duplicate submission of manuscripts for publication."

Misuse of data could in some circumstances constitute a breach of legal obligations or potentially impact on health and safety.

f. *"**Improper dealing with allegations of misconduct:** failing to address possible infringements, such as attempts to cover up misconduct and reprisals against whistleblowers, or failing to adhere appropriately to agreed procedures in the investigation of alleged research misconduct accepted as a condition of funding. Improper dealing with allegations of misconduct includes the inappropriate censoring of parties through the use of legal instruments, such as non-disclosure agreements."*

Any clause in a non-disclosure agreement that tries to prevent whistleblowing would be null and void.

4. Making a disclosure

What does not normally count as wrongdoing?

Personal grievances such as bullying, harassment, and being individually discriminated against in the workplace are not generally covered by whistleblowing law, unless your case has a 'public interest' element. Public interest is not defined in whistleblowing law. As a general rule, if the wrongdoing affects people other than just yourself, it is more likely that the public interest requirement will be satisfied. If the wrongdoing only relates to you and your rights, it is less likely to be satisfied.

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There are ambiguous cases: where you may have a personal interest in the issue, but there are also wider implications for other people. This could include, for example, whistleblowing on cultures of misogyny or racism. For instance, many #MeToo whistleblowers bringing to light cultures of harassment speak up both for themselves and for their affected colleagues.

Azeem Rafiq, who made headlines after he blew the whistle on institutional racism at Yorkshire Cricket Club, started his whistleblowing journey with a personal grievance after facing discrimination himself. In such cases, you should bear this in mind and emphasise that you are not the only one affected by wrongdoing and that you are speaking up about a matter of public interest.

CAUTION: Whistleblowers need to present factual information, not only allegations. Under whistleblowing law, you do not need to provide any evidence, yet there should be enough detail in the disclosure that the person receiving it could begin to investigate.

However, in reporting under procedures to investigate concerns relating to breaches of good practice in research, you will normally be expected to supply evidence for the concerns you raise.

For example, consider the difference between saying "*I believe my colleague falsified research data*" to saying "*on X date, I saw colleague Y deleting research data from their PC.*"

Please also note that taking documents or data confidential to the employer, even to prove the whistleblowing can result in disciplinary action.

To whom can you disclose your concerns?

For your disclosure to be protected by law, you must make it to the right person and in the right way. Broadly speaking, you can either make a disclosure to your employer (i.e. an internal disclosure) or to someone outside your organisation (i.e. an external disclosure). Different legal tests apply depending on where your disclosure is made. There are also different risks and benefits with each approach, which you need to carefully weigh up before making a disclosure. The following sections outline the different requirements and considerations, first for an internal disclosure and then for an external disclosure.

What should you know about making an internal disclosure?

You can make a disclosure to your employer or to a third party authorised by your employer to receive protected disclosures (such as an organisation providing a reporting hotline). Legally speaking, these internal disclosures are the most likely to be protected. Reporting internally may also be the most effective route, as generally speaking, your employer is more proximate to the alleged wrongdoing than an external regulator and therefore able to take swifter action to investigate your concerns and address any wrongdoing. However, there are also risks when reporting internally. You may be ignored or worse retaliated against and your employer might

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have an incentive to cover up their wrongdoing. Under whistleblowing law, you are not required to first make your disclosure internally and you might want to consider making an external disclosure if you think your employer might not handle your disclosure fairly and effectively.

Note:

- Your employer means someone within the organisation, with the authority to act on the disclosure you are making, rather than a colleague or a more junior manager;
- Approaching your line manager or supervisor may be the most intuitive choice, yet it may not be appropriate where they are implicated in the wrongdoing, or you have reason to believe they would not act on the concerns (e.g. they've failed to deal with a similar issue in the past). In such cases, it may be appropriate to identify someone more senior or make an external disclosure in the first instance.

As noted above, higher education institutions should have in place a publicly available process to report alleged breaches of good research conduct, including a confidential liaison point and a person responsible for research misconduct matters within the institution.

CAUTION: If you wish to make a disclosure protected by whistleblowing law, it is important to make sure you understand in what circumstances both internal and external disclosures are protected and that you seek legal advice from a solicitor. The whistleblowing charity, Protect, offers a free and confidential advice line, which you may wish to contact before making a disclosure. You can also see further information on the circumstances under which external disclosures are protected under law.

What should you consider when thinking about disclosing to your employer?

Here are some key points to consider:

- Most larger employers have a whistleblowing policy. Check whether your employer has such a policy or other employee guidance. It may identify a person or persons you can approach with a concern and include guidance on how to raise your concern. Good employers have dedicated persons or teams which may have received training on handling concerns and preventing retaliation. Some employers designate external channels, such as commercial speak-up hotlines. It may be helpful if you later seek protection under the law that you can show you have followed your employer's policy either for whistleblowing or raising allegations of research misconduct.
- If you want to raise your concerns on a confidential basis and your employer has a dedicated process for whistleblower reporting, this may make it easier to keep your identity a secret from those you work with. However, no assurance of confidentiality is failproof. Under the Concordat to Support

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Research Integrity, employers of researchers are required to have in place a confidential liaison point for those wishing to discuss a potential allegation/notification of a breach in confidence.

- You can still report your concern to your employer if they do not have a dedicated policy or process. In that case, think about how certain managers may react, and whether there is a particular person in senior management you trust. You may also want to consider who is best placed to investigate and remedy wrongdoing. Please see UKRIO's short guide to research misconduct and guidance on reporting.
- If others share your concerns, it may be safer and more effective to raise such concerns collectively as a group. This can give weight to the concerns and strength in numbers to offset risk of victimisation.

Useful tips:

- Draw on your knowledge of the organisation and think carefully about whom to report your concerns to and how.
- **Watch your tone**. Judicial decisions on whistleblowing in the UK have established that whistleblowers can legitimately be dismissed if they raise concerns in a way that is considered unreasonable or too confrontational by the employer. **Be as polite, objective, and professional as possible. Refrain, if possible, from criticising individual colleagues.**
- Create a robust audit trail and secure evidence of you making the disclosure. Even if you raise the concerns in a meeting, make sure you also follow up in writing afterwards. Get in the habit of keeping contemporaneous notes.
- Take care to document evidence.
- Avoid misconduct in pursuit of making a disclosure. Do not do anything that could open you up to criticism, disciplinary action or wider legal liability. Don't make unauthorised recordings or enter systems you shouldn't to collect evidence.

This checklist will be helpful when you are considering your options.

What should you expect after making a disclosure to your employer?

Your employer should listen to your concerns and decide if any action is needed. The law says nothing about how employers should deal with whistleblowing concerns or follow up on a disclosure, but this may be set out in your employer's whistleblowing policy.

It should also be set out in the institutional Code of Practice for Research or the equivalent that breaches of research misconduct will be taken seriously and investigated impartially when they are raised. Institutions, as employers of researchers are obliged under the Concordat to Support Research Integrity to have procedures in place to investigate concerns raised and not to victimise the initiator of the concern. Indeed, it is not uncommon for institutional Codes of Practice to state that researchers are **expected** to raise any breaches of good practice that they see and not ignore them.

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When you make your disclosure, you can ask your employer about timeframes and feedback and revert to them later based on what they agreed to do. If you believe your disclosure has not been taken seriously or the wrongdoing is still ongoing, you can consider escalating your concerns to a more senior manager, or to a prescribed person or external body. Section 5 below outlines some alternatives to disclosing to your employer.

What can you do if you're treated unfairly after whistleblowing?

> *"Many whistleblowers tell us they could never have imagined the victimisation they would face for speaking out. This can come from co-workers, managers and the organisations, but it can be weathered if the whistleblower has considered, prepared and sought advice early."*
>
> Protect

You should seek legal advice if you believe you are being mistreated due to whistleblowing. Despite whistleblower victimisation and dismissal being unlawful, whistleblowing can lead to backlash. This could take the form of bullying, imposed changes to your employment, an unfair disciplinary, or even post-employment detriment like receiving a negative reference during future recruitment. While your employer may stand to lose a lot if they retaliate against you for blowing the whistle, the law and the reputational risks may not stop it from happening.

You should have a right to a remedy if it does happen. If you've been treated unfairly, dismissed or victimised by your employer because you've made a protected disclosure, you could bring a claim to an Employment Tribunal. This is usually for compensation for any financial losses. If you are dismissed due to whistleblowing, you can also seek 'interim relief.' This is an order made by an Employment Tribunal judge that effectively gives you your job back or, if your employer is unwilling to take you back, preserves your wages until the future date for a full hearing of your case. There will be a preliminary hearing where a judge will look at your evidence (only in the form of documents) and award the relief if they are satisfied you are 'likely' to win the case.

At the Employment Tribunal, you will have to establish two things:

1. That you made a protected disclosure.
2. That the protected disclosure is the reason you were treated detrimentally or dismissed. Your employer may give other reasons for their actions, and it is important that you are able to provide evidence that supports your arguments and contradicts theirs, e.g. performance reviews from before the whistleblowing show you were performing well and then become negative after whistleblowing. Make a note of how you are treated and any changes over time. Beware of the tight timeframes.

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You have three months minus one day to bring a claim in the Employment Tribunal, from the date of the last detrimental act.

You have seven days from the effective date of dismissal (including weekends) to apply for interim relief. A preliminary hearing is based on documents only – meaning you must have available all your evidence at this time.

CAUTION: Engaging with the Employment Tribunal is a lengthy and uncertain process. A claim for interim relief also has disadvantages as it forces you to act quickly. If you are paying for legal advice, it will significantly add to your costs. Although failing at interim relief does not mean you will fail at the final hearing, it can weaken your hand in settlement negotiations.

Useful tips:

- Consider whether you can negotiate a settlement. You can do this before launching Employment Tribunal proceedings, or at any time before the final hearing. This allows you and the employer to end the employment on mutually agreeable terms, including an award of compensation and an agreed reference. A tribunal process can be lengthy and unpredictable, and so settling out of court may be preferable. Even if you decide to settle, you will still be able to blow the whistle legally.
- If you've been offered or want to seek a settlement agreement, seek legal advice. You can also get further guidance from the Advisory, Conciliatory and Arbitration Services (ACAS) or the specialist charity YESS Law.
- If you are mistreated or dismissed after raising concerns, immediately seek legal advice from a solicitor or contact Protect's free and confidential Advice Line. You may also seek support from your trade union representative.
- If you are facing retaliation outside of the workplace, such as in your local community, immediately report any threats to the police.
- If you are facing malicious threats of legal action, it may be appropriate to report this to the Solicitors Regulation Authority. You could investigate whether Strategic Litigation Against Public Participation (SLAPP) applies to your case.

5. Alternatives to disclosing to your employer

This guidance primarily covers disclosures made to an employer.

However, if for any reason you do not want to disclose your concerns to your employer, you have other options. This is usually referred to as making an 'external disclosure' and includes reporting to a regulator, journalist or a member of Parliament (or Member of the Scottish Parliament or a government minister in Northern Ireland).

There are specific sets of rules depending on to whom you make the disclosure (see below).

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Remember you can always speak to a legal adviser. This is protected under whistleblowing law and may also be covered by legal professional privilege.

External disclosures

Whistleblowing to anyone other than your employer, those channels authorised by your employer, or to a prescribed person is considered a 'wider disclosure'.

External disclosures can made to a 'prescribed person', who are typically regulatory bodies. As set out in government guidance, the role of a prescribed person is to provide workers with a mechanism to make their public interest disclosure to an independent body where they do not feel able to disclose directly to their employer. The body might be able to take some form of further action on the disclosure. A worker will potentially qualify for the same employment rights as if they had made a disclosure to their employer where they report to a prescribed person, if they can show they had a reasonable belief the disclosure was substantially true.

There are over 60 prescribed persons within the UK; a full list is available in this guidance. They include the Information Commissioners Office, the Medicines and Healthcare Products Regulation Agency and the Care Quality Commission.

It is also possible to make a disclosure externally to bodies or agencies that are not prescribed. This could include for example the police (for criminal activity); research funders, publishers or the media more broadly.

For a wider disclosure to be protected in law, the information must be substantially true. Additionally, your disclosure must not be made for personal gain and you must meet one of four 'gateway' tests:

1. You fear victimisation; or
2. You fear a cover-up and there is no prescribed regulator; or
3. You have already made the disclosure to your employer or a prescribed person; or
4. The disclosure is of an 'exceptionally serious failure.' The making of a wider disclosure must also be 'reasonable in all the circumstances.' What is considered reasonable will depend on the facts, yet one key factor will be the identity of the person to whom the disclosure is made.

Note: You may be protected if you are reporting to a person you reasonably believe is responsible for the wrongdoing, even if they are not your employer or a prescribed person. This may be the case if you work somewhere like a shared workspace, where employers of multiple companies work in proximity to one another. It could also be relevant if you are an IT worker whose work involves going into the systems of various organisations other than your employer.

Protection of wider disclosures is complex and uncertain. If you are looking to make an external disclosure, you should consider seeking advice from Protect before acting.

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6. Conclusion

Whistleblowing/public interest disclosure is a complex area in UK law, and we hope this guidance in the context of research practice has been helpful.

Whilst progress has been made, the UK research arena has some way to go to ensure that whistleblowers in the broadest sense feel confident in reporting alleged breaches of good practice. Given the number of matters in the public domain at the present time, it is not alone in grappling with this issue. With UKRIO's focus on destigmatising the reporting of perceived breaches of good research practice, and Protect's work more broadly aiming to stop harm by encouraging safe whistleblowing, we hope that the climate will continue to improve.

It is vital that research employers who are responsible for good research practice and for the wellbeing of their staff ensure that they put in place an open research culture and an institutional environment conducive to those wishing to make disclosures.

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7. Further reading

- The Signals Network, Whistleblowing International Network (WIN) and Protect guidance – A tech workers guide to whistleblowing
- Protect guidance – volunteers, interns and trainees
- UKRIO guidance – Reporting research misconduct – when, how, and to whom
- UKRIO report – Barriers to investigating and reporting research misconduct
- Department for Business, Innovation and Skills guidance – Whistleblowing: guidance for employers and code of practice
- Department for Business, Energy and Industrial Strategy – Whistleblowing: Prescribed Person Guidance
- UK Public General Acts – Employment Rights Act 1996

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8. Authorship and contributions

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Competing Interests

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Funding

This work was funded by UKRIO and Protect.

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Promoting integrity and high ethical standards in research
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The UK Research Integrity Office (UKRIO) is an independent charity, offering support to the public, researchers and organisations to further good practice in academic, scientific and medical research. We pursue these aims through a multi-faceted approach:

- Education via our guidance publications on research practice, training activities and comprehensive events programme.
- Sharing best practice within the community by facilitating discussions about key issues, informing national and international initiatives, and working to improve research culture.
- Giving confidential expert guidance in response to requests for assistance.

Established in 2006, UKRIO is the UK's most experienced research integrity organisation and provides independent, expert and confidential support across all disciplines of research, from the arts and humanities to the life sciences. We cover all research sectors: higher education, the NHS, private sector organisations and charities. No other organisation in the UK has comparable expertise in providing such support in the field of research integrity.

UKRIO welcomes enquiries on any issues relating to the conduct of research, whether promoting good research practice, seeking help with a particular research project, responding to allegations of fraud and misconduct, or improving research culture and systems.

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