

## Ensuring your firm has effective whistleblowing arrangements

A guide to CII members who have responsibility for running or overseeing their firm's whistleblowing arrangements

This brief guidance paper is a supplement to the main CII Guidance paper called '**Speaking Up - Information for CII members about whistleblowing**' which can be found on the professional standards section of the CII website.

The objective of this supplementary paper is to focus on CII members who may be in positions of responsibility in relation to a firm's whistleblowing policy or processes. It explains what is meant by whistleblowing, how to design and implement effective whistleblowing arrangements and provides a checklist for assessing the effectiveness of arrangements.

### Introduction

Financial firms are paying more attention to whistleblowing because of pressures from Government, regulators and the public to avoid a repeat of events leading up to the recent financial crisis. It is widely believed that the financial crisis could have been less severe if certain business practices had been identified earlier on and subjected to more critical scrutiny by those in charge. As a result, insurance and other financial services firms are being urged to join with other sectors, to consider how well they respond to people 'blowing the whistle'.

Many CII members hold positions of responsibility within their firms. Some will be in charge of implementing or managing their firm's whistleblowing arrangements, while others will be expected to oversee how well this is being done. The CII has produced this guide to help just such members with those tasks. It provides an overview of these three areas:

- what is whistleblowing and why your firm should pay it attention;
- how to design and implement effective whistleblowing arrangements;
- a checklist of assessing the effectiveness of existing whistleblowing arrangements.

## An overview of whistleblowing

Whistleblowing is the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing which affects others.

The concern could be raised by an employee, manager or director of the organisation concerned, and by a full time, temporary or former worker. The issue of concern could involve a dangerous activity, a serious risk to the business, malpractice in how an activity is being undertaken or wrongdoing in how the organisation is being run.

People blow the whistle within the workplace, with a regulator, or in exceptional circumstances, with the wider public. The way in which they decide to blow the whistle can matter – we'll look at this in more detail later.

Not everyone uses the term whistleblowing. Some organisations talk about 'speaking up' or 'raising concerns'. Whistleblowing tends to be associated with situations where a person is worried about how their firm might respond to someone raising a concern. At the end of the day though, what matters is the willingness of the person to 'do the right thing' and the willingness of the firm to respond appropriately.

## Why whistleblowing matters

Whistleblowing can save lives, jobs, money and reputations. It acts as an early warning system for misconduct, wrongdoing or dangerous behaviour. It alerts employers to problems within their firm and if reported externally, highlights issues that could influence regulators and the public.

Some people mistake whistleblowing for disloyalty. The opposite is the case. Those who blow the whistle can be amongst the most loyal and public spirited of employees. They are helping the firm to address problems, hopefully before the consequences become too serious. This allows firms to resolve matters earlier on, so reducing the financial and reputational impact of what has happened.

## How whistleblowing differs from complaining

Blowing the whistle and making a complaint are different. Someone making a complaint has a vested interest in the issue they're complaining about: for example, that they've been unfairly treated or discriminated against at work. Someone blowing the whistle usually has no direct, personal interest in the dangerous or illegal behaviour they're raising; they are simply trying to alert others to something they feel needs urgent attention.

This difference matters, for a complainant would be expected to provide evidence about the issue they're raising, while there is no such expectation on a whistleblower. It is for others to investigate the malpractice being raised by the whistleblower.

## The CII and whistleblowing

The CII has a formal procedure for investigating complaints against its members (available in print or from the CII website). However, the CII isn't able to respond to whistleblowing approaches from its members or from the public. We ask those wanting to blow the whistle outside of their firm to contact the relevant regulatory authority, which in the majority of cases will be the Financial Conduct Authority. This is because regulators have specific powers to investigate such concerns and apply any necessary sanctions.

## Regulators and whistleblowing

There is at present no requirement for regulated firms in the UK financial services market to establish whistleblowing arrangements. That however will change over the next year or so (although very small firms may be exempt), so all other regulated firms who do not currently have a whistleblowing policy or procedures should be preparing them now. Many observers believe the Financial Conduct Authority (FCA) is already taking their presence or absence into account when weighing up the effectiveness with which a firm might be adhering to the Principles for Businesses.

On an individual level, certain categories of members are under specific obligations to regulatory authorities such as the FCA and the Ministry of Justice. So for example, an 'approved person' under the FCA's Approved Persons regime is under an explicit duty to deal with the regulator in an open and cooperative way and "to disclose appropriately any information of which the FCA or the PRA would reasonably expect notice".

The FCA's Handbook also refers to how an approved person should act in relation to a worker making a 'protected disclosure' under the Public Interest Disclosure Act 1998 (see below). The FCA makes clear that any approved person found to have acted to the detriment of a worker in such circumstances could find their approved status under review.

Other members could be under other forms of obligation depending on their specific role within the organisation. Examples of legislation setting out such obligations include the Pensions Act 2004 and the Proceeds of Crime Act 2002.

Bear in mind that the next few years will see regulators extending the responsibilities of senior individuals within regulated firms towards people who 'blow the whistle'.

## **An overview of the Public Interest Disclosure Act 1998**

The law provides legal protection to whistleblowers, while at the same time requires firms and their employees to act appropriately.

The Public Interest Disclosure Act 1998 makes it unlawful for an employer to dismiss or victimise a worker for having made a 'protected disclosure' of information. What follows is an outline of the protection provided by the Act: more detailed information about the Act can be obtained from the leading whistleblowing charity, Public Concern at Work.

The Act provides protection under four categories of disclosure: disclosure to an employer, to a 'prescribed person or body' (such as a regulator), to the wider public and whilst obtaining legal advice.

A disclosure will 'qualify' for protection if, in the reasonable belief of the worker, the information is in the public interest and falls into one or more of the following categories of 'wrongdoing': a criminal offence; failure to comply with legal and regulatory obligations; miscarriages of justice; dangers to health or safety; dangers to the environment, and; deliberate concealment of any of those things.

A worker making a qualifying disclosure to a 'prescribed person or body' will also be protected if he/she reasonably believes that the information (and the allegation contained within it) is substantially true. The Government has published a list of 'prescribed people and bodies', most of which are Government departments and regulatory authorities such as the Financial Conduct Authority. Note that this further protection only applies if the qualifying disclosure falls within the remit of the 'prescribed person or body'.

A qualifying disclosure made to the wider public (such as the media) is also protected, but only if a number of detailed conditions are met.

There is no qualifying period of employment. The protection provided by the Act starts immediately upon employment and covers workers, contractors, trainees and agency workers.

## **Designing and implementing effective whistleblowing arrangements**

Whistleblowing can save lives, jobs, money and reputations, but a lot depends on your firm's arrangements for whistleblowing being effective and understood. Here are some steps to consider when designing new whistleblowing arrangements for your firm:

- there should be a clear rationale for introducing whistleblowing arrangements and what is to be achieved from this;
- senior directors at your firm should openly give their support to that business rationale;
- there should be some form of consultation early on within the firm to help ensure that the new whistleblowing arrangements reflect everyone's experience and expectations;
- responsibility for the new arrangements should be placed with a named person who has the relevant skills and experience;
- a whistleblowing policy should be produced, with accompanying procedures that can be embedded into the firm's management systems;

- training in whistleblowing should be given to key personnel and be available for those who seek it;
- the whistleblowing policy and procedures should be communicated across the company, both at the outset and in subsequent reminders, with clear support from senior management;
- written advice should be available for managers on how to respond to a person wanting to 'blow the whistle' to them;
- there should be clear rules and procedures for logging whistleblowing incidents as they arise;
- senior management should be provided with management information about whistleblowing incidents and their current status.

And when you're implementing the whistleblowing policy and procedures, make sure they're clear...

- about the difference between whistleblowing and complaints, with examples to illustrate this;
- about employees having the option to raise a whistleblowing concern outside of their line management, but still within their firm;
- about where employees can obtain independent and confidential guidance: for example, from an external helpline service set up by the firm with a third party provider, or from a leading charity such as Public Concern at Work;
- about employees having the right to confidentiality when raising their concern, and how that will be respected;
- about the option for employees to raise a concern with a relevant regulator if necessary;
- that it is a disciplinary matter for anyone to victimize a whistleblower;
- that it is a disciplinary matter for someone to maliciously make a false allegation;
- about how the whistleblower's concern will be followed up and about the feedback they will receive.

## **Assessing the effectiveness of existing whistleblowing arrangements**

Sometimes firms set up whistleblowing arrangements, but then find that they are not proving effective. Like any policy and procedures, their effectiveness will depend on a variety of factors. Here are some questions you should address when asked to assess the effectiveness of your firm's whistleblowing arrangements:

- does your firm have both a whistleblowing policy and a set of clearly documented procedures for responding to any concerns raised by someone 'blowing the whistle'?
- has the scope and wording of that policy and its procedures been reviewed within the last three years, and is there supporting evidence for any findings having been acted upon?
- has someone been given clear responsibility for managing your firm's whistleblowing arrangements? Do they report to a senior director within your firm? And have they received any training in whistleblowing in the last three years?
- does the board receive reports on whistleblowing incidents and is there evidence of such reports having been discussed at board meetings?
- has there been any form of internal audit / external review of how your firm has been using its whistleblowing arrangements during the last three years?
- does your firm (or a third party provider of a whistleblowing helpline) record details of whistleblowing incidents and does it maintain a log about how each has been progressed? Does the volume, detail and timescales of such incidents seem reasonable?
- has there been any survey (or questions within a wider survey) in the last 3 years asking employees for their opinion about the trustworthiness of the firm's whistleblowing arrangements?

- do you believe that senior executives in your firm view these whistleblowing arrangements as important, and is there evidence in the last 2 years of them having communicated this to employees of your firm?
- have there been any incidents that have come to your attention that you would have expected to have been already raised through your firm's whistleblowing arrangements?
- is there any evidence of any form of victimisation or breach of confidentiality having occurred in relation to a person who has previously 'blown the whistle'?

Use these questions to build an overview of how you think your firm's whistleblowing arrangements currently stand and then make more detailed enquiry into any anomalous findings.

## **Members in small firms**

Whistleblowing in small firms can be just as difficult as in larger firms, for it's likely that everyone knows each other and works in closer proximity. In fact, those characteristics could make whistleblowing even more difficult. While drawing up or reviewing the firm's whistleblowing arrangements may seem a rather cumbersome task for a small firm, it could prove just as valuable as for any larger firm.

## **Members outside of the UK**

The legal protection for whistleblowers varies across different countries. This guide focuses on the situation for whistleblowing as it currently exists in the UK. CII members who work outside the UK should seek guidance locally on the legal protection available to whistleblowers.

They should also consider how they might contribute to a culture supportive of whistleblowing within their firm and local insurance market. Getting that supportive culture right is a key factor in reassuring potential whistleblowers that voicing their concerns is a positive act that could save jobs and protect revenue and reputations.

## **Sources of guidance on whistleblowing**

There are sources of confidential guidance that you could turn to when weighing up the effectiveness of existing whistleblowing arrangements. Your firm might use an independent third party whistleblowing service that can provide you with guidance. The charity Public Concern at Work has a free and confidential advice line for people with a concern about whistleblowing. The Financial Conduct Authority has a whistleblowing telephone line, but it is orientated more towards receiving reports of whistleblowing incidents and does not give general or legal advice.

## **Links**

The Financial Conduct Authority's whistleblowing page - <http://www.fca.org.uk/site-info/contact/whistleblowing>

Public Concern at Work's home page - <http://www.pcaw.org.uk/>

The Government's list of 'Prescribed People and Bodies' - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf)

## **Other types of guidance on whistleblowing from the CII**

This is one of three guides on whistleblowing produced by the CII. It is specifically aimed at those members who have responsibilities within their firms for implementing or overseeing whistleblowing arrangements.

The other two guides are aimed at:

- members who are considering blowing the whistle themselves and who wish to know more about the options available to them;
- managers who find themselves having to respond to an employee who is blowing the whistle to them.

## Concluding Comments

Whistleblowing has a role to play in maintaining the professionalism of the insurance sector. It allows serious concerns to be aired and addressed. At the same time, whistleblowing can sometimes open up sensitive issues and raise challenging questions. That's why the CII has produced this guidance, so that should you be given responsibility for ensuring the effectiveness of your firm's whistleblowing arrangements, your response will demonstrate that speaking up is important to you, your firm and your profession.

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**The CII is the world's leading professional organisation for insurance and financial services, with over 100,000 members in 150 countries. We are committed to maintaining the highest standards of technical expertise and ethical conduct in the profession through research, education and accreditation. In 2012 we are celebrating our Centenary as a Chartered body.**