

# Ethical Culture

CII guidance series

## Speaking up: Information for CII members about whistleblowing



- 2 Introduction**
  - 3 What is whistleblowing?**
  - 6 How to be better prepared**
  - 8 FAQs**
  - 10 Concluding comments**
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## **The Chartered Insurance Institute (CII) Professionalism in practice**

As the premier professional body for the insurance and financial planning professions, the CII promotes higher standards of integrity, technical competence and business capability.

With over 120,000 members in more than 150 countries, the CII is the world's largest professional body dedicated to these sectors.

Success in CII qualifications is universally recognised as evidence of knowledge and understanding. Membership of the CII signals a desire to develop broad professional capability and subscribe to the standards associated with professional status.

The CII works with businesses to develop bespoke, company-wide solutions that ensure competitive advantage by enhancing employees' technical and professional competence.

Individually, CII's members are able to drive their personal development and maintain their professional standing through an unrivalled range of learning services and by adhering to the CII's Code of Ethics.

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## **Contacting the CII**

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### **Online**

The information is accurate as of April 2016 and this whistleblowing guide can be found online at: **[www.cii.co.uk/31018](http://www.cii.co.uk/31018)**

Other papers in the series can be accessed at: **[www.cii.co.uk/40380](http://www.cii.co.uk/40380)**



## 2 Introduction

We recognise that from time to time, our members may become concerned about something they see or hear at work. Such concerns come in all shapes and sizes. Some will be relatively minor incidents of misconduct that can be easily resolved through normal company channels. Others may involve incidents of wrongdoing that seem too serious or pervasive for reporting through those normal channels.

Knowing how best to raise such concerns is important. They may be a sign of financial or reputational trouble for your firm or perhaps even of criminal wrongdoing. Yet reporting such concerns can seem daunting at times.

That is why the CII has prepared this guide. It provides you with information about how to report your concern so that it can be properly addressed. It explains whistleblowing and the law and regulations connected with it, as well as what to weigh up when preparing to blow the whistle. And it seeks to give reassurance about the importance of giving voice to your concerns and from whom you can seek more detailed support when so doing.

This guide has been updated to take account of changes to the Financial Conduct Authority's whistleblowing policy and processes, and to take account of the new Senior Managers Regime for banks and building societies (SM&CR) and Senior Managers Regime for insurers (SIMR), which came into operation in March 2016. For members working for firms that presently fall outside of the scope of the above changes, this guide will help illustrate the nature of the 'non-binding guidance' the regulator is encouraging them to adopt.

# What is whistleblowing? 3

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

Such concerns can be raised by anyone who holds them. This includes (but is not limited to) 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 breach of the firm's policies and procedures, or behaviour that could harm the reputation or financial well-being of the firm. It could also be what is called a 'protected disclosure' – more on this later.

The concern may be raised within the workplace, with a regulator, or in exceptional circumstances, with the wider public. The way in which you decide to raise a concern 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'. Which is best depends on the context – simply 'speaking up' about your concerns is fine if your firm encourages openness, but runs into problems if your manager is unwilling to listen and respond to what you have to say.

Whistleblowing tends to be associated with situations where you suspect that your firm's management may not listen and respond in the manner you would hope for. At the end of the day, what matters is your willingness to 'do the right thing'.

## 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 concern 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.

Someone raising a concern may find that it is not immediately designated as either whistleblowing or a complaint. Some firms may channel all concerns they receive through one point and only designate it as either whistleblowing or a complaint once they have carried out an initial assessment.

## The CII and whistleblowing

The CII has a formal procedure for investigating complaints against its members (available in print or from the CII website). Such complaints have to relate to the requirement that members uphold the laws of the CII, as set out in the Charter, bye-laws, regulations, codes and other requirements of the CII.

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 ("FCA"). This is because regulators have specific powers to investigate such concerns and apply any necessary sanctions. The CII will take into account any sanctions imposed by a regulator upon a member of the CII when considering potential disciplinary action against that person.

## 4 What is whistleblowing? continued

### What our Code of Ethics says about whistleblowing

The Code of Ethics applies to all members of the CII. It is made up of five principles, each of which is supported by a number of specific requirements and reflective questions.

The Code's second principle says this: "You must act with the highest ethical standards and integrity." One of the questions under this principle that members are asked to reflect upon is: "Does my organisation have a whistleblowing policy?"

And while the Code's third principle refers to client confidentiality, the first principle requires a member to "give confidential information to the relevant authorities where the information relates to a criminal act or fraud by your client".

As CII members are all individuals, the approach taken by the Code of Ethics towards whistleblowing is to focus first and foremost on the individual qualities, rather than the organisational processes, that support it. So, for example, one of the commitments under the Code's second principle is for members to be honest, trustworthy and open, and one of the ways in which the Code then suggests members seek to support this commitment is by questioning whether their firm has a whistleblowing policy.

### The obligations our members are under when it comes to whistleblowing

All members of the CII are under an obligation to carry out their work in accordance with the CII's Code of Ethics. In addition to this, certain categories of members are under further obligations to regulatory authorities: for example the FCA, the PRA and the Ministry of Justice. The exact nature of those regulatory obligations will depend on the type of firm the member is working for and their role within that firm.

Some members may have been appointed as their firm's whistleblowers champion and others may have operational responsibility for their firm's whistleblowing policy and procedures. Both have specific regulatory responsibilities to fulfill, which this guide helps to explain.

Members working in functions such as human resources and internal communications will have to ensure that people at their firm are aware of their rights with regard to approaching the regulator's whistleblowing service. And members whose work involves the management of appointed representatives and tied agents have to ensure that those firms are made aware of the regulator's whistleblowing service.

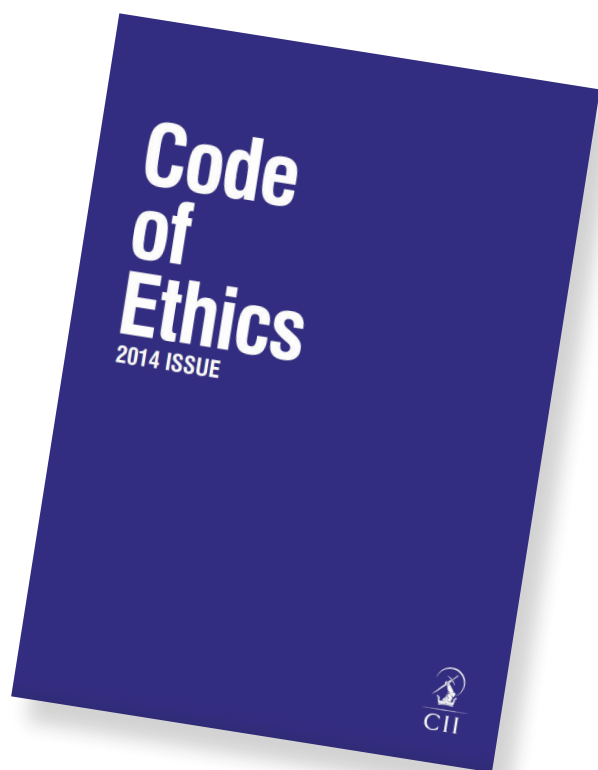
Some members who do not work for firms subject to SMR and SIMR will still come under the FCA's Approved Persons regime. This places them under an explicit duty to deal with the regulator in an open and cooperative way and "to disclose appropriately any information of which the FCA or the PRA would reasonably expect notice".

More broadly, all members working in regulated firms are under an overall regulatory obligation to act in support of a culture that respects whistleblowing. One way in which they can do so is to do what they can to ensure that whistleblowers are not victimised in any way.

That said, the FCA has not imposed a statutory duty on people working in regulated firms to blow the whistle. This means that while an approved person is under an explicit duty to be open with the regulator, anyone working in a regulated firm who has knowledge of misconduct within that firm is not under an explicit duty to blow the whistle about that.

The FCA's Handbook also refers to how an approved person should act in relation to someone making a 'reportable concern' (see below). The FCA makes clear that any approved person found to have acted to the detriment of that person 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.



## Reportable concerns and protected disclosures

It is important for members thinking of blowing the whistle to understand the difference between ‘reportable concerns’ and ‘protected disclosures’. The FCA requires regulated firms to have procedures in place to receive and respond to ‘reportable concerns’ from any person in relation to the activities of that firm. A reportable concern includes:

- anything that would be the subject-matter of a ‘protected disclosure’, including breaches of rules;
- a breach of the firm’s policies and procedures;
- behaviour that harms or is likely to harm the reputation or financial well-being of the firm.

A ‘protected disclosure’ is one type of ‘reportable concern’, although it is important to note that not all ‘reportable concerns’ are ‘protected disclosures’. This is because ‘protected disclosure’ has a very distinct meaning under an important piece of legislation for whistleblowers: the Public Interest Disclosure Act 1998.

## An overview of the Public Interest Disclosure Act 1998

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 not ‘qualify’ for protection unless, 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 ‘wrongdoings’: 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 FCA. 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.

To sum up in relation to ‘reportable concerns’: the Public Interest Disclosure Act 1998 gives protection to certain people (i.e. those defined in employment legislation as workers) and for certain concerns (i.e. those that qualify as ‘protected disclosures’). People not defined as workers will not receive protection under the Act, and nor will concerns that do not qualify as ‘protected disclosures’: it is possible that this might include some types of ‘reportable concerns’.

## 6 How to be better prepared

It's worth spending a little time becoming familiar with your speaking up obligations and about how to raise a concern. Reading this whistleblowing guide is a good way of thinking ahead, as is:

- being familiar with the difference between complaining and whistleblowing
- being familiar with the difference between 'reportable concerns' and 'protected disclosures'
- understanding how to weigh up the seriousness of any situation you may become concerned about
- checking whether your firm has a whistleblowing policy, and if not, what you might do to encourage one to be produced
- gauging the extent to which your firm has an 'open culture' in which concerns can be shared and discussed, and if not, how you might influence the firm to move in that direction
- reflecting upon how approachable you are to a colleague who might be thinking of sharing a serious concern with you
- being aware of where you might turn, should you need more information about whistleblowing
- weighing up which of your colleagues you would feel comfortable approaching, should you wish to share a concern
- understanding how you would build a case for any concern you might have, so that what you report has more credibility.

### What to weigh up when a problem does arise

Being faced with something that you think is serious enough to warrant blowing the whistle about can be daunting and worrying. You may feel torn between letting the truth be known and being loyal to your colleagues and firm. However, doing what you feel is right is important, for both yourself and the profession around which you have based your career.

So while you may initially feel uncomfortable with the problems that blowing the whistle may stir up amongst other employees and for your firm, it is just as important to think of other loyalties that are wider than those immediate concerns. Think of those elsewhere in the firm whose jobs could be at risk from the wrongdoing going unreported. And while blowing the whistle on the wrongdoing may cause difficulties for your firm, think of how much more serious the financial and reputational impact of the wrongdoing going unreported could be.

Investing a little time early on can pay dividends later on. Here are some ideas you might want to weigh up when a potential whistleblowing situation does arise.

- be clear about the facts of the case. Write them down and add to that list as events unfold
- consider the situation from different perspectives. Could there be another reason for the events you've encountered? Are any grey areas material to what has happened, or peripheral?
- be objective and clear minded when recording what you've encountered. Stand back from the immediacy of events and take careful stock of what has been going on
- carefully weigh up how serious those events have been and whether there might be a quite simple way of resolving the situation
- compare what you've encountered with the commitments set out in the code of ethics of your firm and of the CII. Be clear about which ethical commitments are being undermined by the events you've encountered
- take stock of any involvement you may have had in the situation and how your own interests may be influencing your present thoughts. If your involvement is more than peripheral, should you be thinking of this as a complaint rather than blowing the whistle?
- consider discussing the situation with a trusted colleague or good friend. A second opinion is invariably reassuring and can sometimes illuminate a situation in new and revealing ways.

Taking steps such as these helps you establish whether you have reasonable grounds for believing that your concerns are substantially true. An odd turn of phrase perhaps, but from a legal perspective, an important one for determining the protection available under the Public Interest Disclosure Act 1998.

Your next step should be to tune into the whistleblowing environment you're working within. For this, you need to consider:

- any specific obligations you may be under to blow the whistle on the events you've encountered (for example, if you are an 'approved person')
- whether your firm has a whistleblowing policy and if it does, what options it presents you with
- whether or not your concern will 'qualify' as a 'protected disclosure' under the Public Interest Disclosure Act
- the degree of overlap between any of the people mentioned in the whistleblowing policy and the events you're considering blowing the whistle on
- the level of confidence you have in the individuals referred to in the various reporting options set out in the whistleblowing policy
- how comfortable you are with how the culture of your firm is likely to handle the whistle being blown; (for example, in terms of confidentiality, victimisation etc)
- any other whistleblowing events that may have occurred within your firm and what you know about how the firm handled them.

If your firm does not have a whistleblowing policy, you will have to weigh up whether there is someone in your firm who you feel could be approached with the concern you have. If there isn't such a person, then you should consider blowing the whistle to a 'prescribed body', such as the FCA.

## Deciding how to blow the whistle

It can be extremely useful at this stage to seek impartial advice about the options available to you for blowing the whistle. This is because the legislation affording you protection when blowing the whistle is complex and, at times, undergoing change.

Many people considering blowing the whistle contact the leading whistleblowing charity, Public Concern at Work. They provide independent and confidential advice to workers who are unsure about whether or how to blow the whistle. Their free advice line is managed by qualified lawyers with a wealth of experience in whistleblowing law and practice.

Your options for blowing the whistle will be influenced by:

- the level of confidence you have in the reporting options, and the reassurances set out in your firm's whistleblowing policy
- how important remaining anonymous is to you and the extent to which you feel each reporting option is able/likely to respect this
- the extent to which you are confident that your concerns are substantially true
- whether you are an approved person under the Financial Services and Markets Act
- whether your disclosure will 'qualify' as a protected disclosure under the Public Interest Disclosure Act
- whether the events you've encountered fall within the remit of a 'prescribed person or body', for example the FCA
- the immediacy and seriousness of events that may be unfolding around you: for example, do they present any danger to someone's life?
- in the event of you having previously raised this concern, how it was treated and what you know in relation to its response.

For many members of the CII, working in the regulated environment of financial services, this adds up, in the vast majority of cases, to a choice between blowing the whistle within your firm, or to the FCA. The FCA strongly encourages workers to speak up about their concerns within their firm first, but recognise that sometimes this may not be feasible.

If you've decided to blow the whistle within your firm, you should follow the procedures set out in its whistleblowing policy.

If you've decided to report your concern to the FCA, you should go the FCA's website and read the specific page there for whistleblowers. You'll find answers to frequently asked questions and details of the dedicated telephone line it operates for whistleblowers.



## 8 FAQs

### Question

Can I blow the whistle to the CII about concerns involving one of its members?

### Answer

The CII isn't able to respond to whistleblowing reports. Members are asked to report their concerns to a 'prescribed person or body', such as the Financial Conduct Authority (FCA). This could provide the whistleblower with legal protection under the Public Interest Disclosure Act 1998 that they wouldn't have if the CII dealt with their concerns.

### Question

Where can I get more advice about how to blow the whistle?

### Answer

We would recommend members talk to the charity Public Concern at Work, who offer a free, independent and confidential advice line.

### Question

Do I have to raise a concern internally within my firm first?

### Answer

The CII would strongly encourage members to consider blowing the whistle internally within their firm first. If however they are worried about the response they might receive, or have already done so and are unhappy with the response (or lack of) they did receive, then they should consider approaching a 'prescribed person or body', which in many cases will be the FCA.

### Question

If I blow the whistle to the FCA, will they keep my identity confidential?

### Answer

The FCA cannot give any categorical assurance on confidentiality (for reasons they explain on their website), but they do seek to do their best to protect the whistleblower's identity.

### Question

Do I get legal protection when I blow the whistle?

### Answer

The legal protection given to whistleblowers is influenced by several factors and needs to be weighed up with care. We would strongly recommend that members seek advice on this by contacting the confidential advice line provided by the charity Public Concern at Work.

## 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 advice 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, protect the public and maintain reputations.

## 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 a whistleblowing policy may seem a rather cumbersome task for a small firm, it could prove just as valuable as for any larger firm.

## Members who do not work in the regulated environment of financial services

Members whose work doesn't fall within the remit of a regulator will have different options for blowing the whistle than those whose work is regulated. Clearly, blowing the whistle within the organisation they work for remains a key option. It's also worth checking the list of 'prescribed people and bodies' to see if their concerns fall within the remit of any other oversight body.

## Sources of advice on whistleblowing

There are sources of confidential advice that you could turn to when considering whether or not to blow the whistle. Your firm might use an independent third party whistleblowing service that provides you with advice as well as an option for reporting your concerns. The charity Public Concern at Work has a free and confidential advice line for whistleblowers. The Financial Conduct Authority has a whistleblowing telephone line, but it is orientated more towards receiving reports of whistleblowing incidents and does not give 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/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

## 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 are considering blowing the whistle and wish to know more about the options available to them.

The other two guides are aimed at:

- managers who find themselves having to respond to an employee who is blowing the whistle to them
- senior directors who are responsible for implementing and overseeing their firm's whistleblowing arrangements.

All three guides are available on the professional standards section of the CII website [www.cii.co.uk/31018](http://www.cii.co.uk/31018)

# 10 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 feel like a challenging step to take, with all sorts of uncertainties attached. That's why the CII has produced this guidance, so that should a member want to raise a serious concern, they can do so with greater confidence, knowing that speaking up is important for themselves, their firm and their profession.

## A summary of the key points

1. Whistleblowing matters. It can save lives, jobs, money and reputations
2. The CII's Code of Ethics expects members to speak up about their concerns, as part of "acting with the highest ethical standards and integrity"
3. Workers blowing the whistle have protection under the Public Interest Disclosure Act 1998 when making a 'protected disclosure'
4. Many firms have a whistleblowing policy to encourage employees to speak up about their concerns
5. An 'approved person' has a duty to disclose information to the FCA or PRA of which they "...would reasonably expect notice"
6. The FCA has a dedicated whistleblowing hotline and is recognised as a 'prescribed body' under the Public Interest Disclosure Act 1998. This status can provide a whistleblower with legal protection not available if they blew the whistle to a professional body like the CII
7. Blowing the whistle can seem daunting, but doing what you feel is right is important, both for yourself and your profession
8. There are sources of impartial advice about how best to blow the whistle.

## Ethics guidance Series



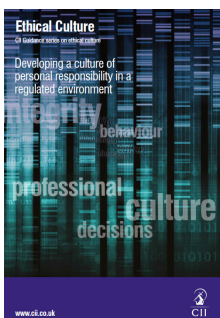
### **Ethical culture: building a culture of integrity**

The first paper in the CII's ethical guidance series proposes a ten-part framework for promoting integrity, which is built around the central principles of setting the right tone, supporting ethical decision-making, promoting openness and managing incentives. [www.cii.co.uk/27326](http://www.cii.co.uk/27326)



### **Ethical culture: a practical guide for small firms**

Every firm has a culture. It doesn't matter if you employ 10 or 10,000 people: culture influences how your firm goes about its business. It also helps shape how your firm develops and how it succeeds. Ethical culture: a practical guide for small firms offers guidance on how to shape culture within your firm. It will help you to understand how you can steer your firm's ethical culture in a more productive and trustworthy direction. [www.cii.co.uk/27327](http://www.cii.co.uk/27327)



### **Ethical culture: Developing a culture of personal responsibility in a regulated environment**

The creation of the Financial Conduct Authority brought an increased focus on culture and attitudes within firms. Ethical culture: Developing a culture of personal responsibility in a regulated environment considers how financial services regulation, in particular the new Senior Managers regimes, impacts on the development of an ethical culture and highlights pointers from within the regulation which can assist in securing ethical behaviour. [www.cii.co.uk/39598](http://www.cii.co.uk/39598)



### **Ethical culture: Changing the story – reasons to believe**

This paper sets out how it is important to use narratives and examples of 'doing the right thing' to help encourage good culture. [www.cii.co.uk/32573](http://www.cii.co.uk/32573)



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