

CII Guidance

How to manage a whistleblower: A six step plan for CII members approached by someone with a whistleblowing concern

Summary

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 CII website.

The purpose of this supplementary paper is to provide CII members who may be involved in their own whistleblowing occurrence in their own firm or organisation with support and guidance on how this can be handled professionally. It explains what is meant by whistleblowing, looks at the types of concerns that can be involved and outlines the law and regulations connected with it. It follows this up with a 6 step plan for you to use if someone approaches you with a whistleblowing concern.

Introduction

Many of our members hold positions of responsibility within the organisation they work for. From time to time, they may be approached by someone wanting to raise a concern about some form of misconduct or wrongdoing they have seen or heard about at work. Such an approach is referred to as ‘whistleblowing’.

The way in which you respond to someone seeking to ‘blow the whistle’ is very important. It’s an opportunity to address a potential problem at your firm and to help steer it away from financial and reputational damage. If your response to the person ‘blowing the whistle’ is wrong, then not only could the person blowing the whistle take their concern outside of the firm, but there could also be regulatory repercussions for you personally and for the firm you work for as well.

The CII has prepared this guide to provide you with information about how to respond appropriately to someone seeking to ‘blow the whistle’ to you. It explains what is meant by whistleblowing, looks at the types of concerns that can be involved and outlines the law and regulations connected with it. It follows this up with a 6 step plan for you to use if someone approaches you with a whistleblowing concern.

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 (SMR) 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?

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 they decide to raise a concern can matter – more on this 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 a concern is fine if the firm encourages openness, but runs into problems if the manager is unwilling to listen and respond to what the person has to say.

Whistleblowing tends to be associated with situations where a person suspects that their firm's management may not listen and respond in the manner they would hope for. At the end of the day, 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 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. 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.

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.

This is why the manner in which you respond to a person seeking to blow the whistle is important for you personally. Using this guide to respond appropriately to such concerns helps protect your job and your career from the regulatory and professional repercussions outlined above. Some situations can become quite complex: being prepared can make a real difference.

Reportable concerns and protected disclosures

It is important for members responding to people who are 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 '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 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'.

Our six step plan to use when someone approaches you with a whistleblowing concern

The CII have prepared this six step plan so that those of its members in positions of responsibility can respond appropriately to someone approaching them with a whistleblowing concern.

The way in which you respond to someone seeking to 'blow the whistle' is very important. They are presenting you with information about a potential problem for your firm and the opportunity to steer it away from financial and reputational damage.

We would recommend that you read the six step plan now and become familiar with the actions it sets out. In this way, if you are approached by someone with a whistleblowing concern, you'll be ready to respond in a professional manner. The 6 steps to this plan are: remember, listen, advise, reassure, take action and feedback.

1. Remember

- Remind yourself about your obligations under your firm's whistleblowing policy;
- Remember that your behaviour at this point should respect the CII's Code of Ethics, your own firm's code of ethics (or similar) and any regulatory obligations you may be under;
- Remember that the person in front of you blowing the whistle is going to be feeling nervous and cautious. Take this into account in how you engage with them, for example by being patient, responding with sensitivity and above all, listening respectfully;
- Remember that whistleblowing can save lives, jobs, money and reputations. Whistleblowers can be amongst the most loyal and public spirited of employees.

2. Listen

- Listen to what he/she has to say and record it. Ask him/her to clarify any grey areas, but bear in mind that the person may not know exact details. Read back what you've recorded so that the person knows what you've written down;
- Check whether the person raising the concern with you is doing so as a complaint (because they have a vested interest in what's happened) or as whistleblowing (which usually involves no direct, personal interest in what's happened). Follow the appropriate procedure for whichever situation applies, but remember, if the person is in doubt or insists it's whistleblowing, then treat it as whistleblowing;
- Don't let your feelings about what they are telling you (the message) become confused with how you respond to the person in front of you (the messenger);

- Remember that while the person blowing the whistle should provide you with what evidence they have to back up the concerns they are raising with you, they are not required to provide you with any form of investigatory evidence. It is for you and the firm to investigate the concern being raised and to gather that evidence.

3. Advise

- Suggest that, if they haven't already done so, the person becomes familiar with the firm's whistleblowing policy;
- Reassure the person that he/she should not suffer detriment for having raised this concern, unless it is later proved that the information they're providing was false to his or her knowledge;
- Reassure the person that his/her identity can be kept confidential if he/she so requests, but also point out that in certain circumstances, the law may require its disclosure;
- Remind the person that he/she is entitled to seek independent guidance. This could be through an independent provider of whistleblowing guidance already organised by the firm, or through an independent source such as the charity Public Concern at Work.

4. Reassure

- Outline who will be looking into their concern and how they will go about doing so, as well as how long this might take. Provide the person with a copy of the firm's procedures for handling a concern raised by a whistleblower;
- Reassure the person that they can expect to be told the outcome of the investigation into the concern they've raised, but also point out that in certain circumstances (such as relating to data protection or the rights of third parties), such feedback might not be possible;
- Tell the person that if they suffer any form of detriment from the firm or any of its employees as a result of having raised this concern, then they should report this to you as soon as possible. Some examples of detriment (both short and long term) to look out for could be closer monitoring, ostracism, blocking access to resources, unrequested reassignment or relocation, bullying or harassment, victimisation, suspension, demotion, disciplinary sanction, denial of training, dismissal, failure to promote, failure to provide an appropriate reference and failure to investigate a subsequent concern.

5. Take Action

- Decide how you're going to deal with the concern that the person has raised with you – for example, is there any immediate urgency with regard to a danger to life?
- Report this whistleblowing approach to the appropriate persons of authority within the firm. This could be the compliance manager or the person your firm has designated as its 'whistleblowers champion';
- Record this whistleblowing approach in the firm's management systems, as and where required by its whistleblowing procedures;
- Initiate an investigation into the concern being raised and allocate to it the appropriate level of resource and expertise.

6. Feedback

- Remind those conducting the investigation that feedback is to be provided to the person who raised the concern and agree with them when and what this is likely to be, and who will provide it. Diary to check that such feedback was subsequently given.

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, protect the public and maintain reputations.

Sources of guidance on whistleblowing

There are sources of confidential advice that you could turn to when someone approaches you with a serious concern. 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 FCA has a whistleblowing telephone line, but it is orientated more towards receiving reports of whistleblowing incidents and does not give legal advice.

Links

The FCA'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 in positions of responsibility and who have been approached by someone wanting to 'blow the whistle'.

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;

- senior directors who are responsible for implementing and overseeing their firm's whistleblowing arrangements.

All three guides are available on the CII website.

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 you be approached by someone wanting to 'blow the whistle' to you, your response will demonstrate that speaking up is important to you, your firm and your 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 be daunting, so responding to the person in a responsible and professional manner is important, both for yourself and your profession**
8. **There are sources of impartial advice about whistleblowing.**