CII Guidance

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 CII website.

The purpose 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 have been 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. These pressures have since resulted in many insurance firms now being subject to new regulations on whistleblowing.

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 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.

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 Senor 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.

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.

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.

Reportable concerns and protected disclosures

It is important for members involved with their firm's whistleblowing arrangements 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'.

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:

- a clear business rationale should be prepared outlining why your firm is introducing whistleblowing arrangements and the outcomes your firm wants to achieve from doing so;
- the rationale should point out the firm's regulatory obligations, but also refer to the business and ethical reasons for responding appropriately to people wanting to raise a concern;
- 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;
- a 'whistleblowers champion' should be appointed, with responsibility for the independence, autonomy and effectiveness of the firm's policies and procedures on whistleblowing, including the procedures for protection of people who raise concerns from detrimental treatment.
- operational responsibility for the firm's policies and procedures on whistleblowing should be assigned to 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;
- the whistleblowing policy should set out how the firm will assess and escalate the concerns reported to them, including the handling of anonymous disclosures;
- the whistleblowing policy and procedures should make clear that the firm will take disclosures from any person;
- training in whistleblowing should be given to the whistleblowers champion, the manager with operational responsibility and other key personnel, and be available for those who seek it;
- the whistleblowing policy and procedures should be communicated across the firm, both at the outset and in subsequent reminders, with clear support from senior management;
- it should be made clear in these communications that people are entitled by law to approach the regulator if they choose to, and can do so at any stage, whether or not they have raised the concern internally first;
- the whistleblowing policy and procedures should also be communicated to appointed representatives and tied agents, who should in turn make their UK-based people aware of the FCA's whistleblowing service;

- 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;
- those reporting procedures should extend to informing the FCA and any applicable professional body of any employment tribunal case brought by a whistleblower and which the firm subsequently loses;
- the board and the firm's senior management should be provided with management information about whistleblowing incidents and their current status, on at least an annual basis.

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

- about how the firm will assess and escalate the reports it receives, for example in relation to how it will differentiate between whistleblowing and complaints;
- about the range of people who are able to raise a concern through the firm's whistleblowing arrangements;
- about people having the option to raise a whistleblowing concern outside of their line management, but still within their firm;
- about people being able to approach the regulator's whistleblowing service at any stage;
- about the scope of responsibilities of both the whistleblowers champion and the person with operational responsibilities for the firm's whistleblowing policies and procedures;
- 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;
- 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.

Many of our members will work in firms that are now required by the regulator to have whistleblowing policies and procedures, but some members may work in firms not yet covered by those regulations. Those members can use the above points as guidance for implementing their own voluntary whistleblowing arrangements.

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 could address when assessing the effectiveness of your firm's whistleblowing arrangements:

- does your firm have both a whistleblowing policy and a set of clearly documented procedures of sufficient scope to meet its regulatory obligations and business requirements?

- 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?
- have the responsibilities and duties of both the whistleblowing champion and the whistleblowing manager been clearly set out and agreed with them? Is there evidence that that balance of responsibilities and duties is working in practice?
- what training in whistleblowing has taken place in the last three years? Is it of suitable quality and scope, and have the right people been attending it?
- has the board and senior management been receiving reports on whistleblowing on at least an annual basis? Is there evidence of such reports being discussed at board meetings? Do board members feel sufficiently informed by these reports?
- has there been any form of internal audit of how your firm has been using its whistleblowing arrangements during the last three years? Did this encompass any agreements with people at your firm in relation to clauses now prohibited by the regulator?
- 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 concerns that have come to your attention that you might 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, protect the public and maintain reputations.

Sources of guidance on whistleblowing

There are sources of confidential advice 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 FCA 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 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 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.