

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 professional standards section of the CII website.

The objective of this supplementary paper is to focus on CII members who may be involved in their own whistleblowing occurrence in their own firm or organisation and provides support and guidance on how this can be handled professionally. It explains what is meant by whistleblowing, how it differs from complaining and outlines the law and regulations connected with it. It follows this up with a 6 step plan for you to use when 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, 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, how it differs from complaining and outlines the law and regulations connected with it. It follows this up with a 6 step plan for you to use when someone approaches you with a whistleblowing concern.

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.

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'. Which is best depends on the context: for example, 'speaking up' about a concern is fine if the firm has established a culture of openness, but not so fine when openness is absent or only skin deep.

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.

What obligations are our members under when it comes to whistleblowing

All members of the CII are under an obligation to carry out their work in accordance with the Institute's Code of Ethics. In addition to this, certain categories of members are under further obligations to regulatory authorities: for example the Financial Conduct Authority (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.

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.

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.

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, when 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 the 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 whistleblower 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 would 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 concerns 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 should be told the outcome of the investigation into the concerns 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. Examples of detriment (both short and long term) to look out for are 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 issue that is being whistleblowed about – 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, a senior director and/or someone with designated whistleblowing responsibilities;
- Record this whistleblowing approach in the firm's management systems, as and where required by its whistleblowing procedures;
- Initiate an investigation into the concerns 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 and protect revenue and reputations.

Sources of guidance on whistleblowing

There are sources of confidential guidance 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 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/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 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 might be responsible for implementing and overseeing their firm's whistleblowing arrangements.

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.

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The CII is the world's leading professional organisation for insurance and financial services, with over 110,000 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 celebrated our Centenary as a Chartered body.