



Institute
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Whistleblowing:

A guide for actuaries

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Whistleblowing: A guide for actuaries

Introduction

At some point in their career, many actuaries may be concerned about issues they see or hear during the course of their work. Usually these concerns are easily resolved but sometimes they may not be. It can be difficult to know what to do.

You may be worried about raising such issues, anxious that doing so may be seen as disloyalty and put at risk relations with colleagues or even your job. You may want to keep the concerns to yourself, perhaps feeling that it's none of your business, or only a suspicion, or that you will be seen as a “troublemaker” if you raise them.

The guide

This guide is intended to help all actuaries, including any actuary who may find themselves experiencing such concerns.

It sets out:

- the expectations in respect of speaking up and reporting suspected professional misconduct placed on an actuary by their professional body, the Institute and Faculty of Actuaries (IFoA);
- the relevant law;
- some questions for actuaries to consider to help them ensure they can handle any such situations of concern confidently and constructively; and
- sources of further help and advice.

The guide is only an indicator of relevant considerations. If you are unsure at any stage whether to raise a concern, you may wish to seek advice from one of the sources listed on pages 14-15 of this guide.

In practice, the terms “whistleblowing” and “speaking up” are often used interchangeably. In this guide, whistleblowing is used to describe any act of speaking up¹ or reporting to a third party (whether clients, regulators or relevant authorities)², except where the context makes it sensible to preserve the distinction.

1] As required by Principle 4.1 of the Actuaries' Code reproduced in Appendix A.

2] As required by Principles 4.2 – 4.4 of the Code – ibid.



Purpose

The guide imposes no new obligations upon actuaries or their employers. Rather the IFoA hopes that the guide will be a useful tool for its members if, and when, they find themselves in the sort of complex or difficult situations where they may be thinking about whistleblowing.

The guide is mainly aimed at actuaries but may also be helpful to those who employ actuaries, in so far as it identifies the professional expectations actuaries are under and what actuaries' expectations of their employers or clients in this matter may legitimately be. To help those who employ actuaries further, especially those in smaller firms, the IFoA has also produced a parallel guide for employers, which includes a sample whistleblowing policy.

You may wish to refer, or refer your employer, to that guide, which is available on the IFoA's website.

Application

Actuaries and their employers must be aware that the provisions of the Actuaries' Code ("the Code") are applicable to all members of the IFoA (i.e. Students, Affiliates, Associates and Fellows), regardless of where they practise.

However, where reference is made to legislative provisions within this guide, those references are to UK legislation.

What is required of an actuary

Actuaries are required by their professional body³, to "act honestly and with the highest standards of integrity"⁴. They are also required to "respect confidentiality unless disclosure is permitted by law and justified in the public interest"⁵. So the duty of confidentiality to a client (whether an employer or an external client) is not absolute and may be overridden by other considerations in the public interest.

The Code recognises this in its fourth principle – "Compliance". This says that members of the IFoA will:

"...comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure that they are not placed in a position where they are unable to comply, and will challenge non-compliance by others."

The Code goes on to state four relevant ways in which this principle is to be observed. Section 4 of the Code is reproduced in full in Appendix A to this guide.

Additionally, in certain circumstances specified in the Rules of the Disciplinary Scheme, actuaries could be found guilty of misconduct if they fail to take action when they become aware of certain kinds of conduct by a person with whom they are connected. There is no requirement that the connected person be a member of the IFoA, only that the actions, if they were committed by a member, would amount to misconduct.

3| Institute and Faculty of Actuaries <http://www.actuaries.org.uk>

4| The Code, principle 1.

5| The Code, paragraph 1.2.

It is clear therefore that actuaries are expected to:

- **raise** concerns about any potentially unlawful, unethical or improper course of action with their clients and/or employer; and
- **report**
 - information to the relevant regulatory authorities, in accordance with legal or regulatory obligations to do so;
 - behaviour which they believe to be unlawful, unethical or improper to regulators or other relevant authorities where there is legal protection to allow them to do so;
 - any breach of the Actuaries' Code which appears to constitute misconduct or which is otherwise considered material, including any material breach of any relevant legal, regulatory or professional requirements (including IFoA Standards or Technical Actuarial Standards issued by the Board for Actuarial Standards), promptly to the IFoA for consideration under the relevant Disciplinary Scheme.

...the price of doing nothing is often greater than doing what we think is right.

To the extent that the consent of a third party is required for this purpose in order to disclose information, members must take all reasonable steps to obtain such consent; and at all times, actuaries must be guided by the public interest and their own consciences to make use of permitted disclosures in order to comply with their professional obligations.

Although raising these matters is not always easy, the price of doing nothing is often greater than doing what we think is right. Issues which may occur to actuaries who are considering whistleblowing are addressed at Appendix B to this guide.

Relevant law and other requirements

Certain statutory and regulatory provisions place a duty on individuals to make particular disclosures to a third party whilst other provisions are permissive, allowing disclosures to be made in certain circumstances. Where there is a statutory duty to disclose, any contractual confidentiality clauses would most probably be overridden. Those involved in the negotiation of such contracts should therefore bear this in mind when drafting the contract terms. These duties should also be considered when an organisation's standard terms and conditions of business are being reviewed.

The provisions most likely to affect actuaries are:

The Companies Act 2006

This Act provides that an officer of an organisation guilty of an offence committed by that organisation under part 42 of the Act will be committed without their consent, connivance or attributable to any neglect on their part. (Note there is an identical provision within the Financial Services and Markets Act 2000.)

The Financial Reporting Council (FRC) - Code of Corporate Governance

Provision C 3.4 of the FRC's revised Code of Corporate Governance (the UK Corporate Governance Code) published in June 2010 requires that the audit committees of public companies review the company's arrangements for staff to raise concerns confidentially.

Financial Services Authority (FSA)

The FSA rules impose additional reporting requirements on any actuary who performs a controlled function for an FSA authorized firm. Those individuals are known as "approved persons" and are required to disclose information of which the FSA would reasonably expect notice.

The FSA's Statement of Principles and Code of Practice for Approved Persons provides that failing to report information which could reasonably be assumed to be of material significance to the FSA in accordance with their organisation's internal procedures – or, where none exist, direct to the FSA – falls foul of this requirement⁶.

⁶ Statement of Principle 4

The Financial Services and Markets Act 2000

Actuaries who carry out a statutory function are under an obligation to disclose certain matters to the FSA. A disclosure made in accordance with the terms of this Act overrides any contractual duty of confidentiality, provided it is made in good faith and the person making the disclosure reasonably believes that the disclosure is relevant to the functions of the FSA. It does not matter whether the information is volunteered by the actuary or provided to the FSA in response to a request.

The Pensions Act 2004

A professional adviser to an occupational or personal pension scheme has a duty to report certain breaches of the law to the Pensions Regulator (tPR). As long as the whistleblower has reasonable cause to believe that there has been a breach of the law, which would be materially significant to tPR, such a report will not amount to a breach of a duty of confidentiality, even if the breach is not proven. A report to tPR must be in writing, and be made as soon as reasonably practicable. Failure to comply can result in a fine of up to £5,000. tPR's Code of Practice⁷ gives guidance on the meaning of "reasonable cause" and "materially significant".

The Proceeds of Crime Act 2002

This Act requires employees working within the regulated sector, as defined in the Act, to disclose suspicions of money

laundering to a designated employee within the organisation (the Money Laundering Reporting Officer) or to the Serious Organised Crime Agency (SOCA).

A number of offences are created by the Act, including that of assisting a money launderer. It is a valid defence to report the matter to the Money Laundering Reporting Officer or SOCA. Where a report is made, it is not an offence to alert or "tip off" the suspected launderer, but a report has been made and an investigation is being carried out.

The Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998)

The Public Interest Disclosure Act (PIDA) was introduced to provide protection for those who honestly raise genuine concerns about wrongdoing or malpractice in the workplace, when they do so in good faith, are acting in the public interest and not for personal gain and subsequently are victimised and/or dismissed for doing so. The Act has a tiered approach to disclosures, which most easily gives protection to workers for raising a concern internally. Protection is also available for disclosures to regulatory bodies (including the FSA, the FRC and tPR) and, in exceptional circumstances, wider disclosures (for example to an MP or the media) may also be protected. However, before following these routes, we strongly recommend that you seek advice.

Some practical considerations and questions for actuaries

In some cases actuaries will be under a legal or regulatory duty to report information as soon as their suspicions are aroused. In others, where there is no immediate duty to report, blowing the whistle externally is not the first step to consider but the last one.

Indeed, some of these protections, such as the protection under PIDA, may not be available to the whistleblower unless he or she has raised the matter internally first before going outside the organisation. The aim of every one – actuaries, their clients and employers – should be to promote an open culture, in which all involved feel able to raise any concerns they may have and are not inhibited, victimised or penalised for doing so.

Actuaries can help in developing such a culture by:

- ensuring that their clients and/or employer understand the professional and legal obligations of actuaries set out earlier in this note, whether through contractual terms or the provision of a separate information note;

- checking that their firm has a clear policy for staff on speaking up and whistleblowing that is effectively promoted and regularly reviewed; and
- ensuring that their employer's policy on speaking up and whistleblowing is properly recognised in client contracts.

Against this background, here are some practical questions which actuaries might ask themselves both (a) before any situation of concern arises and (b) if and when one does.

⁷ | tPR, Reporting Breaches of the law
<http://www.thepensionsregulator.gov.uk/docs/code-01-reporting-breaches-of-law.pdf>

Before any problem arises

1. Do I know and understand my professional obligations and rights and responsibilities under the law (as set out earlier in this guide)?
2. Do I know whether my firm/employer has a written policy on whistleblowing?
3. If it does, am I familiar with the policy?
4. If I am a manager, do my staff know about the policy?
5. If I found myself in a situation where I might have to blow the whistle, am I clear about my obligations and the protections available under the law?
6. Do I know where I can go for further advice?
7. Do I understand that the Actuaries' Code is not simply a set of rules and that members are expected to observe the spirit as well as the letter of the Code in their professional conduct?
8. Do I understand what constitutes misconduct which may lead to reporting, and what constitutes a material breach of relevant requirements, under Principle 4.4 of the Code?

9. Do I understand that, while some situations will very clearly require me to blow the whistle, others may be less clear cut, and that nevertheless I should keep a note of all such concerns as a series of actions, each in itself below the reporting threshold, may in aggregate become serious enough to require reporting?
10. Have I developed a clear picture of the distinction which can be made between actions which are minor, part of work in-progress, and can potentially be remedied, and actions which are so advanced that remedies are no longer possible, when deciding at what point to progress from speaking up to reporting?

If a problem does arise

1. Do I understand my obligations as an actuary and the obligations and protections available to me under the law?
2. Have I re-read my firm's whistleblowing policy?
3. Do I have reasonable grounds for believing my concerns are true?
4. Have I raised my concerns at the appropriate level within my organisation?
5. Am I clear how, and to whom, I should make the report?
6. Am I clear who should be informed that I have made the report?
7. Do I have reasonable grounds to believe that any disclosure outside the firm to an appropriate third party would be lawful and in the public interest?
8. Do I need to want to look for further sources of advice?
9. Have I properly considered the risks of not reporting this issue?

Points to note when considering whether to whistleblow

In any situation in which you are contemplating whistleblowing to an appropriate individual either within or outside your organisation, you may find it helpful to note down:

- the nature of your concern;
- your reason(s) for believing that there is an issue;
- the full name(s) of those involved, including any with whom you have already raised the issue;
- times and dates when your concerns were aroused;
- details of the location(s) concerned;
- details of any evidence;
- details of any witnesses; and
- whether any action has already been taken by anyone.

If, having identified an issue, you decide that it is not necessary to whistleblow, you may find it helpful to note down contemporaneously your reasons for your decision.

When considering whether to raise a concern outside an employing organisation, members should first consider, where appropriate, whether they can follow the internal procedures laid down by their employer.



Making a report to the IFoA

To report concerns about the conduct of another actuary, details of the alleged misconduct must be submitted in writing to the IFoA. Written reports should where possible contain:

- the full name and address of the member or members concerned;
- details of what, in your view, the member has done wrong;

- the dates on which the events that you describe took place;
- copies of any relevant papers; and
- the names and addresses of anyone who could support your complaint from their own personal knowledge.

Further information on making a report can be found on the IFoA's website⁸.

8| www.actuaries.org.uk/regulation/pages/how-complain-about-member

Sources of guidance and advice

First, and, hopefully obviously, check what advice is available within your own firm.

Many actuarial firms have whistleblowing policies in place. The Committee on Standards in Public Life has recommended that a whistleblowing policy should make clear the following:

- the organisation adopting the policy takes malpractice seriously, giving examples of the types of concerns that can be raised, so distinguishing a whistleblowing concern from a grievance;
- staff have the option to raise the concern outside line management;
- staff are enabled to access confidential advice from an independent body;
- the organisation will, when requested, respect the confidentiality of a member of staff raising a concern;
- when and how concerns may properly be raised outside the organization (e.g. with a regulator).

- it is a disciplinary matter both to victimise a bona fide whistleblower and for someone maliciously to make a false allegation.

Larger firms may also have professionalism and/or Ethics Committees whose members are available to help their colleagues deal with professional ethical issues arising in the course of actuarial work. In addition, the IFoA offers general advice to members on professional ethical matters, including whistleblowing.

Members of the IFoA can access this confidential service at:

whistleblowing@actuaries.org.uk

Further sources of advice

This guide is intended as a useful starting point for actuaries considering their obligations in relation to whistleblowing. The following organisations and bodies offer additional guidance, which you may find of assistance.

Independent organisations

Public Concern at Work (PCaW)

+44(0)20 7404 6609
helpline@pcaw.co.uk
www.pcaw.co.uk

The charity PCaW provides much useful information both to employees and employers on their respective obligations and on the legal protections available to whistleblowers under the Public Interest Disclosure Act 1998. The full provisions of the Act can be found on the Government's legislation website⁹.

British Standards Institution (BSI)

+44 (0)20 8996 9001
cservices@bsigroup.com
www.bsigroup.com

The BSI has produced a whistleblowing arrangements code of practice, available on its website, which sets out good practice for the introduction of effective whistleblowing arrangements¹⁰.

Regulators

Financial Reporting Council (FRC)

+44 (0)20 792 2300
www.frc.org.uk

Financial Services Authority (FSA)

+44 (0)20 7066 9200
whistle@fsa.gov.uk
www.fsa.gov.uk

The FSA offers further guidance on whistleblowing, which can be found on the FSA website.

The Pensions Regulator (tPR)

+44 (0)870 606 3636
customersupport@thepensionsregulator.gov.uk
www.thepensionsregulator.gov.uk

tPR has also issued a Code of Practice giving guidance to those affected by the Pensions legislation¹¹.

Institute and Faculty of Actuaries

Whistleblowing advice line

(UK members only)
+44 (0)800 223 0177

This confidential advice line is provided by Public Concern at Work for the IFoA's UK based members. All calls are answered by staff experienced in advising on when and how best to raise concerns.

Conclusion

This guide is issued by the IFoA for the use and benefit of actuaries and their employers. It sets out the IFoA's view of good practice in relation to whistleblowing. It is not intended to be the only standard of good practice for actuaries and their employers to follow. Demonstrating that you followed the steps set out in this guide will make it easier to account to the IFoA for your actions. This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct.

While care has been taken to ensure that it is accurate up to date and useful, the IFoA will not accept any legal liability in relation to it.

The content of this guide will be kept under review and for that reason we would be pleased to receive any comments you may wish to offer on it.

Any comments may be directed to:

**Whistleblowing
Institute and Faculty of Actuaries
Maclaurin House
18 Dublin Street
Edinburgh
EH1 3PP**

or

whistleblowing@actuaries.org.uk

9| <http://www.legislation.gov.uk/ukpga/1998/27/contents>

10| <http://www.bsigroup.com/en/sectorsandservices/Forms/PAS-1998-2008-Whistleblowing/>

11| <http://www.thepensionsregulator.gov.uk/docs/code-of-practice-on-reporting-breaches-of-law.pdf>

Appendix A: Extract from the Actuaries' Code

4 Compliance:

Members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.

4.1 Members will speak up to their clients or to their employers, or both, if they believe, or reasonably ought to believe, that a course of action is unlawful, unethical or improper.

4.2 Members will fulfil any obligations to report information to relevant regulatory authorities.

4.3 Where there is legal protection available, members will report behaviour that they have reasonable cause to believe

is unlawful, unethical or improper, to regulators or other relevant authorities. In the UK these protections include: the Public Interest Disclosure Act 1998, sections 342 and 343 of the Financial Services and Markets Act 2000 and section 70 of the Pensions Act 2004.

4.4 Members will promptly report any matter which appears to constitute misconduct or a material breach of any relevant legal, regulatory or professional requirements including IFoA Standards and Technical Actuarial Standards issued by the Board for Actuarial Standards, for consideration under the relevant disciplinary schemes. To the extent that the consent of a third party is required for this purpose in order to disclose information, members must take all reasonable steps to obtain such consent.

Appendix B: Issues which may occur to actuaries who consider whistleblowing

I may be sued or disciplined for breach of confidentiality.

There are a number of public interest exceptions to a claim for breach of confidentiality. In general, courts usually favour disclosure in such cases, provided that the disclosure is made to the appropriate body, in good faith and in the public interest.

I only need to whistleblow where I have a specific duty to do so.

Raising matters of concern with your employer or the appropriate regulatory body is encouraged by the IFoA even where there is no specific duty to do so.

I can only whistleblow where I am certain of the facts.

It will not always be possible for a whistleblower to be 100% certain of the facts and for that reason, most whistleblowing duties extend to reasonable concerns and protections generally apply to whistleblowers who act on suspicions which are reasonably held.

I am unsure how to proceed because the confidentiality clause in my employment contract does not contain the exception “unless disclosure is permitted by law and justified in the public interest” contained in Principle 1.2 of the Actuaries’ Code.

Even where your employment contract does not include an exemption relating to your professional duties, you are still obliged to blow the whistle in accordance with those obligations.

The Public Interest Disclosure Act 1998 (the Act) provides anyone who makes a “protected disclosure” under the terms of the Act with a specific statutory defence to any breach of confidence action raised against a whistleblower.

Under the Act, any agreement or contract, in so far as it operates to prevent an employee from making a protected disclosure, is rendered void. If, for example, an employee is able to meet the conditions contained within the Act and makes a properly protected disclosure of their employers’ confidential information, they may not be held to be in breach of contract and the employer will not be able to rely on the contract to seek an injunction or damages in respect of the disclosure of the confidential information.

The whistleblowing charity, **Public Concern at Work (+44 (0)20 7404 6609 or helpline@pcaw.co.uk)** is able to provide

free confidential advice on making a disclosure in accordance with the Act.

I am concerned that I may lose my job or upset an important client if I blow the whistle.

Although legitimate concerns, these possibilities should not dissuade you from blowing the whistle. Protection for employees who whistleblow can be found within the Public Interest Disclosure Act 1998 and the whistleblowing charity

Public Concern at Work is able to provide confidential advice on how to go about making a disclosure in accordance with the provisions of the Act. It is important to bear in mind that reputable employers and other actuaries expect all actuaries to report concerns which they have, in accordance with their professional duties.

I think that the regulatory reaction to a disclosure is likely to be disproportionate to the concerns that I have.

Small concerns can often provide clues to much larger problems and so it is essential that a decision on the relative importance of a disclosure is left up to your employer, the IFoA or the appropriate regulator.

If you are an actuary and have any questions regarding the content of this whistleblowing guide please email

whistleblowing@actuaries.org.uk

Small concerns can often provide clues to much larger problems...