



Society of Actuaries  
in Ireland

# **Whistleblowing: A Guide for Actuaries**

**May 2019**

# Whistleblowing: A Guide for Actuaries

## Introduction

### Purpose of this Guide

This Guide is intended to assist members of the Society of Actuaries in Ireland (“the Society”) who find themselves in a situation where they are required to speak up or “whistleblow” about an activity that they believe is unlawful, unethical or improper. The Guide outlines key statutory requirements and protections and the additional obligations imposed upon members under the Society’s Code of Professional Conduct.

### What is “whistleblowing”?

“Whistleblowing” does not have a legal definition and the term can mean different things to different people. In essence, it is about an individual reporting suspicions in respect of some wrongdoing.

A whistleblower might know that the wrongdoing has occurred or is likely to occur, or might have strong suspicions in that regard. Depending on what is at issue, the whistleblower might report the matter to an employer, or (by choice or because of statutory or professional obligations) to a statutory authority and/or professional body.

The term “good faith reporting” may be used instead of “whistleblowing”. “Speaking up” is also used, particularly where an individual reports matters within his/her firm on either a formal or informal basis.

### Overview

In Section 1 of this Guide, we highlight the importance of having an open culture in which people are not inhibited from, or penalised for, raising concerns. We also provide guidance on how to address concerns and how to protect yourself from potential adverse consequences if you decide to whistleblow.

In Section 2, we provide an overview of some relevant legislation.

- The Protected Disclosures Act 2014 provides that workers who raise concerns about actual or potential wrongdoing in their workplace will benefit from a range of employment and other protections. We provide information on types of wrongdoing, and types of disclosures, covered by the Act.
- We also draw attention to other reporting requirements, and protections, that may be particularly relevant to actuaries.

In Section 3, we draw attention to professional responsibilities, as set out in the Society’s Code of Professional Conduct. As many members of the Society are also members of the Institute and Faculty of Actuaries (IFoA), we refer to IFoA requirements too, and we outline how non-compliance with Society or IFoA requirements will be addressed. We also mention considerations that apply if you are a member of an actuarial association other than the IFoA, or another professional body.

Finally, in Section 4, we list some practical considerations that actuaries might usefully consider.

## **Disclaimer**

This Guide does not provide, and does not constitute or comprise, legal advice on any particular matter and it is provided for general information purposes only. While care has been taken to ensure that it is accurate at the date of publication, the Society will not accept any legal liability in relation to it.

A member who decides to whistleblow should not rely on the content of this Guide but should consider the relevant statutory provisions and professional obligations, and take any appropriate legal and professional advice, before proceeding.

This Guide is not intended as a description of all appropriate approaches to whistleblowing - actions other than those described here may be appropriate, and indeed advisable, in some circumstances.

## 1. Actuaries and Whistleblowing

### *Fostering the right culture*

- 1.1 In many cases, issues which may be a cause for concern 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 quiet about concerns, perhaps feeling that it's none of your business, or only a suspicion, or may be worried that, by speaking up, you will be seen as a "troublemaker". It is important that actuaries feel encouraged to raise and question wrongdoing, risk or malpractice as speaking up early can mean a problem is addressed before the damage is done, and so a disaster may be prevented. Although raising these matters is not always easy, the price of doing nothing is often greater than the price of doing what is right. Ultimately, speaking up better protects the reputation of any organisation and protects clients, customers and the wider public.
- 1.2 The aim of everyone – actuaries, their clients and employers – should be to promote an open culture, in which all involved feel able to speak up in order to articulate any concern they may have and are not inhibited from, 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 on actuaries, 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 or whistleblowing that is effectively promoted and regularly reviewed; and
  - Ensuring that their employer's policy on speaking up or whistleblowing is properly recognised in client contracts.

### *I am concerned about an issue – what should I do?*

- 1.3 You may be obliged to whistleblow on your employer, or a client, or another actuary or colleague, e.g. if an issue which you raise with the employer, client or other actuary or colleague is not resolved to your satisfaction and whistleblowing is required by law or by professional standards. In other cases, where there is no immediate duty to report, blowing the whistle externally should not normally be the first step to consider, but may be necessary if there is no other way of dealing with the issue.
- 1.4 Except where there is a statutory requirement to report immediately to an authority (e.g. under Section 83 of the Pensions Act 1990 as amended in case of fraud or misappropriation of pension fund assets, or the anti-money laundering provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010), you should, where possible, first attempt to resolve the issue by bringing it to the attention of your superiors or client or the other actuary or colleague in

question. In many cases, the other party will be grateful that the matter has been raised as it will provide an opportunity to address the issue, if necessary, at an early stage.

1.5 However, there may be circumstances where this approach does not address the perceived problem to your satisfaction, and you are required to consider whether you should or indeed are obliged to whistleblow.

- In some circumstances, reporting is mandatory by law. We cover some of these circumstances in section 2 of this Guide.
- In other circumstances, there might be no statutory requirement to report. However, you might have a responsibility to do so under the Society's Code of Professional Conduct, which reflects the public interest responsibilities generally accorded to professions and their members.

1.6 In making this decision, you should have regard to the relevant statutory and professional requirements, which are considered below. You might need help with your decision. You should check what support and advice is available within your firm. Many public bodies and financial services firms are required to have procedures in place to deal with disclosures made. You may wish to avail of the Society's Member Support Panel<sup>1</sup>, in which case the Society will introduce you to a senior actuary with whom the matter can be discussed. It would usually be advisable to also seek legal advice on your responsibilities and protections, especially in relation to allegations against named individuals and possible disclosure of confidential information. You might also need to seek other professional advice to confirm whether your concerns are well founded.

***If I whistleblow, how can I protect myself from adverse consequences?***

1.7 Sometimes people are deterred from whistleblowing by fears that they will be shunned by colleagues, or will lose out on promotion opportunities or even lose their job, or will suffer in other ways.

1.8 In some circumstances, statutory protections apply, under the terms of the Protected Disclosures Act 2014. We outline the main provisions of the Act in section 2 of this Guide.

1.9 Whether statutory protections apply or not, there are some things that you can do to minimise the risks involved in whistleblowing, such as:

- (a) You should take such steps as are available to you to ensure that your concerns are substantially valid and based on true information. If you are concerned about an evolving situation, it may be useful to keep a diary or contemporaneous notes of relevant information.
- (b) As indicated at 1.6, you should seek appropriate advice before making a report. As well as advising on your rights and the approach you should take, your adviser should be able to

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<sup>1</sup> <https://web.actuaries.ie/member-support-panel>

advise you on the extent to which you should or should not gather documentation or other evidence to support any allegations that you raise. Your adviser should also be able to counsel you on how to prepare for and deal with any implications for you as a consequence of whistleblowing.

- (c) Consider whether you should in the first instance raise your concerns informally and in a non-confrontational way, e.g. with a compliance officer or health and safety officer or non-executive director (depending on what is at issue). It may be that matters are not yet so far advanced that they cannot be remedied, and if they are remedied, external reporting might not be necessary (though legal and professional requirements might make reporting necessary anyway in some circumstances).
- (d) If you decide to make a formal report of wrongdoing to your employer, check whether they have a whistleblowing policy/procedure in place. If your employer has a formal procedure for dealing with protected disclosures, follow it carefully. If you have any questions on the policy/procedure, try to have these answered by the company or seek professional advice before whistleblowing.
- (e) If you decide to make a formal report to an authority in relation to wrongdoing in the workplace and you expect the protections set out in the Protected Disclosure Act 2014 to apply, be sure that you fully understand the circumstances in which the protections apply and the procedures that you must follow in making your report.
- (f) Be sure that you are clear in your own mind about why you are reporting and what you are reporting. This will help you to explain your concerns and help others to understand them. In your report, stick to the facts and highlight the information that is of most importance.
- (g) Seek medical advice promptly if you experience anxiety or your health and wellbeing are otherwise adversely affected during the course of whatever investigations are initiated as a result of your report.

1.10 A useful source of information and advice is the booklet “Speak Up Safely: Transparency International Ireland’s Guide to Whistleblowing and Making a Protected Disclosure”<sup>2</sup>. This booklet is aimed at situations where workers choose to (rather than are obliged to) disclose information and are protected in doing so under the Protected Disclosures Act 2014. However, it contains good advice that may also be helpful if you find yourself in other situations where you need to speak up or whistleblow, e.g. if, in accordance with responsibilities under the Code of Professional Conduct, you are considering making an allegation to the Society that another member has or may have been guilty of misconduct.

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<sup>2</sup> [https://www.transparency.ie/sites/default/files/14.12.02\\_speak\\_up\\_safely\\_final.pdf](https://www.transparency.ie/sites/default/files/14.12.02_speak_up_safely_final.pdf)

## **2. Statutory provisions**

### **A. Protected Disclosures Act 2014**

2.1 The Protected Disclosures Act 2014, which came into effect on 15 July 2014, provides that workers who raise concerns (protected disclosures) about actual or potential wrongdoing in their workplace will benefit from a range of employment and other protections. Redress is available to workers where they are penalised by their employer or suffer any other detriment at the hands of others for making the disclosure.

#### ***Application***

2.2 The Protected Disclosures Act 2014 does not require employees to make a protected disclosure but sets out a process and provides for protection in the event that they do.

2.3 The term “worker” includes employees or former employees, trainees, people working under a contract for services, independent contractors, agency workers and people on work experience.

2.4 If you are a worker and you disclose relevant information in a particular way, this is a protected disclosure under the Act. Information is relevant if it came to your attention in connection with your work and you reasonably believe that it tends to show wrongdoing. This wrongdoing may be occurring or suspected to be occurring either inside or outside of the country. Even if the information is proved to be incorrect, you are still protected by the Act provided you had a reasonable belief in the information.

#### ***Wrongdoing***

2.5 Wrongdoing is defined in quite broad terms in the Act and includes the commission of criminal offences, failure to comply with legal obligations, endangering the health and safety of individuals, damaging the environment, miscarriage of justice, misuse of public funds, and oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body. The definition also includes the concealment or destruction of information about any of the above wrongdoing. In addition, likely as well as actual wrongdoing is covered. Any wrongdoing which it is your or your employer’s function to detect, investigate or prosecute does not come within the terms of the Act.

#### ***Confidentiality***

2.6 In general, people who receive protected disclosures or who subsequently deal with them may not disclose any information to another person which may identify the person who made the disclosure. There are some exceptions to this, for example, if identifying the whistleblower is essential to the effective investigation of the matter or is required in order to prevent crime or risks to State security, public health or the environment.

### ***Disclosure to employer***

2.7 The simplest form of disclosure is to your employer where all that is required is a reasonable belief that the information disclosed shows or tends to show that the wrongdoing is occurring. If you are or were employed in a public body, you may choose, as an alternative, to report to the relevant Minister.

### ***Disclosure to prescribed body***

2.8 You may choose to report to one of the prescribed bodies listed in the Protected Disclosures Act 2014 (Section 7(2)) Order 2014<sup>3</sup> as amended by the Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2015<sup>4</sup>. In general, these bodies have regulatory functions in the area which are the subject of the allegations.

2.9 A disclosure you make to a prescribed body is a protected disclosure if:

- You reasonably believe that the relevant wrongdoing is within the remit of the prescribed body; and
- The information you disclose and any allegation in it are substantially true (this is a higher standard than is required for disclosure to your employer).

### ***Disclosure to external persons***

2.10 A disclosure made to an external person, for example, a journalist, may be a protected disclosure if it meets a number of conditions:

- You must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.
- The disclosure must not be made for personal gain.
- At least one of these conditions must be met:
  - At the time you make the disclosure you must reasonably believe that you will be penalised if you make the disclosure to the employer, a prescribed body or a Minister;
  - Where there is no relevant prescribed body, you reasonably believe that it is likely that the evidence will be concealed or destroyed if you make the disclosure to the employer;
  - You have previously made a disclosure of substantially the same information to the employer, a prescribed body or a Minister;
  - The wrongdoing is of an exceptionally serious nature.

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<sup>3</sup> <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

<sup>4</sup> <http://www.irishstatutebook.ie/eli/2015/si/448/made/en/print>



- 2.11 In all these circumstances, it is reasonable for you to make the disclosure to an external person. The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, and whether any action had been taken in cases where a previous disclosure was made.

### ***Redress and protections***

- 2.12 The Act provides for redress for employees who are penalised because they made a protected disclosure. You are deemed to have been penalised if there is any act or omission that is detrimental to you, for example, dismissal, unfair treatment or threats of reprisal.
- 2.13 If you are dismissed from your employment because you made a protected disclosure, that dismissal is regarded as unfair. You may make a claim for unfair dismissal and if your claim succeeds, you may be awarded compensation of up to 5 years' pay. Your motivation for making a protected disclosure may affect the level of compensation you are awarded. If the investigation of the wrongdoing was not your only or main motivation for making the disclosure, then the compensation awarded to you may be up to 25% less than it would otherwise be.
- 2.14 The Act provides for immunity from civil actions for damages – in effect, you cannot be successfully sued for making a protected disclosure. You may sue a person who causes detriment to you because you made a protected disclosure. However, you may not do this and also look for redress under the unfair dismissals legislation or make a complaint to the Workplace Relations Commission. If you are charged with unlawfully disclosing information, it is a defence that you were making what you reasonably thought to be a protected disclosure.
- 2.15 If you are dismissed or penalised for making a protected disclosure, you may bring a complaint to the Workplace Relations Commission using the online complaint form available on [www.workplacerelations.ie](http://www.workplacerelations.ie). You should make a complaint within 6 months (or within 12 months if there is a reasonable cause). The adjudicator's decision on your complaint may require your employer to take a specific course of action and/or may award compensation.
- 2.16 Appeals: You or your employer may appeal the adjudicator's decision to the Labour Court. The Labour Court may refer a question of law arising in the case to the High Court. The High Court's decision on the matter is final. You or your employer may appeal the Labour Court's decision on a point of law to the High Court. Again, the decision of the High Court is final.

## **B. Other protected disclosures**

2.17 Before the Protected Disclosures Act 2014 came into effect, some sectors were already covered by protected disclosures legislation. The Health Act 2004, as amended by the Health Act 2007, provides for the protection of employees and members of the public who disclose possible wrongdoing within the health sector. The Protections for Persons Reporting Child Abuse Act 1998 provides protection from victimisation and civil liability for people reporting the abuse of children. The Charities Act 2009 provides for the protection of people who report alleged breaches of the legislation to the Charities Regulatory Authority. There are also arrangements in place in a number of other sectors. These sectoral arrangements are generally not limited to disclosures by employees but may also cover disclosures by members of the public. These sectoral arrangements remain in place but are amended in some respects by the Protected Disclosures Act 2014.

### ***Financial Institutions***

2.18 Section 38(1) of The Central Bank (Supervision and Enforcement) Act 2013 sets out the issues in relation to which an individual may make a protected disclosure in relation to a financial institution:

*38.— (1) Where a person makes, in good faith, whether in writing or otherwise, a disclosure to an appropriate person and the person making the disclosure has reasonable grounds for believing that the disclosure will show one or more of the following:*

*(a) that an offence under any provision of financial services legislation may have been or may be being committed;*

*(b) that a prescribed contravention may have been or may be being committed;*

*(c) that any other provision of financial services legislation may have been or may be being contravened;*

*(d) that evidence of any matter which comes within paragraph (a), (b) or (c) has been, is being or is likely to be deliberately concealed or destroyed,*

*the disclosure shall be a protected disclosure for the purposes of this Part.*

2.19 Section 38(2) of The Central Bank (Supervision and Enforcement) Act 2013 provides that an individual who is appointed to a pre-approval controlled function (PCF) role is legally obliged to make a protected disclosure to the Central Bank of Ireland in these circumstances, except in specified situations:

*(2) (a) A person appointed to perform a pre-approval controlled function (within the meaning of section 18 of the Central Bank Reform Act 2010) shall, as soon as it is practicable to do so, disclose*

*to the Bank information relating to one or more of the matters specified in subsection (1)(a) to (d) which he or she believes will be of material assistance to the Bank.*

*(b) A disclosure under paragraph (a) shall be a protected disclosure for the purposes of this Part.*

*(c) Paragraph (a) does not apply if the person has a reasonable excuse.*

*(d) It is a reasonable excuse for the purposes of paragraph (c) for a person to fail to make a disclosure on the ground that the disclosure might tend to incriminate the person.*

*(e) It is a reasonable excuse for the purposes of paragraph (c) for a person to fail to make a disclosure on the ground that the information has already been disclosed by another person.*

*(f) Paragraphs (d) and (e) do not limit what is a reasonable excuse for the purposes of paragraph (c).*

- 2.20 Section 38(4) of The Central Bank (Supervision and Enforcement) Act 2013 provides that a form may be prescribed for a PCF holder to make a protected disclosure to the CBI (available [here](#)).

### ***Pension Schemes and PRSAs***

- 2.21 Under the Pensions Act 1990, specified relevant persons involved in administering a pension scheme or PRSA are required to report to the Pensions Authority if they have suspicions of fraud or misappropriation of assets.

- 2.22 Section 83 (1) of the Pensions Act 1990 states:

*Subject to subsection (2), where a relevant person has reasonable cause to believe that a material misappropriation or a fraudulent conversion of the resources of a scheme, trust RAC or PRSA in relation to which he is a relevant person has occurred, is occurring or is to be attempted, that person shall, as soon as practicable, give to the Board a report in writing of the particulars of the misappropriation or conversion, as the case may be.*

- 2.23 Subsection (2) sets out dates from which the requirements apply, and the remaining subsections give details of specific circumstances in which reports must be made. Subsection (2A) imposes a wide-ranging responsibility on a PRSA Actuary:

*(2A) Where a [PRSA Actuary] has reason to believe that a PRSA provider has carried on activities in relation to PRSA products referred to in Part X otherwise than in accordance with that Part, that person shall, as soon as is practicable, give to the Board a report in writing of the particulars of such activities.*

Other situations where reporting is required, in relation both to schemes and PRSAs, are where employer and/or employee contributions are not remitted to the trustees or PRSA provider in accordance with the statutory deadlines. The majority of whistle-blow reports to the Pensions

Authority relate to alleged breaches of the remittance of contributions requirements. There is a [standard report form](#) to assist in making report in relation to suspected non-remittance of contributions.

2.24 Section 82 of the Pensions Act 1990 defines "relevant person" in relation to a scheme, trust RAC or PRSA, as a person who -

*(a) is an auditor of the scheme or trust RAC, or*

*(b) is an actuary of the scheme [in relation to a scheme, means a person appointed in pursuance of this Act as actuary, for the purposes of this Act, of the scheme] or trust RAC, or*

*(c) is a trustee of the scheme or trust RAC, or*

*(ca) is an administrator, investment manager or custodian of the PRSA, or*

*(cb) is a registered administrator, or*

*(d) is an insurance intermediary (within the meaning of section 2 of the Investment Intermediaries Act, 1995), in relation to the scheme or trust RAC, or*

*(e) is an investment business firm (within the meaning of section 2 of the Investment Intermediaries Act, 1995), and -*

*(i) has advised on the scheme, trust RAC or PRSA, or*

*(ii) has received any payment in relation to the investment of any of the resources of the scheme, trust RAC or PRSA, or*

*(f) has been instructed to prepare, or who has prepared, an annual report of the scheme or trust RAC in accordance with section 55, or*

*(g) has been appointed by the trustees of the scheme or trust RAC to carry out, or who is carrying out, any of the duties of the trustees of the scheme or trust RAC under section 59, or*

*(h) is the PRSA provider, or*

*(i) is a PRSA actuary, or*

*(j) is an auditor of the business of a PRSA provider, or*

*(k) is an employee of an employer referred to in section 121 [Obligation of employer to provide access and to pay and to remit contributions].*

2.25 Section 84 of the Pensions Act 1990 states that regardless of whether there is a duty or disclosure is voluntary, no liability will arise or action will be taken against a person in court for whistleblowing in good faith.

*Where a person makes a report, whether in writing or otherwise, in good faith to the Board of any matter concerning the state and conduct of a scheme or trust RAC or the state of a PRSA, whether or not that person is a relevant person and whether or not the report is required to be*

*made under section 83, no duty to which the person may be subject shall be regarded as contravened and no liability or action shall lie against the person in any court for so doing.*

- 2.26 There are a number of points to note in relation to the above requirements. In particular:
- A relevant person need only have “reasonable cause to believe”, not be able to prove, fraud or misappropriation.
  - A report must be made if fraud or material misappropriation “has occurred, is occurring or is to be attempted”, i.e. he/she should not wait until the action has taken place before reporting it.
  - The report must be made “as soon as practicable”, i.e. immediately it comes to his/her attention, unless there are logistical reasons why this is not practicable. The wording used does not appear to permit the making of enquiries or seeking of evidence before reporting.
  - The report must be “in writing”, although this does not preclude making an oral report as soon as practicable and following up shortly afterwards with a written report.
  - Protection from liability is provided to any person (i.e. not just a relevant person as defined) who makes a “voluntary” report (i.e. not one that is required under Section 83) in good faith concerning the state and conduct of a scheme or PRSA.
- 2.27 The Pensions Authority has issued Guidance Notes on Compulsory and Voluntary Reporting to the Pensions Authority which are available [here](#).
- 2.28 The Pensions Regulator (i.e. the Chief Executive Officer of the Pensions Authority) is a “prescribed person” for the purposes of the Protected Disclosures Act 2014. A worker may make a protected disclosure to the Pensions Regulator if he or she reasonably believes that wrongdoing which relates to the following has occurred:
- “All matters relating to the monitoring and supervision of the operation of the Pensions Act 1990 (other than investigations by, and decisions of, the Pensions Ombudsman), including the activities of Personal Retirement Savings Account (PRSA) providers, the provision of PRSA products and the operation of PRSAs and the issue of guidelines and codes of practice for trustees of occupational pensions and providers of PRSAs”.*
- 2.29 The Protected Disclosures Act 2014 also provides that for the disclosure to qualify as a protected disclosure, the worker must believe that the information and any allegation contained in it are substantially true.
- 2.30 A disclosure under the Protected Disclosures Act 2014 can be made by emailing [protecteddisclosures@pensionsauthority.ie](mailto:protecteddisclosures@pensionsauthority.ie). Details that should be included in a disclosure are set out [here](#).
- 2.31 The provisions of the Protected Disclosures Act 2014 do not absolve a worker who is a “relevant person” from the mandatory reporting obligations set out in the Pensions Act 1990, as outlined above.

### **Money laundering**

- 2.32 Money laundering is the processing of criminal proceeds (cash and assets obtained from criminal activities) to disguise their illegal origin. Money laundering offences are committed

where a person knows or believes (or is reckless as to whether or not) that the property represents the proceeds of criminal conduct and the person is involved in:

- Concealing or disguising the true nature, source, location, disposition, movement or ownership of the property
- Converting, transferring, handling, acquiring, possessing or using the property or
- Removing the property from, or bringing the property into, the State.

2.33 The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 places obligations on designated persons to guard against their businesses being used for money laundering or terrorist financing purposes. Designated persons must:

- Apply customer due diligence (for example, identify customers or beneficial owners),
- Report suspicious transactions to An Garda Síochána and Revenue
- Not make any disclosure that is likely to prejudice an investigation (“tipping off”) and
- Have specific procedures in place to prevent money laundering and terrorist financing

2.34 Customer due diligence obligations are designed to make it more difficult for businesses to be used for criminal money laundering or terrorist financing.

2.35 An obligation on an actuary to report may arise if the actuary falls within the definition of “designated person” in section 25 of the Act e.g. a life assurance company or intermediary, a trust or company service provider or an investment business firm.

#### **Other Statutory requirements**

2.36 The Criminal Justice Act 2011 requires individuals to provide information about a 'relevant offence' to the Gardaí if they believe it might be of material assistance to the Gardaí. The relevant offences mostly relate to company law offences, specified offences of financial services legislation and theft and fraud offences. The requirement to make mandatory disclosures under both of the above Acts does not apply where the person has a 'reasonable excuse' not to make the disclosure.

2.37 The Competition Act 2002 provides protection to persons reporting to the Competition Authority in good faith that they believe that an offence under competition law has been committed.

2.38 The European Union (Protection of Trade Secrets) Regulations 2018, which were implemented in Ireland on 9 June 2018, amend the Protected Disclosures Act 2014 to provide that, “*where a worker makes a disclosure of relevant information... [which] it is alleged... concerned the unlawful acquisition, use or disclosure of a trade secret..., such disclosure is a protected disclosure provided that the worker has acted for the purposes of protecting the general public interest*”.

The information above is not an exhaustive list of all reporting requirements that may be relevant to actuaries. For example, there are criminal sanctions for failing to disclose certain information in relation to offences against children and vulnerable persons; these types of mandatory reporting obligations fall outside the scope of this Guide.

**In case of doubt, seek legal advice.**

### 3. Professional responsibilities

#### *Code of Professional Conduct*

3.1 One of the five Principles underpinning the [Society's Code of Professional Conduct](#) is:

#### **Compliance**

*Members will comply with all relevant legal, regulatory and professional requirements. Members will take reasonable steps to anticipate and address situations where they may be unable to comply. Members will challenge non-compliance by others.*

3.2 This principle is amplified as set out below:

#### *Compliance*

*4.1 If members believe that a course of action proposed by their client is unlawful, unethical or improper, they will draw the client's attention to that fact.*

*4.2 Members will report behaviour that they have reasonable cause to believe is unlawful, unethical or improper. Where relevant and appropriate, members may in the first instance avail of reporting processes within their firms to report such behaviour. Notwithstanding the existence of such processes, members will consider whether it would be appropriate to report the behaviour in question to regulators or other relevant authorities.*

*4.3 Members will report to the Society, in a timely manner, any act or omission by another member which they have reasonable cause to believe constitutes or might constitute misconduct, including a material breach of any relevant legal, regulatory or professional requirements, for consideration under the Society's Disciplinary Scheme. Where such reporting or the subsequent investigation of alleged misconduct requires the disclosure of information that would normally be confidential to a third party, members will take all reasonable steps to obtain the consent of the third party to such disclosure. Before deciding whether to report the matter to the Society, members may discuss the apparent misconduct with the other member concerned and seek further information in order to form a view on whether the matter in question does amount to apparent misconduct. Discussing the matter also gives the other member the opportunity to rectify the apparent misconduct or mitigate its effect, although any such rectification or mitigation does not relieve members of their duty to report the apparent misconduct.*

3.3 It can be seen from the above that:

- You must alert your client if you have concerns that actions proposed by the client are unlawful, unethical or improper. In this context, if you are an employed actuary, "client" may mean your employer. This could include, for example, actions that are likely to have adverse consequences for third parties to whom the client has a duty of care.



- More generally, if you have reasonable cause to believe that behaviour is unlawful, unethical or improper, you must report it. This could be behaviour by, for example, a client, an employer, another actuary or a business colleague. In some instances, it will make sense to use reporting processes available within your firm. However, even where this is done, you must consider whether it would be appropriate to report to regulatory authorities – and, as outlined earlier, in some cases you will be obliged to do so.
- If you have reasonable cause to believe that another member is in material breach of legal, regulatory or professional requirements, or has otherwise acted in a way that might constitute misconduct, you must report the matter to the Society without undue delay, and in this regard, you must seek permission to disclose confidential information if necessary. You may, in the first instance, discuss the matter with the other member concerned although this may not be appropriate if, for example, the other member were suspected of fraud or misappropriation of client’s funds, or of being involved in money-laundering activities. In some cases, a discussion with the other member may serve to clarify misunderstandings or enable steps to be taken to correct the situation. Note, however, that rectification does not remove the obligation on you to report the apparent misconduct.

3.4 To report concerns about the conduct of another member to the Society, you should submit details of the alleged misconduct in writing using the form provided on the Society’s website<sup>5</sup>.

3.5 If you do not make a report to the Society in respect of another member, where the circumstances are such that a report should have been made, you are in breach of the Compliance requirements of the Code and may yourself be the subject of a disciplinary investigation.

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<sup>5</sup> [https://web.actuaries.ie/sites/default/files/page/2009/09/110920\\_complaint\\_form.pdf](https://web.actuaries.ie/sites/default/files/page/2009/09/110920_complaint_form.pdf)

### **Requirements of the Institute and Faculty of Actuaries**

- 3.6 If you are a member of the Society who is also a member of the Institute and Faculty of Actuaries (IFoA), you should consider whether you are obliged to report to the IFoA in accordance with their procedures<sup>6</sup>, as well as to the Society.
- 3.7 If you make a report to both the Society and the IFoA, you should tell both bodies that you have also made a report to the other body. The Society and the IFoA will then consider whether it is feasible for one body to carry out fact-finding in the first instance and will usually have regard to the following general approach:

	Who should investigate in the first instance?
Actuary resident in the Republic of Ireland (“RoI”); work relates solely to entity located/regulated in RoI (“Irish work”)	SAI
Resident in RoI, UK work	IFoA
Not resident in RoI, Irish work	SAI
Not resident in RoI, UK work	IFoA
Resident in RoI, work outside RoI and UK	SAI
Resident in UK, work outside RoI and UK	IFoA
Resident outside RoI and UK, work outside RoI and UK	Decide on case by case basis.
Regardless of residence: Irish work which has a significant impact on a UK entity	Decide on case by case basis
Regardless of residence: Work relates to a UK entity but has a significant impact on an Irish entity	Decide on case by case basis.

- 3.8 Each case will be considered on its own merits and there may be circumstances in which the Society and/or the IFoA decide that an approach which is different to that shown in the table is more appropriate. Both bodies recognise the merits of following a streamlined approach with minimal duplication, but each body must also meet the requirements of its own disciplinary processes and reserves the right to conduct its own investigation in circumstances where it is not satisfied with the conduct of the investigation by the other body. The Society may provide assistance, as required, to the IFoA if the IFoA is conducting an investigation into the conduct of a member resident in the Republic of Ireland, and vice versa.

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<sup>6</sup> <https://www.actuaries.org.uk/upholding-standards/speaking>

- 3.9 In particular, the IFoA may refer an allegation of misconduct for determination under the Financial Reporting Council's (FRC's) disciplinary scheme because they consider that the case raises or appears to raise important issues affecting the public interest in the UK. The FRC may also independently decide to investigate apparent misconduct by a member of the IFoA, if the matters that have come to their attention appear to have a UK public interest dimension. Where the FRC makes it known that it is investigating the conduct of a member of the Society, the Society will usually await the FRC's decision before considering what action, if any, to take under the Society's disciplinary process. Information on the FRC's disciplinary scheme for the actuarial profession is available [here](#) .
- 3.10 Regardless of who carries out fact-finding, both the Society and the IFoA (or FRC, where applicable) may apply disciplinary sanctions, if misconduct has occurred.

***Members who are members of another actuarial association (other than IFoA) or professional body***

- 3.11 If you are also a member of another actuarial association or professional body which requires its members to whistleblow, you should follow the requirements of that other body as well as reporting to the Society. The Society will if appropriate discuss with the other body how the issue may be processed most efficiently.

## **4. Practical considerations**

### **4.1 Before any problem arises**

1. Know and understand your professional obligations and rights and responsibilities under the law (as set out earlier in this Guide).
2. Be familiar with your firm's/employer's policy on whistleblowing (if any).
3. If you are a manager, ensure that your staff know about the policy.
4. Understand what constitutes behaviour which may lead to reporting under Principle 4 of the Code of Professional Conduct.
5. Address and resolve any issues which are minor, part of work-in-progress, and can be remedied before any need to whistleblow arises.
6. If you are aware of an issue which may appear minor, 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 external reporting. It would also be advisable to retain copies of any legal advice relating to the issue.

### **4.2 If a problem does arise**

1. Decide whether this is a matter where there is a statutory requirement (e.g. under The Central Bank (Supervision and Enforcement) Act 2013, the Pensions Act 1990 or the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010) to report immediately to the relevant authority, and if it is, report it.
2. If it is not, re-read your firm's whistleblowing policy and the Code of Professional Conduct and form a view as to whether the issue is such that you should make a report. You should also assess the risks of not reporting the issue.
3. Seek advice from peers and colleagues as to what steps to take, and consider taking legal advice, particularly if you intend to report the matter externally.
4. Where possible, any report should first be made in accordance with your firm's policy, at the appropriate level within the organisation.
5. If the matter is not resolved satisfactorily through the normal procedure, you might consider raising your concerns with the Chair of the firm's Audit Committee, or an Independent Non-Executive Director.
6. You may wish to avail of the Society's Member Support Panel<sup>7</sup>, which will make an introduction to a senior member of the Society with whom the matter can be discussed.
7. If you decide to raise the concern externally, determine to whom the report should be made – e.g. regulator, Society.
8. Decide who else, if anybody, should be informed that you have made the report.
9. Keep a record of what you report and the evidence on which you have based your report.

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<sup>7</sup> <https://web.actuaries.ie/member-support-panel>

### **4.3 Points to note when considering whether to blow the whistle**

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 the person(s) involved, including any person(s) with whom you have already raised the issue;
- times and dates when your concerns were first 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 else.

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