



Institute
and Faculty
of Actuaries

The Actuaries' Code

Guidance to support the principles and
amplifications in the Actuaries' Code

by the Regulation Board

Section 7: Principle 5 – Speaking up

This Guide imposes no new obligations upon Members or their employers. Rather the Institute and Faculty of Actuaries (“the IFoA”) hopes that the Guide will be a useful tool for its Members.

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 its contents.

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7. PRINCIPLE 5 – SPEAKING UP

The general duty to speak up

7.1 Members have a responsibility to speak up in certain situations. This is reflected in Principle 5 of the Code, which states:

“Members should speak up if they believe, or have reasonable cause to believe, that a course of action is unethical or is unlawful”.

7.2 The Code also sets out, in a number of amplifications, some specific requirements relating to speaking up.

7.3 These requirements reflect the important role of speaking up by Members.

7.4 It is an essential part of being a professional actuary: raising or identifying issues at an early stage can help to address a problem before any harm is caused or to prevent any further damage being caused. Raising an issue as soon as Members are able to ultimately helps to protect the reputation of the actuarial profession, organisations employing actuaries, clients, customers and the wider public.

7.5 The particularly technical nature of the work of actuaries means that it will not always be obvious to users when there are issues. Therefore it is particularly important that other actuaries speak up as there will often be situations where they can identify problems that will not be as apparent to non-actuaries.

7.6 The IFoA hopes that this section will be a useful tool for Members if they find themselves in situations where there may be a requirement to speak up.

7.7 The information in this section is mainly aimed at Members but may also be helpful to those who employ Members, insofar as it identifies the professional expectations applying to Members. To help those who employ Members, especially those in smaller firms, the IFoA has also produced a specific Guide for employers of actuaries, which includes a sample speaking up policy.¹

7.8 If Members are unsure at any stage whether to raise a concern, the IFoA encourages them to seek advice or further guidance from one of the sources listed later in this section.

7.9 Issues which may occur to Members who are considering speaking up are addressed at **Appendix D**.

¹ <https://www.actuaries.org.uk/upholding-standards/standards-and-guidance/non-mandatory-guidance>

What is meant by ‘Speaking Up’?

- 7.10 The requirements under the Code are to ‘speak up’.
- 7.11 In terms of the Code, ‘speaking up’ is not defined. It is intended to be interpreted broadly and to cover different types of reporting or challenging others’ behaviour/approach.
- 7.12 Speaking up can range from challenging a colleague or user by addressing them directly when they appear to be behaving in a way they should not (whether intentionally or not), to highlighting to a colleague, or even user, material issues in a piece of work, to formal or informal reporting to a third party (whether clients, regulators or relevant authorities) about an issue uncovered in a Member’s place of work.
- 7.13 The term ‘whistleblowing’ is often used to describe the act of reporting of wrongdoing to a relevant regulator or other authority, sometimes with legal protection for doing so.
- 7.14 The term ‘speaking up’ for the purposes of the requirements of the Code is intended to cover ‘whistleblowing’ but is not restricted to that sort of activity, it also encompasses a wider range of situations.

What is required of Members?

- 7.15 The IFoA recognises that the requirements around speaking up are not always straightforward and that when a Member is faced with a situation that requires them to speak up in order to comply with the Code, they may not always know who to speak to or when to do it.
- 7.16 There may also be situations where there are barriers to speaking up, such as situations where it would be a criminal offence to do so.
- 7.17 Members may also be worried about raising such issues, anxious that they may be seen as disloyal and put at risk relationships with colleagues (including, potentially, more senior and influential colleagues), and even their job. They may want to keep the concerns to themselves, perhaps feeling that it’s none of their business, or only a suspicion, or that they will be seen as a ‘troublemaker’ if they raise them. There will, however, still be situations where Members are required speak up even though that may have serious implications for their work life or even their career.
- 7.18 In recognition of those challenges, but also the importance of speaking up for protection of the public interest, the speaking up principle in the Code is a ‘should’ requirement.²
- 7.19 This means that there is an expectation that Members will speak up but that there is also recognition that there may be circumstances in which non-compliance may be justified. This wording is designed to ensure Members have the necessary flexibility in situations where speaking up might not be the right thing to do.

² For further information see paragraph 2.12 of this Guidance.

- 7.20 Some of the amplifications under this principle are, however, ‘must’ requirements³ and non-compliance cannot, therefore, be justified in the same way.
- 7.21 In addition to Principle 5, there are also other principles of the Code that may be relevant to issues of speaking up. Those include Principle 1, which requires Members to “*act honestly and with integrity*” and which also has the amplification providing that Members “*should respect confidentiality*”.⁴
- 7.22 The Code also provides in its fourth principle, Compliance that Members must “*comply with all relevant legal, regulatory and professional requirements*”. This may be relevant if there are legal requirements to report on particular matters.

What is an ‘unethical’ course of action?

- 7.23 An unethical course of action can be described as behaviour that falls outside of what is reasonably considered to be morally right or appropriate for a person, a profession or an industry.
- 7.24 Unethical behaviour can occur in the relationships between a Member and a user, in the way a Member goes about their day to day work, or how they conduct themselves in their private life.
- 7.25 Members are expected to use reasonable judgement in determining what might constitute unethical conduct and whether that conduct should be challenged and/or appropriately be reported to relevant regulators or other authorities.
- 7.26 When determining whether a course of action is unethical, Members may wish to ask themselves the following questions:
- does the conduct violate the principles of the Code? If so, this is an indication that it may be unethical;
 - does the conduct go against company policy or any ethical codes of the organisation by which I am employed?;
 - would a local regulator require this type of behaviour to be disclosed?;
 - what might happen if I don’t report the conduct?;
 - will it damage my reputation, my organisation’s reputation or the reputation of the profession as a whole in the eyes of the general public if it is not reported to the relevant regulators or other authorities? How would it look for example if it was reported in the media?;

³ See Amplifications 5.2 and 5.4 of the Code.

⁴ Amplification 1.2 of the Code.

- what would a trusted colleague say if I asked them for advice? What advice would I give to them if the situation were reversed?
- Is the conduct widely unacceptable socially, commercially or professionally?

7.27 It is stressed that these questions are designed to encourage members to think about all of the relevant issues and circumstances that they might take into account in determining whether conduct is unethical.

7.28 While the principles of the Code are applied to Members universally, what is viewed as unethical conduct will sometimes depend on particular cultural and geographical circumstances; what is considered unethical in one country or for one culture might not be considered to be unethical in another where commercial and other practices may differ. It does not follow, however, that something will be deemed to be ethical simply because it is widely accepted practice in the country in which a Member works.

7.29 If Members think their own judgement might be clouded it can be helpful to try and reassess the situation from a more neutral perspective by seeking advice from a trusted colleague.

7.30 Members can also seek advice from their employers' ethics or professionalism committee (if they have one), or contact the IFoA's Professional Support Service.⁵

Challenging others' non-compliance

7.31 Amplification 5.1 provides that:

"Members should challenge others on their non-compliance with relevant legal, regulatory and professional requirements".

7.32 Members of the IFoA, in common with other professionals, need to be aware of, and ensure that they comply with, all applicable laws and regulations. This is reflected in the fourth principle of the Code (Compliance). In many jurisdictions there will be legal requirements to report certain breaches of the law and/or regulations to the relevant authorities (including regulators). Members are expected to be aware of such requirements and to comply with them.

7.33 Beyond this, however, the Code also provides that they should challenge incidences of non-compliance by others, including non-compliance with professional requirements, as well as legal and regulatory requirements.

7.34 This extends not only to incidences of non-compliance by fellow Members but also to non-compliance by clients, employers and other professionals who may be engaging in illegal conduct or breaching regulatory or professional requirements.

7.35 This provision imposes a 'should' requirement, which means that non-compliance with the requirement may be justified in exceptional circumstances.

⁵ For further information see paragraph 7.72 below .

Reporting Misconduct to the IFoA

7.36 Amplification 5.2 provides a specific requirement that:

“Members must report to the Institute and Faculty of Actuaries, as soon as reasonably possible, any matter which appears to constitute Misconduct for the purposes of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries and/or a material breach of any relevant legal, regulatory or professional requirements by one of its Members.”

7.37 Whether or not a breach is material will depend on the particular circumstances of each case. Members will be required to use their judgement in determining whether a breach is material or not. Relevant factors to consider might include:

- the cause of the breach (including whether it was a genuine error, was due to incompetence, or involved a wilful breach of a rule);
- the extent of the breach and whether it can easily be rectified;
- whether the breach was disclosed to the appropriate person(s) at the earliest opportunity (for example to a senior colleague, the user or other affected parties);
- whether the breach is likely to be repeated;
- the consequences of the breach (for example, has it resulted in any financial, reputational or other detriment to a user?);
- any wider implications of the breach (for example, is the breach indicative of wider problems in the Member’s work or judgement, is it likely to cause other Members to act in a similar way, or is it likely to bring the actuarial profession into disrepute?).

7.38 If the breach was an isolated incident, was disclosed by the individual who made the breach to the appropriate person(s) (for example a senior colleague or the user) without delay and the Member considers that the breach has not resulted in any discernible adverse consequences, can be easily rectified and is unlikely to be repeated, then they may conclude that the breach was not material. Members are reminded however, that in addition to a single material breach, in certain circumstances a series of immaterial breaches can have the effect of amounting to a material breach. Members are expected to use their judgement in determining whether this is the case with reference to the factors set out in the list above.

7.39 In the majority of cases, Members will be expected to speak to the individual concerned and/or to another colleague before proceeding to report a breach to a regulator or to the IFoA. It is recognised, however, that there may be circumstances where it is appropriate to report without such a discussion having taken place, such as where the circumstances make it difficult to raise it with the individual or with another manager (for example, raising an issue about the

competence and care of your senior colleague in a firm where you are the only two actuaries and they are your line manager).

- 7.40 There may, exceptionally, be circumstances where Members should not flag up the issue to the individual and, in some cases, to the organisation (for example, in cases of money laundering where this would constitute ‘tipping off’ or in situations where raising the issue is likely to lead to the destruction of evidence of a regulatory breach).
- 7.41 Members are expected to report matters to the IFoA “as soon as *reasonably possible*”. This reflects that there will be certain circumstances in which a delay in reporting can be justified.
- 7.42 The IFoA will take a reasoned and proportionate approach to what it views as an unreasonable delay in reporting. This will depend on the particular facts and circumstances of each case, including the nature and severity of the breach, as well as the reason for any delay in notifying the IFoA of the relevant issue.
- 7.43 A delay in reporting an issue might be justified in order to comply with a legal obligation, for example (this might include situations in which a Member is prohibited from reporting an issue in order to comply with money laundering legislation and avoid “tipping off”).
- 7.44 Where a Member delays in reporting an issue for whatever reason, they may be expected to provide justification for that delay. Where the IFoA considers that there has been an unreasonable delay in reporting, it may decide to refer a Member for investigation under the IFoA’s Disciplinary and Capacity for Membership Schemes.
- 7.45 In circumstances where a breach is discovered but a Member chooses not to report it because they do not consider it to be material, Members will need to be prepared to explain and justify the approach they have taken in reaching that conclusion, if reasonably called upon to do so. This may be in response to a request from a user or a regulator. Members are, therefore, encouraged to document the reasons for their overall approach, including whether they have sought any guidance or advice about whether to report, for example, from a solicitor or their organisation’s professionalism committee.
- 7.46 In certain circumstances which are set out in the Rules of the IFoA’s Disciplinary and Capacity for Membership Schemes, Members may also be found guilty of Misconduct if they have contributed to or fail to take action when they become aware of conduct by a person with whom they are connected when that conduct, if committed by the Member, would amount to Misconduct.
- 7.47 For the purposes of the Disciplinary and Capacity for Membership Schemes, a Member is deemed to be connected with: (a) his employer or employee; (b) any director or employee of a body corporate of which she/he is a director or employee; and (c) any member or employee of a partnership of which she/he is a member or employee.

Legal requirements to report to regulators/authorities

7.48 Amplification 5.3 provides that:

“In addition to complying with any legal requirements to report matters to relevant regulators or other authorities, Members should also report to those bodies any behaviour that they have reasonable cause to believe is unethical or unlawful, and carries significant risk of materially affecting outcomes.”

7.49 What this amplification means is that Members are expected to report unethical or unlawful behaviour to the relevant regulators or other authorities (for example, the police) where it is likely have a material effect on an outcome, even where there is no legal requirement to report.

7.50 For behaviour to carry significant risk of materially affecting outcomes, it needs to be behaviour that carries more than simply a remote possibility that the user might be impacted in some material way.

7.51 Having reasonable cause to believe that something is unethical or unlawful means more than merely having a suspicion that cannot be substantiated. It means holding a rational view that is based on the knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing.

7.52 Where a Member does not know the facts or events surrounding the conduct they are concerned about, it will usually be appropriate to check the relevant facts and obtain supporting material wherever possible before making a report. If the concern, however, is that a fraud or other serious crime has been committed, and discussion with any parties involved might alert those implicated or impede the actions of the police or a regulatory authority, then it will not be appropriate to check the facts with them.

Requirement to take reasonable steps to make users aware of substantial issues with work

7.53 Amplification 5.4 provides that:

“Members must take reasonable steps to ensure users are aware of any substantial issues with a piece of work for which they are responsible or in which they have had significant involvement, if those issues might reasonably influence the decision-making or judgement of users”.

7.54 Issues with a piece of work might involve technical errors, but might also include unethical or unlawful matters, for example the wilful manipulation of models or concealment of information from a user.

7.55 Substantial issues might be those which have the potential to impact a user’s financial or reputational standing or would under normal circumstances involve a report to a regulator or other relevant authority.

- 7.56 Taking reasonable steps in this context means Members acting as soon as possible to escalate their concerns in a way that they can be confident the user will be made aware of the issue. This might involve notifying the user directly, or, in situations where it may not be practical or appropriate for the Member to contact the user directly themselves, by highlighting the issue to a colleague or manager who is responsible for reporting matters to the user.
- 7.57 A starting point for Members might be to check whether their organisation has in place an internal audit plan or procedures which may set out what is expected of them when an issue is uncovered with a piece of work.
- 7.58 Before taking steps to notify anyone of the issue, Members may want to consider what the most appropriate method of escalating the issue might be. It would not be appropriate, for example, to 'bury' the notification of a substantial issue within the body of a 20 page report.
- 7.59 Where a Member uncovers a substantial issue, they will need to be able to demonstrate that they took appropriate steps to escalate their concerns to the right person. It is sensible, therefore, to document the nature of the issue including when and where it was uncovered, the rationale for escalating the concern and the specific steps taken to ensure that the user was informed of the issue.
- 7.60 Where a Member uncovers a substantial issue but determines, after careful consideration, that it is unlikely to influence the decision-making or judgement of users, and therefore decides not to take the matter further, it is recommended that they document the reasoning behind their decision.

Other requirements

- 7.61 Certain legal 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 legal duty to disclose, any contractual confidentiality clauses would most probably be overridden. Those involved in the negotiation of such contracts are expected, therefore, to bear this in mind when drafting the contract terms. It is recommended that these duties also be considered when an organisation's standard terms and conditions of business are being reviewed.
- 7.62 It is recommended that Members take independent advice about the legal and regulatory provisions which apply in the country in which they are carrying out a piece of work (and, where they are working remotely, the country in which the piece of work is being delivered).⁶

Situations where the law prevents disclosure

- 7.63 None of the provisions of the Code are intended to require Members to act in a way that is unlawful. That is clarified in the Status and Purpose section of the Code.

⁶ For actuaries working in the UK, there are likely to be requirements of this nature that will apply to them.

- 7.64 This means that where any legal provisions exist in the country in which the Member is working which prohibit disclosure, those legal provisions will override Member's duties under the Code.
- 7.65 An example of situations where disclosure might be prohibited is when a Member making that disclosure risks committing a crime by default, such as where they disclose information which they have come into possession of relating to state security or intelligence matters, or where they alert a person who has engaged in unlawful conduct to the fact that they are under investigation by the relevant authorities.

Some practical considerations and questions for Members

- 7.66 In order to encourage speaking up, the aim of everyone – Members, their clients and employers – should be to promote an open culture, in which all involved feel able to articulate any concern they may have and are not inhibited from, or penalised for, doing so.
- 7.67 Members can help in developing such a culture by:
- ensuring that their clients and/or employer understand the professional and legal obligations on Members, 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 that is effectively promoted and regularly reviewed; and
 - ensuring that their employer's policy on speaking up or whistleblowing is recognised in client contracts.
- 7.68 Against this background, **Appendix E** includes some practical questions which Members might ask themselves both (a) before any situation of concern arises and (b) if and when one does.

Making a report to the IFoA

- 7.69 The IFoA will consider allegations that an individual Member (or former Member) has been guilty of professional Misconduct.⁷ Members can discuss any potential allegation with the Disciplinary Investigation Team of the IFoA but the IFoA cannot give Members advice on whether it is appropriate for them to refer an allegation.
- 7.70 Included at **Appendix F** is more information on the process for raising an allegation.

Sources of guidance and advice

- 7.71 It is recommended that the first course of action for Members is to check what advice is available within their own firm. Many actuarial firms have speaking up policies in place.

⁷ Misconduct is defined in Rule 1.6 of the IFoA Disciplinary and Capacity for Membership Scheme.

- 7.72 In addition, the IFoA offers a confidential Professional Support Service,⁸ to assist all Members with professional ethical matters, including speaking up. The service is free to all Members.
- 7.73 If Members wish to report any concerns, or have any queries on Speaking Up they should contact the IFoA at regulation@actuaries.org.uk.
- 7.74 A confidential advice line is provided by Protect for the IFoA's UK based Members. All calls are answered by staff experienced in advising on when and how best to raise concerns. The number is [+44 \(0\)800 223 0177](tel:+44(0)8002230177).

⁸ <https://www.actuaries.org.uk/upholding-standards/professional-support-service>

Issues which may occur to Members who consider speaking up

I may be sued or disciplined for breaches 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, honestly and in the public interest.

I only need to speak up 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 speak up where I am certain of the facts.

It will not always be possible for Members to be 100% certain of the facts and for that reason, especially when raising a concern with their employer, a reasonable suspicion of wrongdoing is generally sufficient. When taking information outside of the organisation there ought to be a reasonable belief in the truth of the information.

I am unsure how to proceed because the confidentiality clause in my employment contract does not contain the exception 'unless relating to your professional duties'.

Even where your employment contract does not include an exemption relating to your professional duties, you are still subject to the professional duties set out in the Actuaries' Code, particularly the requirement that you speak up and challenge non-compliance (principle 5.1).

I am concerned that I may lose my job or upset an important client if I speak up.

Although legitimate concerns, these possibilities should not dissuade Members from speaking up. It is important to bear in mind that reputable employers and other actuaries expect all Members of the IFoA 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 Member's employers, the IFoA or the appropriate regulator.

Practical Questions for Members

Some practical questions which Members might ask themselves both (a) before any situation of concern arises and (b) if and when one does.

Before any problem arises

1. Do I know and understand my professional obligations and rights and responsibilities under the law?
2. Do I know whether my firm/employer has a written policy on speaking up or whistleblowing?
3. If it does, am I familiar with the policy or policies?
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 speak up, am I clear about my obligations and about any protections available under the law?
6. Do I know where I can go for further advice?
7. Do I understand that the 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 amplification 5.2 of the Code?
9. Do I understand what constitutes behaviour that is unethical or unlawful, under amplification 5.3 of the Code?
10. Do I understand that, while some situations will very clearly require me to speak up, others may be less clear cut, and that nevertheless, it would be prudent to keep a note of all such concerns as a series of actions, each in itself below the reporting threshold, which may in aggregate become serious enough to require external reporting?
11. 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 raising a concern within my employer and raising it externally?

If a problem does arise

1. Do I understand my obligations as a Member and the obligations and protections available to me under the law?

2. Have I re-read my firm's speaking up or whistleblowing policy?
3. Do I have reasonable grounds for believing my concerns tend to show wrongdoing or malpractice and disclosure of the information is in the public interest?
4. Have I raised my concerns at the appropriate level within my organisation?
5. If I decide to raise the concern externally, am I clear how, and to whom, I should make the report?
6. Am I clear who ought to 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 is substantially true?
8. Do I need to/want to look for further sources of advice?
9. Have I properly assessed the risks of not reporting this issue?

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

When considering whether to raise a concern outside an employing organisation, Members are advised to first consider, where appropriate, whether they ought to first follow the internal procedures laid down by their employer.

How to make a complaint to the IFoA

If Members decide to proceed with an allegation against another Member, they should write to the Disciplinary Investigation Team giving as much of the following information as possible:

- the name and contact details of the Member or Members concerned;
- details of what, in your view, the Member has done wrong;
- what the impact of the alleged Misconduct has been;
- the dates on which the events that you describe took place;
- whether or not the Member may have been suffering from ill health at the time of the alleged Misconduct;
- copies of any relevant documentation (being careful not to breach confidentiality when doing so); and
- the names and addresses of anyone who could support your concern from their own personal knowledge;
- whether you have raised this matter with the Member or with the Member's employer;
- whether you have raised this matter with any other regulator and if so, what was the outcome; and
- what outcome are you looking for in making the allegation?

Disclosures made to the IFoA may not be protected by law. Members are, therefore, advised to consider seeking advice before making a report if that report is likely to result in the disclosure of confidential information. Where it is possible for a Member to protect confidentiality by redacting supporting documents or preserving the anonymity of users, then they ought to do so.

Further information on making a report can be found on the IFoA's website.⁹

⁹www.actuaries.org.uk/upholding-standards/complaints-and-disciplinary-process/how-make-complaint