

## **WHISTLEBLOWING - EXPLANATORY NOTE TO THE CODE OF PROFESSIONAL CONDUCT**

### **Classification**

Explanatory Notes are appendices to the Code of Professional Conduct. They serve to provide more information and elaborate on principles mentioned in the Code.

### **Abstract**

This explanatory note provides guidance and information on principles of the actuarial code with respect to Whistleblowing.

### **Legislation or Authority**

The Code of Professional Conduct and other relevant legislation

### **Purpose**

The guide imposes no new obligations upon actuaries or their employers. Rather the Society 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 or feel duty bound to do so.

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.

### **Application**

Actuaries and their employers must be aware that the provisions of the Society's Code of Professional Conduct (the Code) are applicable to all members of the Society (i.e. Students, Affiliates, Associates and Fellows but excluding Honorary Members and Library Members), regardless of where they practise.

Where reference is made to legislative provisions within this guide, those references are to RSA legislation.

### **Author**

Professional Matters Board, ASSA, August 2013

### **Status**

Version 1 – Effective 1 September 2013

## 1 Introduction

- 1.1 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.
- 1.2 This guide is intended to help all actuaries, including actuaries who may find themselves experiencing such concerns. It sets out:
- (1) The expectations and obligations in respect of speaking up and reporting suspected professional misconduct placed on an actuary by their professional body, the Actuarial Society of South Africa (the Society);
  - (2) Speaking up in a situation where someone else is involved. e.g an employer or a client;
  - (3) The relevant law; and
  - (4) Some questions for actuaries to consider to help them ensure they can handle any such situations of concern confidently and constructively.
- 1.3 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 internally within the structures of the Society or externally from a legal practitioner.
- 1.4 In practice, the terms "whistleblowing" and "speaking up" are often used interchangeably. In this guide, whistleblowing is used to describe any act of speaking up, disclosure or reporting to a certain party (whether employers, regulators or relevant authorities).

## 2 What is required of an actuary professionally?

- 2.1 Actuaries are required by the Society to "act honestly, with integrity, competence and due care"<sup>1</sup>. Actuaries are simultaneously required to respect confidentiality but the Code enjoins members to consider the public interest when rendering actuarial services<sup>2</sup>. Thus the duty of confidentiality, and for that matter any other duty owed, either to an employer or an external client, is not absolute and may be overridden by other considerations in the public interest.
- 2.2 These principles underlie the provision of the Code that all members must comply with any whistleblowing requirements of the regulatory authorities and relevant legislation<sup>3</sup>.
- 2.3 Collegiality between members must also yield to professionalism when a member comes across *prima facie* evidence of a contravention of the Code (which will include a material contravention of the law) by another member. Such contravention must (at least) be reported to the Society<sup>4</sup>.
- 2.4 Additionally, depending on the circumstances and the seriousness of a failure to disclose, actuaries could be found guilty of misconduct if they fail to take action when

---

<sup>1</sup> The Code, rule 9.

<sup>2</sup> Rule 23 and 24.

<sup>3</sup> Rule 22.

<sup>4</sup> Rule 21.

they become aware of certain kinds of conduct by a person if there was a duty on them to disclose.

- 2.5 It is clear therefore that actuaries in their professional capacity are expected to:
- (1) Raise concerns about any potentially unlawful, unethical or improper course of action with their clients and/or employer; and
  - (2) Report
    - (a) Information to the relevant regulatory authorities, in accordance with legal or regulatory obligations to do so;
    - (b) Behaviour which they believe to be unlawful, unethical or improper to regulators or other relevant authorities;
    - (c) Any breach of the 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 Standards of Actuarial Practice issued by the Practice Area Committees), promptly to the Society for consideration under the relevant Disciplinary Procedure; and
    - (d) At all times, actuaries must be guided both by the public interest and their own professional sense to make use of permitted disclosures in order to comply with their professional obligations.

2.6 Although raising these matters is not always easy, the price of doing nothing is often greater than doing what is right.

2.7 Issues which may occur to actuaries who are considering whistleblowing are addressed later in this guide.

### 3 **Relevant law and other requirements**

3.1 Certain statutory and regulatory provisions place a duty on individuals to make particular disclosures to a 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.

3.2 The provisions most likely to affect actuaries are dealt with consecutively in what follows:

### 4 **Statutory Provisions**

4.1 General approach

- (1) Whilst "whistleblowing" has become the subject of legislation in recent years, there is no single, dedicated Act of Parliament pertaining to this requirement in relation to the professional activities of actuaries as such.
- (2) Yet, actuaries are or may be affected by some legislation and therefore need to know of their content because actuaries, like others, may at some stage find it necessary to report the conduct of others to an authority, their employer or the Society.

- (3) Often the emphasis of the legislation is the protection afforded by the law to whistle-blowers, although there are instances where the law imposes an obligation on persons who encounter untoward behaviour of others while performing their functions to report such conduct.
- (4) Bear in mind also that the need for whistleblowing may cross the path of an actuary not only in active independent practice as such but also as an employee or officer of an institution. Further, that as a member of an honourable profession aimed at upholding ethical standards, there may be a greater imperative on actuaries to speak up as would be the case with ordinary persons or employees.

#### 4.2 Protected Disclosures Act, No 26 of 2000

- (1) This was the first piece of legislation to provide for procedures and to offer protection to employees who blow the whistle on their employers or fellow-employees.
- (2) This Act does not compel disclosure but aims to put into place a mechanism through which employees may in a responsible manner make disclosure in the public interest that are protected, and therefore to prevent any person from being subjected to victimization, reprisal or other occupational detriment as a result of the disclosure<sup>5</sup>.
- (3) Another aim of the statute is to promote the eradication of criminal and other irregular conduct in organs of state and private bodies<sup>6</sup>.
- (4) Disclosures are protected if made in good faith to, depending on the nature of the disclosure, various individuals or offices, e.g. to a legal practitioner, an employer, member of cabinet or of the Executive Council of the Province, the Public Protector, the Auditor-General and others mentioned in the Act<sup>7</sup>.
- (5) The protection of the Act will extend to actuaries who are employees<sup>8</sup> in a work situation.

#### 4.3 The Companies Act, No 71 of 2008

- (1) Section 159 of the Companies Act provides protection for whistle-blowers as part of one of the central themes of the Act, namely "to encourage the efficient and responsible management of companies"<sup>9</sup>.
- (2) These new principles of protection for whistle-blowers have been formulated to widen the protection already afforded to employees under the Protected Disclosures Act, 2000 (dealt with in the previous paragraph)<sup>10</sup> to other categories of whistle-blowers.
- (3) Amongst the whistle-blowers protected are a shareholder, director, company secretary, prescribed officer or employee of a company, a supplier of services to a company or an employee of such a supplier, all of whom have qualified privilege, and are immune from civil, criminal or administrative liability, in respect of such disclosure<sup>11</sup>.

---

<sup>5</sup> Preamble to Protected Disclosures Act, 2000.

<sup>6</sup> Ibid

<sup>7</sup> See definition of "protected disclosure" in section 1 of Act and reference to sections therein.

<sup>8</sup> See definition of "employee" in section 1 of Act.

<sup>9</sup> Sec 7 (j) of the Companies Act, No 71 of 2008

<sup>10</sup> Sec 159 (1) (a) and (b) of the Act

<sup>11</sup> Sec 159 (4). Also see section 159 (5) which in certain circumstances creates a compensatory claim in favour of the whistle-blower.

- (4) The whistle-blower may disclose information to the Commission, the Companies Tribunal, the Panel, a regulatory authority, an exchange, a legal adviser, a director, prescribed officer, company secretary, auditor, a person performing the function of internal auditor, Board or committee of the company<sup>12</sup>.
- (5) The disclosure of information is only protected in terms of the Act insofar as the whistle-blower made the disclosure in good faith and reasonably believed at the time that the disclosed information showed or tended to show that a company or external company, or a director or prescribed officer or the company, has contravened the Act or a law mentioned in schedule 4 of the Act, or committed an impropriety spelled out in the section<sup>13</sup>.
- (6) Although the section contains nothing peculiar to actuaries, it remains an important provision on whistle-blowing. By virtue of their qualification and professional status actuaries may find themselves involved in a company where on the one hand they may occupy a position of being protected as a whistle-blower and, on the other hand, being a person to whom a disclosure may be made by someone else. Either way they will be guided not only by the provisions of section 159 but also by the ethical norms of their profession.

#### 4.4 Financial regulation laws

- (1) No doubt all actuaries are well-aware of the various laws applicable to the supervision and regulation of financial institutions. Actuaries play an indispensable role in the application of these laws in providing a professional, independent and impartial service not only to institutions but also to their statutory regulators.
- (2) Justifiably so, regulators repose immense confidence not only in the ability of actuaries, but also in their professional integrity to ensure a safe and sound financial environment in which financial institutions may operate, all for the benefit and protection of the public.
- (3) Actuaries need to acquaint themselves with the laws applicable to regulated financial institutions, and in particular their statutory duties and rules of professional practice embedded over many years.
- (4) In this guide brief reference will be made to the **Long-term Insurance Act**, the **Short-term Insurance Act**, and the **Pensions Funds Act**. These are administered by the **Financial Services Board**. Similar legislation which could affect actuaries as well, are the **Banks Act, No 94 of 1990** and the **Medical Schemes Act, No 131 of 1998**, respectively administered by the **South African Reserve Bank** and the **Medical Schemes Council**.
- (5) The focus in this instance is the disclosure duties imposed on actuaries by the law.

#### 4.5 Long-term Insurance Act, No 52 of 1998

- (1) This Act requires a long-term insurer at all times to have an actuary<sup>14</sup> and places an obligation on such actuary to report certain matters. The

---

<sup>12</sup> Sec 159 (3) (a)

<sup>13</sup> Sec 159 (3) (b). For a full discussion of section 159 see Henochsberg on the Companies Act, 71 of 2008, at page 551

<sup>14</sup> Sec 20(1). This actuary is stated to be a statutory actuary. There may be another actuary engaged by the insurer to whom the provisions of sec 20 do not necessarily apply.

appointment of this actuary is approved by the Registrar<sup>15</sup>. If the insurer fails to appoint a statutory actuary, the Registrar may do so<sup>16</sup>.

- (2) The actuary, quite conspicuously, is intended to be the Registrar's "eyes and ears" in respect of the business of the long-term insurer, obliged to report to the board of directors of the insurer contraventions relating to the insurer's financial stability or other requirements which insurers must meet. The board must within 30 days take steps to the satisfaction of the actuary to rectify the shortcomings, failing which the actuary must without delay inform the Registrar<sup>17</sup>.
- (3) If the statutory actuary's appointment is terminated a statement of what the actuary believes to be the reasons for the termination must be submitted to the Registrar<sup>18</sup>.
- (4) All sorts of powers are given to the statutory actuary to enable him or her to have effective insight into the statements and accounting records of the long-term insurer and to attend and speak at a general meeting or meeting of the board<sup>19</sup>.
- (5) A statutory actuary is one of the persons whose services the Registrar may by notice require a long-term insurer to terminate, after due administrative process has been complied with<sup>20</sup>.

#### 4.6 Short-term Insurance Act, No 53 of 1998

- (1) This Act was amended in 2008<sup>21</sup> to provide for the appointment of a statutory actuary with functions, power and reporting duties almost identical to those of the statutory actuary for a long-term insurer, for short-term insurers<sup>22</sup>. This actuary may be removed from office at the instance of the Registrar after the compliance with administrative process<sup>23</sup>.

4.7 Unlike the Acts which aim at protective measures for whistle-blowers who exercise a discretion to disclose information that they come across in their workplace, or who may be induced by a sense of professionalism to speak up, the sections of the two Insurance Acts referred to, place a positive duty on statutory actuaries to report contraventions and relevant problems to a board or the regulator as the case may be.

4.8 A statutory actuary who acts in good faith is protected against any contravention of a law or provision of a code of professional conduct in performing his or her duties. Also, a failure by the statutory actuary to furnish a report does not confer a right of action against the actuary based only on such failure<sup>24</sup>.

4.9 In addition, a statutory actuary who has made a disclosure in terms of either of the Insurance Acts will enjoy the protection afforded to whistle-blowers under the other Acts discussed above.

---

<sup>15</sup> Sec 20(4)

<sup>16</sup> Sec 21(1)(b)

<sup>17</sup> Sec 20(5)(b). In urgent circumstances the report may immediately be copied to the Registrar

<sup>18</sup> Sec 21(5)(a)

<sup>19</sup> Sec 20 (8)

<sup>20</sup> Sec 22

<sup>21</sup> Sec 33 of Act No 27 of 2008

<sup>22</sup> Sec 19A of the Short-term Insurance Act, 1998

<sup>23</sup> Sec 21 of the Act

<sup>24</sup> Sec 20(6) and (b) of the Long-term Insurance Act, 1998 and sec 19A(6)(b) of the Short-term Insurance Act, 1998

#### 4.10 Pension Funds Act, No 24 of 1956<sup>25</sup>

- (1) The vital role played by actuaries in the administration of pension funds is well-known. The Act applies to privately administered pension funds as defined under the expression "pension fund organisation" in sec 1(1) of the Act.
- (2) Unlike the Insurance Acts, the Pension Funds Act does not contain a specific provision casting a duty on an actuary to voice and report an irregularity come across in the administration of a pension fund.
- (3) From this omission should not be inferred that an actuary associated with a pension fund has no responsibility *vis-à-vis* the regulator.
- (4) As in the case of insurers, the Registrar of Pension Funds relies heavily, and is entitled to do so, not only on the professional skills of an actuary but also on the actuary's honesty and integrity. For these reasons the Registrar will rely on actuaries to come forward and disclose to the regulator what is necessary or desirable in the interest of sound regulation.
- (5) Actuaries in turn will receive the protection of the law if they have acted *bona fide* in the interest of the members of a fund or the public in general. Conversely, actuaries who fail to uphold their professional standards may have to face indictment under the law and censure from their professional body.
- (6) Without attempting to compile an exhaustive list of provisions of the Act most likely to affect actuaries, the following may be alluded to:
  - (a) Sec 9A, as amended in 2008<sup>26</sup>, provides that every fund required to have its financial condition investigated and reported upon, shall appoint a valuator (invariably an actuary).
  - (b) In ordinary parlance this investigation is called the fund's statutory actuarial valuation which needs to be effected at least every three years. This process is dealt with fully in section 16.
  - (c) The all-important purpose of the valuation (reflected in a report to be submitted to the Registrar) is to make sure that the fund carries sufficient assets to meet its actuarial liabilities to members, the calculation of the latter by the valuator forming an integral part of the valuation.
  - (d) Section 15 deals with the annual accounts required to be submitted by a fund to the Registrar. Section 15(3) enables the Registrar to reject any document furnished by a fund, which applies equally to a valuation report under section 16<sup>27</sup>.
  - (e) If any return submitted to the Registrar in the opinion of the Registrar indicates that the fund is not in a sound financial condition, the fund may be subjected to a recovery scheme in order to correct deficiencies. Once again the valuator of the fund reports on the scheme and will oversee its implementation<sup>28</sup>.
  - (f) Because the provisions of sec 14 have been abused in the past, particular mention should be made of them.

---

<sup>25</sup> The Pension Funds Act is somewhat dated. So also the concept "pension fund". The Act stands to be replaced by a completely new Retirement Act within the foreseeable future

<sup>26</sup> By sec 13 of Act No 22 of 2008

<sup>27</sup> Sec 16(9)

<sup>28</sup> Sec 18

- (i) The section deals with the transactions involving the amalgamation or transfer of business between a registered pension fund and any other person.
  - (ii) A scheme of this kind requires the approval of the Registrar who invariably relies on a report by the valuator, and other representations, on which it will be decided whether or not the scheme is reasonable and equitable and accords full recognition, *inter alia*, to the rights and reasonable benefit expectations of the transferring and remaining members.
  - (iii) Members of pension funds are extremely vulnerable in the sense of hardly being able to look after their own interests. So is the Registrar if full reliance cannot be placed on the integrity of what is placed before him by an actuary.
  - (iv) Therefore, actuaries should never under-estimate their responsibilities under the Code to any regulator and feed only correct and complete information and speak up when they get to know of any non-compliance with the law or an irregularity which could adversely affect the position of the pension fund beneficiaries<sup>29</sup>.
- (g) Finally as far as pension fund administration is concerned, reference should be made of the prominence of actuaries in the apportionment of actuarial surplus of pension funds in terms of the surplus legislation promulgated in 2001<sup>30</sup>.
  - (h) Although the board of a fund is seized with steering the scheme for the apportionment of surplus, the statutory actuarial valuation of the fund largely determines its outcome<sup>31</sup>.
  - (i) The importance of the role of the valuator may be gleaned from sec 15B(9). The apportionment will be of no force or effect unless the scheme, including the statutory valuation, has been submitted to the Registrar and the Registrar is satisfied that the valuation has been prepared on actuarially sound and acceptable principles<sup>32</sup>.
  - (j) Furthermore, the Registrar must be furnished with a certificate signed by the valuator confirming the latter's satisfaction that the process of apportionment complied with the Act<sup>33</sup>. The Registrar may even call into assistance the services of another independent actuary on such matters associated with the apportionment as the Registrar shall determine<sup>34</sup>.
  - (k) Finally, in the event of an impasse resulting in the Registrar being unable to approve the scheme, the Registrar shall require the Board to refer the scheme to a special ad hoc tribunal which will perform the functions of the Board. At least one member of the tribunal shall be an actuary selected by the Board from a panel approved by the Registrar<sup>35</sup>.

---

<sup>29</sup> Par 22 of the Code

<sup>30</sup> Introduced by the Pension Funds Second Amendment Act, No 39 of 2001, which provided for the concept of minimum benefits (Sec 14A of the Pension Funds Act) and the rights relating to an apportionment of surplus (Section 15A to 15K of the Pension Funds Act)

<sup>31</sup> Inferred from sec 15 B (1)

<sup>32</sup> Sec 15 B(9)(a)

<sup>33</sup> Sec 15 B(9)(b)

<sup>34</sup> Sec 15 B(9)(c)

<sup>35</sup> Sec 15 K

- (l) Can there be a worse experience for the regulator and for the many stakeholders in the apportionment exercise, extending to former members of the fund going back to 1980, than an actuary that
  - (i) has been remiss in the performance of his or her statutory duties; or
  - (ii) has preferred to remain silent in circumstances that demanded the voicing of a concern?

## 5 Other legislation

Brief reference will be made to other legislation which is possibly of no more importance to actuaries than to other persons. Yet actuaries should know of their existence as they may affect actuaries in the conduct of their profession.

### 5.1 Financial Intelligence Centre Act, No 38 of 2001

- (1) The Act establishes a Financial Intelligence Centre the principal object of which is to assist in the identification of the proceeds of money laundering and the combating of money laundering activities and the financing of terrorist and related activities<sup>36</sup>.
- (2) Except for the right to legal professional privilege which may not be infringed, the Act places certain reporting duties on listed accountable institutions and supervisory bodies<sup>37</sup>.
- (3) Protection is, however, afforded to persons making reports in good faith<sup>38</sup>
- (4) Unlike many other occupations and professions, the profession of actuaries is not listed as an accountable institution, nor is the Society as a self-regulatory body of the actuarial profession<sup>39</sup>.
- (5) Nonetheless, actuaries may well find themselves affected by the Act being employed by or serving as an officer of an accountable institution listed as such, e.g. a registered bank, long-term insurer, investment manager and others<sup>40</sup>.

### 5.2 Prevention of Organised Crime Act, No 121 of 1998

- (1) The Act, in a quest to contain the rapid growth of organised crime, introduces measures to combat organised crime, money laundering and criminal gang activities.
- (2) Any form of assistance given to another to benefit from the proceeds of unlawful activities is criminalized and exposed to severe sanctions.
- (3) Assistance is an offence where the assister knows or ought to have known that the other party has obtained the proceeds through unlawful activities<sup>41</sup>.
- (4) Disclosures made under the Financial Intelligence Centre Act, 2001, may be raised as a defence to charges under the Act<sup>42</sup>.

---

<sup>36</sup> Sections 2(1) and 3(1)

<sup>37</sup> Chapter 3 Part 3, commencing with sec 27

<sup>38</sup> Sec 38

<sup>39</sup> Schedule 1 and Schedule 2 respectively

<sup>40</sup> Schedule 1

<sup>41</sup> Section 5

<sup>42</sup> Sec 7A

- (5) Actuaries ought to know of the Act and the need to report unlawful activities of the kind covered by the Act as the risk of not doing so may have sad consequences to the personal and professional lives of unsuspecting actuaries.

### 5.3 Prevention and Combating of Corrupt Activities Act, No 12 of 2004

- (1) This is yet another Act of which actuaries should.
- (2) In addition to the creation of a general, broad and all-encompassing offence of corruption, various specific corrupt activities are criminalised and severe sanctions provided for on conviction<sup>43</sup>.
- (3) The Act places a duty on any person who holds a position of authority (for example a directorship) and who knows or ought reasonably to have known or suspected of corrupt transactions, to report them or to face heavy sanctions if they don't<sup>44</sup>.

## 6 Some practical considerations and questions for actuaries

6.1 As stated earlier, this guide may not be exhaustive of the legislation directly or indirectly affecting actuaries in the course of their professional occupation. Unlike legal practitioners, actuaries and their clients do not establish a form of privilege of communication in their interaction with one another. In a situation where there is a reasonable doubt on the part of an actuary that an activity or transaction may be against the law or otherwise unethical, an actuary should follow a conservative route of discussing the matter internally with the actuary's firm or else seek advice from the Society or a legal practitioner on the need of reporting or disclosing the matter to a suitable authority. Rather look for a justification to speak up, than to find an excuse to remain silent, when something is simply not right.

6.2 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 requires the responsible exercise of discretion. The aim of everyone – actuaries, their clients and employers – should be to promote an open culture, in which all involved feel able to articulate any concerns they may have and are not inhibited from, or penalised for, doing so.

6.3 Actuaries can help in developing such a culture by:

- (1) ensuring that their clients and/or employer understand the professional and legal obligations on actuaries set out earlier in this note, whether through contractual terms or the provision of a separate information note;
- (2) checking that their firm has a clear policy for staff on speaking up and whistleblowing that is effectively promoted and regularly reviewed; and
- (3) ensuring that their employer's policy on speaking up and whistleblowing is properly recognised in client contracts.

6.4 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.

- (1) Before any problem arises

---

<sup>43</sup> Chapter 2 of the Act, covering sections 3 to 16

<sup>44</sup> Sec 34

- (a) Do I know and understand my professional obligations and rights and responsibilities under the law (as set out earlier in this guide)?
  - (b) Do I know whether my firm/employer has a written policy on whistleblowing?
  - (c) If it does, am I familiar with the policy?
  - (d) If I am a manager, do my staff know about the policy?
  - (e) 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?
  - (f) Do I know where I can go for further advice?
  - (g) 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?
  - (h) Do I understand what constitutes conduct which may require reporting?
  - (i) 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?
  - (j) 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?
- (2) If a problem does arise
- (a) Do I understand my obligations as an actuary and the obligations and protections available to me under the law?
  - (b) Have I re-read my firm's whistleblowing policy?
  - (c) Do I have reasonable grounds for believing my concerns are true?
  - (d) Have I raised my concerns at the appropriate level within my organisation?
  - (e) Am I clear how, and to whom, I should make the report?
  - (f) Am I clear who should be informed that I have made the report?
  - (g) 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?
  - (h) Do I need to/want to look for further sources of advice?
  - (i) Have I properly assessed the risks of not reporting this issue?

## 6.5 Points to note when considering whether to whistleblow

- (1) In any situation in which you are contemplating whistleblowing to an appropriate individual or authority either within or outside your organisation, you may find it helpful to note down:
  - (a) The nature of your concern;
  - (b) Your reason(s) for believing that there is an issue;
  - (c) The full name(s) of those involved, including any with whom you have already raised the issue;
  - (d) Times and dates when your concerns were aroused;
  - (e) Details of the location(s) concerned;
  - (f) Details of any evidence;
  - (g) Details of any witnesses; and
  - (h) Whether any action has already been taken by anyone.

6.6 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.

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

## 7 **Making a report to the Society**

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

- (1) The full name and address of the member or members concerned;
- (2) Details of what, in your view, the member has done wrong;
- (3) The dates on which the events that you describe took place;
- (4) Copies of any relevant papers; and
- (5) The names and addresses of anyone who could support your complaint from their own personal knowledge.

## 8 **Issues which may occur to actuaries who consider whistleblowing**

8.1 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, in good faith and in the public interest.

8.2 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 Society even where there is no specific duty to do so.

8.3 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 in good faith on suspicions which are reasonably held.

8.4 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".

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

(2) The Protected Disclosures Act, 2000 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.

(3) In terms of 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.

8.5 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. 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.

8.6 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 Society or the appropriate regulator.

## 9 **Conclusion**

9.1 This guide is issued by the Society for the use and benefit of actuaries and their employers. It sets out the Society'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 Society for your actions. This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct.

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

- 9.3 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 the Actuarial Society office.