



# *Guidance on the duty to report misconduct*

EFFECTIVE FROM 1 OCTOBER 2020

This Guidance On The Duty To Report Misconduct was first approved by ICAEW's Council on 4 August 1993. It was substantially amended and updated by the ICAEW Regulatory Board (IRB) on 4 August 2020 and is **effective from 1 October 2020**.

## WHO DOES THIS GUIDANCE APPLY TO?

All ICAEW members whether they are engaged in public practice or employed or working in business.

## WHAT IS ITS PURPOSE?

This Guidance is intended to help ICAEW members understand their reporting obligations under Disciplinary Bye-laws (DBLs) 9.1 and 9.2 to ICAEW's Professional Conduct Department (PCD) and sets out:

- A summary of what you need to report to PCD and when.
- Who should make the report if issues arise within your firm.
- Matters to consider when making a report (e.g. client confidentiality, AML obligations and GDPR).
- How to make a confidential report to PCD and what we can do with anonymous reports.
- Where to access advice or assistance to make a report.

## THE PUBLIC INTEREST

The IRB has determined that it is in the public interest for an ICAEW member to report matters to ICAEW which, if left unreported, could adversely affect the reputation of ICAEW and / or the profession of accountancy.

As a member, you are in a unique position to identify possible breaches of ICAEW's DBLs by other members and the duty to report is an important part of ICAEW's disciplinary framework.

## WHAT SHOULD BE REPORTED AND BY WHOM?

The duty on you to report is set out in DBLs 9.1 and 9.2 which provide:

- 9.1 *[...] any person...may bring to the attention of the **head of staff**<sup>1</sup> any facts or matters indicating that a **respondent** or **respondent firm** may have become liable to disciplinary action under these **bye-laws** or an **investigation and discipline scheme**<sup>2</sup> and it is the duty of every **member**, where it is in the public interest for them to do so, to report to the **head of staff** any such facts or matters of which they are aware.*
- 9.2 *In determining whether it is in the public interest for a **member** to report any such facts or matters under paragraph 1 regard shall be had to such guidance as may from time to time be issued by the ICAEW Regulatory Board.*

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<sup>1</sup> In the disciplinary context the 'head of staff' is the Professional Standards Department Executive Director.

<sup>2</sup> The Financial Reporting Council's Accountancy Scheme.

This requires you, as an ICAEW member, to report matters to PCD where you have a reasonable belief that another ICAEW member (working in public practice or in business) or firm<sup>3</sup>, may be liable to disciplinary action under the DBLs 4, 5 or 6. This will apply where another member or a firm has, or may have:

- a) **committed misconduct:** by committing any act or default, whether in the course of carrying out professional work or otherwise, likely to bring discredit on the member, the profession of accountancy or ICAEW or so as to fall significantly short of the standards reasonably expected of a member / firm;
- b) **been professionally incompetent:** by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a member / firm;
- c) committed a breach of any ICAEW bye-law or regulation;
- d) been charged with and/or convicted of a criminal offence (whether in the UK or abroad);
- e) been the subject of a disqualification order or provided a disqualification undertaking under the Company Directors Disqualification Act 1986 (or equivalent legislation abroad);
- f) carried on activities regulated under statute when not authorised to do so;
- g) been declared bankrupt or liable to disciplinary action under DBL 4.2 (financial propriety and insolvency matters);
- h) been the subject of an adverse finding in a report by, or proceedings before, another person or body as specified in DBL 7.

Examples are provided in **Appendix 1** of matters which should be reported relating to a member's professional activities. Examples are provided in **Appendix 2** of matters which should be reported relating to a member's personal activities.

The duty does not, however, require you to report the minor faults of other members or firms or suspected issues that are not supported by evidence.

If you are unsure whether you should report a matter to PCD, you can contact the Ethics Advisory Service (+44 (0)1908 248 250) to discuss the matter further on a confidential basis. Further information can be found about the Ethics Advisory Service at [icaew.com/helpsheets](https://www.icaew.com/helpsheets)

### **Self-reporting obligation**

You are also under a duty to report any of your own actions / omissions which could make you liable for disciplinary action under the DBLs.

If your report results in disciplinary proceedings being brought against you, the fact that you have made a self-report will count in your favour.

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<sup>3</sup> References in this guidance to 'members' and 'firms' should be interpreted as including also provisional members (i.e. ACA students), Foundation Qualification Holders (i.e. BFPs), Provisional Foundation Qualification Holder (i.e. BFP students), CFAB students, member firms, regulated firms and contracted firms (i.e. firms that have contracted with ICAEW to be part of the Practice Assurance Scheme).

## **Obligation on firms to report members**

While DBL 9 does not put a specific obligation on an ICAEW member firm or regulated firm to report matters, there is a duty on ICAEW members who hold management positions within such firms to make a report where they have a reasonable belief that another ICAEW member in the firm may be liable to disciplinary action. If in any doubt, the matter should be discussed with the firm's Ethics Partner and / or Advisory Services.

If an internal investigation or disciplinary process has been started in relation to a matter, a report does not have to be made to PCD until such time as that investigation or process has been concluded and, only at that time, if the internal investigation or process has concluded that the principal or member of staff may be liable to disciplinary action under the DBLs. However, if the principal or staff member decides to resign at any time during the internal investigation or disciplinary process, a report should be made as soon as practicable to PCD after notice of resignation if there is a reasonable belief that the former principal or staff member may be liable to disciplinary action under the DBLs.

## **INFORMATION IN THE PUBLIC DOMAIN OR KNOWN TO OTHERS**

If a matter has been reported in the national media or is otherwise in the public domain, you will not be under a duty to report. However, if you are unsure whether PCD is aware of the issue (e.g. if a matter has been reported only in local press) or if you believe that you have new or additional information or evidence about an issue that is already in the public domain and which may assist PCD in investigating a complaint, you should contact PCD.

If you are in a practising firm and become aware, along with others in the firm, of an issue concerning a colleague who is also an ICAEW member, the duty to report will rest primarily with the most senior ICAEW member in the firm with knowledge of the issue. You, along with other ICAEW members in the firm, will be able to rely on the decision of this more senior principal (or another principal or employee acting on their behalf) as to whether a report should be made under DBLs 9.1 and 9.2. If, however, they elect not to make a report and you have clear evidence that this is an attempt to improperly conceal the matter, you should make a separate report to PCD. You should adopt a similar approach if you are in business, but only if the more senior person is a member of ICAEW.

Members must ensure that they do not act in any way to prevent other members with the firm from making a report to PCD in the public interest. Similarly, members with management responsibility must ensure that others within the firm do not suffer professionally or personally following a decision to make a report. PCD will take disciplinary action against members who attempt to prevent others from reporting matters to us, regardless of whether PCD proceeds to investigate and / or take disciplinary action in connection with the report.

## **CONFIDENTIALITY AND LEGAL CONSTRAINTS**

Before making a report under DBL 9.1, you should consider whether you are in any way constrained by a duty of confidentiality to your client, your employer or anyone else. There are circumstances in which the public interest may justify a breach of confidence and crime, fraud and other serious misconduct are not protected by the duty of confidentiality. This is a difficult area of law and further guidance can be found in the [ICAEW Code of Ethics - Confidentiality](#), the [guidance on non-compliance with laws and regulations \(NOCLAR\)](#) and in [Professional conduct in relation to](#)

**defaults or unlawful acts.** Auditors should refer to the relevant standards and guidance issued by the Auditing Practices Board, e.g. **ISA (UK) 240, 'The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements'**, and **ISA (UK) 250A, 'Consideration of Laws and Regulations in an Audit of Financial Statements'**. Where necessary, you should seek legal advice on whether the information may be disclosed. If it is later alleged that you failed to disclose a matter to PCD in breach of DBL 9.1, a disciplinary committee would have regard to the fact that you sought legal advice in reaching your decision.

You may also be prohibited from disclosing information by law. If, for example, you are aware that a Suspicious Activity Report (SAR) has been made relating to known or suspected money laundering, then you should take care avoid the 'tipping off' offence under money laundering legislation. Further guidance on this offence can be found in **Anti-money laundering guidance for the accountancy sector**.

## REPORTS TO OTHER REGULATORS

If you are in practice or working in the regulated sector for the purposes of the money laundering legislation, you have a duty to report actual or suspected money laundering to your firm's Money Laundering Reporting Officer or to the National Crime Agency (NCA). Known or suspected terrorist activity must also be reported without delay. It is important to remember that a report to PCD will not relieve you from your own obligation under law to report knowledge or suspicion of money laundering or terrorist financing.

There may be other circumstances in which you have a duty to report criminal, conduct or other matters to clients, regulators or third parties. Further guidance on reporting defaults and unlawful acts by clients, employers or their staff is provided in **'Professional conduct and disclosure in relation to unlawful acts'**, or its successor. Auditors should refer to current Auditing Standards and guidance, in particular **ISA (UK) 250B, 'The Auditor's Right and Duty to Report to Regulators of Public Interest Entities and Regulators of Other Entities in the Financial Sector'**; and related practice notes, for example, **Practice Notes 19 (Banks & Building Societies)** and **20 (Insurers)**. Auditors also have a duty to report matters of material, regulatory significance to a number of regulators outside the financial services sector such as The Pensions Regulator and Charities Commission.

## WHEN AND HOW TO MAKE A REPORT

Generally, you should make a report as soon as you are aware, based on this guidance, of any matters that may suggest that you, or another member / firm, may be liable to disciplinary action under the DBLs. Unless an internal disciplinary investigation or internal disciplinary proceedings are in process in respect of the matter, you should make the report as soon as possible, as any significant delay could lead to you being in breach of the reporting duty in DBL 9.1 and result in disciplinary action.

Occasionally, it may be appropriate for you to invite the member / firm to comment on the issue first in order to give them an opportunity to clarify any misunderstanding before you make a report. However, this will not apply where you are under a legal duty to disclose suspected money laundering and any significant delay could still result in a breach of DBLs 9.1 and 9.2. In no circumstances should you use the threat of reporting as a means of securing any advantage over another member / firm.

Any report you make should be in writing and accompanied by any supporting documentation. A reporting form is attached at **Appendix 3** which specifies the information which should be provided to PCD. You should send your report (by post or email) to the following address:

Head of Investigation  
Professional Conduct Department  
ICAEW  
321 Avebury Boulevard  
Milton Keynes, MK9 2FZ

T: +44 (0)1908 546 235  
E: [complaints@icaew.com](mailto:complaints@icaew.com)

If you have any questions on how to complete the form or what information to include, please contact the Ethics Advisory Service.

Information about the complaints process and what we will do following a report is available from [icaew.com/complaints](https://icaew.com/complaints)

## CONFIDENTIAL / ANONYMOUS REPORTING

Although most information is reported to us openly, we do receive information from individuals who request that we keep their identity confidential. If information is provided to us on a confidential basis, we will take appropriate steps to protect your identity.

Please do let us know when making your report if you wish your report to remain confidential. Otherwise we will assume that we can disclose it as part of our regulatory action in the matter.

Sometimes reports are made to us anonymously. While we will consider such reports, it is sometimes difficult for us to take action as it is not usually possible to obtain sufficient details or evidence to investigate and take forward the concerns. We therefore urge you to provide your name and a means of contacting you if you are making a report in the public interest. We can then work with you to ensure that appropriate safeguards are in place to protect your wish to remain confidential.

Equally, sometimes people wish to make a report on a 'no names basis', without providing the identity of the individuals involved. This can sometimes be a useful way to discuss our approach to matters on a hypothetical basis; however, we cannot take action on the information and so do not class this as a formal report.

## ADDITIONAL HELP WITH REPORTING

We can provide you with additional support in making a report, particularly if a disability or health problem is making things harder for you.

We understand that there may be the need to provide support to those who make allegations of a sensitive or sexual nature about the conduct of an ICAEW member at the firm where they work. We understand the difficulties of this, but it is important that you feel that you are able to speak up - either to someone in the firm where you work such as the Ethics Partner or by making a report to the police or by speaking to us or all of these.

If sensitive information is shared with you by one of the people involved on a confidential basis we appreciate that this may cause you difficulty; for example, the person may not want you to disclose their name to us and may make it clear that they do not wish to help us in any investigation.

Although we understand that this is a difficult situation for everyone involved, if the information you have been told gives you a reasonable belief that a member is liable to disciplinary action, you have a duty to report it to us and we can, if appropriate, deal with the request for anonymity or confidentiality. We need to know so we can assess the risk and decide what action we should take.

We have significant experience of dealing sensitively with the issues caused by such reports and dealing with requests for anonymity or confidentiality. For example, if a matter raised with us is to be heard at the ICAEW Disciplinary Tribunal, there are special measures that we can apply to have put in place to ensure that a witness has the support needed to give evidence.

## GENERAL DATA PROTECTION REGULATION (GDPR)

We recognise that firms and organisations will need to consider data protection laws including the GDPR when reporting matters to us. We recognise also that it may not always be possible to seek an individual's consent to disclose their personal data when you make a report. However, as a regulator we have a legal obligation and legitimate interest to process personal data in carrying out our disciplinary functions under statute and the ICAEW Royal Charter and information about how we use personal data is available on our [privacy notice](#).

The Information Commissioner's Office (ICO) is the authority responsible for upholding information rights in the UK. If you are considering reporting a matter to us but are unsure of your obligations under the GDPR then in addition to contacting us you should also have reference to the detailed guidance on complying with data protection law available on the [ICO website](#).

## EXEMPTIONS FROM THE DUTY TO REPORT

The duty to report set out in DBLs 9.1 and 9.2 is not intended to prevent members from seeking ethical advice or to inhibit ICAEW members or staff from providing advice to other members on a confidential basis. Therefore, the following people are exempt from the duty to report, except where disclosure is required by law:

- ICAEW Ethics Advisory Service staff.
- Members of the ICAEW Support Members Scheme.
- Members acting on behalf of the Chartered Accountants Benevolent Association.

However, you should note that discussion of a matter with those above will not relieve you of the duty to report under DBLs 9.1 and 9.2 where such duty exists.

## APPENDIX 1

**Examples of matters that are likely to constitute misconduct relating to a member's professional life or work environment include:**

- Dishonest actions or statements and / or actions demonstrating a lack of integrity.
- Knowingly providing false or misleading information to a principal, an employer, senior manager, a client, a regulator etc.
- Falsification of documents or wrongful backdating of documents.
- Knowingly or recklessly acting with a conflict of interest or lack of independence.
- Knowing or reckless breach of duty of confidentiality.
- Knowingly or recklessly preparing incorrect documents to be filed / published / relied upon e.g. financial statements, valuations, tax returns, mortgage references etc.
- Knowing or reckless breach of AML requirements.
- Misappropriation of funds from employer, by expense claims or otherwise, or from client.
- Knowing or reckless submission of incorrect expense claims particularly where the errors are numerous and / or significant.
- Creating, encouraging or promoting highly artificial or highly contrived tax avoidance schemes in breach of the standards for tax planning in the **Professional Conduct in Relation to Taxation (PCRT) guidance**.
- Knowing or reckless breaches of the **Clients' Money Regulations**.
- Knowing or reckless failure to obtain client's consent to retain commission.
- Abusive, intimidatory or threatening conduct directed towards other employees / managers at place of work or directed towards third parties such as clients, regulators etc.
- Harassment (sexual or otherwise) of another employee / manager at place of work or client.

*Note – this is not an exhaustive list.*



## APPENDIX 2

**Examples of matters that are likely to constitute misconduct relating to a member's personal activities include:**

- Being charged with, or convicted of, one or more criminal offences involving dishonesty, fraud, extortion or bribery; discrimination; violence or sexual misconduct; the possession or distribution of child sex abuse images or where the offence is associated with terrorism; money laundering; perverting or obstructing the course of justice or facilitating or concealing serious criminal activity by others.
- Convictions, or accepting a caution, for any other criminal offence except minor motoring offences.

*For example, a motoring offence for speeding or careless driving that does not result in disqualification does not need to be reported but more serious motoring convictions do need to be reported.*

- Where a member has been removed or dismissed from a position of trust on the basis of dishonest or allegedly dishonest behaviour.

*For example, if a member has been removed or dismissed from any role in relation to a charity or charitable trust on suspicion of dishonest conduct which does not result in a police charge.*

- Inappropriate use of social media / electronic communications.

*This will include the making and publishing of racist, homophobic or other offensive comments or the sharing of offensive material.*

*This will not include instances where the member has made a point forcefully in a heated debate without any offensive content in the comment made.*

- Verbally or physically abusive behaviour towards work colleagues or other persons outside of the workplace.
- Sexual misconduct / harassment of work colleagues or other persons outside of the workplace.
- Aggressive or abusive behaviour in correspondence that may be unrelated to professional activities or relate to the member's own financial affairs.

*Note – this is not an exhaustive list*

**Duty to report misconduct form – to make a report about an ICAEW member, affiliate or firm, this form should be completed and submitted to the ICAEW Professional Conduct Department (PCD).**

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## Our role as a world-leading improvement regulator

We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct.

ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

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There are more than 1.8m chartered accountants and students around the world and 186,500 of them are members and students of ICAEW. They are talented, ethical and committed professionals, which is why all of the top 100 Global Brands employ chartered accountants. ICAEW promotes inclusivity, diversity and fairness. We attract talented individuals into the profession and give them the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

Founded in 1880, we have a long history of serving the public interest and we continue to work with governments, regulators and business leaders around the world. And, as an improvement regulator, we supervise and monitor over 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct. ICAEW is proud to be part of Chartered Accountants Worldwide, a global network of 750,000 members across 190 countries, which promotes the expertise and skills of chartered accountants on a global basis. We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create strong economies and a sustainable future for all.

[www.charteredaccountantsworldwide.com](http://www.charteredaccountantsworldwide.com)  
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