

## **‘Whistleblowing’ – Guidance to ICE members**

### **Introduction**

‘Whistleblowing’ can be defined as “publicly raising concerns about misconduct within an organisation where internal reporting systems do not exist or are ineffective”. Many organisations both within the public and the private sector, including the engineering, infrastructure and construction sectors, have policies and procedures for the protection of whistleblowers. In the first instance, therefore, ICE members who are concerned about apparent wrong-doing in their organisations should consult their employer’s code or procedures for reporting wrong-doing. However, there may have been good reason not to use the employer’s internal procedures, e.g. they have already proved to be ineffective or not to have protected whistleblowers, in particular where their livelihoods and professional prospects have been compromised.

### **Statutory provisions for the protection of whistleblowers**

Under UK law, a measure of protection to whistleblowers is provided by the Public Interest Disclosure Act 1998 (see below for more detail). In the USA, the Public Company Accounting Reform and Investor Protection Act of 2002, more generally known as the Sarbanes-Oxley Act (SOX), makes it an offence to take “harmful action” against anyone reporting a federal offence, or possible commission of an offence, to a law enforcement officer and requires companies to establish procedures for handling complaints regarding accounting and auditing matters, including anonymous employee complaints. ICE members should make themselves aware of the legislation on whistleblowing in the countries in which they will be working before taking up an engagement.

### **The ICE’s scope for action, and its code of conduct.**

It is important that ICE members understand at the outset that ICE has very limited scope to support members who feel an obligation to make public disclosure, i.e. to ‘whistleblow’. ICE is constrained by its Royal Charter and cannot act as a trade union or professional association. Members should be mindful of the provisions in the ICE Code of Professional Conduct relating to bribery and corruption (see Rule 1 of the Rules of Conduct and the associated Guidance Notes on bribery and corruption). ICE members should also bear in mind the corresponding obligations upon all ICE members, which will also apply to other ICE members who might be involved or implicated in the matter concerned, or who have failed to take appropriate action where the matter has been reported internally. Above all, ICE members should think things through carefully and not to act precipitately. Whistleblowing should be a last resort.

The ICE Code of Professional Conduct can be accessed at:

<http://www.ice.org.uk/Information-resources/Document-Library/Code-of-professional-conduct-for-members>

ICE members who wish to discuss their position as ICE members in relation to whistleblowing, or who have concerns about the ICE Rules of Conduct should contact the ICE Professional Conduct Department. The first point of contact is Paul Taylor, the Professional Conduct Manager, who may be reached by e-mail at [paul.taylor@ice.org.uk](mailto:paul.taylor@ice.org.uk) or by telephone at 020 7665 2064.

### **The Public Interest Disclosure Act 1998 (PIDA)**

All ICE members who are UK based or are engaged by UK firms and who are contemplating whistleblowing should be aware of the provisions of PIDA, which applies to people at work raising concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health and safety or the environment and the 'cover-up' of any of these. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas. Detailed information on the operation of PIDA may be obtained from 'Public Concern at Work' (see below).

### **'Public Concern at Work', the whistleblowing charity**

ICE members who are contemplating making public disclosure may wish to approach 'Public Concern at Work' (PCaW). Its objective is to safeguard the public interest by empowering individuals to speak up about wrongdoing in the workplace and helping organisations to address risk responsibly. The charity is wholly independent of Government. PCaW is recognised as a legal advice centre by the Bar Council and the Law Society. Since its establishment in 1993 PCaW has successfully advised on fifteen hundred cases.

Through its helpline (telephone 020 7404 6609 or email [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk)), PCaW's lawyers provide confidential advice, free of charge, to people who are concerned about wrongdoing at work but who are not sure whether to, or how to, raise their concerns. Examples of the wrongdoing about which PCAW can give advice are fraud, public dangers and risks to consumers. For persons who are in this position, PCAW aims to help them identify how best to raise their concerns, while minimising any risk to them and maximising the opportunity for any wrongdoing to be addressed.

PCaW also provide information about how PIDA operates. It does not take cases or represent clients, but for persons wishing to make claims under PIDA and needing help to do so it will give information on other useful sources of advice.

Information about PCaW is given on its website at: <http://www.pcaw.co.uk/>