



Case Study 5

You should have a copy of the CII Code of Ethics and Conduct to refer to when attempting this case study.

This case study presents certain actions and asks you to consider whether, in the circumstances, they might normally be considered a breach of the CII Code of Conduct and Ethics.

For each of the six circumstances answer True or False. Bear in mind that the question does not ask whether the CII will take any action if it becomes aware of the breach. The purpose of this case study is to assess your knowledge and understanding of possible breaches.



Circumstances 1

Joan, a CII member and an insurance adviser, has failed to notice that a client has not completed the 'claims history' section of a customer's proposal. When a claim arises the insurer rejects it and avoids the policy for failure to disclose previous losses which the underwriter asserts are material to the risk.

Joan's employer, Afid Limited, has been sued for negligence and an enormous sum for damages is awarded by the Courts.

Joan's negligence is a breach of the CII Code of Conduct and Ethics: True or False?

Circumstances 2

Joan, a CII member and an insurance adviser, has not noticed a failure by customers to complete the 'claims history' section of their proposals on many occasions and this has led to a number of complaints and subsequent claims for financial damages against her employer.

Joan's negligence is a breach of the CII Code of Conduct and Ethics: True or False?

Circumstances 3

Joan, a CII member and an insurance adviser, noticed that a customer had not filled in the 'claims history' section on the proposal and inserted the details that she thought were true from her study of the file. Unfortunately Joan's memory was not reliable and the insurer declined a claim on the basis of the materiality of a claim that Joan forgot to add.

Joan's negligence is a breach of the CII Code of Conduct and Ethics: True or False?

Circumstances 4

David, a CII member and an insurance broker, has been placing the business of his small UK commercial clients with an insurer based in the Outer Achilles Islands which is not authorised by the FSA to transact business in the UK. David notices that the insurer appears very efficient when a claim arises but, in practice, no claims are being paid. Suddenly, the company starts avoiding policies with rather spurious claims of non-disclosure.

David is in breach of the CII Code of Conduct and Ethics: True or False?

Circumstances 5

Sharon is a personal accident claims manager with ACME Insurance Company. The shareholders are not at all happy with the results of the Sickness and Accident book and a directive from above tells Sharon that claim payments are far too generous and must be reduced.

Sharon asks to see all claims for the last 12 months and notices that 25% are for injuries arising from class 1 office workers occasionally lifting things, e.g. boxes, computers etc.

She gives an instruction that, henceforth, all such claims are to be rejected on the grounds of non-disclosure of a material fact, namely that the job entailed manual work and should have been rated as class 2.

Sharon's action is a breach of the CII Code of Conduct and Ethics: True or False?

Circumstances 6

Philip is a CII member and has been asked to write an article for a trade magazine on the subject of Liability Insurance for Roofers.

It is not his favourite subject but he knows that one of his junior colleagues has recently written a similar article for the trade press and she agrees that he can use her work as the basis for his.

Changing very little, he puts his name to the piece and submits it to the trade journal under his own name as author. Both articles are published.

Philip's action is a breach of the CII Code of Conduct and Ethics. True or False?



Circumstances 1 feedback (True)

An act of negligence is a breach of the Code of Conduct (paragraph C) 'a member is expected to complete their duties with due skill, care and diligence') but in a one-off situation it is generally accepted that such events will happen in any professional's career and no-one is expected to be perfect.

However, a complaint and subsequent investigation could uncover other factors that might involve a breach, such as failure to keep up the required competence and CPD standards. A professional institute will particularly take note of repeated reports of negligence by an individual or firm.

Circumstances 2 feedback (True)

Paragraph C of the Code states that 'a member is expected to complete their duties with due skill, care and diligence'.

The key word is 'due' and this normally refers, in the first place, to the standard that a body of peer practitioners might expect and ultimately, to what the Court would find to be acceptable, taking into account the body of opinion of peer practitioners.

Clearly, repeated acts of negligence such as this are not acceptable and Joan's behaviour is now moving into the realm of gross negligence.

It is worth noting that at this stage Joan's supervisor/s might also be in breach of the Code if it was held that they were negligent in not identifying the problem earlier.

Circumstances 3 feedback (False)

A straightforward question. Joan has made an honest but misguided mistake. This is not 'due' skill, care and diligence (no-one should guess at information on behalf of a client) but as a one-off case of negligence it is not something that a professional institute is likely to consider as requiring any disciplinary action.

Circumstances 4 feedback (True/False)

The answer could be either and the purpose of asking you about this set of circumstances is to get you used to considering the facts against the CII Code Key Values.

Ultimately, if David is acting within the law and his client clearly understands all the risks and problems that might arise from insuring in this way, then he is acting within the Code. On the other hand, if he simply places his customer's business with this insurer in the same way that he would an authorised UK insurer, then it is likely that he is in breach of the Code on a number of counts.

The salient point in the first four sets of circumstances is that David and Joan are practitioners who are members of a professional institute. Negligence is a breach of the Code (See the Key Values) but, of itself, is not a matter that would necessarily cause the institute to take action against the member.

However, repeated negligence or wilful, reckless or criminal acts not only breach the Code of Conduct but also cut across the ethical aspects of the expected behaviour of a CII member.



The following circumstances are an example of each of these acts. Match the left hand circumstance to the right hand expression.

1) A practitioner falsifies a customer's claim form to increase the amount paid with the intention of keeping the additional amount.	A) Gross Negligence
2) A practitioner completes a customer's claim form not caring whether it is right or wrong.	B) Wilful
3) A practitioner completes a customer's claim form knowing it is not right.	C) Negligence
4) A practitioner fails to complete a claim form correctly.	D) Reckless
5) A practitioner repeatedly fails to complete claim forms correctly.	E) Criminal

Answers:

- 1): E)
- 2): D)
- 3): B)
- 4): C)
- 5): A)

It is worth noting that all bar 4) could fall into the class of 'Gross Negligence'. It is a term commonly used where a professional body is considering some form of serious censure.

Circumstances 5 feedback (True)

Sharon's actions are unethical. All PA & Sickness underwriters should know that the average office worker occasionally lifts heavy things. The correct way to deal with the matter and with an eye to treating the customer fairly is to clearly explain the additional risk of lifting at the point of sale and either rate it or exclude it.

The test of fairness is whether the customer gets an unreasonable surprise when the claims arise.

CII members who have the authority to decide on whether to settle claims or not, should be aware that treating customers fairly is a key factor in the Institute's assessment of whether there has been a breach of the Code or not.

Circumstances 6 feedback (True)

If Philip had copied the work for his ACII exams then no-one would question that there had been a breach of the Code.

There are many practitioners who when asked to write articles, rely on someone else to do the writing for them. Whether that individual is being deceitful to the reader is often only a matter of conscience.

Where the question of a breach of the Code arises is in three particulars:

- 1) It was another publication that commissioned the piece from his colleague and he should have sought its permission first.
- 2) He should have told the publisher of the plagiarised work the true situation.
- 3) Arguably, as the other piece was in the public domain in another name, he should have given credit to that person or not claimed the piece as his own



The breach of the Code therefore lies in the failure to obtain the approval of and/or inform interested parties of the true situation not for the plagiarism itself.

If Philip had not sought the agreement of his colleague to copy the material then the issue of plagiarism would then come to the fore.

Unless Philip identified himself as a CII member or was well known publicly as, say, a CII Officer, it is unlikely that there would also be a breach of section 5:10 of the Code:

Ensure that any conduct, promotion or public announcement, with which a member, their name or qualification are connected, does not bring the CII, or another member or their profession into disrepute.

Summary

When considering whether a breach of the Code has occurred, common sense must prevail. In any professional working environment it is deliberate and unethical breaches that are usually the most serious and which should prompt action to be taken, either by way of reporting to the institute or through disciplined and recorded rectification.

People will make mistakes and accidentally break rules so one of the key factors when considering a breach is the attitude of the practitioner at the time.

Remember the key definitions:

Negligence:	Making a mistake and letting a customer down
Gross Negligence:	Severe or repeated negligence
Wilful:	Knowing something is wrong or unethical
Reckless:	Not caring whether something is wrong or unethical
Criminal:	Acting contrary to criminal law