



Case Study 6

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

Horatio is a CII member who works for JimJam Pensions Limited, an independent intermediary. He also sells general insurance.

In 1999 he sold tractor insurance to a farming client. Horatio also advised this client on pensions and investment matters. He was an approved person at the time.

Mr Krang, the client, had a very serious accident in the tractor in 2001 and cannot work again. The customer has sued Horatio's firm claiming that he failed to advise him to consider effecting accident and injury insurance at the time he sold him the tractor insurance.

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

Circumstances 2

Horatio is a CII member who works for JimJam Pensions Limited, an independent intermediary. He also sells general insurance.

In 1999 he sold tractor insurance to a farming client. Horatio also advised this client on pensions and investment matters. He was an approved person at the time.

Mr Krang, the client, had a very serious accident in the tractor in 2001 and cannot work again. The customer has sued Horatio's firm claiming that he failed to advise him to consider effecting accident and injury insurance at the time he sold him the tractor insurance.

Horatio is absolutely furious that Mr Krang should take this action and has no hesitation in giving the details to the local press, haranguing Mr Krang and his family by letter and berating him to friends and colleagues. As far as he is concerned, Mr Krang is a liar and he is looking forward to his day in Court when he can prove this to the world.

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

Circumstances 3

Damien is a CII member and an IFA whose main source of business is advising Asian business people on their financial planning needs. In most cases his clients affect fairly substantial Key Man term assurance. Six weeks after affecting a substantial policy, one of his clients is reportedly killed in a car accident whilst on a trip to Bombay.

Damien is advised by the insurer that there have been a number of fraudulent claims in recent years concerning reported deaths that in all likelihood never happened. In every case this involved an accident whilst abroad. The insurer confirms they are sending special investigators to India to investigate the case and Damien is advised to expect a visit from the police.

Damien is very worried that this might damage his reputation with both the public and the FSA and immediately refuses to deal with the client's family and advisers.

It transpires, in a relatively short space of time, that the claim was entirely legitimate.

The client's wife complains to the CII.

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



Circumstances 4

Colin, a CII member and employee of a firm of financial advisers, has been lying to his employer about his hotel expenses.

Colin is entitled to claim £75 per night for the cost of a hotel room and £20 for an evening meal. His employer is not willing to meet the cost of alcoholic drinks.

Colin stays at a particular hotel on a regular basis and the cost of room and evening meal is £55 inclusive. Colin has arranged with the hotel proprietor to include all his alcoholic drinks and to state that it is for 'room and evening meal' as long as it does not exceed £95 per night.

Colin is sacked by his employer for theft.

Which of the following statements is true?

- Colin is in breach of the CII Code of Ethics and Conduct.
- Such matters do not fall within the CII Code of Ethics and Conduct.
- The employer must report the matter to the CII.
- This was not theft as it was within the limit set by the employer.

Circumstances 5

Colin is a CII member. His employer includes in the contract of employment a clause which strictly forbids staff staying with a partner in a hotel room that the company is paying for through an expenses claim.

Colin is having a relationship with a lady-friend who joins him in a double room at the hotel on a regular basis. So that the employer does not find out, he arranges for an invoice to cover the cost of a single room and they pay the difference in cash.

Colin's employer finds out the true circumstances and sacks him for dishonesty.

Which of the following statements is true?

- Colin is in breach of the CII Code of Ethics and Conduct.
- The CII would not expect such a matter to be reported.
- The employer must report the matter to the CII?
- This was not dishonest as there was no monetary gain.

Circumstances 6

Ernest is a key director of a firm of Independent Financial Advisers. He is an equal shareholder with three other approved persons.

One of the directors, Shane, is an ex-direct salesman and has adopted the role of sales manager for the directors and the 20 or so financial advisers that are employed by the firm.

Ernest dislikes the sales tactics that Shane is encouraging the staff to adopt and feels strongly that these methods are manipulative and unethical. He is convinced that this approach is leading to mis-selling but he does not wish to say anything to the other directors as Shane is very aggressive when challenged and Ernest prefers to avoid confrontation.

Ernest is in breach of the CII Code of Ethic and Conduct: True or False?



Circumstances 1 feedback (False)

This is a case of alleged negligence. At this stage Horatio is certainly not in breach of the Code. Let us suppose that this case goes to Court and Horatio is found to be negligent. That, in itself, is a breach of the code (failing to complete his duties with due skill, care and diligence) but it is highly unlikely, if this is an isolated case of negligence, that the CII would be interested in taking any action against Horatio.

Circumstances 2 feedback (True)

Paragraph 1.7 of the Code says: 'a member will...act openly, fairly and respectfully at all times, providing all customers with due respect, consideration and opportunity'.

There is no doubt that some customers 'try it on' when things do not go as they expect and an intermediary that does not keep good records of customer communications, conversations and meetings is always likely to be in the firing line.

However, any professional body would expect its members to rise above personal vendettas that might bring the reputation of the institute and industry into disrepute.

An example in recent years involved a CII member who wrote a letter to the trade press using language that was abusive and offensive. The member signed himself ACII and the press published.

Under the new CII Code of Ethics and Conduct, the CII might well have considered taking some action against the member.

Imagine how it would reflect on the medical profession if two doctors were having a disagreement in public and using insulting language. Equally, if a doctor decided to mount a public attack on a patient who complained.

Membership of the CII is membership of a professional body and members will be expected to conduct themselves in what is commonly regarded as a professional manner.

Circumstances 3 feedback (True/False)

This falls to paragraph 1.1 of the Code ('Give fair and proper consideration and the appropriate priority to the interests and requirements of all customers') and the answer is not straightforward.

It is a certainty that having made the wrong decision, Damien is going to feel foolish and, as a professional, terribly embarrassed.

However, since the inception of the Proceeds of Crime Act, most good practitioners will have become nervous about involvement with suspected criminal activity and the dire consequences of not acting in the prescribed manner when suspicious circumstances arise.

It is interesting to note that Damien was more influenced by his reputation than his legal responsibilities and as such is probably in breach of paragraph 1.2 of the Code: 'avoid conflict between personal interests, or the interests of any associated company, person or group of persons, and their duties to all customers'.

Perhaps, on the limited information available from the insurer, Damien was a little premature but it is unlikely that a professional body would take issue with a member who weighed up a series of obligations which were creating conflict and, in good faith, made what proved to be the wrong decision.



Circumstances 4 feedback

- a) **True:** Colin has sought to deceive his employer. He has been dishonest. 2.3 of the CII Code says: 'seek to be a responsible employer or employee and be honest and trustworthy at work'.
- b) **False:** Proven or admitted dishonesty of any kind could be a breach of the CII Code.
- c) **False:** It is very much a matter for individuals and/or firms as to whether the CII should be notified of a breach of the code. There is no 'must' about it. However, Colin has been dismissed for dishonesty and this is the sort of circumstance that a professional body would want to be told about.
5.11 of the CII Code says members should: 'advise the CII of any members who are not following its rules or this Code'.
- d) **False:** Colin has obtained money by deception. A professional person 'fiddling' expenses is a very serious matter.

Be careful if you decide to notify the CII of circumstances under 5.11. Individuals have rights and it might be wise to seek legal opinion before advising the Institute if you are naming someone (or a legal entity) as in breach of the Code.

Circumstances 5 feedback

- a) **True:** Paragraph 2.3 of the Code says 'seek to be a responsible employer and be honest and trustworthy at work'. Colin has not been honest.
- b) **True:** This is a private and civil matter between employer and employee. If Colin was known to be a member of the CII and did something that brought the name of the Institute or the profession into disrepute the answer might be different.
- c) **False:** The main purpose of asking this question is to demonstrate that dishonesty does not, in itself, trigger the need to inform the CII.
- d) **False:** Yes, this was dishonest. Colin belied his employer's trust.
Unless things really get out of hand, a professional body does not expect to be informed of disputes between employer and employee.

Circumstances 6 feedback (True)

There is an interesting point that arises in the new CII Code. Paragraph 2.9 says that where a member holds a position of influence within an organisation they should: 'incorporate or encourage their employer to incorporate, ethical standards into the organisation's governance standards including the development of an ethical code'.

So Ernest is in breach if he really believes that the firm is developing an unethical sales culture.

The Code does not require Ernest to be heroic and take a stand if the other directors disagree (that is a matter for Ernest personally), but it does require members to make their concerns known and to encourage the adoption of ethical standards.

Take the example of a firm that is found guilty of mis-selling by the regulator and fined. If a professional body had a number of members employed at the firm it would not only wish to know if any member was involved in the mis-selling but also if other members knew of the mis-selling and did nothing about it.

A professional person who maintains a 'head in the sand' philosophy or turns a blind eye to unethical behaviour can be dealt with as harshly as one who is directly involved in a misdemeanour.



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

And don't forget that to turn a blind eye to the bad and unethical practice of others can be taken as seriously by a professional body as the acts themselves.