

New whistle blowing rules for the financial services sector

Last week the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) published new whistleblowing rules that will apply to some firms in the banking and insurance sectors. The new rules will come into effect on 7 September 2016 and are intended to formalise good practice with a view to encouraging individuals to raise concerns about poor practices and behaviours. Although many in scope firms will already have existing whistleblowing procedures there will still be aspects of the new regime that they will need to address and incorporate into these procedures. The PRA and FCA's new rules are not identical; below we set out some of the key elements of the two regimes.

Which firms?

The new rules will apply to:

- UK deposit-takers with assets of £250m or greater, this includes: banks, building societies and credit unions;
- PRA-designated investment firms, and
- Insurance and reinsurance firms within the scope of Solvency II and to the Society of Lloyd's and managing agents.

The rules do not apply to UK branches of overseas banks, however, the regulators are soon going to consult on applying the same or similar rules to them. In addition they will consider extending the regime to other regulated firms once they have reviewed how the new regime has bedded down in practice.

Regulated firms that are not in scope may nevertheless wish to apply the rules on a voluntary basis as the rules will have the status of non binding guidance for such firms.

What are the new requirements?

Under the new whistleblowing rules in scope firms are *inter alia* required to:

- appoint a whistleblowing champion;
- put internal whistleblowing arrangements in place that are able to handle all types of disclosure from all types of person;

Key issues

- Which firms?
- What are the new requirements?
- Effective internal whistleblowing procedures
- New whistle blowing champion
- Practical considerations
- Timetable

- tell employees about the FCA and PRA whistleblowing services and make it clear that such reporting is not conditional upon using internal procedures first;
- require appointed representatives and tied agents to tell their UK-based employees about the FCA whistleblowing service;
- inform the FCA if it loses certain employment tribunal cases with a whistleblower;
- present a report on whistleblowing to its board at least annually;
- include language in settlement agreements that expressly states that the worker may make a protected disclosure; and
- ensure that nothing in any employment contract or settlement agreement entered into after 7 September 2016 prevents or discourages whistleblowing.

Effective internal whistleblowing procedures

In scope firms are required to have appropriate and effective arrangements for the disclosure of 'reportable concerns' by whistleblowers. A 'reportable concern' is:

- anything that would be the subject-matter of a protected disclosure, including breaches of PRA/FCA rules;
- a breach of the firm's policies and procedures; and
- behaviour that harms or is likely to harm the reputation or financial well-being of the firm.

A firm's whistleblowing arrangements must at least:

- be able effectively to handle disclosures of reportable concerns including:
 - where the whistleblower has requested confidentiality or has chosen not to reveal their identity; and
 - allowing for disclosures to be made through a range of communication methods;
- ensure the effective assessment and escalation of reportable concerns including to the FCA or PRA;
- include reasonable measures to ensure that if a reportable concern is made no person under the control of the firm engages in victimisation of that whistleblower;
- provide feedback to a whistleblower about a reportable concern made where this is feasible and appropriate;
- include the preparation and maintenance of:
 - appropriate records of reportable concerns made by whistleblowers and the firm's treatment of these reports including the outcome; and
 - up-to-date written whistleblowing procedures that are readily available to the firm's UK-based employees;
- include the preparation of an annual report made to the firm's governing body on the firm's whistleblowing systems and controls;
- include appropriate training for:
 - UK-based employees;

- managers of UK-based employees wherever the manager is based; and
- employees responsible for operating the firms' internal arrangements.

The PRA whistleblowing rules provide that an in scope firm must inform all workers of the whistleblowing procedures in place. This apparently applies to all workers whether located in the UK or not. The FCA rules by contrast limit this information requirement to UK employees. In some jurisdictions the establishment or revision of whistleblowing procedures may require informing and consulting with the firm's works council and/or notification to local information commissioners.

New whistleblowing champion

In scope firms are required to appoint a whistleblowers' champion with effect from **7 March 2016**. This must usually be a non-executive director who is subject to the Senior Managers Regime or the Senior Insurance Managers Regime. The champion should be provided with access to independent legal advice and training in order to carry out his responsibilities.

The champion will have responsibility for overseeing the firm's transition into the new whistleblowing regime that comes into effect on **7 September 2016**. Thereafter, he will be responsible for ensuring and overseeing the integrity, independence and effectiveness of the firm's whistleblowing policies and procedures including those intended to protect whistleblowers from being victimised because they have "blown the whistle".

The champion is not, however, expected to be open to direct approaches and need not have a day-to-day operational role handling disclosures from whistleblowers.

Practical considerations

Before the new whistleblowing rules come into effect firms ought to consider:

- whether they are bound by the new rules; if not whether they wish to use them as a benchmark for good practice;
- who will be appointed as the whistleblowing champion;
- what training the champion will need in order to fulfil his duties including the oversight of delegates;
- whether existing whistleblowing policies and procedures need revision or whether new procedures need to be put into place;
- what revisions need to be made to template settlement agreement language;
- what training (if any) needs to be given to the managers of UK based employees and employees more generally;
- what internal communications should be delivered to employees in relation to whistleblowing and whether this should be restricted to UK based employees only;
- whether employment contract templates and/or the staff handbook needs revision; and
- whether the works council (if any) needs to be informed or consulted about proposed changes.

Timetable

What?	When?
Joint FCA/PRA consultation on rules to formalise whistle blowing procedures in the banking and insurance sectors (CP6/15)	February 2015
PRA/FCA publication of new whistle blowing regime for the banking and insurance sectors	6 October 2015
PRA/FCA consultation on the application of the new rules to UK branches of overseas' firms	Q3/4 2015?
New whistleblowing responsibilities to be assigned to senior manager whistleblowing champion	7 March 2016
Transitional period to implement new whistleblowing requirements	7 March – 7 September 2016
FCA/PRA to consider extension of regime to other firms	Q1/2 2017 ??

[FCA PS 15/24](#) and [PRA PS 24/15](#), [PRA SS 39/15](#)

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