



PS 15/24 - Whistleblowing in deposit-takers, PRA-designated investment firms and insurers

Introduction

In 2013 the Parliamentary Commission on Banking Standards (PCBS) recommended that banks implement procedures to allow employees to raise concerns internally and that they appoint a senior person to take responsibility for the effectiveness of these arrangements. In February 2015, the FCA issued a Consultation Paper proposing the formalisation of whistleblowing arrangements in deposit-takers, PRA-designated investment firms and insurers. This Policy Statement (PS) summarises the feedback received to the FCA's proposals and includes final rules.

As the title suggests, this PS is directly applicable to deposit-takers, PRA-designated firms and insurers. However, the FCA has said other FCA-regulated firms should view these rules as non-binding guidance.

Key Messages

- * In-scope firms are required to appoint a non-executive director as its Whistleblowers' Champion.
- * The champion will be responsible for ensuring and overseeing the integrity, independence and effectiveness of the firm's whistleblowing policies and procedures.
- * A firm's internal whistleblowing arrangements must meet certain criteria, as detailed in SYSC 18.3, which includes the preparation and maintenance of appropriate records and the preparation of an annual report to the board.
- * UK-based employees, their managers and employees responsible for operating the firm's internal whistleblowing arrangements must receive appropriate training, which covers a number of specific points, as detailed in SYSC 18.3.4.
- * Training to group member employees or third parties should be considered but is not mandatory.
- * A firm must ensure its staff, and the staff of its ARs and tied agents, are aware they can make reports to the FCA and the methods for doing so.
- * Staff should also be aware that they can make a report to the FCA in addition to (either simultaneously or consecutively), or instead of, a report internally.
- * The information in the above two points should be contained within the firm's Staff Handbook or an equivalent document.
- * The FCA has included specific guidance that evidence of a firm acting to the detriment of a whistleblower would call the firm's, and/or approved person's, fitness and propriety into question, and also whether or not the firm continues to satisfy the FCA's threshold conditions.
- * Firms should include the prescribed, or equivalent, text in settlement agreements to make it clear that nothing prevents an employee from making a protected disclosure.
- * Firms must not use measures, or operate practices, which prevent workers from making protected disclosures.
- * SYSC 18.1.1C G states that other firms may adopt the rules and guidance in SYSC 18 as best practice and tailor their approach to reflect their size, structure and headcount.
- * The proposal of rewarding whistleblowers was mentioned in the PS in reference to feedback, the FCA didn't comment further on the proposal or include it within the final rules.

Additional Notes on Key Messages

- * Firms will need to inform UK -based employees of the FCA and PRA whistleblowing services but there is no requirement to promote these services to other parties.
- * Firms' procedures should be able to handle all types of whistleblowing disclosure, however it is acknowledged that other channels may be more effective in dealing with other types of concerns, e.g. grievances, and it is not the intention that the FCA's new procedures interfere with these.
- * Procedures should ensure effective assessment and escalation of concerns however it is accepted that not all reports will result in an investigation. However, firms will be required to demonstrate consideration of each issue raised.
- * Although firms' procedures should be able to take disclosures from anyone, firms are not required to promote their arrangements to others except UK-based employees, and firms are able to offer fewer protections to whistleblowers who aren't employees.
- * Firms should always be prepared to accept anonymous disclosures, although the advantages of disclosing their identity can be explained/discussed.
- * In relation to settlement agreements, firms will:
 - ➔ need to insert the prescribed, or equivalent, text explaining workers' legal rights; and
 - ➔ be prohibited from asking signatories to confirm they know of no information that could form the basis of a disclosure, or state whether they have made a protected disclosure.
- * Firms have discretion about the use of such text in employment contracts and in asking employment agencies to include the text in settlement agreements.
- * Principal firms should require ARs and tied agents to inform staff about the FCA's whistleblowing service.
- * Principal firms will not need to promote their internal whistleblowing procedures to ARs and tied agents, however, principal firms may wish to encourage ARs and tied agents to adopt appropriate internal procedures that will persuade employees to make internal disclosures about regulatory matters.
- * Firms can use alternative titles for Whistleblowers' Champions.
- * The champion should be a non-executive director subject to the Senior Manager's Regime or Senior Insurance Manager's Regime. However, firms will not need to appoint one purely for this role and the champion can be based overseas, as long as they are able to carry out their role effectively.
- * The role of the Whistleblowers' Champion will be entirely non-executive and will not involve being open to direct approaches. However, the individual will need to know what appropriate action to take should they receive a report directly.
- * Firms will need to prepare an annual report for the board, which can be provided to the FCA or PRA on request, however it will not need to be publicly disclosed.
- * The Whistleblowers' Champion does not need to write the report but will need to oversee its preparation.
- * Firms will need to inform the FCA of cases where an employment tribunal finds in favour of the whistleblower that they were victimised. The report should be made to whistle@fca.org.uk but doesn't need to be made by the Whistleblowers' Champion.
- * The FCA will not impose a regulatory duty on employees to blow the whistle.
- * The FCA has not provided any guidance on where whistleblowing should sit within an organisation.
- * Rules for specific monitoring by firms of whistleblowers for victimisation have been removed following feedback.
- * Firms can use alternative phrases to whistleblowing.
- * Firms may wish to use a group member or third party to operate their arrangements, however the firm remains responsible for complying with the rules and effectively managing any conflict of interest.

Next Steps

In-scope firms will have until 7th March 2016 to appoint a Whistleblowers' Champion and the 7th September 2016 to comply with the remaining rules. Between these dates, the Whistleblowers' Champion will be responsible for overseeing the firm's progress towards implementing the requirements.

After the new rules have been in place for long enough for their effectiveness to be assessed, the FCA will consider whether the requirements should be more broadly applied to other FCA regulated firms, e.g. various types of brokers, consumer credit firms and investment firms.

The full Consultation Paper can be accessed [here](#).

This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.

For further information, please contact Gem Compliance Consulting Ltd.