

## *Whistleblowing and the Whistleblowers' Champion: A Digest*

Incorporating

PRA Policy Statement PS24/15 and Supervisory Statement SS39/15: *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*

and

FCA Policy Statement PS15/24: *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*

***Governance,  
Risk,  
Compliance &  
Assurance  
Solutions***



1. Scope, Application and Effective Dates
2. The Whistleblowers' Champion
3. Protected Disclosures
4. Protecting Protected Disclosures
5. Reportable Concerns
6. Training & Awareness
7. Balance
8. Observations

- All authorised deposit-taking firms are in-scope, except Small Deposit-takers
- A Small Deposit-taker is a deposit-taker which has total gross assets of £250 million or less\*
  - However Small Deposit-takers should regard the whistleblowing rules as ‘non-binding guidance’ (FCA) with which they ‘may wish to comply voluntarily’ (PRA)
- By March 7<sup>th</sup> 2016 (Senior Managers Regime effective date), in-scope firms should have allocated the relevant Prescribed Responsibilities to a Non-Executive Director who must be a Senior Manager (the ‘Whistleblowers’ Champion’).
  - In effect this means the Board Chair or the SID, or the Chair of one of RiskCo, RemCo, NomCo and AuditCo
- The whistleblowing rules come into effect 6 months later – September 7<sup>th</sup> 2016
- Between those two dates the Whistleblowers’ Champion is responsible for overseeing the steps the firm takes to prepare for the new regime.

\* Averaged over the last 5 accounting reference dates (or such number of prior accounting dates as exist)

- The Whistleblowers' Champion must ensure and oversee the integrity, independence and effectiveness of relevant policies, training and awareness, processes and assurance, and the protection of whistleblowers
- At minimum an annual Board report must be presented regarding the effectiveness of whistleblowing systems and controls, including details of whistleblower tribunals the firm has lost (which must be reported to the FCA immediately); the report should be made available to the PRA on request.
- All of this must be set out clearly and succinctly in the relevant NED's Statement of Responsibilities (and included in the Responsibilities Map)

- ...This does not mean that the Whistleblowers' Champion is an operational role; but s/he will be personally responsible for effective policies and processes which ensure that the firm can
  - handle reports from people who wish to remain anonymous
  - assess and, where justified, escalate whistleblowers' concerns within the firm and to the FCA and PRA
  - track the outcome of whistleblowing reports
  - provide feedback to whistleblowers
  - maintain appropriate records and
  - ensure that no person under the firm's control victimises whistleblowers

- A disclosure made in the public interest, of information which, in the reasonable belief of the person making the disclosure, tends to show that one or more of the following has been, is being, or is likely to be committed:
  - a criminal offence
  - a failure to comply with any legal obligation
  - a miscarriage of justice
  - putting the health and safety of an individual in danger
  - damage to the environment
  - deliberate concealment of any of the above
  
- It is immaterial whether the failure occurred, occurs or would occur in the UK or elsewhere, and whether the law applying to it is that of the UK or of any other country

- Firms must not use measures intended to prevent employees from making protected disclosures
- A firm must include a term in any settlement agreement that makes clear that nothing in such an agreement prevents an employee from making a protected disclosure
- Firms may use the following wording, or alternative wording which has substantively the same meaning, in any settlement agreement:
  - “For the avoidance of doubt, nothing precludes [name] from making a “protected disclosure” within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996. This includes protected disclosures made about matters previously disclosed to another recipient.”
- Firms must not request that workers enter into warranties which require them to disclose to the firm that
  - they have made a protected disclosure or
  - they know of no information which could form the basis of a protected disclosure

- A concern held by any person in relation to the activities of a firm, including:
  - anything that would be the subject-matter of a protected disclosure, including breaches of 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
- It is possible to report using the firm's internal arrangements and also to the PRA or FCA; these routes may be used simultaneously or consecutively but *it is not necessary for a disclosure to be made to the firm in the first instance*
- This must be communicated to *all UK-based employees* in the firm's employee handbook or equivalent document
- A range of communication methods must be provided and confidentiality, where sought, must be assured

- For all UK-based employees a firm's training and development should include:
  - a statement that the firm takes the making of reportable concerns seriously
  - a reference to the ability to report reportable concerns to the firm, and the methods for doing so
  - examples of events that might prompt the making of a reportable concern
  - examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower's confidentiality and
  - information about sources of external support, such as whistleblowing charities

- For all managers of UK-based employees, wherever based, a firm's training and development should include:
  - how to recognise when there has been a disclosure of a reportable concern by a whistleblower
  - how to protect whistleblowers and ensure their confidentiality is preserved
  - how to provide feedback to a whistleblower
  - steps to ensure fair treatment of any person accused of wrongdoing by a whistleblower and
  - sources of internal and external advice and support on these matters
- For all employees of the firm, wherever based, responsible for operational arrangements for whistleblowing, how to:
  - protect a whistleblower's confidentiality
  - assess and grade the significance of information provided by whistleblowers and
  - assist the Whistleblowers' Champion if asked to do so

- There is no obligation on UK employees to blow the whistle
- Firms may make it clear that there may be other more appropriate routes for some issues, such as employee grievances or consumer complaints, and that whistleblowing remains an option during or after the exploration of other routes
- Firms may make it clear that nothing prevents them from taking action against those who have made false and malicious, or vexatious, disclosures
- Firms must manage any conflicts of interest, such as where a reportable concern involves a person responsible for an aspect of whistleblowing administration or operations

- We recommend *inter alia* that
  - Small Deposit-takers should table whistleblowing as a Board agenda item and decide, rationalise and document their approach to whistleblowing and the whistleblowing rules
  - For in-scope firms, whistleblowing policies, processes and assurance should be a discrete but integral part of the revised governance infrastructure responding to the SMR
  - Policy should incorporate the allocation of operational responsibilities for whistleblowing, including management reporting to the Whistleblowers' Champion
  - The Whistleblowers' Champion should initially and on a regular basis challenge and test whistleblowing processes

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- The Senior Managers Regime
- Regulatory Disclosure
- Business Planning and Modelling and
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- Strategic business modelling
- Regulatory Metrics such as LCR and HHI

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