

New rules on whistleblowing

The FCA has published [new rules and a policy statement](#) to support whistleblowers in exposing poor practices within the FS sector.

Background

The FCA's existing guidance on whistleblowing encourages firms to implement internal procedures to enable employees to raise concerns about wrongdoing and poor practice, and to protect those who raise genuine concerns. In 2013, the Parliamentary Commission on Banking Standards recommended that banks put in place mechanisms to allow their employees to raise concerns internally and that they appoint a senior person to take responsibility for the effectiveness of these arrangements. It is no surprise then that this week the FCA has published new rules on whistleblowing which apply to banks and other financial institutions, and which are designed to promote disclosure by encouraging individuals to come forward with concerns about poor practice and behaviours.

Who do the rules apply to?

The new rules will apply to:

- UK deposit-takers with assets of £250m or greater, including 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 apply to all other FCA regulated firms on a non-binding basis. Currently UK branches of overseas banks are not required to implement the rules. However, the FCA will consider extending the application of the rules to overseas branches in a future consultation. The FCA has also stated that it will going forwards consider extending the rules to other firms such as stockbrokers, mortgage brokers, consumer credit brokers and investment managers,

Requirements

The FCA will require firms to:

- appoint a whistleblowers' champion – the role should be assigned to a Senior Manager, preferably someone who is based in the UK;
- put in place internal whistleblowing arrangements to deal with all types of disclosure from all types of person;

- ensure that settlement agreements include language explaining that workers have a legal right to blow the whistle. (There will be a prohibition on inserting clauses which ask employees to confirm that they are not aware of information that could form the basis of a protected disclosure or whether they have made a protected disclosure.);
- inform UK-based employees about the FCA and PRA whistleblowing services. The FCA recognises that firms will encourage employees to use internal whistleblowing procedures, but feels that it is important that employees are made aware of the legal right to approach a regulator, without initially raising the concern internally;
- present an annual whistleblowing report to the board - the whistleblowers' champion is not required to prepare the report personally, but he or she should oversee its preparation. The FCA's final rules and guidance will remain silent as to what the report should contain, giving firms the freedom to tailor the report as they see fit;
- inform the FCA where an employment tribunal finds in favour of a whistleblower; and
- require its appointed representatives and tied agents to tell their UK-based employees about the FCA whistleblowing service.

Next steps

The FCA requires applicable firms to have complied with the requirements by 7 September 2016. The requirement to assign responsibilities to a whistleblowers' champion will take effect on 7 March 2016 (concurrent with implementation of the Senior Managers Regime), and the whistleblowers' champion will oversee the preparations to implement the new regime between 7 March and 7 September 2016.

How we can help

We are currently advising clients on the practical implications of the Senior Managers Regime and compliance requirements in the Financial Services Sector. Please [contact us](#) for further information and advice.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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