

UK CLIENT MEMORANDUM | ENGLISH LAW UPDATES

UK Financial Regulators Consult on New Whistleblowing Rules for Insurers, Deposit-Takers and Designated Investment Firms

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On February 23, 2015, the UK's Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) published a joint consultation paper (FCA CP15/4 and PRA CP6/15)¹ on a proposed set of whistleblowing rules that will apply to UK insurers (including Lloyd's managing agents), banks, building societies, credit unions and PRA-designated investment firms.

The proposed rules come as a response to the recommendations of the Parliamentary Commission on Banking Standards (PCBS) that banks should put in place mechanisms to allow their employees to raise concerns internally (i.e. to "blow the whistle"), and that the FCA and PRA should ensure these mechanisms are effective. The proposed rules aim to move towards a more consistent and formalized approach to whistleblowing and aim to ensure that employees are encouraged to blow the whistle where they suspect misconduct.

The consultation paper sets out the PRA and FCA's proposals that would require relevant firms to:

- Put internal whistleblowing arrangements in place and inform their UK-based employees about these arrangements.
- Inform their UK-based employees that they can blow the whistle to the FCA or the PRA.

¹ <http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp615.pdf>

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- Offer protections to all whistleblowers, whatever their relationship with the firm and whatever the topic of their disclosure.
- Include a passage in new employment contracts and settlement agreements clarifying that nothing in that agreement prevents an employee, or ex-employee, from making a protected disclosure under the Public Interest Disclosure Act 1998 (PIDA).
- Allocate the prescribed responsibility for whistleblowing under the Senior Managers Regime and Senior Insurance Managers Regime to an individual with responsibility for:
 - overseeing the effectiveness of internal whistleblowing arrangements, including arrangements for protecting whistleblowers against detrimental treatment;
 - preparing an annual report to the board about their operation; and
 - reporting to the FCA where, in a case before an employment tribunal contested by the firm, the tribunal finds in favour of a whistleblower.

The FCA and PRA intend to implement these changes by amending the Senior Management Arrangements, Systems and Controls (SYSC) sections of the FCA and PRA rulebooks. In addition, the PRA intends to introduce a supervisory statement to its rulebook setting out the PRA's expectations on how firms should comply with the PRA's rules as well as a new "Whistleblowing" section that will apply only to insurers.

If proposed new rules are adopted, existing PRA and FCA regulated firms will need to consider the rules within their existing whistleblowing policies and governance frameworks under Chapter 18 of the FCA's SYSC handbook and the PIDA, as well as rules at group level arising out of stock exchange listings and otherwise. It is important to note the expanded scope of protections proposed, which will require firms to implement a hotline for reporting concerns regarding a failure to comply with a firm's policies and procedures, as well as behaviour likely to have an impact on the firm's reputation or financial well-being. The proposed rules would apply only to UK firms; however, many firms have sought to harmonise their whistleblower policies and procedures across offices. UK firms with offices in other European jurisdictions will need to consider whether or not this is appropriate in light of stricter controls on the use of whistleblower hotlines in some countries, such as France and Belgium.

The consultation period closes on May 22, 2015, until which time the PRA and FCA are welcoming views on the issues raised in the consultation paper. The PRA and FCA will consider the responses received and will publish policy statements containing their respective final rules at a later date.

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