



# Briefing

## Employment

## Speaking up in the financial services sector: new rules on whistleblowing

The PRA and FCA have introduced a new set of rules designed to bolster the culture of “speaking up” within financial services firms. These new proposals arise out of concerns raised by the Parliamentary Commission on Banking Standards in 2013, which identified a reluctance to blow the whistle as one of the difficulties that contributed to the financial crisis. The rules complement the new Senior Managers and Senior Insurance Managers regimes.

### Which firms are affected by the new rules?

The new rules are relevant to all firms in the financial services sector.

The new rules directly apply to:

- banks, building societies, credit unions and other UK deposit takers with assets of £250 million or above
- PRA-designated investment firms
- insurance and reinsurance firms within the scope of Solvency II.

The rules do not currently apply to UK branches of overseas banks. The FCA plans to consult about the introduction of rules to apply to those firms in due course, as well as stockbrokers, mortgage brokers, insurance brokers, investment firms and consumer credit firms.

For other firms the rules will currently act as non-binding guidance but we anticipate that the approach under the new rules is likely to become standard practice throughout the sector.

### What do firms need to do?

The new rules require firms to:

- Put in place internal whistleblowing arrangements that deal with disclosures from any person, including individuals from outside the organisation as well as employees. However, firms will be able to decide for themselves how best to handle those disclosures, which

may not be through whistleblowing procedures but may instead, for example, be through grievance or customer complaints procedures.

- Appoint a ‘whistleblowers’ champion’ who is responsible for overseeing the effectiveness of internal whistleblowing policies and supervising the preparation of an annual report to the board about the operation of those policies. The whistleblowers’ champion must be a senior manager who is subject to the Senior Managers Regime or the Senior Insurance Managers regime and it is anticipated that the role will be carried out by a non-executive director. However, there is no requirement for the whistleblowers’ champion to have any day to day involvement in handling disclosures.
- Tell their employees about the FCA and PRA’s whistleblowing services. Firms can encourage employees to use internal procedures in the first instance, provided that it is clear that there is no obligation to do so.
- Inform staff about the legal protections offered under the Public Interest Disclosure Act 1998, which include protection from detriment or dismissal as a result of blowing the whistle.
- Ensure that wording in employment contracts and settlement agreements does not deter staff from whistleblowing. In standard non-disclosure wording common in settlement agreements it is important that firms now expressly exclude an employee’s ability to make a protected disclosure.
- Inform the FCA if it loses an employment tribunal case brought by a whistleblower.

### When do the new rules apply?

The rules will be introduced with effect from 7 September 2016, with the exception of the requirement to appoint a senior manager to the role of whistleblowers’ champion, which must be done by 7 March 2016.

## What should I do now?

To discuss the implementation of whistleblowing policies which comply with the new rules or any other aspect of the regulators' new provisions, please contact Roger Bull or James Green.

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