

## FCA and PRA bolster protection for whistleblowers in the financial industry

NOVEMBER 6, 2015

The FCA and PRA have published new rules on whistleblowing designed to empower individuals to raise concerns within the financial industry. According to Tracey McDermott, acting FCA chief executive, the rules aim to "encourage a culture where individuals feel able to raise concerns and challenge poor practice and behaviour."

The rules take full effect in September 2016 and apply to deposit-takers (banks, building societies & credit unions) with over £250m in assets, and to insurers subject to the Solvency II Directive.<sup>1</sup>

The new rules require firms to:

- Appoint a Senior Manager as their "whistleblowers' champion."
- Put in place internal whistleblower arrangements able to handle all types of disclosures from all types of person (not only employees).
- Explain in employment settlement agreements that UK workers continue to have a legal right to whistleblow even after leaving a firm and signing a settlement agreement.
- Tell UK-based employees about the FCA and PRA whistleblowing services. This will involve telling employees that they are entitled by law to approach regulators if they choose to, and that they can do so at any stage, regardless of whether they have raised the concern internally first.
- Present a report on whistleblowing to the board at least annually.
- Inform the FCA if it loses an employment tribunal claim brought by a whistleblower.
- Require appointed representatives<sup>2</sup> and tied agents<sup>3</sup> to tell their UK-based employees about the FCA whistleblowing service.

The concept of a "whistleblowers' champion" is part of the FCA and PRA's strategy to improve individual accountability within the UK financial industry. As such, the "whistleblowers' champion" has to be a non-executive director subject to the Senior Managers Regime or the Senior Insurance Managers Regime, and will be responsible for ensuring the effectiveness of a firm's whistleblowing arrangements. Firms need not use the specific title of "whistleblowers' champion," but they must have someone with equivalent responsibility in place by 7 March 2016 (to coincide with the Senior Managers Regime coming into force).

These regulatory obligations are over and above existing rules on the protection of whistleblowers under employment law. They also follow a year in which the FCA received a record number of whistleblowing disclosures<sup>4</sup> and represent another pro-whistleblower development, in a year which has seen significant progress globally in the area (see previous [WilmerHale W.I.R.E. UK post](#)).

---

<sup>1</sup> The rules are also non-binding guidance for all firms the FCA and PRA supervise.

<sup>2</sup> Those representatives authorised under the umbrella of a firm directly authorised by the FCA.

<sup>3</sup> Those agents under the full and unconditional responsibility of an authorised firm, and on whose behalf it acts (see FCA Handbook for more expansive definitions of what constitutes an appointed representative and a tied agent).

<sup>4</sup> There were 1340 whistleblowing disclosures recorded for the financial year 2014/15, compared to 1040 in 2013/2014, which represents a 28% increase. In the financial year 2007/08 the then Financial Services Authority received only 138 disclosures.