



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Consultation Paper | FCA CP15/4**
| PRA CP6/15

Whistleblowing in deposit-takers, PRA-designated investment firms and insurers

February 2015

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The FCA are asking for comments on this Consultation Paper by Friday 22 May 2015.

You can send them to the FCA using the form on its website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-04-response-form.

Or in writing to:

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The FCA make all responses to formal consultation available for public inspection unless the respondent requests otherwise. The FCA will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, the FCA may be asked to disclose a confidential response under the Freedom of Information Act 2000. The FCA may consult you if it receives such a request. Any decision the FCA makes not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from the FCA website: www.fca.org.uk. Or contact the FCA's order line for paper copies: 0845 608 2372.

The Bank of England and the Prudential Regulation Authority (PRA) reserve the right to publish any information which it may receive as part of this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure, in accordance with access to information regimes under the Freedom of Information Act 2000 or the Data Protection Act 1998 or otherwise as required by law or in discharge of our statutory functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England or the PRA receives a request for disclosure of this information, the Bank of England or the PRA will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England and the PRA.

This Consultation Paper proposes changes to the PRA Rulebook.

Please address responses, comments or enquiries by Friday 22 May 2015 to:

CP6/15@bankofengland.co.uk

Abbreviations used in this document

CBA	Cost benefit analysis
CP	Consultation Paper
Employee	As defined in FCA Handbook ¹
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act (2000)
FTE	Full-time equivalent member of staff
NED	Non-executive director
PCBS	Parliamentary Commission on Banking Standards
PIDA	Public Interest Disclosure Act (1998) “(In Northern Ireland, the Public Interest Disclosure (Northern Ireland) Order 1998.)”
PRA	Prudential Regulation Authority
Protected disclosure	As defined in section 43A of PIDA.
Relevant firms	UK banks, building societies, credit unions (not including those with £25m or less in assets), PRA-designated investment firms, and insurers, meaning insurance and reinsurance firms, including third country branch undertakings within the scope of Solvency II, and to the Society of Lloyd’s and managing agents).
Whistleblowers’ champion	The person assigned the prescribed responsibility of “ensuring and overseeing the integrity, independence and effectiveness of the firm’s policies and procedures on whistleblowing”. ²
Worker	As defined in section 43k of the Employment Rights Act (1996).

¹ See: <http://fshandbook.info/FS/html/FCA/Glossary/E>

² See Prescribed Responsibility 8 on page 18 of Consultation Paper FCA CP14/13/PRA CP14/14 *Strengthening accountability in banking: a new regulatory framework for individuals*. www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13

1. Overview

Introduction

- 1.1** The Parliamentary Commission on Banking Standards (PCBS) recommended that banks put in place mechanisms to allow their employees to raise concerns internally (i.e. to “blow the whistle”), and that the FCA and the PRA ensure these mechanisms are effective. (See Annex 5 for the recommendations). The FCA and the PRA have, in response, proposed a package of measures to formalise firms’ whistleblowing procedures. These proposals aim to move towards a more consistent approach, building on existing good practice in firms. They aim to ensure that all employees are encouraged to blow the whistle where they suspect misconduct, confident that their concerns will be considered and that there will be no personal repercussions.

Who does this consultation affect?

- 1.2** This consultation paper (CP) proposes a set of rules that will apply to **UK banks, building societies, credit unions, PRA-designated investment firms³** and **insurers**. The FCA and the PRA propose that the requirements are not imposed on small credit unions with £25m or less in assets. In this CP firms subject to these proposals are referred to as ‘**relevant firms**’. The FCA intends to consult in future on whether to require similar whistleblowing mechanisms to be introduced by a wider range of firms it regulates.

Is this of interest to consumers?

- 1.3** Whistleblowing is a topic of wide public concern, although the detail of the specific proposals in this consultation are unlikely to be of direct interest to consumers.

Context

- 1.4** In June 2013, the PCBS published *Changing Banking for Good*⁴, setting out proposals for reform of the banking sector. The PCBS considered, amongst other things, the role of whistleblowers. The PCBS made a number of recommendations to ensure whistleblowing arrangements, both

³ UK banks, building societies, credit unions and PRA-designated investment firms are formally known as ‘relevant authorised persons’. The legal definition of this is in Section 71A of the Financial Services and Markets Act 2000, as amended by Section 33 of the Financial Services (Banking Reform) Act (2013).

⁴ See: www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/

in banks and the regulators⁵, are effective, and that people blowing the whistle are protected from victimisation.

- 1.5** A well-run financial institution will seek to foster a culture that welcomes discussion and challenge. Employees should feel comfortable having an open dialogue in the workplace. Individuals may, however, be reluctant to speak out about misconduct because of the possibility of suffering personally as a consequence: they may worry about being labelled disloyal or as troublemakers, or face a realistic prospect of being bullied, victimised or otherwise disadvantaged, particularly if reporting on their superiors. The possibility of losing their job and being unable to find another in the industry may be a particular concern.
- 1.6** People voicing concerns – whether internally, to regulators, or to the press – may benefit from legal protections under the Public Interest Disclosure Act (PIDA)⁶. It is unlawful for a worker⁷ to be dismissed or victimised for making a protected disclosure⁸, and they may be awarded compensation from their employer by an employment tribunal if that does occur. A remedy is, however, only available after the event, and this may not reassure everyone who is considering whether to speak out. PIDA also does not apply to all employees or to all types of disclosure; for example, self-employed contractors are arguably not covered.
- 1.7** Mechanisms to encourage people to voice concerns, by, for example, offering confidentiality to those speaking up, can provide further comfort to whistleblowers. At present, relevant firms are under no UK legal or regulatory duty to have whistleblowing arrangements in place.⁹ Many do, regarding it as good practice, although implementation may be inconsistent.¹⁰
- 1.8** Evidence to the PCBS demonstrated that encouraging whistleblowers to raise the alarm can be a powerful tool for identifying wrongdoing in banks. We consider that the issues outlined above, and the benefits of more effective whistleblowing arrangements, are common to both the banking and insurance industries, so this consultation will cover both. This consultation is intended to build upon current good practice in the banking and insurance sector, and the FCA's existing guidance on how firms handle whistleblowers.¹¹ The intention is to encourage individuals to raise their concerns about wrongdoing by protecting them from unfair treatment, and in doing so, help firms manage their risks more efficiently by enabling alleged misconduct, dishonesty and illegal activity to be exposed at an early stage.

⁵ This consultation only refers to whistleblowing procedures within firms. For discussion of the FCA's role as a recipient of whistleblowing reports please see its publication '*How we handle disclosures from whistleblowers*'.

⁶ See: <http://www.legislation.gov.uk/ukpga/1998/23/contents>

⁷ As defined in section 43k of the Employment Rights Act (1996).

⁸ See section 43A of PIDA, available here: www.legislation.gov.uk/ukpga/1998/23/section/1

⁹ An exception to this is the whistleblowing requirement set out in the current Capital Requirements Directive. See Article 71 ('Reporting of breaches') in Directive 2013/36/EU of 26 June 2013 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>). European law is increasingly asking member states to require financial firms put whistleblowing arrangements in place: several recently negotiated regulations and directives (including the Market Abuse Regulation, Fourth Money Laundering Directive, MIFID II, and UCITS V) have contained such clauses; this trend is likely to continue.

¹⁰ Whistleblowing arrangements help a firm's management to identify problems and aids compliance with laws such as the Bribery Act (2010) and PIDA; the presence of whistleblowing arrangements may aid a company's use of the 'adequate procedures' defence in the Bribery Act, while a failure to offer staff a clear route to raise concerns internally may damage a firm's ability to defend itself at a tribunal hearing involving a whistleblower making a claim under PIDA. Companies with a US listing will have whistleblowing arrangements in place in order to comply with the requirements of the Sarbanes Oxley legislation, while UK-listed firms may do so to adhere to the voluntary recommendations of the Financial Reporting Council's current Corporate Governance Code.

¹¹ For the FCA, these are set out in Chapter 18 of the Senior Management Arrangements, Systems and Controls sourcebook, which forms part of the FCA's Handbook, as well as in section 2.4 of the Investment Firms Prudential sourcebook, and section 2.5 of the Recognised Investment Exchange sourcebook. For the PRA, these are found in section 4.1.15 of the Senior Management Arrangements, Systems and Controls sourcebook, which forms part of its Handbook.

Summary of the FCA and the PRA's proposals

1.9 The FCA and the PRA propose that relevant firms should:

- Put **internal whistleblowing arrangements** in place (if they are not already), and inform their UK-based employees about these arrangements (see chapter 2).
- Inform their UK-based employees that they can **blow the whistle to the FCA or the PRA** (see sections 2.6 and 2.7).
- Offer **protections to all whistleblowers**, whatever their relationship with the firm and whatever the topic of their disclosure (see sections 2.15 to 2.18).
- 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 (see sections 2.22 to 2.26).
- Allocate the prescribed responsibility for whistleblowing under the Senior Managers Regime and Senior Insurance Managers Regime to an individual (referred to as the “whistleblowers’ champion”) with responsibility for:¹²
 - overseeing the effectiveness of internal whistleblowing arrangements, including arrangements for protecting whistleblowers against detrimental treatment (see chapter 3)
 - preparing an annual report to the board about their operation (see section 3.10 to 3.14), 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 (see section 3.16)

Equality and diversity considerations

1.10 The FCA and the PRA have assessed the likely equality and diversity impacts of the proposals and do not think they give rise to any concerns, but would welcome your comments.

Next steps

1.11 This consultation closes on Friday 22 May 2015. Views are welcomed on the issues raised in the CP, including the detailed questions on the specific proposals. Details of where to send your comments are on page 2. The FCA and the PRA will consider and discuss the responses to the questions, and will publish policy statements containing their respective final rules at a later date.

¹² See Prescribed Responsibility 8 on page 18 of Consultation Paper FCA CP14/13/PRA CP14/14 *Strengthening accountability in banking: a new regulatory framework for individuals*. See also Consultation Paper PRA CP26/14 *Senior insurance managers regime: a new regulatory framework for individuals* (www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp2614.pdf).

2. Whistleblowing requirements

Which firms should have whistleblowing mechanisms?

- 2.1 The PCBS recommended that banks should put in place mechanisms to allow employees to raise concerns, and that the FCA and the PRA should ensure these mechanisms are effective.
- 2.2 The FCA and PRA propose that these requirements will be applied to **deposit-taking firms** (this means UK regulated banks, building societies, and credit unions) and **PRA-designated investment firms**. Small credit unions will be exempted from these requirements because of their limited resources¹³, although, as these rules represent best practice, small credit unions may find them helpful when considering whether their governance arrangements remain appropriate. Because the benefits of more effective whistleblowing arrangements are common to the banking and insurance industries, the FCA and the PRA also intend to apply these requirements to insurers regulated by the PRA. Many of these firms currently have whistleblowing procedures in some form. This population of firms reflects the constituency covered by the FCA's and the PRA's wider proposals stemming from the PCBS's recommendations, such as the accountability consultations that propose reform of the approved persons regime for these firms.
- 2.3 This consultation does not propose to apply new requirements to UK branches of overseas banks, although the PRA and the FCA are considering whether to do so and may consult in due course. In the meantime we would welcome views on the benefits and challenges of doing so.
- 2.4 The FCA can see a strong case for consulting in future on whether to require whistleblowing mechanisms to be introduced by a wider range of firms it regulates, but does not propose to do so at this time. A future FCA consultation will recognise that many firms the FCA regulates have a small number of employees, and requirements should be applied in a proportionate manner.
- 2.5 These proposals only apply to the regulated legal entity; they do not apply to subsidiary undertakings, unless those firms are also UK-regulated deposit-takers, PRA-designated investment firms or insurers regulated by the PRA. As a consequence, financial institutions that are formed as a group of related legal entities will not be required to apply these requirements on a group-wide basis, although they may choose to do so for practical reasons.

Q1: Do you agree that the requirements should apply to these firms? What are the benefits and challenges of extending the requirements to a) branches of overseas banks, and b) other sectors regulated solely by the FCA such as non-PRA-designated investment firms?

¹³ Small credit unions are defined as those with assets less than or equal to £25m.

Reporting to the regulators

- 2.6** The FCA and the PRA each run dedicated whistleblowing services that anyone can use to report any concern they have about a financial firm. (More information, including contact details, can be found in Annexes 6 and 7). This means employees of all regulated firms have a way of making a disclosure to a regulator.¹⁴
- 2.7** The FCA and the PRA propose that all employees of relevant firms who are based in the UK should be informed about the whistleblowing services provided by the PRA and the FCA, including how to contact them, the protections they offer, and the kinds of disclosures it would be appropriate to make to each of the services. As such, the FCA and the PRA propose that all relevant firms tell employees that they can blow the whistle to the FCA or the PRA, regardless of whether they have made an internal report. (Sections 2.27 to 2.31 explain how this should apply to employees of appointed representatives and tied agents.)

Q2: Do you agree that all UK-based employees of relevant firms should be informed about the whistleblowing services run by the PRA and the FCA?

What might be expected to feature in a firm's whistleblowing arrangements?

- 2.8** The FCA and PRA want relevant firms to have internal procedures that reassure all employees that they can raise concerns and be listened to. Ideally, employees should feel comfortable speaking openly to management, but, where employees do wish to blow the whistle in confidence, there must be a route available to them.
- 2.9** Building on the FCA's existing guidance on whistleblowing¹⁵, the FCA and PRA think that relevant firms should take measures to:
- respect the confidentiality of people who raise concerns
 - be able to deal with disclosures from people who have not revealed their identity
 - assess and escalate concerns raised by whistleblowers within the firm as appropriate, and, where this is justified, to the FCA, the PRA or an appropriate law enforcement agency (e.g. where information relates to criminal conduct such as insider trading or calls into question the viability of the firm as a going concern)
 - track the outcome of whistleblowing reports
 - track what happens to an internal whistleblower to determine whether they are subsequently disadvantaged as a consequence of speaking out
 - provide feedback to whistleblowers, where appropriate
 - prepare written procedures (e.g. staff handbooks, etc.)

¹⁴ The topics for which the PRA and FCA are given responsibility under PIDA are set out in the Public Interest Disclosure (Prescribed Persons) Order (2014) or the Public Interest Disclosure (Prescribed Persons)(Amendment) Order (Northern Ireland) 2014.

¹⁵ See Chapter 18 of the Senior Management Arrangements, Systems and Controls sourcebook, which forms part of the FCA's Handbook: <http://fshandbook.info/FS/html/FCA/SYSC/18>

- take all reasonable steps to ensure that no person under the firm's control engages in victimising whistleblowers, and take appropriate measures against those responsible for such victimisation

2.10 As with any systems and controls, these should be subject to oversight by the audit or compliance functions, as well as supported by administrative measures such as record-keeping procedures and secure information technology.

A whistleblowing function

2.11 Many larger firms already have specialist units that handle disclosures from whistleblowers. These units can perform tasks such as assessing and escalating concerns a whistleblower has raised, tracking the outcome after concerns were escalated, and providing feedback to whistleblowers if this is appropriate. Such units are often called 'integrity' or 'ethics' functions.

2.12 A firm should consider where this unit might sit within its organisational structure. Some parts of an organisation, such as a Human Resources department, are unlikely to be appropriate; whistleblowers may be concerned an HR team will automatically treat their disclosure as a grievance claim, or that by reporting, they may prejudice their employment record in some way. An internal audit function may be better placed, for example.

Use of third parties to handle disclosures

2.13 Some firms use third parties to provide aspects of their whistleblowing arrangements. Contractors run whistleblowing hotlines that pass reports on to firms in an anonymised form and provide regular management information. An advantage of these arrangements is that a whistleblower contacting a third party service may be more reassured the specialist supplier can offer anonymity, confidentiality and arms-length independence. However, firms will wish to consider the quality of the services being offered, and how this can be monitored, as well as what aspects of the process will need to be handled in-house and how this division of labour is made clear. Firms remain responsible for ensuring all aspects of their whistleblowing arrangements, including those parts contracted out to third parties, meet the regulators' expectations.

Communication methods

2.14 Different whistleblowers will feel comfortable making disclosures in different ways: for example, face to face, over the telephone, by email, or by post. Some whistleblowers may choose to conceal their identity entirely, but communication with such people may still be possible (e.g. through telephone appointments). A firm's arrangements should seek to cater to whistleblowers' different preferences.

Topics whistleblowers' disclosures might cover

- 2.15** Whistleblowers may choose to contact a firm's internal whistleblowing line to make disclosures on many topics. The FCA and the PRA propose that relevant firms' whistleblowing arrangements should cover all types of disclosure. Relevant firms' whistleblowing mechanisms should offer the same protections to anybody blowing the whistle on any type of concern, including those that do not relate to breaches of FCA or PRA rules and which do not qualify as protected disclosures under PIDA. This approach is most consistent with the desire to encourage insiders with knowledge of wrongdoing to feel comfortable speaking up. Mistreatment of a whistleblower would be a matter of regulatory concern regardless of whether their disclosure related to a breach of a specific FCA or a PRA rule because it may be evidence of a culture harmful to those choosing to speak out.

Q3: Do you agree that firms' whistleblowing arrangements should cover all types of disclosure, not just those related to regulatory matters or protected disclosures under PIDA?

Who can use a firm's whistleblowing mechanism?

- 2.16** A range of people may see, or be aware of, conduct in a firm that concerns them. For example:
- employees
 - non-executive directors (who may be self-employed)
 - former employees
 - secondees, interns or people on work experience placements
 - volunteers
 - agency workers
 - contractors
 - agents
 - employees of subsidiary firms, competitor firms, appointed representatives, or suppliers
- 2.17** Not all these people qualify for protections under PIDA. The FCA and the PRA think all these people should nonetheless still be entitled to use a firm's whistleblowing arrangements if they choose to raise concerns. They should all be offered the same level of confidentiality as employees would receive and the same protections against being mistreated. (This does not stop a firm seeking to explain to people who are not covered by PIDA the limits of their legal protections and the implications of this for them.)
- 2.18** There could be occasions where a customer contacts a firm's whistleblowing function. It may be appropriate for the customer to be referred elsewhere in the firm, such as to the part of the organisation that handles customer complaints.

Q4: Do you agree firms' whistleblowing arrangements should be available to all individuals, and that protections should apply to all individuals making disclosures, not just employees or those who benefit from protections under PIDA?

Training

2.19 Relevant firms will need to consider what training is required.

- Training for **all UK-based employees** could cover, for example, the need to report instances of wrongdoing, the methods for doing so, examples of events that might prompt a report, and action that might be taken.
- **Managers of UK-based employees** might require tailored training covering, for example, how to recognise whistleblowing, how to protect whistleblowers, how to feed back to whistleblowers, and steps to ensure a person accused of wrongdoing by a whistleblower receives a fair hearing.
- The **whistleblowers' champion**, who is charged with overseeing the effectiveness of the firm's procedures (see the next chapter), may also benefit from specialised training.
- **Staff manning a firm's whistleblowing service** might be trained in how to protect confidentiality, how to assess and grade the significance of information provided by whistleblowers, and how to spot trends.

2.20 Much of this material could also be reflected in a firm's written procedures.

Information sources when designing whistleblowing arrangements

2.21 There are many sources of information on the design of whistleblowing arrangements that relevant firms can use when establishing their own procedures¹⁶. In addition, procedures could be developed in consultation with employees and groups representing employees.

Employment contracts and settlement agreements

2.22 The FCA and the PRA propose to require all relevant firms to include an explicit clause in any settlement agreement or employment contract they reach with employees clarifying that nothing in that agreement prevents the employee from making a protected disclosure under PIDA, including to the FCA or the PRA.

2.23 A **settlement agreement** is a legally binding contract in which an individual waives the right to make a claim covered by the agreement to an employment tribunal or court. Some commentators have suggested confidentiality clauses in agreements reached between workers

¹⁶ Examples include the British Standards Institution's 'Whistleblowing Arrangements: Code of Practice' (PAS 1998:2008) and the 'Whistleblowing Commission Code of Practice' prepared by the Whistleblowing Commission established by Public Concern at Work.

and employers might prevent workers from speaking up about wrongdoing, malpractice, or other concerns.¹⁷ In fact, the right of workers to raise concerns with a prescribed person¹⁸ such as the FCA or the PRA cannot be negotiated away. Any clause or term in an agreement between a worker and his ex-employer is void in so far as it purports to preclude a worker from making a protected disclosure under PIDA. It is, however, likely that not all workers will be aware of this.

- 2.24** The FCA suggests relevant firms use the following text; if a firm chooses to use a different form of words, the FCA will expect that wording to have substantially the same meaning.

“For the avoidance of doubt, nothing shall preclude [the employee’s name] from making a “protected disclosure” within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996 to the Prudential Regulation Authority, the Financial Conduct Authority or, if applicable, to an overseas regulator within the meaning of section 195(3) of the Financial Services and Markets Act 2000. This includes protected disclosures about topics previously disclosed to another recipient.”

- 2.25** The FCA further propose that the same text is also included in **employment contracts** prepared by relevant firms.

- 2.26** Firms may choose to repeat the same message in codes of conduct and other internal policy documents. The requirements explained in sections 2.22 to 2.25 do not have retrospective effect. The FCA and the PRA would expect the whistleblowers’ champion (see the next chapter) to play a significant role in ensuring that the firm meets these obligations.

Q5: Do you agree that settlement agreements and employment contracts reached by a firm with a UK worker must contain a passage clarifying that nothing in that agreement prevents the worker from making a protected disclosure?

Should firms be required to impose the same requirement on agencies that provide them with staff?

Appointed representatives and tied agents

- 2.27** The FCA propose that relevant firms require their appointed representatives and tied agents to inform their UK-based employees who are workers about the FCA whistleblowing services (see 2.7 for more detail about this requirement).

- 2.28** The FCA’s existing guidance on whistleblowing says that firms are “encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting... appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or the PRA”.

¹⁷ See the section ‘Gagging clauses’ in *Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK* by Public Concern at Work, 2013. www.pcaw.org.uk/files/WBC%20Report%20Final.pdf

¹⁸ See: England and Wales Statutory Instrument 1999/1549; Northern Ireland Statutory Instrument 1998/1763 (NI 17).

- 2.29** The FCA considered requiring principal firms to ensure that their appointed representatives and tied agents put whistleblowing arrangements in place: this would be a contractual requirement in the agreement the principal reaches with its agents and representatives. Many appointed representatives and tied agents will, however, be small operations, and the FCA is concerned whether such a requirement will be practicable. These enterprises might be too small to be able to put credible whistleblowing arrangements in place: some may even be sole traders, for whom such a requirement is clearly irrelevant.
- 2.30** An alternative option might be to require principal firms to promote their own whistleblowing service to staff of appointed representative or tied agents. However this may be disproportionate given that these staff are not workers of their principal firms, and therefore cannot make an employment tribunal claim against the principal firm if it victimises the whistleblower. (Should they nonetheless choose to blow the whistle to the principal firm, they should be free to do so: see 2.20).
- 2.31** The FCA proposes to continue to encourage firms to work with their appointed representatives and tied agents to establish appropriate whistleblowing arrangements. The FCA do not, however, propose to introduce a rule requiring principal firms to request that their appointed representatives and tied agents put whistleblowing arrangements in place.

Q6: Do you agree with the FCA's proposed treatment of whistleblowing arrangements for staff of appointed representatives and agents?

3.

The whistleblowers' champion

- 3.1 The PCBS recommended banks appoint a Senior Person to oversee whistleblowing arrangements:

“A non-executive board member—preferably the Chairman—should be given specific responsibility under the Senior Persons Regime for the effective operation of the firm’s whistleblowing regime. That Board member must be satisfied that there are robust and effective whistleblowing procedures in place and that complaints are dealt with and escalated appropriately. It should be his or her personal responsibility to see that they are. This reporting framework should provide greater confidence that wider problems, as well as individual complaints, will be appropriately identified and handled.”¹⁹

- 3.2 The FCA and PRA’s joint July 2014 consultation, *Strengthening accountability in banking: a new regulatory framework for individuals*²⁰, proposed a new Senior Managers Regime for deposit-takers and PRA-designated investment firms. It set out a new prescribed responsibility for “ensuring and overseeing the integrity, independence and effectiveness of the firm’s policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment”. To make clear the importance and special nature of this responsibility the person performing that role is referred to here as the ‘whistleblowers’ champion’.
- 3.3 Note that the FCA and the PRA have not yet published final rules stemming from the July 2014 consultation; the final text may differ to that set out above.
- 3.4 The FCA and the PRA propose that relevant insurers should also allocate that responsibility to a non-executive director who is an approved person. The PRA published *Senior insurance managers regime: a new regulatory framework for individuals* in November 2014.²¹ This set out a similar prescribed responsibility for “maintenance of the independence, integrity and effectiveness of the firm’s policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment”.

¹⁹ See page 45 of *Changing banking for good: Report of the Parliamentary Commission on Banking Standards. Volume 1: Summary, and Conclusions and Recommendation*. (www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf)

²⁰ Consultation Paper FCA CP14/13/PRA CP14/14 *Strengthening accountability in banking: a new regulatory framework for individuals*. See: www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13

²¹ Consultation Paper PRA CP26/14 *Senior insurance managers regime: a new regulatory framework for individuals*. See: www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp2614.pdf

Who can be the whistleblowers' champion?

- 3.5** The PCBS recommended that oversight of a firm's whistleblowing arrangements should sit with a non-executive director, preferably the chairman. For banks, building societies, credit unions and PRA-designated investment firms, the FCA and the PRA propose to require the prescribed responsibility related to whistleblowing to be allocated to a non-executive director who is a senior manager under the Senior Managers Regime. For insurers within the scope of Solvency II, the PRA proposed last year that (subject to further consultation on the role of NEDs within the Senior Insurance Managers Regime) the prescribed responsibility be allocated to one or more non-executive directors.²²

Q7: Do you agree with these proposals for the role of whistleblowers' champion?

What is the role of a whistleblowers' champion?

- 3.6** The whistleblowers' champion is the individual allocated the prescribed responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment.²³ The FCA and the PRA do not, however, intend to be prescriptive about the practical detail of how the whistleblowers' champion performs that role. There is likely to be much variety. In organisations with few employees, the whistleblowers' champion may choose to take a 'hands-on' role, possibly, in concert with his or her support staff, receiving disclosures personally, and taking responsibility for disseminating reports within the organisation, tracking progress, making external reports, feeding back to whistleblowers where appropriate, and reviewing settlement agreements. In larger organisations the whistleblowers' champion is more likely to perform his or her function by delegating day-to-day operations to a dedicated whistleblowing function, but retaining an oversight role. The whistleblowers' champion may be referred to by a different title within a firm.
- 3.7** The FCA and the PRA believe that the steps the firm takes to ensure no person under the firm's control engages in victimisation should be one of the matters subject to the whistleblowers' champion's oversight. The FCA and the PRA also propose that the whistleblowers' champion take steps to ensure the firm adheres to the requirements related to new settlement agreements and employment contracts, as set out in sections 2.22 to 2.26.
- 3.8** Where a firm has delegated the day-to-day contact with whistleblowers to a dedicated person or team, the FCA and the PRA nonetheless expect the whistleblowers' champion to be open to approaches by concerned members of staff, although it is accepted they may not be contactable at all times.
- 3.9** The FCA and the PRA expect the whistleblowers' champion to have a level of authority and independence within the firm and access to resources and information sufficient to enable them to carry out that responsibility. Being independent includes being able to manage any conflicts of interest that may arise from fulfilling the role. Having access to resources includes having recourse to independent legal advice and dedicated training.

²² See Paragraph 2.21 of Senior insurance managers regime: a new regulatory framework for individuals (www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp2614.pdf)

²³ See Paragraph page 18 of Consultation Paper FCA CP14/13/PRA CP14/14 Strengthening accountability in banking: a new regulatory framework for individuals. (www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13)

Annual reporting

- 3.10** The PCBS recommended firms should include information about whistleblowing in their annual reports; they suggested the FCA and PRA set out what data should be included. The content of companies' annual reports to their shareholders is set out in the Companies Acts. There are other routes, however, by which the FCA and the PRA can require firms to prepare information on whistleblowing.
- 3.11** One option is to introduce a new regulatory return about whistleblowing; the content of such a return could be made public in the same way as the FCA currently does for data in firms' complaints returns.
- 3.12** An alternative is to require the whistleblowers' champion to present a report to the firm's senior management about whistleblowing at least annually. This would discuss the operation and effectiveness of the whistleblowing arrangements, include statistical data, and could be requested by the FCA or the PRA. (This is analogous to the report firms' Money Laundering Reporting Officers are required to prepare).
- 3.13** The FCA and the PRA believe the whistleblowers' champion should present an annual report to the board, with the firm having discretion as to the content of that document. The FCA and the PRA doubt whether a new regulatory return would yield information of sufficient value to justify its costs. An annual report owned by the whistleblowers' champion would be able to take a more narrative and analytical form than a regulatory return, and be a more useful resource for a firm's management and the regulators' supervisory staff to draw upon.
- 3.14** A firm may choose to make some or all of this report public, but the FCA and the PRA do not propose to require this. Reports may refer to specific cases of whistleblowing and it is not in the interests of whistleblowers for such information to be put into the public domain. It may discourage people from speaking up in the first place. The prospect of public scrutiny may also discourage the reports from being frank assessments of the firm's performance.

Q8: Do you agree that the whistleblowers' champion should prepare an annual report to the firm's senior governance committee, which is available to regulators on request, but not made public?

Groups of firms

- 3.15** Where a relevant firm forms part of a group of related companies, the firm may, for reasons of administrative efficiency, wish for the whistleblowers' champion to be on the board of another company elsewhere in the group. The FCA and PRA are content for such an arrangement to be put in place, providing the person is the whistleblowers' champion of a parent company (not a subsidiary) that is itself regulated by the FCA and the PRA and subject to these requirements.

Q9: Do you agree with our proposed treatment of the role of the whistleblowers' champion in financial groups?

Employment tribunals

- 3.16** The PCBS recommended the FCA require firms to inform it of any employment tribunal cases brought by workers relying on PIDA where the tribunal finds in the worker's favour. If the FCA requires whistleblowers' champions to report all cases the firm contested, but lost, where claims were made under PIDA, this would be a new source of intelligence that could inform supervisory work. It would also encourage the whistleblowers' champion to take an interest in cases where a worker had been disadvantaged after blowing the whistle and ensure that lessons are learned. The FCA proposes that the whistleblowers' champion should report the information to the FCA's whistleblowing service (see Annex 6). This should take place promptly each time a tribunal reaches such a judgement. If the firm intends to appeal against the judgement, the whistleblowers' champion may wish to say so in the report.

Q10: Do you agree the FCA should require firms to inform it of cases where an employment tribunal finds in favour of a whistleblower?

4.

The 'duty' to blow the whistle

- 4.1** The PCBS recommended employment contracts, codes of conduct and staff handbooks should include clear references to the 'duty' staff have to blow the whistle internally. The FCA and the PRA do not, however, propose to place a regulatory requirement on individuals who work for financial firms to blow the whistle on wrongdoing.
- 4.2** At present, employees in financial firms have no explicitly-expressed obligation set out either in regulation or law to speak up when they see wrongdoing, whether internally or to a regulator. The FCA and the PRA could require firms to include contractual terms in employment contracts that place an obligation on employees to report misconduct they are aware of. Amending those parts of the FCA Handbook and the PRA Rulebook that apply to individual employees in financial firms is another means by which new obligations could be placed on individuals. But the FCA and the PRA do not propose to take either course.
- 4.3** The FCA and the PRA are concerned a requirement on employees to speak up may place individuals in a position where they feel they face being penalised whatever course of action they take. It may also lead worried employees to make defensive reports of little value that overwhelm whistleblowing services and damage their ability to function effectively. Informal discussions with stakeholders such as firms, trade unions and trade bodies indicated such misgivings were shared by others. As a consequence, the FCA and the PRA take the view that the decision to speak up should remain a matter for the individual.
- 4.4** This does not affect the long-standing obligation on approved persons to be open and transparent with the regulators. Also, staff in firms regulated by the FCA and the PRA remain under a legal duty to report knowledge or suspicion of money laundering or the financing of terrorism.

Q11: Do you agree that the FCA and the PRA should not place a requirement on employees to speak up when they see wrongdoing?

Q12: Do you have any other comments on the proposals in this consultation paper?

Annex 1

PRA cost benefit analysis

1. Effective whistleblowing arrangements can help firms and regulators identify wrongdoings. Early identification will in turn help firms and regulators rectify and mitigate wrongdoings, therefore help reduce risks to firms and the wider financial system.
2. However, without arrangements that offer protection to whistleblowers in place, employees may be reluctant to raise concerns for fear of suffering personally as a consequence. In addition, while it is in the interests of firms for employees to be able to make their superiors aware of activities of which they would not approve, firms and/or their managers may have incentives to turn a blind eye to some concerns, perhaps because an activity was particularly profitable for the firm.
3. The proposals in this CP aim to help identify wrongdoings in firms through effective whistleblowing arrangements that encourage whistleblowers to raise their concerns.

Blow the whistle to the regulators

4. Informing employees that they can blow the whistle to the regulators can help expose wrongdoings that are beneficial for the firms and/or their managers (therefore the firms and their managers are unlikely to be receptive to such concerns) but potentially costly for the financial system and/or other stakeholders in the financial system. Whistleblowing would allow regulators to investigate and intervene at an early stage to mitigate the potential cost such wrongdoings could impose on the wider financial system.
5. The incremental cost for the firms, included in the FCA's estimate of costs to firms, is likely to be minimal as firms can inform employees by email that they can blow the whistle to the regulators. In addition, if the increased awareness leads to an increased number of contacts from individuals who would like to raise their concerns with regulators, the regulators will incur some additional cost in dealing with these contacts. However, we do not expect the additional cost in dealing with contacts themselves will be significant. There may be further costs associated with pursuing some of these additional tip-offs. To the extent that the tip-offs merit further investigation, there will be benefits associated with uncovering wrongdoings, setting appropriate sanctions and creating potential deterrent effects.

Employment contracts and settlement agreements

6. Including a passage in employment contracts and settlement agreements that states explicitly that nothing prevents an (ex-) employee from making a protected disclosure under PIDA will raise awareness of the right an (ex-) employee currently has rather than give an (ex-) employee a new right.

7. Including a passage in settlement agreements will incur minimal additional costs. This requirement could lead to additional tip-offs, depending on how much employees are aware of this existing right currently.

Internal whistleblowing arrangements and protections to all whistleblowers

8. A large number of firms already have adequate whistleblowing procedures in place. The incremental costs and benefits of this requirement will be limited for these firms.
9. For firms that do not currently have adequate whistleblowing procedures in place, this requirement will impose some costs, e.g., training, establishing new departments to handle employees who wish to raise concerns or outsourcing to a third party provider. Based on discussion with whistleblowing services providers, the FCA estimates that firms may pay up to £15 per employee per year. The FCA estimated the potential incremental cost in its CBA (Annex 4), assuming all employees of relevant firms – so an upper limit as only firms that do not currently have adequate whistleblowing procedures in place will need to incur these costs.
10. Requiring firms to establish internal whistleblowing procedures that provide protections to all whistleblowers should alleviate the fear of being personally disadvantaged, and therefore reduce the need for individuals from firms to contact the regulator, as some concerns (those that are in firms' and their managers' interests) can be dealt with internally.

Whistleblowers' champion

11. PRA CP14/14 and CP26/14 set out the prescribed responsibility for firms, both banks (CP14/14) and insurers (CP26/14), to appoint a senior manager responsible for maintaining "the independence, integrity and effectiveness of the whistleblowing procedures". The costs associated with appointing a whistleblowers' champion (whose duties include preparing an annual report to the firm's senior governance committee) were included in the previous CPs that set out the proposed accountability regime.

Annex 2

PRA compatibility statement

Compatibility statement

1. The Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) have different objectives. While both look to meet their own objectives, they are aware of each other's objectives.

Compatibility with PRA's general duties and regulatory principles

2. This appendix sets out how the proposals in this CP are compatible with the general duties and regulatory principles of the PRA.
3. The PRA is required, by section 138J(2)(d) of the Financial Services and Markets Act 2000 (FSMA), to explain its reasons for believing that making the proposed rules is compatible with (i) its duty to act in a way which advances its general objective (ie to promote the safety and soundness of PRA-authorized persons, and, specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders.), and (ii) its duty to act, so far as is reasonably possible, in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.
4. The PRA believes these proposals will advance its general objective, as the proposed rules would introduce measures which are designed to put in place mechanisms to allow whistleblowers to raise concerns. Effective whistleblowing arrangements that offer protection to whistleblowers can help firms and regulators identify wrongdoings. Early identification will in turn help firms and regulators rectify and mitigate wrongdoings, therefore help reduce risks to firms and the wider financial system.
5. The PRA has adhered to the regulatory principles in setting out the rules proposed in this consultation. In particular
 - a. The need to use the resources of each regulator in the most efficient and economic way;

Although the requirement for firms to inform their workers about the whistleblowing services provided by the PRA and the FCA may increase awareness and so increase the workload of the PRA in receiving and pursuing these disclosures, this could provide additional useful information that can be used by regulators to investigate and intervene in wrongdoing at an earlier stage mitigating potential costs to the financial system.

- b.** the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

The costs of these requirements are relatively small, calculated by the FCA to be £15 per employee. In addition, many firms that already provide an internal whistleblowing function to their employees will not need to incur this additional cost. Moreover, these requirements will not be applied to small credit unions.

- c.** the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;

If firms or the regulator can identify and rectify wrongdoing, as a result of staff being better able to, or informed on how, to make disclosures, this will reduce the risks to the wider financial system.

- d.** the general principle that consumers should take responsibility for their decisions;

The PRA does not consider this to be relevant for this CP.

- e.** the responsibility of senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;

This consultation sets out the responsibilities of the senior manager allocated the prescribed responsibility relating to the firm's policies and procedures on whistleblowing under the Senior Managers Regime and the Senior Insurance Managers Regime.

- f.** the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act [FSMA];

Firms will have considerable flexibility in carrying out the requirements contained within this paper, so that they can be implemented in the way most fitting to their business. The requirement to provide an internal whistleblowing procedure may be carried out by a third party, if a firm deems that most suitable to the way they conduct their business, and information on the whistleblowing services of the PRA and the FCA can be provided to staff through the channels deemed most appropriate by the firm.

- g.** the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;

It is important that firms and the regulator protect the identities of whistleblowers where this is requested. The proposals respect this confidentiality by not requiring the senior manager allocated the prescribed responsibility relating to the policies and procedures on whistleblowing to make public their report on whistleblowing within the firm.

- h.** The principle that the regulators should exercise their functions as transparently as possible;

The regulators have held discussions with industry, government departments, whistleblowing charities, providers of third party whistleblowing services, trade unions and other relevant stakeholders prior to publishing this consultation, and will continue to engage.

- 6.** These proposals will facilitate effective competition, as effective whistleblowing arrangements can expose wrongdoings that may give some firms an unfair advantage in the market. This in turn will allow regulators to intervene and rectify.
- 7.** The PRA has a statutory requirement under section 138K(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. The proposals in this CP will apply to mutual societies which, the PRA considers, will not be affected any differently from other firms.

Annex 3

FCA cost benefit analysis

1. This section estimates the costs and benefits of the proposals in this consultation. FSMA, as amended by the Financial Services Act (2012), requires the FCA to publish a cost benefit analysis (CBA) of its proposed rules. Specifically, section 138I requires the FCA to publish a CBA of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits’ that will arise if the proposed rules are made. It also requires the FCA to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

Proposal

2. The FCA and PRA propose that relevant firms be required to:
 - Put internal whistleblowing arrangements in place (if they are not already), and inform their UK-based employees about these arrangements.
 - Inform their employees that they can blow the whistle to the FCA or PRA.
 - Include a passage in employment contracts and settlement agreements clarifying that nothing in that agreement prevents the ex-employee from making a protected disclosure.
 - Give the ‘whistleblowers’ champion” 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 where, in a case before an employment tribunal contested by the firm, the tribunal finds in favour of a whistleblower.

Market failure analysis

3. Workers may be reluctant to raise concerns for fear of suffering personally as a consequence. If an internal mechanism offering credible protections to those voicing concerns reassures whistleblowers, and hence reveals information useful to management, then firms have a self-interested reason for establishing one. Also, if a firm has no clear internal arrangements in place to allow workers to speak up, it may be in a weaker position to contest disputes with employees.

4. Many firms have already chosen to have whistleblowing arrangements in place, but others do not. Currently, a firm may decide it is not exposed to the kind of risks a whistleblower might identify, or that it has other means of managing those risks. There may be practical constraints: small firms may not feel able to offer a credible guarantee of confidentiality to whistleblowers, for example. But more troubling reasons may exist:
 - i. **Externalities:** if a whistleblower speaks out about wrongdoing that harms third parties (e.g. customers, suppliers, etc.) but not the firm, then management have less incentive to listen.
 - j. **Behavioural biases** may affect the decision: management may underestimate the risks of misconduct (overlooking, for example, the potential for damage to the firm's reputation), and so see formal whistleblowing arrangements to be unnecessary. They may also have a cultural bias towards seeing an employee who questions conduct as being disloyal or malicious, and not deserving of protection.
 - k. **Conflicts of interest:** there may be cases where management are complicit in wrongdoing, or gain from that misconduct, and so have no incentive for it to be challenged.

Population

5. The proposed rules apply to UK banks, building societies, credit unions (not including those with £25m or less in assets), PRA-investment firms, and insurers. We anticipate this is about 1,500 firms.

Costs to firms

6. This analysis considers the costs of implementing these proposals. The cost of investigations prompted by whistleblowers' disclosures is outside the scope of this CBA.
7. This consultation paper proposes that relevant firms will put whistleblowing arrangements in place and have these overseen by a dedicated person. Many firms will already have whistleblowing services, although most will need to create the position of whistleblowers' champion.
8. Services like whistleblowing lines and escalation systems are activities that are for sale to financial firms from third-party providers; this gives a market value for such services' costs. We have spoken to several providers of whistleblowing lines, and, on the basis of these discussions, estimate that firms pay up to £15 per member of staff each year.

9. According to data published by the British Bankers' Association²⁴, Building Societies Association²⁵ and Association of British Insurers²⁶, deposit-takers and insurers in the UK collectively employ about 570,000 people. It follows it would cost about £8.5m annually to offer internal reporting arrangements to all these potential whistleblowers. This represents an upper threshold to the estimated collective cost to the industry of running whistleblowing arrangements. Because many firms already have whistleblowing arrangements in place, not all of these costs will be new.
10. Providing training on whistleblowing (including telling staff about the FCA and PRA whistleblowing services) will also lead to costs. If training were to occupy twenty minutes for each member of staff per year, and if one full-time member of staff costs £290 a day²⁷, then, across 570,000 people, that suggests training costs £7.9m a year. This can be seen as a conservative estimate because staff are likely to be trained on whistleblowing less frequently than annually.
11. Firms will incur other costs from overseeing whistleblowing procedures; the job of the whistleblowers' champion involves performing a number of duties that are not done at present. We estimate the champion and his supporting staff (performing tasks not captured above, and not performed already, such as preparing an annual report about whistleblowing) will, on average, collectively expend five man-days of labour a year. (This figure may be substantially higher in a large institution, but lower in smaller organisations). This amounts to 7,500 man-days in total across the industry; this suggests the cost to these firms will amount to £2.2m a year.
12. One of our proposals is that firms inform the FCA when an employment tribunal they contest finds in favour of a whistleblower. A review of employment tribunal judgments at the public register found this to be an infrequent occurrence; consequently, we believe the requirement will have negligible ongoing costs.
13. Firms will face one-off set-up costs implementing our proposals. Firms will need to prepare training material for staff and include clarifying text in settlement agreements and employment contracts; we anticipate the additional costs of doing this will not be significant in the context of ongoing work to provide training to staff and keep training material, internal procedures and template contracts up-to-date.
14. Our estimates so far apply to the industry as a whole, although costs will differ markedly between firms. Table 1 shows illustrative examples of how firms of different sizes may be affected. Note these are indicative and not based on any specific institutions.

24 The BBA suggest employment in the banking sector was 421,000 in 2013. See: www.bba.org.uk/news/statistics/abstract-of-banking-statistics/statistical-abstracts/

25 BSA report that employment in building societies was 39,384 in 2013. See: www.bsa.org.uk/statistics/sector-info-performance/sector-information/

26 According to the ABI, the insurance sector "employs around 315,000 individuals, of which more than a third are employed directly by insurers and the remainder in auxiliary services such as broking." Source: www.abi.org.uk/Insurance-and-savings/Industry-data/Key-Facts-2014

27 This figure is drawn from the cost benefit analysis in FSA's Consultation Paper 11/12. See: www.fsa.gov.uk/pubs/cp/cp11_12.pdf

Table 1: Illustrative examples of costs for firms of different sizes

	Large firm (e.g. 10,000 staff)	Medium firm (e.g. 500 staff)	Small firm (e.g. 50 staff)
Number of whistleblowing reports annually	Over one hundred	Over a dozen	One or two
Incremental annual cost of running whistleblowing arrangements	£140,000 (2 FTE)	£9,000 (30 man days)	£900 (3 man days)
Incremental annual cost of training staff	£125,000 (450 man days)	£6,000 (20 man days)	£1,000 (25 man hours)
Incremental annual cost of overseeing effectiveness of whistleblowing arrangements	£15,000 (0.2 FTE)	£6,000 (20 man days)	£600 (2 man days)
Total annual costs	£280,000	£21,000	£2,200
One-off set up costs (e.g. reviewing employment contracts, settlement agreements, staff handbooks, training material, etc.)	£70,000 (1 FTE)	£6,000 (20 man days)	Negligible

Costs to the FCA

15. Once our proposed rules come in to effect, the FCA will scrutinise firms' compliance, alongside the other matters we are charged with supervising. The FCA has not performed the prioritisation and budgeting process that would allow us to allocate resources to supervising these rules, because the new requirements are still only a proposal. We anticipate, however, it would require perhaps three full-time equivalent members of staff, at an annual cost, including overheads, in the region of £200,000 a year, to supervise industry's compliance with these requirements.

Benefits

16. We anticipate the benefits from these proposals will be significant. We intend for our proposals to increase the volume of disclosures made by whistleblowers in the financial industry, although we believe it is difficult to credibly predict how our proposals will affect the quantity or quality of those reports.
17. If, as a result of whistleblowing, poor conduct is discouraged, or identified and stopped sooner, then we anticipate fewer consumers will be disadvantaged; this may mean more customers are comfortable participating in the market for financial products, particularly if a strong compliance culture is fostered in firms. Likewise, the financial sector may need to pay out less in compensation and face fewer scandals that damage its reputation. Another positive consequence could be a reduction in illicit transfers of wealth resulting from, for example, fraud or insider dealing.

18. These benefits may be further enhanced when combined with wider reforms to implement the recommendations of the PCBS; these relate to, for example, reform of remuneration in the banking sector and corporate governance enhancements in the banking and insurance sectors.
19. We do not feel it is reasonably practicable to estimate the value of these benefits.

Q13: Do you have any comments on the FCA's cost benefit analysis?

Annex 4

FCA compatibility statement

Compatibility with the FCA's general duties

1. This annex sets out how the proposals in this CP are compatible with the general duties and regulatory principles of the FCA.
2. The FCA is required, by section 138i of the Financial Services and Markets Act (2000) (FSMA), to explain why making the proposed rules is compatible with its strategic objective, advances its operational objectives, and has regard to the regulatory principles in section 3b of FSMA.

Equality and diversity considerations

3. The FCA has considered the equality and diversity issues that may arise from the proposals in this CP, and does not consider the proposals result in direct discrimination for any of the groups with protected characteristics (i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender). To the extent that the proposals encourage wrongdoing within deposit-takers and insurers to come to light, they may lead to cases of discrimination being identified and stopped.

The FCA's strategic objective and regulatory principles

4. The proposals set out in this CP are compatible with our strategic objective of ensuring that the relevant markets function well. This CP supports our July CP proposals to clarify the lines of responsibility at the top of relevant firms and enhance the FCA's ability to hold senior and other individuals in such firms to account. This should, over time, result in improved governance within the industry.
5. In preparing these proposals, the FCA had regard to the regulatory principles set out in section 3b of FSMA. The table below sets out how the proposals demonstrate regard for each of the regulatory principles.

Regulatory principle	Compatibility
<p>Efficiency and economy The need to use FCA resources in the most efficient and economical way</p>	<p>In preparing these proposals, the FCA aimed to avoid placing new requirements on firms unless it judged the benefits outweighed the costs, including costs to the FCA. As a consequence, these proposals have not implemented the PCBS's recommendations that the FCA require banks to report on whistleblowing in their annual report to shareholders.</p>
<p>Proportionality A burden or restriction should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.</p>	<p>The FCA considered the burdens these proposals place on firms, and whether these were proportionate to the benefits. This led to the proposed requirements being disappplied to small credit unions. It also led to, for example, a decision not to place a duty on all staff in relevant firms to speak up internally about wrongdoing.</p>
<p>Sustainable growth The desirability of sustainable growth in the UK economy in the medium or long term</p>	<p>It is in the interest of the UK economy that wrongdoing in firms is identified, including as a result of disclosures by whistleblowers.</p>
<p>Consumer responsibility Consumers should take responsibility for their decisions</p>	<p>The proposals in this CP concern the internal organisation of relevant firms. Consumers may benefit if whistleblowing arrangements improve firms' conduct.</p>
<p>Senior management responsibility The responsibilities of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements</p>	<p>These proposals set out what is expected of the 'whistleblowers' champion', a member of senior management with responsibility for overseeing the effectiveness of firms' whistleblowing arrangements. This includes a requirement for that person to report to the board at least annually on the subject of whistleblowing.</p>
<p>Recognising the differences in the businesses carried on by different regulated persons The desirability of exercising our function that recognises differences in the nature of the businesses carried on by different persons we regulate</p>	<p>These proposals offer firms a certain degree of latitude in how they are implemented: it is accepted that firms will wish to tailor their whistleblowing arrangements to the nature and scale of their businesses. These proposals disapply the requirement to small credit unions.</p>
<p>Openness and disclosure The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA</p>	<p>Protecting the confidentiality of a whistleblower is a key responsibility for the FCA's and PRA's whistleblowing services and for whistleblowing arrangements in relevant firms. Any data or information about whistleblowing made available by the regulators or firms should be prepared with that in mind.</p>
<p>Transparency The FCA should exercise its functions as transparently as possible.</p>	<p>The FCA aims to be an open and transparent regulator. Prior to publishing this consultation, the FCA has obtained industry feedback during a pre-consultation exercise and engaged with other relevant external stakeholders, including whistleblowing charities, providers of third party whistleblowing services, government departments, trade unions, consumer bodies, and the financial services panels. The FCA will continue to engage with relevant stakeholders.</p>

The FCA's operational objectives

6. **Consumer protection and market integrity:** The proposals in this CP aim to make whistleblowing procedures in relevant firms more effective. Many disclosures from whistleblowers will relate to consumer protection and market integrity. The FCA therefore considers these proposals support its consumer protection and market integrity objectives.
7. **Promoting competition:** In preparing the proposals set out in this CP, the FCA had regard to the duty to promote effective competition in the interests of consumers set out in section 1B(4) FSMA. The FCA does not consider that these proposals – which relate to enhancing whistleblowing processes and procedures – are likely to have any adverse impact on effective competition.

Mutuals

8. The FCA also has a statutory requirement under section 138k(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. The FCA considers that mutuals are not expected to be affected differently, or in a disproportionate way, from other firms by these proposals. The FCA, along with the PRA, considered the impacts of these proposed requirements on credit unions and, as a consequence, do not intend to apply the requirements to credit unions with assets of £25m or less. These rules will help to improve the effectiveness of whistleblowing across all relevant firms, which are unaffected by the particular circumstances of mutuals.

Annex 5

The PCBS's recommendations related to whistleblowing

The PCBS's recommendations on whistleblowing were as follows²⁸:

47. Whistleblowing – senior responsibility

A non-executive board member – preferably the Chairman – should be given specific responsibility under the Senior Persons Regime for the effective operation of the firm's whistleblowing regime. The board member responsible for the institution's whistleblowing procedures should be held personally accountable for protecting whistleblowers against detrimental treatment.

48. Whistleblowing – role of regulators

All Senior Persons should have an explicit duty to be open with the regulators. The FCA should regard it as its responsibility to support whistleblowers. It should also provide feedback to the whistleblower about how the regulator has investigated their concerns and the ultimate conclusion it reached as to whether or not to take enforcement action against the firm and the reasons for its decision. The regulator should require banks to inform it of any employment tribunal cases brought by employees relying on the Public Interest Disclosure Act where the tribunal finds in the employee's favour. The regulator can then consider whether to take enforcement action against individuals or firms who are found to have acted in a manner inconsistent with regulatory requirements set out in the regulator's Handbook.

49. Whistleblowing – financial incentives

The regulator should undertake research into the impact of financial incentives in the US in encouraging whistleblowing, exposing wrongdoing, and promoting integrity and transparency in financial markets.

50. Whistleblowing – duty to report

Institutions must ensure that their staff have a clear understanding of their duty to report an instance of wrongdoing, or 'whistleblow', within the firm. This should include clear information for staff on what to do. Employee contracts and codes of conduct should include clear references to the duty to whistleblow and the circumstances in which they would be expected to do so.

51. Whistleblowing – mechanisms in place to raise concerns

Banks must have in place mechanisms for employees to raise concerns when they feel discomfort about products or practices, even where they are not making a specific allegation of wrongdoing. It is in the long-term interest of banks to have mechanisms in place for ensuring

²⁸ This summary of the PCBS's recommendations was first set out in *The Government's response to the Parliamentary Commission on Banking Standards*. See: www.gov.uk/government/uploads/system/uploads/attachment_data/file/211047/gov_response_to_the_parliamentary_commission_on_banking_standards.pdf. The FCA and Bank of England published their respective responses to the PCBS in October 2013. See *The FCA's response to the Parliamentary Commission on Banking Standards* (<http://www.fca.org.uk/static/documents/pcbs-response.pdf>) and *Bank of England response to the final report of the Parliamentary Commission on Banking Standards* (<http://www.bankofengland.co.uk/publications/Documents/news/2013/pcbsresponse.pdf>)

that any accumulation of concerns in a particular area is acted on. Accountability for ensuring such safeguards are in place should rest with the non-executive director responsible for whistleblowing.

51A. Regulators should ensure that firms have appropriate whistleblowing mechanisms

52. Whistleblowing – internal filter

Whistleblowing reports should be subjected to an internal ‘filter’ by the bank to identify those which should be treated as grievances. The regulator should periodically examine a firm’s whistleblowing records, both in order to inform itself about possible matters of concern, and to ensure that firms are treating whistleblowers’ concerns appropriately. The regulators should determine the information that banks should report on whistleblowing within their organisation in their annual report.

53. Empowering regulators where a whistleblower has not been treated properly

The regulator should be empowered in cases where as a result of an enforcement action it is satisfied that a whistleblower has not been properly treated by a firm, to require firms to provide a compensatory payment for that treatment without the person concerned having to go to an employment tribunal.

Annex 6

The FCA's whistleblowing service

1. The FCA wants firms it regulates to be places where people who see misconduct feel encouraged to speak out, not left struggling with a dilemma. The proposals in this paper are designed to promote a culture within financial firms that welcomes whistleblowing.
2. Nonetheless, you, as an employee, may still fear damaging consequences from speaking up within your firm. In such cases, the **FCA's Whistleblowing Service is available**.
3. You can call **020 7066 9200** or email **whistle@fca.org.uk** to speak to the FCA's trained staff. The FCA is happy to receive reports from anyone, anywhere. If you want to remain anonymous, protecting your identity is the FCA's top priority²⁹.
4. The number of people contacting the Whistleblowing Service is increasing year on year; the FCA has recently raised its staffing levels sharply to ensure that everyone calling receives the attention they deserve.
5. Whistleblowers have consistently proved to be a key source of intelligence on wrongdoing in the financial sector. The FCA receive disclosures from a wide variety of sources: regulatory investigations, enforcement actions and fines have all been triggered by calls from concerned insiders.

²⁹ For more information, see: www.fca.org.uk/site-info/contact/whistleblowing

Annex 7

The PRA's whistleblowing service

Who should contact the PRA Whistleblowing Function?

- Individuals who work in the financial services industry who have concerns about their employer or other firms or individuals and who want to know more about blowing the whistle.
- Firms and individuals who want to understand more about the Prudential Regulation Authority's (PRA) guidance, policy & procedures are on whistleblowing.

How do I blow the whistle?

6. We would encourage you first to use the whistleblowing procedures in your workplace. If there aren't any or if you don't feel able to do so, then contact us on 0203 461 8703 during office hours. Alternatively, you can email us at PRAwhistleblowing@bankofengland.co.uk or write to us at:

Confidential Reporting (Whistleblowing)
PRA CSS
20 Moorgate
London
EC2R 6DA

7. Please note: We record all calls and do so to ensure we have captured all the information correctly. If the caller asks us not to record the conversation we will respect their wishes. The PRA expects the vast majority of information provided by whistleblowers to be provided in writing, even if initial contact is made with the PRA by telephone. The PRA occasionally holds interviews with whistleblowers, usually attended by a minimum of two PRA staff.

What happens once I have blown the whistle?

8. When whistleblowers first contact the PRA, it will be explained that we will be unable to supply any more than very limited feedback to them about the outcome of the provision and investigation of information. In many cases, statutory restrictions on the disclosure of information obtained by the PRA in the course of exercising its functions are likely to prevent such disclosure.

9. The information will usually be put into a report which is saved on an intelligence database with limited access arrangements. Reports are clearly marked as related to a whistleblower's disclosure. The whistleblower may or may not be identified in the report. This marking system should help alert the limited PRA staff who can access the database to the fact that neither the information, nor the whistleblower's identity, should be disclosed internally or externally without reference to the PRA Whistleblowing Function.

PRA's expectations of a whistleblower

10. The PRA does not encourage whistleblowers to proactively obtain any further information from any source, whatever the circumstances, as this action might infringe the law. However whistleblowers may be asked to clarify the information they have already provided to the PRA (or other organisation).

Legal advice

11. The PRA cannot give legal advice to a whistleblower. Whistleblowers may wish to take legal advice from a lawyer at their own expense. Alternatively they can contact Public Concern at Work, an independent charity which gives free and confidential legal advice. You can contact them on 020 7404 6609 or www.pcaaw.co.uk.

Annex 8

List of questions

- Q1:** Do you agree that the requirements should apply to these firms? What are the benefits and challenges of extending the requirements to a) branches of overseas banks, and b) other sectors regulated solely by the FCA such as non-PRA-designated investment firms?
- Q2:** Do you agree that all UK-based employees of relevant firms should be informed about the whistleblowing services run by the PRA and the FCA?
- Q3:** Do you agree that firms' whistleblowing arrangements should cover all types of disclosure, not just those related to regulatory matters or protected disclosures under PIDA?
- Q4:** Do you agree firms' whistleblowing arrangements should be available to all individuals, and that protections should apply to all individuals making disclosures, not just employees or those who benefit from protections under PIDA?
- Q5:** Do you agree that settlement agreements and employment contracts reached by a firm with a UK worker must contain a passage clarifying that nothing in that agreement prevents the worker from making a protected disclosure? Should firms be required to impose the same requirement on agencies that provide them with staff?
- Q6:** Do you agree with the FCA's proposed treatment of whistleblowing arrangements for staff of appointed representatives and agents?
- Q7:** Do you agree with these proposals for the role of whistleblowers' champion?
- Q8:** Do you agree that the whistleblowers' champion should prepare an annual report to the firm's senior governance committee, which is available to regulators on request, but not made public?

- Q9:** Do you agree with our proposed treatment of the role of the whistleblowers' champion in financial groups?
- Q10:** Do you agree the FCA should require firms to inform it of cases where an employment tribunal finds in favour of a whistleblower?
- Q11:** Do you agree that the FCA and the PRA should not place a requirement on employees to speak up when they see wrongdoing?
- Q12:** Do you have any other comments on the proposals in this consultation paper?
- Q13:** Do you have any comments on the FCA's cost benefit analysis?

Appendix 1

Proposed changes to the PRA Rulebook

WHISTLEBLOWING INSTRUMENT 2015

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

Commencement

- D. This instrument comes into force on [DATE].

Amendments

- E. The modules of the PRA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B

Citation

- F. This instrument may be cited as the Whistleblowing Instrument 2015.

By order of the Board of the Prudential Regulation Authority
[DATE]

Annex A

Amendments to the Glossary of definitions

In this Annex new text is underlined and deleted text is struck through.

...

employee for the purposes of SYSC 4.15, means an individual:

(1) who is employed or appointed by a *person* in connection with that *person's* business, whether under a contract of service or for services or otherwise; or

(2) whose services, under an arrangement between that *person* and a third party, are placed at the disposal and under the control of that *person*.

...

protected disclosure a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996 made by a *worker* in accordance with sections 43C to 43H of the Employment Rights Act 1996.

...

reportable concern means a concern held by any *person* in relation to the activities of a *firm*, including:

- (a) anything that would be the subject-matter of a *protected disclosure*, including a breach of any *rule*;
- (b) a failure to comply with the *firm's* policy and procedures; and
- (c) behaviour that has or is likely to have an adverse effect on the *firm's* reputation or financial well-being.

...

small credit union means a *credit union* which has average total gross assets of £25 million or less, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the *firm's* annual accounting reference date).

...

worker has the meaning as defined by section 230(3) of the Employment Rights Act 1996 and as extended under section 43K of the Employment Rights Act 1996.

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex new text is underlined and deleted text is struck through.

...

4.1 General requirements

...

4.1.15 R (1) A firm other than a credit union must have in place appropriate procedures for its *employees* to report breaches internally through a specific, independent and autonomous channel.

...

R (3) A credit union other than a small credit union must establish, maintain and implement appropriate and effective arrangements for the disclosure of reportable concerns by a person, including a firm's employees, internally through a specific, independent and autonomous channel.

R (4) The channel in (3) may be provided through arrangements by third parties, including social partners, subject to any applicable requirement under SYSC 8.

R (5) A credit union other than a small credit union must inform all workers of the channel referred to in (1).

R (6) A credit union other than a small credit union must inform all workers:

(a) that they may disclose directly to the PRA or to the FCA anything that would be the subject-matter of a protected disclosure;

(b) of what would constitute a protected disclosure;

(c) that the PRA or the FCA are prescribed persons under the Employment Rights Act 1996 and the effect of making a protected disclosure to the PRA or to the FCA,; and

(d) of the means available to make a protected disclosure to the PRA or the FCA.

R (7) A credit union other than a small credit union must

ensure that nothing in any employment contract or settlement agreement between the *credit union* and a *worker* in relation to the *worker's* employment, entered into after the date on which these rules come into force, discourages the *worker* from:

- (a) making a *protected disclosure*, including to the *PRA*;
- (b) making a further *protected disclosure* connected to a *protected disclosure* already made under (a).

R (8) A reference in SYSC 4.1.15 to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

...

PRA RULEBOOK: CRR FIRMS: WHISTLEBLOWING INSTRUMENT [YEAR]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (the PRA’s general rules); and
 - (2) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms: Whistleblowing Instrument [YEAR]

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on [DATE].

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Whistleblowing Instrument [YEAR].

By order of the Board of the Prudential Regulation Authority

[DATE]

Annex

For this consultation, new text added to the rules consulted on in The PRA Rulebook: Part 2 – CP25/14 is underlined and deleted text is struck through.

Part

GENERAL ORGANISATIONAL REQUIREMENTS

Chapter content

1. APPLICATION AND DEFINITIONS
2. GENERAL REQUIREMENTS

...

Links

1 APPLICATIONS AND DEFINITIONS

1.1 ...

1.2 In this Part, the following definitions apply:

chief executive function

...

protected disclosure

means a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996 made by a *worker* in accordance with sections 43C to 43H of the Employment Rights Act 1996.

reportable concern

means a concern held by any *person* in relation to the activities of a *firm*, including:

- (a) any matter that, if disclosed, would be the subject-matter of a *protected disclosure*, including a breach of any *rule*;
- (b) a failure to comply with the *firm's* policy and procedures; and
- (c) behaviour that has or is likely to have an adverse effect on the *firm's* reputation or financial well-being.

worker

has the meaning as defined by section 230(3) of the Employment Rights Act 1996 and as extended under section 43K of the Employment Rights Act 1996.

1.3 In this Part, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

...

2 GENERAL REQUIREMENTS

...

2.8 ...

- 2.9 (1) A *firm* must establish, implement and maintain appropriate procedures and effective arrangements for the disclosure of *reportable concerns* by a *person*, including a *firm's* employees, internally through a specific, independent and autonomous channel.
- (2) The channel in (1) may be provided through arrangements with *third parties*, including social partners, subject to any applicable requirement under the Outsourcing Part.

[Note: Art. 71(3) of the CRD]

- (3) A firm must inform all workers of the channel in (1).
- (4) A firm must inform all workers:
- (a) that they may disclose directly to the PRA or to the FCA anything that would be the subject-matter of a protected disclosure;
 - (b) of what would constitute a protected disclosure;
 - (c) that the PRA or the FCA are prescribed persons under section 43F of the Employment Rights Act 1996 and the effect of making a protected disclosure to the PRA or to the FCA; and
 - (d) of the means available to make a protected disclosure to the PRA or the FCA.
- (5) A firm must ensure that nothing in any employment contract or settlement agreement between the firm and a worker relating to the worker's employment with the firm, entered into after the date on which these rules come into effect discourages the worker from:
- (a) making a protected disclosure, including to the PRA; and
 - (b) making a further protected disclosure connected to a protected disclosure already made under (a).

...

PRA RULEBOOK: SOLVENCY II FIRMS: WHISTLEBLOWING INSTRUMENT [YEAR]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (the PRA’s general rules); and
 - (2) section 137T (general supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Solvency II Firms: Whistleblowing Instrument [YEAR]

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on [DATE].

Citation

- F. This instrument may be cited as the Solvency II Firms: Whistleblowing Instrument [YEAR].

By order of the Board of the Prudential Regulation Authority

[DATE]

Annex

In this Annex, the text is all new and is not underlined

Part

WHISTLEBLOWING

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. WHISTLEBLOWING**
- 3. LLOYDS**

Links

1 APPLICATION AND DEFINITIONS¹

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II firm*;
- (2) in accordance with General Application² 3, the *Society*, as modified by 3;
- (3) in accordance with General Application 3, *managing agents*, as modified by 3; and
- (4) a *third country branch undertaking* (other than a *Swiss general insurer*).

1.2 In this Part, the following definitions shall apply:

protected disclosure

means a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996 made by a *worker* in accordance with sections 43C to 43H of the Employment Rights Act 1996.

reportable concern

means a concern held by any *person* in relation to the activities of a *firm*, including:

- (a) any matter that, if disclosed, would be the subject-matter of a *protected disclosure*, including a breach of any *rule*;
- (b) a failure to comply with the *firm's* policy and procedures; and
- (c) behaviour that has or is likely to have an adverse effect on the *firm's* reputation or financial well-being.

worker

means as defined by section 230(3) of the Employment Rights Act 1996 and as extended under section 43K of the Employment Rights Act 1996.

1.3 In this Part, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

2 WHISTLEBLOWING

2.1 A *firm* must establish, maintain and implement appropriate and effective arrangements for the disclosure of *reportable concerns* by a *person*, including a *firm's employees*, internally through a specific, independent and autonomous channel.

¹ Defined terms referenced to in this Part (which are not specific to this Part under rule 1.2) either appear in FSMA or are being consulted on in CP16/14 "Transposition of Solvency II: Part 3".

² This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/prd/Documents/publications/cp/2014/cp1614.pdf>

- 2.2 The channel in 2.1 may be provided through arrangements with third parties, including social partners, subject to any applicable requirement in Conditions Governing Business 7³.
- 2.3 A *firm* must inform all *workers* of the channel referred to in 2.1.
- 2.4 A *firm* must inform all *workers*:
- (1) that they may disclose directly to the *PRA* or to the *FCA* anything that would be the subject-matter of a *protected disclosure*;
 - (2) of what could constitute a *protected disclosure*;
 - (3) that the *PRA* and the *FCA* are prescribed persons under section 43F of the Employment Rights Act 1996 and the effect of making a *protected disclosure* to the *PRA* or to the *FCA* as the case may be; and
 - (4) of the means available to make a *protected disclosure* to the *PRA* or the *FCA*.
- 2.5 A *firm* must ensure that nothing in any employment contract or settlement agreement between the *firm* and a *worker* relating to the *worker's* employment with the *firm*, entered into after the date on which these rules come into effect, discourages the *worker* from:
- (1) making a *protected disclosure*, including to the *PRA*; and
 - (2) making a further *protected disclosure* connected to a *protected disclosure* already made under (1).

3 LLOYDS

- 3.1 This Part applies to the *Society* and *managing agents* separately.

³ This Part is being consulted on in CP16/14 which can be found at <http://www.bankofengland.co.uk/pr/ Documents/publications/cp/2014/cp1614.pdf>

Appendix 2

Proposed changes to the FCA Handbook

ACCOUNTABILITY AND WHISTLEBLOWING INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 64A (Rules of conduct);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 138C (Evidential provisions)
 - (6) section 139A (Power of the FCA to give guidance); and
 - (7) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*]

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Prudential sourcebook for Investment Firms (IFPRU)	Annex C

Citation

- E. This instrument may be cited as the Accountability and Whistleblowing Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, the text is all new and is not underlined.

Insert the following new definitions in the appropriate alphabetical position.

[*Editor's Note:* The following text assumes the instrument consulted on in CP14/13 *Strengthening accountability in banking: a new regulatory framework for individuals* is made in the form consulted on.]

<i>employment contract</i>	(in SYSC 18) (Whistleblowing) a contract of service or for services under which a <i>firm</i> has employed or appointed an <i>employee</i> ;
<i>protected disclosure</i>	<p>(a) a “qualifying disclosure” as defined in section 43B of the Employment Rights Act 1996 (and summarised in (2)) made by a <i>worker</i> in accordance with sections 43C to 43H of the Employment Rights Act 1996;</p> <p>(b) a qualifying disclosure is, in summary, a disclosure, made in the public interest, of information which, in the reasonable belief of the <i>worker</i> making the disclosure, tends to show that one or more of the following (a “failure”) has been, is being, or is likely to be, committed:</p> <ul style="list-style-type: none"> (i) a criminal offence; or (ii) a failure to comply with any legal obligation; or (iii) a miscarriage of justice; or (iv) the putting of the health and safety of an individual in danger; or (v) damage to the environment; or (vi) deliberate concealment relating to any of (i) to (v); <p>it is immaterial whether the failure occurred, occurs or would occur in the <i>United Kingdom</i> or elsewhere, and whether the law applying to it is that of the <i>United Kingdom</i> or of any other country or territory.</p>
<i>reportable concern</i>	<p>a concern held by any <i>person</i> in relation to the activities of a <i>firm</i>, including:</p> <p>(a) anything that would be the subject-matter of a <i>protected disclosure</i>, including breaches of <i>rules</i>;</p>

	(b) a breach of the <i>firm's</i> policies and procedures; and
	(c) behaviour that harms or is likely to harm the reputation or financial well-being of the <i>firm</i> .
<i>settlement agreement</i>	(in SYSC 18) (Whistleblowing) an agreement between the <i>firm</i> and its <i>employee</i> which sets out the terms and conditions agreed by these parties for the purposes of settling a potential employment tribunal claim or other court proceedings.
<i>small credit union</i>	(in SYSC 18) (Whistleblowing) a <i>credit union</i> which has average total gross assets of £25 million or less, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the <i>firm's</i> annual accounting reference date).
<i>whistleblower</i>	any <i>person</i> that has disclosed, or intends to disclose, a <i>reportable concern</i> : <ul style="list-style-type: none"> (a) to a <i>firm</i>; or (b) to the <i>FCA</i> or the <i>PRA</i>; or (c) in accordance with Part 4A (Protected Disclosures) of the Employment Rights Act 1996.
<i>whistleblowers' champion</i>	(a) (in SYSC 4.5) an individual appointed by a <i>firm</i> under SYSC 4.5.25R(1) with the allocated responsibilities in SYSC 18.4.4R; <ul style="list-style-type: none"> (b) (in SYSC 18) (Whistleblowing) an individual appointed by a <i>firm</i> under either SYSC 4.5.25R(1) or SYSC 18.4.2R, as applicable, with the allocated responsibilities in SYSC 18.4.4R.
<i>worker</i>	a “worker” defined in section 230(3), and as extended under section 43K, of the Employment Rights Act 1996.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated

[*Editor's Note:* the following text assumes the instrument consulted on in CP14/13 *Strengthening accountability in banking: a new regulatory framework for individuals* is made in the form consulted on.]

4 General organisational requirements

...

4.5 Senior management responsibilities for relevant authorised persons

...

4.5.16 R Table: Senior Management responsibilities

Senior management responsibility	Explanation
...	
(8) Maintaining the independence, integrity and effectiveness of the firm's policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment <u>Acting as the firm's whistleblowers' champion</u>	<u>The whistleblowers' champion's allocated responsibilities are set out in SYSC 18.4.4R</u>
...	

...

4.5.18 G Table: Guidance on the management responsibilities map and the allocation of senior management responsibilities

Functions	Purpose
(1) The functions in Part One of the table of senior management responsibilities in SYSC 4.5.16R	... <u>(4) More guidance on the role of the whistleblowers' champion is set out in SYSC 18.4.5G.</u>
...	

...

18 ~~Guidance on Public Interest Disclosure Act: Whistleblowing~~**18.1 Application and Purpose**Application

18.1.1 G ~~This chapter is relevant to every *firm* to the extent that the Public Interest Disclosure Act 1998 (“PIDA”) applies to it. [deleted]~~

18.1.1A R This chapter applies to:

(1) a relevant authorised person except a small credit union; and

(2) a *firm* (in this chapter referred to as “insurer”) which is a firm as referred to in Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing Instrument [YEAR].

18.1.1B R In this chapter, a reference to a provision of the Employment Rights Act 1996 includes a reference to the corresponding provision of the Employment Rights (Northern Ireland) Order 1996.

18.1.1C G A *firm* not referred to in SYSC 18.1.1AR may adopt the *rules and guidance* in this chapter as best practice. If so, it may tailor its approach in a manner that reflects its size, structure and headcount.

Purpose

- 18.1.2 G (1) The purposes of this chapter are to:
- (a) ~~to remind *firms* of the provisions of the provisions of PIDA set out the requirements on *firms* in relation to the adoption, and communication to UK-based *employees*, of appropriate internal procedures for handling *reportable concerns* as part of an effective risk management system (SYSC 18.3); and~~
 - (b) ~~to encourage *firms* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system set out the role of the *whistleblowers' champion* (SYSC 18.4);~~
 - (c) require *firms* to ensure that *employment contracts* and *settlement agreements* expressly state that *employees* may make *protected disclosures* (SYSC 18.5);
 - (d) outline best practice for *firms* which are not required to apply the measures set out in this chapter but which wish to do so; and

- (e) outline the link between effective whistleblowing measures and fitness and propriety.
 - (2) ~~In this chapter "worker" includes, but is not limited to, an individual who has entered into a contract of employment. [deleted]~~
- 18.1.3 G ~~The *guidance* in this chapter concerns the effect of PIDA in the context of the relationship between *firms* and the *FCA*. It is not comprehensive guidance on PIDA itself. [deleted]~~

Delete SYSC 18.2 (Practical measures). The deleted text is not shown.

After SYSC 18.2 (deleted) insert the following new sections. The text is not underlined.

18.3 Internal arrangements

- 18.3.1 R (1) A *firm* must establish, implement and maintain appropriate and effective arrangements for the disclosure of *reportable concerns* by *whistleblowers* through a specific and autonomous channel.
- (2) The arrangements in (1) must at least:
- (a) be able to effectively handle disclosures of *reportable concerns* including:
 - (i) where the *whistleblower* has requested confidentiality or has chosen not to reveal their identity; and
 - (ii) allowing for disclosures to be made through a range of communication methods;
 - (b) Ensure the effective assessment and escalation of *reportable concerns* by *whistleblowers* where appropriate, including to the *FCA* or *PRA*;
 - (c) include all reasonable measures to ensure that:
 - (i) if a *reportable concern* is made by a *whistleblower* no *person* under the control of the *firm* engages in victimisation of that *whistleblower*; and
 - (ii) it can monitor for any victimisation suffered by a *whistleblower* arising from their disclosure of a *reportable concern*;
 - (d) provide feedback to a *whistleblower* about a *reportable concern* made to the *firm* by that *whistleblower*, where this is

- feasible and appropriate;
- (e) include the preparation and maintenance of:
 - (i) appropriate records of *reportable concerns* made by *whistleblowers* and the *firm's* treatment of these reports including the outcome of any *reportable concern* made by a *whistleblower*; and
 - (ii) up-to-date written procedures that are readily available to the *firm's* UK-based *employees* outlining the *firm's* processes for complying with this chapter; and
 - (f) include appropriate training to its UK-based *employees*, taking into account the seniority or role of such *employees*.
- 18.3.2 G (1) When establishing internal arrangements in line with SYSC 18.3.1R a *firm* may:
- (a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and
 - (b) consult with its UK-based *employees* or those representing these *employees*.
- (2) In considering if a *firm* has complied with SYSC 18.3.1R the *FCA* will take into account whether the *firm* has applied the measures in (1).
- 18.3.3 G (1) A *firm* may wish to operate its arrangements under SYSC 18.3.1R internally, within its *group* or through a third party. Due to potential conflicts of interest the *FCA* does not expect this function to be carried out within the *firm's* Human Resources department or equivalent.
- (2) If the *firm* uses another member of its *group* or a third party to operate its arrangements under SYSC 18.3.1R it will continue to be responsible for complying with that *rule*.
- 18.3.4 G A *firm's* training and development in line with SYSC 18.3.1R(2)(f) should include:
- (1) for all UK-based *employees*:
 - (a) a statement that the *firm* takes the making of *reportable concerns* seriously;
 - (b) a reference to the ability to report *reportable concerns* to the *firm* and the methods for doing so;

- (c) examples of events that might prompt the making of a *reportable concern*;
 - (d) 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
 - (e) information about sources of external support such as whistleblowing charities;
- (2) for all managers of *UK-based employees*:
- (a) how to recognise when there has been a disclosure of a *reportable concern* by a *whistleblower*;
 - (b) how to protect *whistleblowers* and ensure their confidentiality is preserved;
 - (c) how to provide feedback to a *whistleblower*, where appropriate;
 - (d) steps to ensure fair treatment of any *person* accused of wrongdoing by a *whistleblower*; and
 - (e) sources of internal and external advice and support on the matters referred to in (a) to (d);
- (3) for *UK-based employees* of the *firm* responsible for operating the *firm's* arrangements under SYSC 18.3.1R, how to:
- (a) protect a *whistleblower's* confidentiality;
 - (b) assess and grade the significance of information provided by *whistleblowers*; and
 - (c) assist the *whistleblowers' champion* (see SYSC 18.4) when asked to do so.
- 18.3.5 G Where a *firm* operates its arrangements under SYSC 18.3.1R through another member of its *group* or a third party it should consider providing the training referred to in SYSC 18.3.4G(3) to the *persons* operating the arrangements by the *group* member or third party.
- 18.3.6 R (1) A *firm* must, in the manner described in (2), communicate to its *UK-based employees* that they may disclose *reportable concerns* to the *PRA* or the *FCA*, as the case may be, and the methods for doing so.
- (2) The communication in (1) must be included in the *firm's* employee handbook or other equivalent *document*.
- 18.3.7 R *Firms* must ensure that their *appointed representatives* or, where applicable, their *tied agents*, inform any of their *UK-based employees* who are *workers*

that, as *workers*, they may make *protected disclosures* to the *FCA*.

- 18.3.8 G *Firms* are encouraged to invite their *appointed representatives* or, where applicable, their *tied agents* to consider adopting appropriate internal procedures which will encourage *workers* with concerns to blow the whistle internally about matters which are relevant to the functions of the *FCA* or *PRA*.

Link to fitness and propriety

- 18.3.9 G The *FCA* would regard as a serious matter any evidence that a *firm* had acted to the detriment of a *worker* because he or she had made a *protected disclosure*. Such evidence could call into question the fitness and propriety of the *firm* or relevant members of its staff, and could therefore, if relevant, affect the *firm's* continuing satisfaction of *threshold condition 5* (Suitability) or, for an *approved person* or a *certification employee*, their status as such.

18.4 The Whistleblowers' Champion

- 18.4.1 G (1) A *relevant authorised person* is required under SYSC 4.5.25R(1) to appoint an *SMF manager* who will have senior management responsibility that consists of or includes acting as its *whistleblowers' champion*.
- (2) SYSC 18.4.2R requires the appointment by an insurer of a *director* or *senior manager* as its *whistleblowers' champion*.
- (3) This section sets out the role of the *whistleblowers' champion*.
- (4) The *FCA* expects that a *firm* will appoint a *non-executive director* as its *whistleblowers' champion*. Though a *firm* that does not have a *non-executive director* would not be expected to appoint one just for this purpose.
- 18.4.2 R An insurer must appoint a *director* or *senior manager* as its *whistleblowers' champion*.
- 18.4.3 R A *firm* must assign the responsibilities set out in SYSC 18.4.4R to its *whistleblowers' champion*.
- 18.4.4 R (1) A *firm* must allocate to the *whistleblowers' champion* the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the *firm's* policies and procedures on whistleblowing (see SYSC 18.3 (Internal Arrangements)) including those policies and procedures intended to protect *whistleblowers* from being victimised because they have disclosed *reportable concerns*.

- (2) The *whistleblowers' champion* must report:
- (a) at least annually to the *firm's governing body* on the operation and effectiveness of its systems and controls in relation to whistleblowing, see SYSC 18.3.1R. This report must maintain the confidentiality of individual *whistleblowers*; and
 - (b) promptly to the *FCA* any cases the *firm* contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on:
 - (i) detriment suffered as a result of making a *protected disclosure* in breach of section 47B of the Employment Rights Act 1996; and/or
 - (ii) being unfairly dismissed under section 103A of the Employment Rights Act 1996.

- 18.4.5 G (1) The *whistleblowers' champion*:
- (a) should have a level of authority and independence within the *firm* and access to resources (including access to independent legal advice and training) and information sufficient to enable him to carry out that responsibility; and
 - (b) need not have a day-to-day operational role handling disclosures from *whistleblowers*, though the *FCA* expects the holder of this position to be open to direct approaches in appropriate cases.
- (2) Where a *firm* is a *subsidiary undertaking* in a *group* that includes a *parent undertaking* also subject to SYSC 18, it may appoint the *whistleblowers' champion* of the *parent undertaking* as its *whistleblowers' champion* provided it complies with SYSC 4.5.25R(1) and SYSC 18.4.2R, as applicable.
- (3) The *whistleblowers' champion's* report to the *firm's governing body* under SYSC 18.4.4R(2) should include the following information, bearing in mind the need to maintain the confidentiality of *whistleblowers*:
- (a) the number of *reportable concerns* disclosed under the *firm's* SYSC 18.3.1R arrangements since the last report;
 - (b) the *firm's* response to *reportable concerns* disclosed to it, including cases where it took no action;
 - (c) the subject-matter of any *reportable concerns* disclosed to the *firm*;

- (d) the geographical location of any *whistleblowers* and any *persons* against whom a *reportable concern* has been made;
- (e) statistical data, such as age ranges, sex and ethnic background, of *whistleblowers* and any *persons* against whom a *reportable concern* has been made;
- (f) the up-to-date employment status of *whistleblowers*, where known, such as their current role within the *firm* and whether they are still employed in the same status they had when they disclosed the *reportable concern*; and
- (g) information about any *settlement agreements*.

18.5 Confidentiality agreements with employees

- 18.5.1 R A *firm* must include a term in any *employment contract* or *settlement agreement* that makes clear that nothing in such a contract or agreement prevents the *employee* making a *protected disclosure* to the *FCA* or the *PRA*.
- 18.5.2 E (1) A *firm* should include the following term in any *settlement agreement* :
- “For the avoidance of doubt, nothing shall preclude [the employee’s name] from making a “protected disclosure” within the meaning of Part 4A (Protected Disclosures) of the Employment Rights Act 1996 to the Prudential Regulation Authority, the Financial Conduct Authority or, if applicable, to an overseas regulator within the meaning of section 195(3) of the Financial Services and Markets Act 2000. This includes protected disclosures made about matters previously disclosed to another recipient.”
- (2) Compliance with (1) may be relied on as tending to establish compliance with SYSC 18.5.1R.

Annex C

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Supervisory processes and governance

...

2.4 Reporting of breaches

...

- 2.4.2 G ~~SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing)~~ contains further *guidance* on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between *firms* and the FCA requirements on *relevant authorised persons* and certain *insurers* (see SYSC 18.1.1AR) in relation to the adoption and communication of appropriate internal procedures for handling *reportable concerns* as part of an effective risk management system. SYSC 18.1.1CG provides that *firms* not otherwise subject to SYSC 18 may nonetheless wish to adopt the provisions in that chapter as best practice.

Appendix 3

Draft supervisory statement

Draft supervisory statement on whistleblowing

1. Overview

1.1 This supervisory statement applies to UK banks, building societies, credit unions, PRA-designated investment firms and all insurance and reinsurance firms, including third country branch undertakings, within the scope of Solvency II, and to the Society of Lloyd's and managing agents, known together throughout the rest of the document as "relevant firms". This statement sets out the expectations of the PRA on how firms should comply with the PRA's rules on whistleblowing.

1.2 This statement is intended to be read together with the rules contained in the Whistleblowing and General Organisational Requirements Parts of the PRA Rulebook. These Parts require firms to have mechanisms in place to allow employees to raise concerns, which promotes the safety and soundness objective of the PRA. This includes putting internal whistleblowing arrangements in place, informing employees that they can blow the whistle and ensuring that there is an individual who has personal responsibility for overseeing the effectiveness of whistleblowing arrangements (whistleblowing champion).

1.3 This statement sets out the expectations of the PRA for firms in relation to the:

- whistleblowing arrangements;
- training;
- settlement agreements; and
- whistleblowing champion.

2. Whistleblowing arrangements

2.1 The PRA expects that systems and controls put in place to support the whistleblowing procedures required by the rules, and for the procedures themselves, to be subject to inspection by the audit or compliance functions. Internal procedures should:

- ensure the firm protects the confidentiality of whistleblowers, if the individual concerned requests this;
- ensure the firm is able to handle disclosures from people who wish to remain anonymous;
- assess and escalate concerns raised by whistleblowers within the firm as appropriate, and, where this is justified, to the FCA, PRA or an appropriate law enforcement agency (e.g. where information relates to criminal conduct such as insider trading or calls into question the viability of the firm as a going concern);
- track the outcome of whistleblowing reports;
- track what happens to an internal whistleblower to determine whether they are subsequently disadvantaged as a consequence of speaking out;
- provide feedback to whistleblowers, where appropriate;
- prepare written procedures (e.g. staff handbooks, etc.);
- maintain appropriate records; and
- take all reasonable steps to ensure that no person under the firm's control engages in victimisation of whistleblowers, and take appropriate measures against those responsible for such victimisation.

2.2 A larger firm may create an internal specialist unit to handle disclosures and perform some of the above tasks. A firm's arrangements should seek to ensure that there are different methods of communication available to a whistleblower.

2.3 The PRA realises that some firms may use third parties to provide aspects of this service. The PRA expects that firms will consider the quality of the services being offered, and how this can be monitored.

3. Training

3.1 The PRA expects firms to consider whether training can help make their whistleblowing arrangements effective. Training may include:

- **All staff** may receive training about the need to report instances of wrongdoing, the methods for doing so, and examples of events that might prompt a report, and action that might be taken.
- **Managers** may receive tailored training on how to recognise whistleblowing, how to protect whistleblowers and how to provide feedback to whistleblowers.
- The **whistleblowers' champion** may also benefit from specialised training.
- **Staff manning a firm's whistleblowing service** may be trained on how to protect confidentiality, how to assess and grade the significance of information provided by whistleblowers, and how to spot trends.

3.2 Much of this material may also be reflected in a firm's written procedures.

4. Settlement agreements and employment contracts

4.1 A settlement agreement is a legally binding contract that waives an individual's rights to make a claim covered by the agreement to an employment tribunal or court.

4.2 The PRA expects the whistleblowers' champion to play a role in ensuring the firm meets its obligations of providing settlement agreements and employment contracts.

5. Whistleblowing champion

5.1 As part of discharging the requirements of their prescribed responsibility the PRA expects that the whistleblowers' champion will present an annual report to the board, with the firm having discretion as to the content of that document. This should be able to be made available to the PRA at its request.

5.2 As part of their prescribed responsibility the PRA expects that the whistleblowers' champion's responsibilities should include ensuring no person under the firm's control endures detrimental treatment as a result of making a disclosure and that the firm adheres to the requirements related to settlement agreements.

5.3 The whistleblowers' champion should be open to approaches by concerned members of staff, even where the firm has delegated the day-to-day contact with whistleblowers to a dedicated person or team.,

5.4 The PRA expects firms to ensure that the whistleblowers' champion has a level of authority within the firm and access to resources and information sufficient to carry out that function. As a non-executive director, their independence should include being able to manage any conflicts of interest that may arise from fulfilling the role. Having access to resources includes having recourse to independent legal advice and dedicated training.



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



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