

Whistleblowing in UK branches of foreign banks

Response to Consultation Paper 16/25

Policy Statement

PS17/7**

3 May 2017

This relates to

Consultation Paper 16/25 which is available on our website at www.fca.org.uk/publications

Comments or queries can be sent to:

Toby Whitlock
Governance &
Professionalism Policy
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone:

020 7066 1000

Email:

cp16-25@fca.org.uk

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1 Overview

Introduction

- 1.1** People working for financial institutions may be reluctant to raise concerns about bad practice ('whistleblowing') for fear of suffering personally as a consequence. Firms can encourage people to voice concerns by, for example, offering confidentiality to those who speak up.
- 1.2** In 2013, the Parliamentary Commission on Banking Standards (PCBS) recommended that banks put in place mechanisms to support their employees in whistleblowing.
- 1.3** In October 2015, the FCA and PRA introduced new rules requiring banks¹ and insurers to introduce whistleblowing procedures internally. This included requiring that whistleblowing channels be open to all, requiring firms to tell employees about FCA and PRA whistleblowing services, and introducing a Whistleblower's Champion at a senior level within firms.
- 1.4** We then consulted in September 2016² on a proposed approach for extending aspects of this regime to UK branches of overseas banks.
- 1.5** The policy contained in this Policy Statement has been designed in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any changes are required because of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

Who does this affect?

- 1.6** Our new rules affect UK branches of overseas (EEA and third-country) banks.

Is this of interest to consumers?

- 1.7** Whistleblowing is a topic of public interest, so consumers may be interested to know how we are requiring firms to tell their employees about our whistleblowing services.

1 Banks collectively refers to banks, building societies, credit unions and PRA-designated investment firms.
www.fca.org.uk/publication/policy/ps-15-24.pdf

2 www.fca.org.uk/publications/consultation-papers/whistleblowing-uk-branches-overseas-banks



Summary of feedback and our response

- 1.8** We received nine responses to our consultation, including submissions from firms, trade bodies, charities, academics and submissions from the public.
- 1.9** Overall, respondents welcomed our proposals but we also received comments on aspects of the detail. We have considered stakeholder feedback and outlined our response and final rules in this document.
- Annex 1 lists the names of non-confidential respondents.
 - Appendix 1 sets out our final rules.

Equality and diversity considerations

- 1.10** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement.
- 1.11** Overall, we do not consider that the proposals in this Policy Statement adversely impact any of the groups with protected characteristics, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

What do you need to do next?

- 1.12** The final rules set out in this Policy Statement come into effect on 7 September 2017. UK branches of overseas banks will need to ensure that they are ready to implement the whistleblowing rules by this date.

2 Consultation responses

- 2.1** We received nine responses, eight of which agreed with our proposals. Some also commented on aspects of the details.

Proposals to require UK branches of overseas firms to inform relevant staff of FCA and PRA whistleblowing services

- 2.2** We proposed that UK branches of overseas banks tell their UK-based employees about the FCA and PRA whistleblowing services.
- 2.3** Eight respondents commented on this proposal, seven of which agreed with our proposition.
- 2.4** Some also raised additional points, including:
- suggesting that we should mirror the protections in the Public Interest Disclosure Act 1998 (PIDA) for 'reportable concerns' to the FCA
 - that our proposals were too complicated, and that it would be easier to require people to report to their home regulator or head office first
 - that our proposals would encourage firms to become subsidiaries rather than branches in order to avoid our whistleblowing rules

Our response

Given the general support for our proposals, we intend to implement them as consulted on, with one minor change.

On the PIDA suggestion, that legislation provides protections for 'protected disclosures' but not for all 'reportable concerns'. We cannot guarantee protections under PIDA where it does not apply. As a result, we don't want to encourage disclosures on the basis of protections that may not apply in practice.

We already have whistleblowing requirements in place that would apply to a subsidiary based in the UK; therefore a firm cannot become a subsidiary in order to avoid our whistleblowing requirements. We proposed to require a UK branch of an overseas bank that has a sister or parent company that is subject to our whistleblowing rules to tell staff in that branch that they are able to use the sister or parent company's whistleblowing arrangements (see below).



On the suggestion that it would be easier to require people to report to their home regulator first, we have amended the Instrument to introduce guidance reminding branches that they may continue to have concurrent reporting obligations to their home state regulator.

Proposals to require UK subsidiaries in the same group as UK branches to make their whistleblowing channels available

- 2.5** We proposed to require a UK branch of an overseas bank that has a sister or parent company that is subject to our whistleblowing rules to tell its staff that they are able to make use of that (sister or parent) company's whistleblowing arrangements.
- 2.6** We received four comments on this proposal, all of which were in agreement.
- 2.7** One respondent also suggested (as discussed above) that we mirror protections in PIDA for these disclosures.
- 2.8** As outlined in the box above, we intend to implement this as consulted about, given the support for our proposals.

Other comments

- 2.9** One respondent commented on the FCA's internal systems for handling information from whistleblowers. Another suggested that we should share redacted information from whistleblowers in UK branches with any of the firm's relevant overseas regulator(s).
- 2.10** An industry respondent suggested industry best practice would be that whistleblowing should be part of a four-step process, which should include informal and formal disclosure within a firm before approaching a regulator and/or public attention.
- 2.11** Another respondent asked for clarification on whether the requirement applies to all EEA branches or just those involved in certain financial services activities (for example, those engaged in deposit taking and investment business).

- 2.12** Finally, one respondent suggested that we should pay whistleblowers to come forward with information, as in the USA (although they considered the rewards provided there excessive, relative to the information provided).

Our response

FCA internal procedures

The internal procedures of the FCA's whistleblowing systems are outside the remit of this Policy Statement. Further information about how the FCA handles information from whistleblowers can be found on our website³.

Sharing whistleblowing information with other regulators

The FCA already has a variety of arrangements in place with other regulators that facilitate information sharing (including, for example, Memorandums of Understanding, cross-sharing of information and regulatory meetings). Where appropriate and as permitted by law, this may include sharing whistleblowing information.

The FCA is aware of the importance of maintaining confidentiality when sharing information with other regulators.

Industry best practice

We welcome suggestions from industry associations to enhance best practice, and encourage them to work with their members on developing and embedding best practice consistent with the regulatory requirements of SYSC 18.

Application to EEA branches

The new rules apply regardless of what type of financial services activities relevant EEA branches within the scope of the Instrument undertake.

The FCA and paying whistleblowers incentives

We have no current plan to offer incentives to whistleblowers, which is also outside the remit of this Policy Statement.



Annex 1

List of non-confidential respondents

AMFE

BBA

Mercedes Benz Finance and Insurance

Public Concern at Work

Annex 2

Abbreviations used in this paper

EEA	European Economic Area
FCA	Financial Conduct Authority
PCBS	Parliamentary Commission on Banking Standards
PIDA	Public Interest Disclosure Act 1998
PRA	Prudential Regulation Authority

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



Appendix 1

Made rules (legal instruments)

ACCOUNTABILITY AND WHISTLEBLOWING (No 2) INSTRUMENT 2017

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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 7 September 2017.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) of the FCA’s Handbook of rules and guidance is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Accountability and Whistleblowing (No 2) Instrument 2017.

By order of the Board
27 April 2017

Annex

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

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

18 Whistleblowing

...

18.1 Application and ~~Purpose~~ purpose

...

18.1.1A R This chapter applies to:

- (1) a *firm*;
- (2) in relation to the ~~guidance~~ guidance in SYSC 18.3.9G to ~~every~~ every *firm*; and
- (3) in relation to SYSC 18.3.6R and SYSC 18.3.10R, EEA relevant authorised persons and third-country relevant authorised persons only in relation to a branch maintained by them in the United Kingdom.

...

18.3 Internal arrangements

...

Reporting of concerns by employees to regulators

18.3.6 R This rule applies to a firm, an EEA relevant authorised person and a third-country relevant authorised person.

- (1) A ~~firm~~ person subject to this rule ('P') 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 and the methods for doing so. A ~~firm~~ P must make clear that:
 - (a) reporting to the PRA or to the FCA is not conditional on a report first being made using ~~the firm's~~ P's internal arrangements;
 - (b) it is possible to report using ~~the firm's~~ P's internal arrangements and also to the PRA or FCA; these routes may

be used simultaneously or consecutively; and

(c) it is not necessary for a disclosure to be made to ~~the firm~~ P in the first instance.

(2) The communication in (1) must be included in the *firm's* employee handbook or other equivalent *document*.

18.3.6A G For the purposes of SYSC 18.3.6R(1) the possibility for P's employees to disclose reportable concerns to the PRA or to the FCA does not override any obligation of P or its employees to report breaches to P's Home State regulator of matters reserved by an EU instrument to that regulator.

...

Additional rules for UK branches

18.3.10 R (1) This rule applies where an EEA relevant authorised person or a third-country relevant authorised person has:

(a) a branch in the United Kingdom; and

(b) a group entity which is a UK relevant authorised person.

(2) An EEA relevant authorised person and a third-country relevant authorised person must, in the manner described in (3), communicate to the UK-based employees of its UK branch:

(a) the whistleblowing arrangements of the group entity that is a UK relevant authorised person; and

(b) indicate that these arrangements may be used by employees of its UK branch.

(3) The communication in (2) must be included in the branch's employee handbook or other equivalent document.

