

Chapter 2

Recognition requirements

2.5A **Guidance on Public Interest Disclosure Act: Whistleblowing**

Application and Purpose: Application

2.5A.1 **G** This section is relevant to every *UK recognised body* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

2.5A.2 **G** (1) The purposes of this section are to:

- (a) provide *UK recognised bodies* with *guidance* regarding the provisions of PIDA; and
- (b) Encourage *UK recognised bodies* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.

(2) In this section "worker" includes, but is not limited to, an individual who has entered into a contract of employment.

2.5A.3 **G** The *guidance* in this section concerns the effect of PIDA in the context of the relationship between *UK recognised bodies* and the *FCA*. It is not comprehensive guidance on PIDA itself.

Practical Measures: Effect of PIDA

2.5A.4 **G** Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").

2.5A.5 **G** In accordance with section 1 of PIDA:

- (1) a "protected disclosure" is a qualifying disclosure which meets the relevant requirements set out in part 4A of the Employment Rights Act 1996;
- (2) a "qualifying disclosure" is a disclosure, made in the public interest, of information which, in the reasonable belief of the worker 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:
 - (a) a criminal offence; or

- (b) a failure to comply with any legal obligation; or
 - (c) a miscarriage of justice; or
 - (d) the putting of the health and safety of any individual in danger; or
 - (e) damage to the environment; or
 - (f) deliberate concealment relating to any of (a) to (e);
- it is immaterial whether the relevant failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal Procedures

2.5A.6

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- (1) *UK recognised bodies* are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FCA*.
- (2) In considering appropriate internal procedures, *UK recognised bodies* may find the *guidance* provided to *firms* in ■ SYSC 18.2.2 G (2) and ■ SYSC 18.2.2 G (3) helpful.

Link to fitness and propriety

2.5A.7

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In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to, how the *UK recognised body* and *key individuals* have complied with any relevant law (see REC 2.4.3 G (9)).