

Senior arrangements, Systems and Controls

## Chapter 18

# Whistleblowing

## 18.3 Internal arrangements

### Arrangements to be appropriate and effective

18.3.1

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- (1) A *firm* must establish, implement and maintain appropriate and effective arrangements for the disclosure of *reportable concerns* by *whistleblowers*.
- (2) The arrangements in (1) must at least:
  - (a) be able effectively to 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 reasonable measures to ensure that if a *reportable concern* is made by a *whistleblower* no *person* under the control of the *firm* engages in victimisation of that *whistleblower*;
  - (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; 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;
  - (f) include the preparation of the following reports:
    - (i) a report made 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
    - (ii) prompt reports to the *FCA* about each case the *firm* contested but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected

disclosure in breach of section 47B of the Employment Rights Act 1996 or being unfairly dismissed under section 103A of the Employment Rights Act 1996;

- (g) include appropriate training for:
  - (i) UK-based employees;
  - (ii) managers of UK-based employees wherever the manager is based; and
  - (iii) employees responsible for operating the firms' internal arrangements.

18.3.2

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- (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).
- (3) A firm may wish to clarify in its written procedures for the purposes of SYSC 18.3.1R(2)(e)(ii), that:
  - (a) there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes; and
  - (b) nothing prevents firms taking action against those who have made false and malicious disclosures.

18.3.3

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- (1) A firm may wish to operate its arrangements under SYSC 18.3.1R internally, within its group or through a third party.
- (2) Firms will have to consider how to manage any conflicts of interest.
- (3) 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.

**Training and development**

18.3.4

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A firm's training and development in line with SYSC 18.3.1R(2)(g) 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 information about sources of external support such as whistleblowing charities;
- (2) for all managers of *UK-based employees* wherever the *manager* is based:
- (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) all *employees* of the *firm*, wherever they are based, 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.

### Reporting of concerns by employees to regulators

**18.3.6** R This rule applies to an *EEA SMCR banking firm* and a *third-country SMCR banking firm*.

- (1) A *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. P must make clear that:
- (a) reporting to the *PRA* or to the *FCA* is not conditional on a report first being made using P's internal arrangements;
  - (b) it is possible to report using 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 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.

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.

**Appointed representatives and tied agents**

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 *whistleblower*. 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.

**Additional rules for UK branches**

18.3.10 **R** (1) This *rule* applies where an *EEA SMCR banking firm* or a *third-country SMCR banking firm* has:  
(a) a *branch* in the *United Kingdom*; and  
(b) a *group* entity which is a *UK SMCR banking firm*.  
(2) An *EEA SMCR banking firm* and a *third-country SMCR banking firm* 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 SMCR banking firm*; 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*.