



Institute
and Faculty
of Actuaries

CP15/4: Whistleblowing in deposit-takers, PRA-designated investment firms and insurers

IFoA response to the Financial Conduct Authority

20 May 2015

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.



CP15/4 Response
Elizabeth Richards
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

20 May 2015

Dear Ms Richards,

IFoA response to CP15/4 Whistleblowing in deposit-takers, PRA-designated investment firms and insurers

The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the FCA and PRA's joint consultation paper on whistleblowing in deposit-takers, PRA-designated investment firms and insurers. The IFoA's Life and Regulation Boards have led the drafting of this response.

We have answered the questions relevant to the FCA in the response below. We have made the same points (to the questions relevant to the PRA) in our separate response to them.

General Comments

1. The IFoA supports the PRA and FCA's proposals for whistleblowing in the firms within the scope of this consultation. An effective whistleblowing framework helps protect clients, customers and the public, together with safeguarding the firm's reputation. We also welcome the FCA's close working with the PRA on this matter to promote regulatory consistency.
2. The IFoA places a professional requirement on its members to act honestly and with the highest standards of integrity through the Actuaries' Code. To support this, the IFoA has developed guidance on whistleblowing for both actuaries and employers of actuaries. There is significant overlap between this IFoA guidance and the PRA/FCA proposals. For example:
 - confidentiality, and the need to address employee concerns over disclosure, is essential
 - employees and contractors working for the employer should be made aware of the employer's policy on whistleblowing
 - employers must ensure that employees are not penalised for raising genuine concerns
 - employers could consider establishing an Ethics Committee

However, the IFoA guidance differs from the PRA / FCA proposals in some respects, and these areas are covered in the relevant questions below.

3. In addition, IFoA members are required to comply with Actuarial Profession Standard (APS) L2 Financial Services and Markets Act (FSMA) 2000 (Communications by Actuaries)

Regulations 2003. This standard requires certain Life actuaries, including current Actuarial Function Holders and with-profits actuaries, to communicate information on specified circumstances to the PRA or FCA in line with the FSMA regulations.

Question 1: 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?

4. We agree that the whistleblowing requirements should be applied to the firms within the scope of this consultation. All firms face the risk that something could go wrong, and an effective whistleblowing framework could help identify issues before they have an adverse impact on the firm's clients or reputation.
5. For wider FCA firms, including smaller organisations, whistleblowing is as relevant and important as for larger organisations. A proportionate and pragmatic approach to whistleblowing would likely be sensible here, as suggested in the consultation paper.

Question 2: 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?

6. We support the suggestion that UK-based employees are advised of the proposed regulatory whistleblowing services; we have already sign-posted existing FCA guidance within the IFoA whistleblowing guidance referred to above.
7. More generally, we recognise the need for firms to ensure their employees and contractors are aware of the firm's wider policy on whistleblowing.
8. Annexes 6 and 7 give details of the FCA and PRA's proposed whistleblowing services, respectively. The PRA details include helpful information on next steps and obligations on whistleblowers; equivalent information from the FCA perspective may also prove helpful.

Question 3: 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?

9. We agree with this. In the IFoA guidance on whistleblowing, we note that actuaries are expected to raise concerns on any potentially unlawful, unethical or improper course of action. In addition, certain positions held by actuaries also include statutory obligations to report specified information.

Question 4: Do you agree that 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?

10. The IFoA believes that whistleblowing arrangements should be available to all individuals working with a firm, including external contractors, and not be restricted to those protected under PIDA.

Question 5: 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?

11. We agree that settlement agreements and new employment contracts with UK employees should properly reflect the firm's whistleblowing framework. It is important that employees

(and contractors) have the confidence to raise a concern should they feel it appropriate to do so, without the fear of penalty. Firms must also explain the whistleblowing framework to existing employees and contractors.

Question 6: Do you agree with the FCA's proposed treatment of whistleblowing arrangements for staff of appointed representatives and agents?

12. The FCA proposal that appointed agents should not be required to implement a whistleblowing arrangement at the behest of the principal firm, but that instead both parties should co-operate on whistleblowing, seems reasonable.

Question 7: Do you agree with these proposals for the role of whistleblowers' champion?

13. The IFoA supports the proposals for a whistleblowers' champion. In our whistleblowing guidance material, we suggest that firms should allocate a designated senior individual who is responsible for monitoring and following-up on issues raised.
14. We note that the individual appointed as whistleblowers' champion will be taking on a potentially exposed position. This individual will need to have sufficient authority and independence to carry out the role, and a non-executive director could be appropriate. However, firms will need to consider the practicalities of this carefully. For example:
 - a. giving the non-executive director access to an appropriate support framework;
 - b. how the whistleblowers' champion can maintain independence; and
 - c. how the whistleblowers' champion can test effectiveness of the whistleblowing framework, particularly in the absence of any concerns being raised.

Question 8: 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?

15. Annual reporting on the whistleblowing process (and outcomes) would be sensible, and should strengthen a firm's wider governance framework. There should be regulatory oversight of whistleblowing (consistent with the approach to the firm's overall governance arrangements).
16. Individuals must not be discouraged from whistleblowing. We therefore support the proposal not to publicise specific acts of whistleblowing, on the ground that public disclosure could dissuade individuals from raising concerns.

Question 9: Do you agree with our proposed treatment of the role of the whistleblowers' champion in financial groups?

17. This seems reasonable.

Question 10: Do you agree the FCA should require firms to inform it of cases where an employment tribunal finds in favour of a whistleblower?

18. The IFoA supports this proposal. As noted in the consultation paper, this would provide further intelligence to the FCA on the culture prevailing within the relevant firm; we agree that this should be a duty of the designated whistleblower's champion.

Question 11: Do you agree that the FCA and the PRA should not place a requirement on employees to speak up when they see wrongdoing?

19. We think this is a reasonable approach. Employees may feel they face being penalised whatever course of action they take.
20. As mentioned above, the IFoA's Actuaries' Code requires actuaries to act honestly and with the highest standard of integrity. In the IFoA guidance on whistleblowing, we explain that:
- at all times actuaries must be guided by the public interest and their own conscience when considering whether to raise an issue
 - it is important to consider whether there are reasonable grounds to suspect the issue is substantially true
 - actuaries should assess the risks relating to *not* reporting an issue
 - the IFoA encourages actuaries to raise matters of concern, including where there is no specific duty to do so

Question 12: Do you have any other comments on the proposals in this consultation paper?

21. We agree that it would generally be appropriate for a firm's ethics or whistleblowing unit to sit within an Internal Audit function. This would help facilitate audit of the whistleblowing process, including outcomes for the firm and for the whistleblower. However, this would be less appropriate where a firm outsources its Internal Audit function – a common approach with smaller organisations. It is also possible that issues requiring whistleblowing could arise within the Internal Audit function, and firms would therefore need to design their whistleblowing framework to address this risk.
22. We note that the PRA/FCA's proposals aim to formalise firms' whistleblowing procedures. In the corresponding IFoA guidance, we suggest that firms set out and publicise their whistleblowing policy. Such a whistleblowing policy could include:
- clear instructions on raising concerns, including alternative sources of reporting
 - the types of concern the policy relates to
 - specific examples of unacceptable behaviour
 - an undertaking to treat concerns in confidence
 - an undertaking that employees would not be penalised for raising their concerns
 - re-iteration that it would be a disciplinary matter to victimise a bona fide whistleblower
 - the implications of making a false allegation

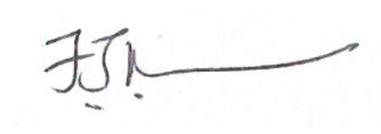
Question 13: Do you have any comments on the FCA's cost benefits analysis?

23. The FCA/PRA proposals on whistleblowing should yield significant benefit to firms, their clients, and society in general.
24. As noted in the consultation paper, many firms have already put a whistleblowing framework in place, although not necessarily a whistleblowers' champion. So the incremental costs of

implementing the PRA/FCA proposals will be lower than otherwise, in such cases.

Should you wish to discuss any of the points raised in further detail please contact Steven Graham, Technical Policy Manager (steven.graham@actuaries.org.uk / 0207 632 2146) in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'FM', followed by a long horizontal line extending to the right.

Fiona Morrison
President-elect, Institute and Faculty of Actuaries