

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

		<p>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;</p> <p>(g) include appropriate training for:</p> <ul style="list-style-type: none">(i) <i>UK-based employees</i>;(ii) <i>managers of UK-based employees</i> wherever the <i>manager</i> is based; and(iii) <i>employees</i> responsible for operating the <i>firms'</i> internal arrangements.
18.3.2	G	<p>(1) When establishing internal arrangements in line with ■ SYSC 18.3.1R a <i>firm</i> may:</p> <ul style="list-style-type: none">(a) draw upon relevant resources prepared by whistleblowing charities or other recognised standards setting organisations; and(b) consult with its <i>UK-based employees</i> or those representing these <i>employees</i>. <p>(2) In considering if a <i>firm</i> has complied with ■ SYSC 18.3.1R the <i>FCA</i> will take into account whether the <i>firm</i> has applied the measures in (1).</p> <p>(3) A <i>firm</i> may wish to clarify in its written procedures for the purposes of ■ SYSC 18.3.1R(2)(e)(ii), that:</p> <ul style="list-style-type: none">(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 <i>firms</i> taking action against those who have made false and malicious disclosures.
18.3.3	G	<p>(1) A <i>firm</i> may wish to operate its arrangements under ■ SYSC 18.3.1R internally, within its <i>group</i> or through a third party.</p> <p>(2) <i>Firms</i> will have to consider how to manage any conflicts of interest.</p> <p>(3) If the <i>firm</i> 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 <i>rule</i>.</p>
18.3.4	G	<p>Training and development</p> <p>A <i>firm's</i> training and development in line with ■ SYSC 18.3.1R(2)(g) should include:</p> <ul style="list-style-type: none">(1) for all <i>UK-based employees</i>:<ul style="list-style-type: none">(a) a statement that the <i>firm</i> takes the making of <i>reportable concerns</i> seriously;(b) a reference to the ability to report <i>reportable concerns</i> to the <i>firm</i> 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 an *overseas 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 <i>firm's</i> employee handbook or other equivalent <i>document</i> .
18.3.6A	G	[deleted]
18.3.7	R	<i>Firms</i> must ensure that their <i>appointed representatives</i> or, where applicable, their <i>tied agents</i> , inform any of their <i>UK-based employees</i> who are <i>workers</i> that, as <i>workers</i> , they may make <i>protected disclosures</i> to the <i>FCA</i> .
		Appointed representatives and tied agents
18.3.8	G	<i>Firms</i> are encouraged to invite their <i>appointed representatives</i> or, where applicable, their <i>tied agents</i> to consider adopting appropriate internal procedures which will encourage <i>workers</i> with concerns to blow the whistle internally about matters which are relevant to the functions of the <i>FCA</i> or <i>PRA</i> .
		Link to fitness and propriety
18.3.9	G	The <i>FCA</i> would regard as a serious matter any evidence that a <i>firm</i> had acted to the detriment of a <i>whistleblower</i> . Such evidence could call into question the fitness and propriety of the <i>firm</i> or relevant members of its staff, and could therefore, if relevant, affect the <i>firm's</i> continuing satisfaction of <i>threshold condition 5</i> (Suitability) or, for an <i>approved person</i> or a <i>certification employee</i> , their status as such.
		Additional rules for UK branches
18.3.10	R	<div><div>(1) This <i>rule</i> applies where an <i>EEA SMCR banking firm</i> or an <i>overseas SMCR banking firm</i> has:<div><div>(a) a <i>branch</i> in the <i>United Kingdom</i>; and</div><div>(b) a <i>group</i> entity which is a <i>UK SMCR banking firm</i>.</div></div><div>(2) An <i>EEA SMCR banking firm</i> and an <i>overseas SMCR banking firm</i> must, in the manner described in (3), communicate to the <i>UK-based employees</i> of its <i>UK branch</i>:<div><div>(a) the whistleblowing arrangements of the <i>group</i> entity that is a <i>UK SMCR banking firm</i>; and</div><div>(b) indicate that these arrangements may be used by <i>employees</i> of its <i>UK branch</i>.</div></div><div>(3) The communication in (2) must be included in the <i>branch's</i> employee handbook or other equivalent <i>document</i>.</div></div></div></div>