

Policy Statement | PS8/17

Whistleblowing in non-EEA UK branches

April 2017



BANK OF ENGLAND
PRUDENTIAL REGULATION
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1 Overview

1.1 This Prudential Regulation Authority (PRA) policy statement (PS) provides feedback to responses for Consultation Paper (CP) 35/16 'Whistleblowing in UK branches'¹ and sets out the final rules (Appendices 1 and 2).

1.2 This PS is relevant to:

- UK branches of non-European Economic Area (EEA) deposit-takers;
- UK branches of non-EEA Solvency II insurers; and
- UK firms that are the UK subsidiaries of non-EEA deposit-takers with a UK branch.

1.3 In CP35/16 the PRA proposed to require:

- UK branches of non-EEA banks and both EEA and non-EEA insurers to inform their workers about the PRA and the Financial Conduct Authority (FCA) whistleblowing services; and
- any non-EEA deposit-taker with both a UK branch and UK subsidiary which is subject to the existing whistleblowing rules, to inform the UK branch staff about the subsidiary's whistleblowing channel. This proposal did not apply to insurers.

1.4 There was broad support for the proposals among respondents to the consultation and the PRA has made no changes to the final rules as a result of the responses received. However, the PRA has decided not to apply the whistleblowing rules to UK branches of EEA insurers as proposed in CP35/16. The change to the scope aligns the rules for insurers with those for deposit-takers. Therefore, the rules will not apply to UK branches of EEA deposit-takers or insurers. The PRA has made minor changes in the final rules to correct referencing.

1.5 Where the final rules differ from the draft in the CP in a way which is, in the opinion of the PRA, significant, the Financial Services and Markets Act 2000 (FSMA) requires the PRA to publish:

- (a) details of the difference (and the PRA's response to representations made to it regarding those changes) together with a cost benefit analysis; and
- (b) a statement setting out in the PRA's opinion whether or not the impact of the rule on mutuals is significantly different to that for other PRA-authorized firms.

1.6 The change in scope for UK branches of EEA insurers will reduce the administrative burden on these firms. The PRA considers there will be a minimal reduction in the benefits of the policy which will be covered by regulation from their home state supervisor. Therefore, the PRA does not consider it necessary to perform another cost benefit analysis. In the PRA's opinion, the impact of the rules as made is not significantly different from the impact of the proposed rules on mutuals or other deposit-takers.

1 PRA Consultation Paper 35/16 'Whistleblowing in UK branches', September 2016: www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3516.aspx.

1.7 The policy contained in this PS has been designed in the context of the current UK and EU regulatory framework. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including changes arising once any new arrangement with the European Union take effect.

2 Feedback to responses

2.1 Before making any proposed rules, the PRA is required by the FSMA to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its response to them.¹

2.2 The PRA received nine responses to CP35/16. The majority of responses supported the proposals. Some respondents asked for clarification and made suggestions to change the policy. This section provides the PRA's feedback to these responses.

2.3 While agreeing with the PRA's proposals for UK branches of non-EEA deposit-takers that are in the same group as UK subsidiaries, one respondent noted that making a disclosure to another member of the group was not equivalent in law with making a disclosure to their own employer. The PRA acknowledges this point, however, the rules have been designed with the protection of whistleblowers firmly in mind. The PRA requires relevant non-EEA branches to inform all workers of what would constitute a protected disclosure;² branch workers should be made aware of the protections afforded by the Employment Rights Act 1996 (ERA) as amended by the Public Interest Disclosure Act 1998 (PIDA). The requirement to make branch workers aware of the subsidiary's whistleblowing channel is intended to ensure that, where branch staff become aware of wrongdoing and can make a protected disclosure, they are aware that they may do so through the subsidiary's internal whistleblowing channel.

2.4 One respondent asked for clarification as to why the rules required firms to inform their workers that they could make protected disclosures to the PRA and the FCA, but not more general reportable concerns. The PRA has adopted this approach as, for the purposes of the ERA, the PRA and the FCA are prescribed bodies, therefore workers making qualifying disclosures to both bodies will receive the protection that the ERA offers. The PRA does not want to encourage individuals to raise concerns through the PRA whistleblowing service that would not benefit from the protection of the ERA.

2.5 One respondent suggested that the PRA should replicate the protections for whistleblowers contained in the ERA in the PRA rules. The PRA can make rules for the firms it regulates, however, the PRA does not have the power to provide legal protection for whistleblowers who raise concerns through a firm's whistleblowing channels. Throughout the process of making rules on whistleblowing, the welfare of whistleblowers has been the PRA's predominant concern, and making such a requirement could encourage those without legal protection to make disclosures potentially putting themselves at risk.

2.6 One respondent disagreed with the PRA's approach to adopting more limited rules with respect to UK branches of non-EEA firms compared with UK firms. As set out in paragraphs 2.11 and 2.12 of CP35/16, the PRA has not directly replicated the rules applicable to UK firms for branches, as not all countries have the same legal protections for whistleblowers as the UK. At all stages of the process for making rules on whistleblowing, the protection of

1 Sections 138J(3);2L; and 138J(4) of FSMA.

2 Internal Governance of Third Country Branches Rule 2A.1(2) of the PRA Rulebook.

whistleblowers has been the predominant consideration, and replicating aspects of these rules could put whistleblowers at risk of dismissal or detrimental treatment.

Appendices

- 1 PRA RULEBOOK: CRR FIRMS; NON-CRR FIRMS: THIRD COUNTRY BRANCHES (WHISTLEBLOWING) INSTRUMENT 2017 available at:
www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps817.aspx**

- 2 PRA RULEBOOK: SOLVENCY II FIRMS: THIRD COUNTRY BRANCHES (WHISTLEBLOWING) INSTRUMENT 2017 available at:
www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps817.aspx**