

Financial Services Authority

Whistleblowing, the FSA & the financial services industry

Feedback on CP101 and made text

April 2002



Contents

1	Executive summary	3
2	Introduction	5
3	Feedback on our approach	7
4	Feedback on the guidance	10
5	Feedback on the information sheet	13
6	Feedback on the proposals to monitor and review policy	15
7	Feedback on other issues	17
8	Cost benefit analysis	22
9	The website	28
10	Date for guidance to come into force and FSA's whistleblowing contact details to be published	29
11	Matters for future consultation	30
	Annex A: Final text of SYSC 4	
	Annex B: Consequential Handbook amendments	
	Annex C: The information sheet	
	Annex D: Frequently asked questions sheet	
	Annex E: List of respondents to CP101	

This policy statement reports on the main issues arising from the consultation on Whistleblowing, the FSA & the financial services industry (CP101). It also contains the final text of chapter 4 of SYSC.

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1 Executive summary

- 1.1 The Public Interest Disclosure Act 1998 (PIDA) is commonly referred to as whistleblowing legislation. It came into being because of a series of well documented incidents. It was designed as a framework to enable workers¹ to make disclosures, which are in the public interest, by giving him or her protection from victimisation by their employer.²
- 1.2 We are convinced that the firms we regulate will benefit from having their own internal whistleblowing procedures.
- 1.3 We published CP101 ‘Whistleblowing, the FSA & the financial services industry’ in July 2001 to draw the attention of the financial services industry to the PIDA.
- 1.4 Following on from CP101, this Policy Statement describes the key issues raised by respondents, gives details on the cost benefit analysis following consultation and records our decisions. The compatibility statement in Chapter 6 of CP101 is unchanged.
- 1.5 The following explains the contents of this paper.
 - Chapter 2 – gives further information on the background to our consultation and our aims when publishing it.
 - Chapter 3 – summarises the overall approval of respondents to the ideas in the consultation and the debate as to whether we should introduce guidance or rules on whistleblowing, together with our response.
 - Chapter 4 – reviews other feedback on the proposed guidance and our response, and shows a table setting out comments received and changes made to the guidance as a result.

1 The definition of ‘worker’ in the PIDA includes, but is not limited to, an individual who has entered into a contract of employment.

2 The definition of ‘employer’ in the PIDA includes the person who substantially determines or determined the terms on which an agency worker is or was engaged and, in the case of trainees on work experience or vocational schemes, the person providing the work experience or training.

- Chapter 5 – covers the proposed information sheet and includes feedback and our response.
- Chapter 6 – is on feedback and our response to how we should monitor and review the efficiency or otherwise of the industry’s implementation of whistleblowing procedures.
- Chapter 7– provides our response to other significant issues raised by the consultation.
- Chapter 8 – cost benefit analysis (CBA) – as noted in CP101, we are not required to publish a CBA where there is no guidance on rules, but we did so as part of the feedback. Respondents all agreed that the costs in setting up whistleblowing procedures are minimal and that there are benefits for both firms and consumers.
- Chapter 9 – a description of what is to be found on our whistleblowing website page.
- Chapter 10 – an explanation of our timetable for publicising our whistleblowing telephone number and email address.
- Chapter 11 – a review of whistleblowing related matters for subsequent consultation, namely introducing Notification Regulations in connection with whistleblowing.

1.6 There was clear support for our approach. So, we intend to give guidance on whistleblowing under section 157(1) of the Financial Services and Markets Act 2000 (FSMA). This will encourage all authorised firms carrying on regulated activities in the UK to adopt, implement and communicate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to our functions. In that guidance, we shall ask firms to consider telling workers that they can blow the whistle to us, as the regulator prescribed for financial services and markets matters under the PIDA. This guidance does not differ in a significant way from the consultative draft.

1.7 We shall also be issuing an information sheet for workers in the industry. It will encourage them to blow the whistle internally in the first instance, but will also give the number for our dedicated whistleblowing line and our new whistleblowing email address. It will be up to firms whether they distribute this sheet to their workers. In any event, we will post it on our website and make it available to the relevant trade unions and to external advisory bodies.

1.8 We will monitor the industry’s response.

2 Introduction

- 2.1 The PIDA came into force on 2 July 1999. It amends the Employment Rights Act 1996. The PIDA creates a framework for whistleblowers across private and public sectors by protecting workers who meet the tests laid down in it for making disclosures of certain information which is in the public interest. It also allows such individuals to bring a legal claim for victimisation.
- 2.2 The PIDA encourages disclosures to the employer through its tiered approach. Only the simplest test needs to be satisfied for protection to apply when the disclosure is made to the employer. There are several benefits to a firm in having whistleblowing procedures in place which are known to and understood by the workforce:
- they help to deter malpractice;
 - they increase the likelihood of senior management being alerted to problems in time to prevent serious damage; and
 - they reduce the likelihood that the reasonableness test¹ will be satisfied should workers make a “wider disclosure”, for example to the media.
- 2.3 We will always be ready to receive information, whether from the industry or from consumers: this is integral to our role as a regulator. We are also one of the bodies prescribed under the PIDA to which protected whistleblowing disclosures may be made if the specified test is met (see information sheet at Annex C).
- 2.4 It was against this background that we decided last year to publish CP101 ‘Whistleblowing, the FSA & the financial services industry’. We have been

¹ Please note that the PIDA does not lay down the reasonableness test for blowing the whistle to a prescribed body such as the FSA (see FSA response to paragraph 3.4).

encouraged by the responses received and are convinced of the merits of encouraging firms to have whistleblowing procedures. This will have the benefit of persuading a worker to blow the whistle internally, so that senior management will not be the last to know about a potential problem and the employer is helped to achieve an effective risk management system at little cost.

3 Feedback on our approach

General approach

- 3.1 More than half the respondents gave a warm, general welcome to the paper (“an important contribution to raising consciousness within the financial services industry about the provisions of...PIDA”; “we are supportive of the proposals which are positive for the profession and very much in the public interest”; “I am in complete agreement with FSA’s proposals as contained in CP101, and believe them to be a sensible and proportionate response to PIDA” etc).
- 3.2 Half the respondents noted in particular their support for CP101’s emphasis on internal whistleblowing. Some noted that they already had whistleblowing procedures, others that the CP had encouraged them to introduce some. Only one respondent was critical, “Fundamentally, therefore, despite the encouragement, the environment that will emerge is not likely to give confidence to individuals to make sensitive disclosures in the knowledge that they will be protected and not victimised.”

Misunderstandings of the PIDA

- 3.3 Several respondents stated that the protection, under the PIDA, is only applicable where the whistleblower reasonably believes the information and any allegation in it are substantially true.

FSA’s response: this is correct where the concern is raised with us. But, there is a lower evidential test, that of reasonable suspicion, when the concern is raised within the firm.

- 3.4 The other misunderstanding was that workers who fail to use an employer’s internal whistleblowing procedures and come to the FSA are unlikely to satisfy the reasonableness test, which is a condition of the PIDA protection.

FSA’s response: our policy, based on the PIDA, is to encourage all whistleblowers to exhaust their firm’s internal procedures before approaching us, but we will not refuse to listen to a whistleblower who does not want to disclose to his employer. The reasonableness test is applicable in the case of a worker who makes a “wider disclosure”, that is not to us as a prescribed body under the PIDA. For example, if they contact the police, an MP, the media or a non-prescribed regulator, the reasonableness test is one limb of the higher test the worker has to meet to enjoy protection under the PIDA.

Guidance v rules

- 3.5 Of those who expressed a view on whether we should achieve our aims through guidance rather than rules, opinions were fairly evenly divided. Three of those in support of guidance felt this was the right approach initially, while one thought it would always be inappropriate for rules in this area. Another was concerned that the comments in CP101 might mean firms felt that they effectively had little choice, other than to treat the guidance as rules. It was suggested it might be helpful for us to state explicitly that it was only guidance and why.
- 3.6 Three respondents, on the other hand, felt strongly that it was now time to require firms to adopt appropriate whistleblowing procedures. One suggested that we should differentiate between small and larger firms, with guidance for the former and a rule for the latter.
- 3.7 A fourth respondent noted that “if the fitness and propriety of a firm or a member of staff may be called into question where a firm acts to the detriment of a worker who had made a protected disclosure (and we would not disagree with this) we would have thought that this needs to be highlighted somewhere else in the rules and not just be part of a guidance note on whistleblowing.”

FSA’s response: we still believe that guidance rather than rules is the more appropriate approach, at least initially. We have chosen to give guidance rather than rules because guidance respects the role of senior management to manage the affairs of their businesses in the most appropriate way. We have no grounds to consider that a prescriptive approach is necessary to achieve the purposes of this guidance, at least at this stage.

- 3.8 We think it right that this approach should apply to all firms, regardless of size. If, at a later date, we conclude that a more prescriptive approach is necessary, we will bear in mind the suggestion that rules might only apply to larger firms, with guidance continuing to apply to small firms.
- 3.9 As to how we propose to respond to firms who act to the detriment of a worker who has made a protected disclosure, it is not entirely clear whether

the respondent was advocating a rule or simply commenting on Handbook location.

- 3.13 The guidance (see Annex A) will be Chapter 4 of SYSC (Senior Management Arrangements, Systems and Controls). As far as highlighting the provision on fitness and propriety elsewhere in the Handbook is concerned, we do not (in the Threshold Conditions or the Fit and Proper Test for Approved Persons) give other examples of matters which could call into question continuing fitness and propriety. However, there will be amendments to the Handbook as a result of the guidance(see Annex B).

Request for greater direction from us

- 3.14 A few respondents were in favour of our being more prescriptive. One suggested it would be helpful if we were to initiate the development of a general Code of Conduct on behalf of businesses generally with the government.

FSA's response: We are drawing the attention of the Department of Trade and Industry to this comment and to the others on the PIDA which we received through the consultation process. However, we are required under the FSMA to use our resources in the most efficient and economic way to meet the statutory objectives we have been given. This would normally rule out our becoming involved in initiatives focused more widely than the financial services industry.

- 3.15 Another respondent suggested that we should act in an advisory capacity to both employers and workers on the PIDA provisions.

FSA's response: in our view it would be inappropriate for us to take on such a role: we are not (and neither should we be) employment law experts. Suitable specialist experts already exist in the charitable sector. Names of some of them are to be found in the list of respondents to the CP in Annex E.

The information sheet and launch of the direct line

- 3.16 Our proposals, on launching the direct line, were endorsed. In particular, the emphasis we plan to put on the employer ordinarily being the first port of call and on our being interested in matters of recent history rather than issues from the distant past was well received. There was also, generally speaking, approval of our flexible approach to using the information sheet.

4 Feedback on the guidance

- 4.1 There were a large number of comments on the guidance. Where they relate specifically to provisions in the guidance they are to be found in the table at the end of this chapter. The other principal points raised were:
- 4.2 ...a request for guidance on dealing with whistleblowing against senior management.

FSA's response: we think there is already enough flexibility in what we are proposing (including the changes we are making because of other feedback comments) to cater for this. Firms will be encouraged by our guidance to:

- give workers a choice of, at least, one person in the organisation with whom they can raise a concern outside the line management structure;
- give them access to an external body for advice; and
- tell them that they can also blow the whistle direct to us. This last aspect may be the strongest safeguard in this particular circumstance.

- 4.3 ...a steer on steps to bring procedures to the attention of workers (examples given were: reference to the firm's policy in each worker's contract of employment/ engagement; publication in worker handbooks; on an intranet site with other policies relating to employment issues; posters in the workplace; policy statements; mission statements; and a code of practice).

FSA's response: the right approach will vary from firm to firm, but these are all helpful suggestions. In small firms, this could be done by displaying an information sheet at key sites around the organisation, with a note to all staff drawing attention to it. This could be followed by a periodic email reminding workers of the firm's policy.

- 4.4 ...whether small firms in a particular sector could centralise their arrangements in some way.

FSA's response: we see no reason to object to such arrangements, provided there is no confusion on the part of either the employer or the worker over the circumstances in which the PIDA protection will or will not apply to the disclosure.

Other changes to the draft guidance

- 4.8 The guidance in Annex A encourages communicating procedures to workers (4.1.2G1(b)), refers to appointed representatives (4.2.2G(1)) and links the guidance to disclosures about matters which are relevant to our functions (4.2.2G(1) and 4.2.3G).

The guidance

Draft text	Comments received	Final text	Substantive change made or other comment
X.1.1.G X.2.2.G	We should only entertain whistleblowing complaints where we are the primary regulator for the firm and where the issue relates to an approved person or to business by an authorised firm carried out in, or from, the UK.	4.1.1G 4.2.2G	The guidance will apply to all firms in the UK to the extent that the PIDA applies to them, whether or not we are the primary regulator. The matters for which we are prescribed are set out in the Public Interest Disclosure (Prescribed Persons) Order 1999, see www.hmsso.gov.uk/si/si1999/19991549.htm .
X.2.1G(1)	Clarify that gagging clauses, which are inconsistent with the PIDA, will trigger protection for a wider disclosure where they give worker reasonable belief they will be victimised.	4.2.1G(1)	No change: it is not for us to advise on the effect of the PIDA.
X.2.1G(2)(b)	Give examples of issues and guidance on how they could be dealt with.	4.2.1G(2)(b)	No change (giving examples can mean ones not mentioned are overlooked). But for the avoidance of doubt, a breach of our rule is a failure to comply with a legal obligation.
X.2.2G(2)(b)	Give examples of financial crime and malpractice.	4.2.2G(2)(a)(i) 4.2.2G(2)(b)(i)	Cross-reference now made to 4.2.1G(2)(b).
X.2.2G(2)(c)	If a worker requests that their name is not disclosed to others without their prior consent, this will not mean others will not guess their identity but it will mean that, if they want to claim PIDA protection, they will need to show that their employer knew who it was.	4.2.2G(2)(a)(iii) 4.2.2G(2)(b)(iii)	No change: it is not for us to advise on the effect of the PIDA.

Draft text	Comments received	Final text	Substantive change made or other comment
	Include an unequivocal statement that we will withdraw authorisation/ approval from any firm person who acts to the detriment of a worker who has made a protected disclosure. Otherwise whistleblowers may hesitate to come forward.	4.2.2G(2)(a)(iv) 4.2.2G(2)(b)(iv)	It would not be appropriate to make such a sweeping statement: any such case would need to be considered on its merits and proportionate action taken. To encourage whistleblowers to come forward, we have added a new element to the recommended procedures: firm to take all reasonable steps to ensure no person under its control engages in victimisation.
X.2.2G(2)(d)	How can one satisfy the 'requirement' to allow whistleblowers to raise concerns outside the line management structure?	4.2.2G(2)(a)(v) 4.2.2G(2)(b)(v)	Guidance now gives examples of suitable postholders. (Preferably a choice of more than one such contact should be given, from separate parts of the firm.)
X.2.2G(2)(e)	Give examples of appropriate penalties	4.2.2G(2)(a)(vi) 4.2.2G(2)(b)(vi)	No change: this is a matter for senior management.
X.2.2G(2)(f)	Give steer on proper way to raise concern outside the firm if necessary.	4.2.2G(3)(a)	Already in the guidance.
X.2.2G(2)	Add Lord Nolan's two subsequent recommendations.	4.2.2G(2)(a)(viii) & (ix) 4.2.2G(2)(b)(viii)	Now included. ¹
X.2.2G(3)	Framework for small firms would be helpful.	4.2.2G(b)	Now included, drawing on Practical Hints for Small Organisations from Public Concern at Work.
X.2.2G(4)(a)	Clarify that allegations to us should be as precise as possible and supporting evidence should be given.	4.2.2G(3)	No change: there is no such requirement under the PIDA.
X.2.3G	There may be good reasons why a firm takes action against a worker who has made a protected disclosure so change text to: "We would regard as a serious matter any evidence that a firm had acted <i>unjustifiably</i> to the detriment of..."	4.2.3G	We recognise some merit in the concern, though consider the proposed solution too subjective. Following change made: "...as a serious matter any evidence that a firm had acted to the detriment of a worker because he had made a protected disclosure..."

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5 Feedback on the information sheet

- 5.1 We received numerous suggestions about the content of the information sheet. The following are the main comments.
- 5.2 Four respondents asked for clarification/amplification of the use of the phrase “financial irregularity or compliance issue” to describe our remit under the PIDA. One was concerned that it might lead to very trivial matters being raised.

FSA’s response: we have replaced that phrase with “possible wrongdoing at work” as one which we think will be clearer. In addition, the further information we are now giving about the legislation will help the worker to realise that the PIDA is about blowing the whistle in the public interest, and not about trivia.

- 5.3 The phrase “it can be difficult to know what to do even in the best-run organisation” was criticised because the “best run organisations are likely to have procedures in place which are well communicated and easily accessible”.

FSA’s response: we accept this argument and have removed the phrase.

- 5.4 We were asked to include the definition of qualifying disclosure under the PIDA and to spell out the test for making internal disclosures.

FSA’s response: we have included both in the revised sheet.

- 5.5 Several respondents specifically welcomed the information sheet, but noted that its usefulness depended on workers seeing it. Suggestions on how this should be done varied: employers making it available to their workers, use of our website, or issuing the sheets primarily for use by external advisory bodies to whom workers may turn for advice. One respondent stated that “it is unlikely that an authorised firm who has not set up whistleblowing procedures will be encouraged to distribute the FSA’s information sheet given that there is no requirement to do so”.

- 5.6 Two respondents welcomed the fact that the information sheet would not be compulsory and another said they would not support the display in offices as

“we would not want to confuse staff or thwart the intention of the PIDA through focusing attention on FSA-related disclosures. However we would support FSA issuing the fact sheet on request.”

FSA’s response: CP101 and the draft guidance mentioned a number of outlets that we are planning to use. In particular, we shall be putting the information sheet on our website (see Chapter 9).

6 Feedback on the proposals to monitor and review policy

- 6.1 Generally, the idea of monitoring and reviewing the industry's arrangements was well received. None of those who commented on this point, however, considered that we should judge the effectiveness of the industry's arrangements as a whole, by asking firms about their internal procedures after one of their workers has made a disclosure to us. This was because it was thought likely to be firms with inadequate internal procedures whose workers would contact us.
- 6.2 Instead, it was suggested variously that:
- monitoring should be part of the ongoing supervision of a firm;
 - the information should be sought from firms on a random basis, perhaps through a survey; or
 - that firms should be required to report routinely how often their whistleblowing procedures have been used each year and whether problems have been satisfactorily resolved.
- 6.3 Respondents wanted the monitoring and review redirected and extended to cover:
- how to improve the effectiveness of current procedures;
 - the allegations and, in particular;
 - the extent to which they were well founded,
 - investigations establishing minor issues following serious allegations,
 - whether the allegation appeared to have been made without reasonable belief that it was substantially true,
 - the number of calls from malicious disclosers, and
 - the number from serial disclosers;

- how the allegations were processed by us;
- the effectiveness of our arrangements in response/overall;
- correlation between problems in firms and the existence or otherwise of a policy; and
- why any substantial problem was not picked up earlier through systems and controls such as a whistleblowing policy.

6.4 It was suggested that the review should take place after two years. There were also requests for us to make public our findings and the success/effectiveness of our arrangements. More specifically there was a request for further guidance in the future on what we consider would amount to “appropriate internal procedures” and, generally, how the effectiveness of current procedures could be improved across the industry.

FSA’s response: we were grateful for all the suggestions made. We also accept the validity of the comment about not judging the industry on the basis of the employers of the whistleblowers who come to us. We are likely to:

- consider whistleblowing in our general work on our requirements for information from firms. Firms could notify us periodically on whether they have any procedures, how often any whistleblowing procedures have been used and on whether the problems identified have been satisfactorily resolved (see Chapter 11);
- post a questionnaire on our website for workers to complete, indicating their awareness, or otherwise, of whistleblowing procedures in their firm (see Chapter 9);
- publish some statistical analysis of whistleblowing calls to us on our website as part of our Annual Report; and
- review the effectiveness of both the industry’s and our arrangements. This will be when data relating to the industry is available.

7 Feedback on other issues

How to encourage whistleblowers to come forward

- 7.1 One or two respondents felt we should be doing more to encourage whistleblowers to come forward. There was also a suggestion that we should promote the PIDA through our newsletters and/or through a specified internet address, because “the major problem with the legislation is that many businesses are simply unaware of it. Without increased publicity, the effectiveness of the legislation will be limited.”

FSA’s response: The CP has already raised awareness in the industry. Publishing this Policy Statement, the new dedicated page on our website (see Chapter 9) and the launch of our whistleblowing line should continue this process. As far as the individual worker who is considering blowing the whistle is concerned, it is probably the package of measures, rather than one particular issue, which will encourage him to come forward. Where a firm has followed our guidance, the key points of encouragement for whistleblowers will be that:

- workers will be aware of the firm’s whistleblowing procedures which will include a statement about protection against victimisation; (Annex A 4.2.2G(2)(a)(iv) and 4.2.2G(2)(b)(iv))
- workers will know they can take advice externally; (Annex A 4.2.2G(2)(a)(viii) and 4.2.2G(2)(b)(viii))
- workers will know they have a number of routes for blowing the whistle, which gives them the maximum flexibility for doing so in the way they feel most comfortable; (Annex A 4.2.2G(2)(a)(v) and (vii), 4.2.2G(2)(b)(v) and (vii))and
- workers will know that they can blow the whistle to us; (Annex A 4.2.2G(3)(a)).

Views on whistleblowers contacting us

- 7.2 Two respondents said they would be reluctant to include a reference to us and our telephone number in the firm's procedures. One went so far as to suggest that our whistleblowing number should only be given if there were a requirement for the firm's procedures to be used first and that we should insist on good reasons being given if this procedure were not followed. A few respondents had strong views on whistleblowers being required to exhaust internal mechanisms before we would listen to their disclosure. "Reason and natural justice would suggest that a whistleblower should not be able to go to the regulators until he had exhausted the procedures of his firm, or can show good cause as to why it would be inappropriate to use his firm's procedures." Others suggested the whistleblower should give us evidence of this.

FSA's response: we think the policy in the CP, based closely on the framework of the legislation, is the right approach. We will encourage all whistleblowers to exhaust their internal mechanisms before disclosing to us, but we will not refuse to listen to a whistleblower who does not want to disclose to his employer. It is better that the whistleblower speaks to us than telling no one or inappropriately making a wider disclosure (eg to the police, an MP or the media). The PIDA provides for a slightly higher test for disclosures made to us, rather than to the firm. The changes we have made to the information sheet make this clear (see Annex C). We see no reason to introduce other hurdles for the whistleblower. This is because, were we to do so, we would run the risk of the whistleblower being misled about the options available to him under the law. It is also because we think it very important that the whistleblower who is genuinely concerned about malpractice in the workplace, but reluctant (for whatever reason) to blow the whistle internally, has a safe alternative. We would hope that firms would share this view.

How we shall handle disclosures

- 7.3 There was support for centralisation for our own arrangements, but a query as to whether our staff would be specially trained.

FSA's response: they are.

- 7.4 All respondents who mentioned **recording of calls** thought that this should be done through an efficient logging system. One suggested all calls should be taped.

FSA's response: We keep confidential written records of calls for three years in case of future query. We tape most calls and we make all reasonable efforts to let callers know we are doing this. We do so to ensure we have caught all the information correctly. The tape is only kept long enough to enable us to make a proper written record of the information reported. If the caller asked us not to tape the conversation, we would respect his wishes.

- 7.5 It was suggested that, to reduce any misunderstandings when reporting an allegation, and as an alternative to our taping the calls, workers should be encouraged to make the **disclosure in writing**.

FSA's response: we would be reluctant to do anything which might deter the whistleblower from making a disclosure, though we may ask for written information once the whistleblower has outlined his concern.

- 7.6 One respondent was concerned that we should not get drawn into dealing with issues which were more like a **grievance** dispute than PIDA whistleblowing. Another was concerned that inside information about malpractice in a company from **consumers** should not be overlooked and attention only given to the complaint they were making.

FSA's response: whistleblowing disclosures often have several aspects to them, but we are experienced at distinguishing between public interest issues and personal grievances. We recognise that sometimes a consumer may have valuable information which is of public concern, rather than restricted to any personal complaint they may have. This is not a matter for our new whistleblowing line but we do consider this information separately and decide whether regulatory action is needed.

- 7.7 A number of respondents asked how we would treat **allegations which appeared to have been made maliciously** or which lacked credibility, particularly where the person concerned was an approved person.

FSA's response: we already receive extensive disclosures and complaints from a wide variety of sources and are well used to assessing the merits of each one for further investigation. As far as whistleblowing by the industry is concerned, malicious calls are the exception. We would not normally be able to impose any sanctions on such callers but we would obviously be wary of further disclosures from the same source.

- 7.8 There were several comments on **confidentiality**. It was important, one said, that the utmost be done to maintain confidentiality both for the protection of the individual and also so as not to raise concerns unnecessarily about the institution concerned until any claims had been properly substantiated.

- 7.9 Two others drew attention to the statement in the CP that we could not give any categorical assurances to the whistleblower on confidentiality, since circumstances may be such that disclosure of identity becomes unavoidable in law. One thought this undermined our proposals, the other thought that, provided the prospective whistleblower was aware, it would encourage the worker to use his firm's procedures rather than coming to us.

FSA's response: after considering these responses and our own responsibilities under the FSMA, our position on whistleblowers' confidentiality is that we undertake to treat the whistleblower sensitively and do our best to protect the whistleblower's identity, if desired. But we cannot give any categorical assurances on confidentiality since circumstances may be such that disclosure of identity becomes unavoidable in law or is otherwise necessary to meet our statutory objectives.

- 7.10 A few respondents wanted to know how we would inform or involve the firm concerned. It was suggested that the first step should be for us to write to the firm with precise details of the allegation, giving the firm an opportunity to respond. Another respondent wanted to know whether the Compliance Officer would be the contact point for such disclosures.

FSA's response: we think it important to have maximum flexibility in the way we respond to whistleblowing disclosures to take account of the circumstances and sensitivities of the case and the concerns of the whistleblower.

Treatment of firms who act to the detriment of workers who have made protected disclosures

- 7.11 The only critical response we received to the CP suggested that one of the factors undermining our proposals was the lack of specificity about what we would do if a firm acted to the detriment of a worker who had made a protected disclosure.

FSA's response: we cannot be more specific, since how we respond to these firms will depend on the seriousness and circumstances of the case, as well as other circumstances concerning the firm. The requirements to be considered are Threshold Condition 5 (suitability) and the principles concerning a firm conducting its business with integrity (Principle 1) and taking reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3).

- 7.12 In any event we would want to know about the PIDA actions taken to employment tribunals against authorised firms. We plan to consider in general work on our requirements for information from firms, whether this should be a notifiable event (see Chapter 11).

Relationship with other disclosure obligations and initiatives

- 7.13 One respondent felt that we should explain the relationship between these proposals and the obligations on certain individuals (for example directors of regulated firms) and entities (for example auditors) concerning whistleblowing.

FSA's response: in CP101, we stated that nothing we were proposing applied to the normal day-to-day relationship between us and regulated firms. Elsewhere in the CP, we referred to the disclosure obligations under Principle 11 for businesses and Principle 4 for approved persons.

- 7.14 This material sets out the position that applies generally to all workers in authorised firms. For auditors and actuaries of firms we regulate (or of firms

connected with such a firm) there are specific arrangements in sections 342 and 343 of FSMA. These require auditors and actuaries to blow the whistle to us in certain circumstances, and in return give certain protection to the auditors and actuaries. The circumstances can be found in the Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 and the Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2002 and are not dealt with further in this paper.

- 7.15 Also, please note the proposals in this Policy Statement do not cut across our arrangements for Market Abuse queries, announced last November. If an individual wants to blow the whistle about a potential market abuse matter, they should contact the market abuse helpline (020 7676 4900) in the first instance. Those running that helpline will liaise with colleagues logging whistleblowing calls.

8 Cost benefit analysis

Our approach

- 8.1 The proposals in CP101 will have a financial impact in three areas:
- The cost to firms of introducing and resourcing internal whistleblowing procedures. This will include the cost of alerting workers to these arrangements and to the protections offered by the PIDA, where they decide to introduce procedures because of the guidance.
 - The cost to us of receiving and dealing with whistleblowing calls resulting from this awareness exercise. There will also be the costs to us for implementing the proposals initially. These should be minimal.
 - The costs to firms who already have systems, but choose to update them to follow the guidance.
- 8.2 We have gathered information from the nine responses to CP101 which commented on costs, and put a brief questionnaire, about costings and experiences, to the FSA Practitioner Panel and the Small Business Practitioner Panel. Further information on costs came from Public Concern At Work ('the charity'), an independent whistleblowing charity, which was identified by many respondents as their guide for such matters.

Costs

Direct costs to us

- 8.3 We already have a dedicated telephone line and email address to receive disclosures. Although the information sheet emphasises that we should not be a worker's first port of call, we expect that there will be a threefold rise in the number of enquiries made to us. During the following six months, we expect the number of calls to decrease, as firms' internal procedures become more

established. We plan to meet the initial rise in calls by sharing work with existing staff employed on other Authorisation Enquiries work. The total opportunity cost of this could be up to £75,000. If we require further resources, we expect that they will be made available. This could cost us between £13,000 to £40,000 depending on the complexity of the extra calls.¹

- 8.4 We have estimated that the total amount of work undertaken to implement the new guidance and information sheet is equivalent to one full-time member of staff working for one year. So, working on whistleblowing procedures has cost us £90,000.² A further cost will be incurred in monitoring the industry's response to this guidance. We have allowed 30 person-days for this, which will cost us £11,000.

Cost to firms

- 8.5 We identified two areas of costs to firms of complying with the guidance and introducing whistleblowing procedures:
- setting up costs, which include reviewing current procedures, awareness and training, management time, consultancy fees; and
 - continuing costs, which include management time, adequate recording of complaints made, monitoring the systems.

We have also looked at the costs to firms who already have systems, but then update them to follow the guidance.

Costs to firms without procedures: set-up costs

- 8.6 Setting up arrangements to receive disclosures internally would have minimal costs. The charity can carry out a review of policy and strategy within firms and also offer training of senior managers and designated whistleblowing officers. These services currently cost £2,500 each, but are tailored to suit each firm's needs and size.
- 8.7 Alternatively, a firm could use an external agency to receive disclosures on its behalf and then pass them back to management.
- 8.8 Using external phonelines can be free, but some firms may wish to customise the service. One respondent said this cost £1,000 minimum, plus a donation to a whistleblowing charity (estimated at £2,000) bringing the estimated cost of setting up an external line to £3,000.

1 These figures are based on the composite hourly charge out rate (including all overheads) of £52 (taken from our internal data). Currently 20 calls are received a month. With a threefold rise to 60, the opportunity cost could be up to £75,000 (assuming a maximum of six hours is spent on each call). A fourfold increase in calls may take between 250-750 hours in extra work for extra staff in the next six months.

2 Based on internal data, we estimate a person-year costs £90,000, including salary, National Insurance contributions and overheads.

- 8.9 Responses to our questionnaire also show that 20% of large firms pay an annual subscription for a package of information, support and training such as that offered by the charity, which is estimated to cost £5,000. This includes a policy audit, in-house training sessions and publicity materials.
- 8.10 To communicate their procedures to workers, some respondents have used their intranet sites and staff handbooks, which have minimal cost impact. Others have designed and distributed booklets, which one respondent estimated to cost £10,000. Smaller firms may alternatively use resources such as the charity's Policy Pack, costing £360, to implement and communicate their policies, which would lower their costs significantly.
- 8.11 As one respondent highlighted, the main set up costs for firms will be in management time, which will depend on whether they generate policies internally or use external sources, and how many workers they have to communicate procedures to. The charity estimate that to use their Policy Pack to introduce procedures will take a day's work. Other respondents suggested that the costs were "hundreds rather than thousands of pounds".
- 8.12 **Costs to small firms** will be much lower. The guidance points to the charity's guidelines for small businesses. The charity also provides a Policy Pack with booklets, guides, presentations and a CD-ROM. This costs £360.

Costs to firms without procedures: continuing costs

- 8.13 These will consist mainly of management time, as well as training, communications and subscriptions to external whistleblowing services.
- 8.14 Some management time will be spent maintaining and monitoring whistleblowing systems every year. This will be the only cost, as using an external phone line system can be free. However, research has shown that some larger firms pay for an advice and support service and others pay for their external phone line system. Based on responses from firms, we estimate this costs them £5,000 a year.
- 8.15 There will also have to be training on the procedures for new arrivals to a firm. But respondents indicated that the policy was included in the overall new starter induction, and that this does not incur any significant material extra expense.
- 8.16 **Running costs for small firms** will mainly involve monitoring and awareness training. But small businesses that responded to the questionnaire all believed that the costs were minimal.

Firms which already have procedures in place

- 8.17 There is very little accurate information about how many firms already have internal systems. Those that do will have extra costs if they wish to alter their

procedures to follow the guidance. However, we expect that such firms would review their procedures yearly (and will be encouraged to do so by our monitoring of progress) and incorporate any changes at that time. Some respondents to CP101 who already have procedures in place may wish to make minor alterations, but these would incur little cost because these firms' existing whistleblowing procedures are not dissimilar from those proposed in CP101. The major costs fall on those firms without procedures.

Indirect costs

- 8.18 Innovation could be impaired if firms fear that workers will blow the whistle on new products and services that are close to the boundary of what regulations allow. However, we expect adverse effects on innovation to be negligible, as whistleblowing procedures will encourage a more open relationship between firms, their customers and us.

Benefits

- 8.19 We have identified two types of benefits. The guidance is expected to bring wider benefits to consumers as well as benefits for firms themselves. A perceived increase in the quality of products and services, and a greater detection of fraudulent and other financial service malpractice, may mean that the guidance will help to increase market confidence.
- 8.20 If a worker makes a wider disclosure and fails to use an internal whistleblowing procedure, they may fail the reasonableness test for protection under the PIDA. So the worker may not be entitled to the (unlimited) compensation available under the PIDA. It follows that firms without internal procedures may have higher potential costs from tribunals (see paragraph 7.12 above), though cases can still go to a tribunal under the PIDA even where firms have procedures in place. So, potentially there will be lower costs for firms following the guidance because of a lower number of cases going to tribunals.
- 8.21 Applications to a tribunal cost firms on average £2,000 each in management time and resources, although this figure may vary widely depending on the complexity of the case and the advice the employer seeks. Firms may also pay defence costs (though they do not have to be legally represented). In cases of unfair dismissal, the costs of recruiting a new worker is, on average, £3,500, including management time, (which does not include the lost investment in training the departed worker). So, the total cost of going to tribunal and

finding a new worker averages £5,500.³ There is also the unquantifiable cost of damage to reputation. If firms with procedures can avoid these costs, they can devote resources to providing extra services or lowering the prices of their products, maintaining a consumer surplus, and potentially benefiting themselves and consumers.

- 8.22 The unlimited compensation available under the PIDA may encourage some workers to use whistleblowing concerns to negotiate a beneficial private settlement where a firm has no internal procedures. Internal whistleblowing systems will reduce the risk that workers can disrupt and waste firms' resources with these vexatious claims.
- 8.23 A whistleblowing policy will improve the trust and confidence among workers by creating what one respondent called a "culture of honesty and openness" by encouraging workers to report internally. This was seen as "good for the morale of the workers", giving them confidence to come forward with concerns. Senior managers will be the first to know of any issues that they may need to address. These can be dealt with internally. This also means that the costs of investigating any problems, such as fraud, are reduced as problems may be caught quickly. The management time and resources saved mean that whistleblowing procedures are a cost-effective early warning system for firms. One respondent highlighted that firms with procedures perceive that they create a better working environment, while also reducing risk, so giving them a competitive advantage.
- 8.24 Introducing whistleblowing procedures should help increase consumer and market confidence, as greater detection of fraudulent and other malpractice are dealt with. This will increase consumer confidence in the financial system and institutions. With procedures in place, consumers may have more confidence in firms and this may result in increased sales. Linked to this, fraud and other malpractice are more likely to go undiscovered without procedures in place. Small firms will be affected much more by any malpractice and may be pushed to insolvency unlike larger firms who may be able to write-off their losses.

Conclusion

- 8.25 Respondents to CP 101 and the questionnaire all agreed that the costs in implementing or reassessing whistleblowing procedures are minimal. Some respondents have already done research into whistleblowing and created policies internally. Many of these policies have then been communicated electronically through their intranet. One firm described the cost of alerting

3 All Employment Tribunal figures come from 'Routes to Resolution: The Government Consultation Paper on Improving Dispute Resolution in Britain'.

workers to the procedures to be “negligible”. Running costs are also low as firms use in-house resources. One small firm believes that introducing “a whistleblowing policy has minimal cost impact”. Another sees no “financial constraints” to introducing procedures. Whistleblowing costs are more significant if an investigation takes place.

- 8.26 The benefits were described by one respondent as “intangible” and hard to quantify, but “significant for the business of any regulated firm”. One respondent claimed that it was “easy to see that effective in-house whistleblowing arrangements are a benefit to both firms and consumers”. Firms will benefit, as consumer confidence in products and services increase. Consumers will benefit as malpractice may be dealt with more transparently, and will potentially benefit as firms devote extra resources to products and services, rather than current procedures to deal with malpractice.
- 8.27 So whistleblowing procedures may lead to improving the quality and quantity of services provided. The industry and the consumer may also benefit from the improved morale in the workplace and the important role whistleblowing procedures play in risk management.

9 The website

- 9.1 We seek to operate a transparent framework. One of the ways we do this is through extensive use of our website www.fsa.gov.uk. We are developing the industry section of this site to include a dedicated page on whistleblowing www.fsa.gov.uk/whistle/. This will include:
- a) this Policy Statement;
 - b) the guidance at Annex A;
 - c) the information sheet (Annex C);
 - d) frequently asked questions (Annex D);
 - e) a questionnaire for workers (see FSA response to paragraph 6.4 above);
 - f) a list of bodies prescribed under the PIDA; and
 - g) links to relevant websites.
- 9.2 One of the links in (g) will be to the UK Listing Authority's (UKLA) website. (The FSA, acting as the competent authority for listing, is referred to as the UKLA.) More information on the function and responsibilities of the UKLA can be found on the UKLA website at www.fsa.gov.uk/ukla/1_responsibilities.html. Another will be to our market abuse website at www.fsa.gov.uk/marketconduct/. The purpose of these links will be to lead whistleblowers to our central whistleblowing number, though arrangements exist internally to identify whistleblowing calls which come in through our market abuse or other industry helpline numbers.
- 9.3 One respondent asked us to publish our own whistleblowing procedures. You can also find these on our website.

10 Date for guidance to come into force and FSA's whistleblowing contact details to be published

- 10.1 The guidance will come into force on 1 May 2002. On the same day we will publish our direct telephone line and email address.

11 Matters for future consultation

Notification regulations

11.1 As a result of the consultation process, we believe it is desirable that firms should tell us periodically:

- whether they have whistleblowing procedures;
- how often they have used any whistleblowing procedures; and
- whether the problems identified have been satisfactorily resolved.

We shall be consulting on this proposal in the future. Also, we plan to consult on making the PIDA actions taken to employment tribunals against authorised firms a notifiable event.

Final text of SYSC 4

Annex A

Chapter 4

Guidance on Public Interest Disclosure Act: Whistleblowing

4.1 Application and purpose

Application

- 4.1.1 G This chapter is relevant to every *firm* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

- 4.1.2 G (1) The purposes of this chapter are:
- (a) to remind *firms* of the provisions of PIDA; and
 - (b) to encourage *firms* 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 chapter "worker" includes, but is not limited to, an individual who has entered into a contract of employment.
- 4.1.3 The *guidance* in this chapter concerns the effect of PIDA in the context of the relationship between *firms* and the *FSA*. It is not comprehensive guidance on PIDA itself.

4.2 Practical measures

Effect of PIDA

- 4.2.1 G (1) 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) In accordance with section 1 of PIDA:
- (a) a protected disclosure is a qualifying disclosure which meets the relevant requirements set out in that section;
 - (b) a qualifying disclosure is a disclosure, made in good faith, 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:
 - (i) a criminal offence; or
 - (ii) a failure to comply with any legal obligation; or
 - (iii) a miscarriage of justice; or
 - (iv) the putting of the health and safety of any individual in danger; or
 - (v) damage to the environment; or
 - (vi) deliberate concealment relating to any of (i) to (v);

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

- 4.2.2 G**
- (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* 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 *FSA*.
 - (2) Smaller *firms* may choose not to have as extensive procedures in place as larger *firms*. For example, smaller *firms* may not need written procedures. The following is a list of things that larger and smaller *firms* may want to do.
 - (a) For larger *firms*, appropriate internal procedures may include:
 - (i) a clear statement that the *firm* takes failures seriously; (see SYSC 4.2.1 G(2)(b));
 - (ii) an indication of what is regarded as a failure;
 - (iii) respect for the confidentiality of workers who raise concerns, if they wish this;
 - (iv) an assurance that, where a protected disclosure has been made, the *firm* will take all reasonable steps to ensure that no *person* under its control engages in victimisation;
 - (v) the opportunity to raise concerns outside the line management structure, such as with the Compliance Director, Internal Auditor or Company Secretary;
 - (vi) penalties for making false and malicious allegations;
 - (vii) an indication of the proper way in which concerns may be raised outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body such as an independent charity for advice;
 - (ix) making whistleblowing procedures accessible to staff of key contractors; and
 - (x) written procedures.
 - (b) For smaller *firms*, appropriate internal procedures may include:
 - (i) telling workers that the *firm* takes failures seriously (see SYSC 4.2.1.G(2)(b)) and explaining how wrongdoing affects the organisation;
 - (ii) telling workers what conduct is regarded as a failure;
 - (iii) telling workers who raise concerns that their confidentiality will be respected, if they wish this;
 - (iv) making it clear that workers will be supported and protected from reprisals;

- (v) nominating a senior officer as an alternative route to line management and telling workers how they can contact that individual in confidence;
 - (vi) making it clear that false and malicious allegations will be penalised by the *firm*;
 - (vii) telling workers how they can properly blow the whistle outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body for advice such as an independent charity; and
 - (ix) encouraging managers to be open to concerns.
- (3) (a) *Firms* should also consider telling workers (through the *firm's* internal procedures, or by means of an information sheet available from the *FSA's* website, or by some other means) that they can blow the whistle to the *FSA*, as the regulator prescribed in respect of financial services and markets matters under PIDA.
- (b) The *FSA* will give priority to live concerns or matters of recent history, and will emphasise that the worker's first port of call should ordinarily be the *firm* (see Frequently Asked Questions on www.fsa.gov.uk/whistle/).
- (c) For the *FSA's* treatment of confidential information, see *SUP* 2.2.4G.

Link to fitness and propriety

- 4.2.3 G** The *FSA* would regard as a serious matter any evidence that a *firm* had acted to the detriment of a worker because he had made a protected disclosure (see SYSC 4.2.1G(2)) about matters which are relevant to the functions of the *FSA*. 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*, his status as such.

Consequential Handbook amendments

Annex B
Consequential amendments to SYSC, AUTH and CRED

In this Annex, underlining indicates new text and striking through indicates deleted text.

SYSC 1.1

SYSC 1.1 Change the title of this section to “Application of SYSC 2 and SYSC 3”

Before SYSC 1.1.1R, insert:

Purpose of this section

1.1.-1G This section sets out the application of SYSC 2 (Senior management arrangements) and SYSC 3 (Systems and controls).

1.1.-2G The application of SYSC 4 (Guidance on Public Interest Disclosure Act: Whistleblowing) is set out in SYSC 4.1.1G (Application).

SYSC 1.1.1R Amend as shown below:

SYSC 2 and SYSC 3 apply ~~applies~~ to every *firm* except that:

...

(2) for an *incoming EEA firm* SYSC 2 and SYSC 3 do ~~does~~ not apply;

...

SYSC 1.1.2G(2) Amend as shown below:

SYSC 1.1.7R and SYSC 1.1.10R (Where?) further restrict the territorial application of SYSC 2 and SYSC 3 for an *incoming EEA firm*, ...

SYSC 1.1.3R Amend as shown below:

SYSC 2 and SYSC 3 apply ~~applies~~ with respect to the carrying on of:

...

SYSC 1.1.4R Amend as shown below:

SYSC 2 and SYSC 3 also apply ~~applies~~ with respect to the *communication and approval of financial promotions* which:

...

SYSC 1.1.7R Amend as shown below:

SYSC 2 and SYSC 3 apply ~~applies~~ with respect to ... in which case SYSC 2 and SYSC 3 apply ~~applies~~ with ...

SYSC 1.1.8G Amend as shown below:

... Therefore, SYSC 2 and SYSC 3 ~~apply~~ **applies** to the *custody* activities ...

SYSC 1.1.9R Amend as shown below:

SYSC 2 and SYSC 3 also ~~apply~~ **applies** in a *prudential context*

SYSC 1.1.11G(1) Amend as shown below:

In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to ...

SYSC 1.1.12R Amend as shown below:

A contravention of the *rules* in SYSC 2 and SYSC 3 does not ...

AUTH 5 Ann 3G

AUTH 5 Ann 3G Amend the following row of Table 2 as shown:

<p>SYSC</p>	<p><u>SYSC 1 contains application provisions only. SYSC 2 and SYSC 3 apply</u> As set out in SYSC 1.1.1R(1):</p> <p>(1) SYSC 2.1.1R and SYSC 2.1.2G do not apply;</p> <p>(2) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question <u>is</u> not reserved by a European Community instrument to the <i>firm's Home State regulator</i>; and</p> <p>(3) SYSC 3 applies, but only in so far as responsibility for the matter in question <u>is</u> not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p> <p>SYSC 1.1.7R (Where?) further restricts the territorial application of <u>SYSC 1 to SYSC 3</u> for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p><u>SYSC 4 applies to the extent that the Public Interest Disclosure Act 1998 applies to the firm.</u></p>	<p>SYSC <u>1 to SYSC 3</u> does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (SYSC 1.1.1R(2)).</p> <p>SYSC <u>1 to SYSC 3</u> have has limited application for activities which are not carried on from a <i>UK</i> establishment (see SYSC 1.1.7R).</p> <p>Otherwise, see column (2).</p>
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CRED 4.1

CRED 4.1.3G Amend as shown below:

SYSC 1 to 3 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. *SYSC 4* applies to all *credit unions* without restriction.

CRED 4.1.8G After CRED 4.1.7G insert:

4.1.8 G *SYSC 4* reminds *firms* of the provisions of the Public Interest Disclosure Act 1998 and encourages them to consider adopting appropriate internal whistleblowing procedures. This applies equally to *credit unions* but is not the subject of further *guidance* in this chapter.

The information sheet



Worried about possible malpractice?

If you are concerned about possible wrongdoing at work, the Public Interest Disclosure Act 1998 (PIDA) provides guidance for dealing with these and other whistleblowing issues in a safe and constructive way. It encourages you to raise concerns **internally** in the first instance.

Internal - contacts for whistleblowing

We hope that you will feel able to raise any such concern internally, confident that it will be dealt with properly and that all reasonable steps will be taken to protect you from victimisation. If you don't feel able to raise or resolve a concern with your line manager, please contact someone internally who has been nominated for this purpose:

Name Phone

Name Phone

PIDA states that individuals who make qualifying disclosures of information in the public interest have the right not to suffer detriment by any act or omission of their employer because of the disclosure. A qualifying disclosure is one which, in the reasonable belief of the worker, suggests that one or more of the following has been, is being, or is likely to be committed:

- a criminal offence;
- a failure to comply with any legal obligation;
- a miscarriage of justice;
- the putting of the health and safety of any individual in danger;
- damage to the environment; or
- deliberate concealment relating to any of the above.

PIDA protects you in making a disclosure to your employer where the disclosure meets the requirements set out above and is made in good faith.

Advice

If you want free, confidential advice on what is protected by PIDA and how best to raise your concern, you can contact:

.....

(for example, the independent charity, Public Concern at Work on 020 7404 6609/www.pcaaw.co.uk)

External - Financial Services Authority

If you're worried about something at work, it may be that you are concerned about something that is relevant to the functions of the FSA.

If you've disclosed your worry internally and you are concerned either by the response or lack of response, or if you feel unable to talk to anyone internally for whatever reason, you can contact the FSA. PIDA protects you if you contact the FSA where:

- you satisfy the test for speaking to your employer (see above);
- you reasonably believe the information and any allegations in it are substantially true; and
- you reasonably believe the FSA is responsible for the issue in question.

Please note that there are other bodies prescribed under PIDA for a range of matters apart from financial services - see www.hmsso.gov.uk/si/si1999/19991549.htm and use 'search' to find Public Interest Disclosure Act.

FSA contact details

FSA's direct whistleblowing number is 020 7676 9200

FSA's direct email address is whistle@fsa.gov.uk

Further information is available at www.fsa.gov.uk/whistle/

Please send letters to - Authorisation Enquiries Department (ref PIDA)

The Financial Services Authority
25, The North Colonnade
Canary Wharf
London
E14 5HS

Frequently asked questions sheet

Annex D

The FSA and the Public Interest Disclosure Act 1998 (The Whistleblowing Act) - Frequently Asked Questions

- Q1 How does someone who wants to blow the whistle contact the Financial Services Authority?
- A We would encourage you first to use the whistleblowing procedures in your workplace. If there aren't any or if you don't feel able to do so, then you can ring us on 020 7676 9200 during office hours or leave a message on voicemail and, if you wish, we will ring you back. You might want to e-mail us, in which case there is a specific address whistle@fsa.gov.uk. Or you can write to us at Authorisation Enquiries Department (Ref PIDA), The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- Q2 Do you give advice on the Whistleblowing Act?
- A No, we cannot advise on the Act. If you need legal advice we suggest that you contact a body like the independent charity, Public Concern at Work, 020 7404 6609/www.pcaw.co.uk or, in Scotland, 0141 5507572/[www.scotland@pcaw.co.uk](mailto:scotland@pcaw.co.uk), which gives free, confidential advice.
- Q3 Can consumers use the whistleblowing line?
- A Consumers should contact one of our consumer helplines. The Whistleblowing Act provides protection in certain circumstances for workers: our whistleblowing line is meant for workers who want to report to us if they need to about matters which are relevant to the functions of the FSA.
- Q4 Do you tape record whistleblowing telephone calls?
- A We tape most calls and we make all reasonable efforts to let callers know we are doing this. We do so to ensure we have caught all the information correctly; the tape is only kept long enough to enable us to make a proper written record of the information reported. If the caller asked us not to tape the conversation we would respect their wishes.
- Q5 Will the whistleblower's identity become known to their employer?
- A We undertake to treat the whistleblower sensitively and do our best to protect the whistleblower's identity, if desired. But we cannot give any categorical assurances on confidentiality since circumstances may be such that disclosure of identity becomes unavoidable in law or is otherwise necessary to meet our statutory objectives.
- Q6 Will you tell the whistleblower what you did as a result of their disclosure?
- A This is difficult. We will not normally disclose whether we are or are not investigating a particular matter, or reveal any of the findings or conclusions of an investigation and that means even to the person who raised the matter with us. Often statutory restrictions on the disclosure of information obtained by us while exercising our functions are likely to prevent such disclosure. We will not disclose confidential information without lawful authority. However, we appreciate that the whistleblower will be anxious to know what has happened. So we would expect, subject to the constraints mentioned, to indicate to the whistleblower whether we consider that the information has been relevant to our regulatory functions.
- Q7 Do you need to know the whistleblower's name?
- A We obviously cannot insist that the whistleblower gives us their name, but it is helpful to have it, together with other contact details, in case we need to get in touch.
- Q8 What information do you need from a whistleblower?
- A Hard evidence - if you've got it - is clearly helpful. However, the Whistleblowing Act does not require you to have evidence before blowing the whistle to us, but does say you must reasonably believe the information and any allegations in it are substantially true. We would prefer that you spoke to someone internally (or to us) about your concern at an early stage rather than wait to attempt to get the evidence.
- Q9 Will you listen to a whistleblower if they have not first tried to raise their concerns internally?
- A Following the approach in the Whistleblowing Act, we strongly encourage workers to blow the whistle internally in the first instance. However, if the whistleblower has disclosed their worries internally and is concerned either by the response or lack of response, or if they feel unable to talk to anyone internally for whatever reason, we will certainly listen.

List of respondents to CP101

1. PricewaterhouseCoopers
2. Friends Provident Life and Pensions Ltd
3. Omega Underwriting Agents Ltd
4. The Futures and Options Association
5. London Investment Banking Association
6. Lloyd's
7. Commonwealth Bank of Australia
8. AMP UK Financial Services
9. The Royal Bank of Scotland Group
10. MSF
11. Forensic Accounting Ltd
12. Building Societies Association
13. Barclays Bank plc
14. HSBC
15. Investment & Life Assurance Group
16. Financial Services Consumer Panel
17. CGNU
18. Fund Managers' Association
19. Public Concern at Work

20. British Bankers' Association
21. Faculty of Actuaries
22. Transparency International (UK)
23. Ms S Joseph
24. International Underwriting Association
25. Association of Independent Financial Advisers

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