

Whistleblower protection in financial services

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Whistleblowers are protected under English law regardless of the sector in which they work. However, there are special

considerations and enhanced protections which apply to whistleblowers working in financial services.

When are whistleblowers normally protected?

Broadly speaking, workers are protected under the Public Interest Disclosure Act 1998 ('**PIDA**') if they are either subjected to poor treatment (which is known as being subjected to a 'detriment') or dismissed because they have blown the whistle.

What additional considerations apply in financial services?

FCA whistleblowing policies

The FCA has put a strong emphasis on encouraging individual and institutional accountability in recent years and its approach to whistleblowers is no exception. As part of its broader regulatory reform, the FCA has introduced a number of policies to seek to ensure the protection of whistleblowers in financial services.

The FCA Handbook requires particular firms to observe a suite of whistleblowing rules which oblige firms to assess and escalate whistleblowing concerns, to inform staff of their rights as whistleblowers, to set up channels to facilitate whistleblowing and to appoint a 'whistleblowing champion' to oversee compliance with whistleblowing regulations within the firm.

Broader protection of whistleblowers under the FCA Handbook

The protection offered to whistleblowers under the FCA Handbook goes further than the 'classic' whistleblower protection under PIDA:

- 1. Who qualifies for protection** – Under PIDA, only 'workers' can be protected as whistleblowers (meaning that the genuinely self-employed are not protected). In contrast, under the FCA Handbook, anyone can be

protected as a whistleblower, regardless of their employment status.

- 2. The type of disclosure that is protected** – To be protected under PIDA, a whistleblower must make a 'qualifying protected disclosure'. A 'qualifying protected disclosure' is more limited than many people assume. Whistleblowers must make a complaint that fits within one of six statutory categories of wrongdoing (most commonly, a breach of a legal obligation, a breach of health and safety or an attempt to cover up another category of wrongdoing). Whistleblowers must also jump through a series of legal hoops before they are afforded protection, including showing that their protected disclosure is 'in the public interest'. By contrast, the definition of whistleblowing under the FCA Handbook is much broader. A complaint about a breach of an internal policy or something that could financially harm the firm will qualify for protection, a much lower hurdle than under PIDA.

Regulatory implications for subjecting whistleblowers to a detriment

Whilst the general law already prevents individuals from subjecting whistleblowers to a detriment or dismissing them because they have made protected disclosures, the FCA Handbook goes one step further. The Handbook states that evidence that an individual has subjected a whistleblower to a detriment could call into question both their individual fitness and propriety and that of the firm at which they work. This, in turn, could have an impact on an individual's status as a certified person or senior manager and, potentially, their future career.

Whilst individuals working in financial services who subject whistleblowers to detrimental treatment face potential regulatory sanctions, there is also scope under PIDA for whistleblowers to pursue claims against individuals who have

subjected them to a detriment, or even given the instruction to dismiss them.

The practical implications of enhanced protections for whistleblowers

The combined effect of these rules is that, in some circumstances, there is more institutional caution around the treatment of whistleblowers than would be required under PIDA. This can mean that individuals working in financial services are in a better position to try and ensure that their concerns are investigated and that they are protected even if, strictly speaking, they do not have legal protection as whistleblowers under PIDA.

On a practical level, these regulatory obligations can also place financial services firms in a difficult position when they are made aware of potentially reportable concerns or protected disclosures on a 'without prejudice' (i.e. 'off the record') basis. Firms may feel that this places them in a tricky position where they are torn between complying with their regulatory duties and respecting privilege over the communications.

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