

FCA FINAL RULES ON NON-FINANCIAL MISCONDUCT IN THE FINANCIAL SERVICES SECTOR

OVERVIEW

The FCA published on 2 July 2025 its much-anticipated approach in relation to non-financial misconduct. This consists of: (1) a [Policy Statement](#) amending its Code of Conduct ("**COCON**") sourcebook to set out new rules for non-financial misconduct ("**NFM**") in the Financial Sector ("**NFM Rules**") (aimed at aligning non-banking firms with the scope of certain NFM that applies to banking firms); (2) a fresh consultation on possible accompanying guidance ([Consultation on guidance in the COCON and the Fit and Proper Test for Employees and Senior Personnel \("**FIT**"\) sourcebooks CP25/18](#)) to support all firms in applying rules in COCON and FIT consistently, in so far as they relate to NFM. The NFM Rules will apply from 1 September 2026. The FCA is consulting until 10 September 2025 on whether to proceed with the guidance.

The FCA focus in its approach is on bullying, harassment and violence – where it is sufficiently serious to be in the regulatory perimeter. In early 2024, following its 2023 consultation [CP23/20: Diversity and inclusion in the financial sector – working together to drive change](#), the FCA sent a culture and NFM survey to over a thousand financial services firms to understand how firms detected and handled NFM incidents over a three-year period. The [survey responses](#) have helped inform the final rules and potential guidance.

The NFM Rules are part of the FCA's 2025 to 2030 strategy that aims to raise standards, increase accountability and build trust in financial services. It considers that COCON now makes it clear that serious, substantiated cases of poor personal behaviour such as bullying, harassment and violence is a matter of regulatory concern, and this includes but is not limited to conduct that would be in breach of the Equality Act 2010 ("**EQA**").

The FCA was already of the view that the scope of COCON was relatively wide for banks and included NFM. The NFM Rules are expanded to clarify that the NFM rules in relation to bullying, harassment and similar behaviour between staff will be extended to around 37,000 other regulated firms (i.e. non-banks), to increase consistency across financial services. For banks, the NFM Rules indirectly provide further clarity on what amounts to NFM.

This Briefing explores the NFM Rules and the draft guidance, highlights what has changed since the original consultation, outlines consultation proposals not taken forward and suggests preparatory steps that in-scope firms should consider taking.

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WHAT FIRMS ARE IN SCOPE?

All FSMA Firms with a Part 4A permission.

The NFM Rules apply to staff in those firms who are subject to COCON.

TERRITORIAL APPLICATION?

The territorial scope for the fitness and propriety requirements and COCON remain unchanged.

NON-FINANCIAL MISCONDUCT: CONDUCT RULES

In the past, there has been much uncertainty around the extent to which NFM can and/or should be taken into account for the purposes of assessing individual fitness and propriety ("F&P"), whether the FCA Conduct Rules/the PRA Rulebook have been breached and what (if anything) should be included in regulatory references. This has resulted in inconsistencies in approach between firms and differences in opinion of the FCA and the Upper Tribunal on whether individuals should be subject to a prohibition notice. In particular (as evidenced in the cases of *Frensham* and *Zahedian*) there has been tension regarding the extent to which behaviour in an individual's private life and their personal integrity, character and reputation should fall within this regulatory parameter.

The FCA has expanded the scope of COCON to clarify that for non-banks the NFM Rules cover **serious** instances of bullying, harassment and violence and similar behaviour towards a colleague (i.e. fellow employees and employees of group companies and contractors). So, for example, situations in which dismissal is "contemplated" by a firm as a possible sanction (even if, in practice, the firm decides not to dismiss due to mitigating circumstances) are likely to be in scope. This is conduct which the FCA regards as already within the scope of COCON for banks.

The original suggestion that "*seriously offensive, malicious, or insulting conduct*" and "*unreasonable and oppressive conduct causing serious alarm or distress to a fellow member of the workforce*" should be covered has been replaced with an indication that "*conduct that has the purpose or effect of violating [colleagues'] dignity*" or which "*[creates] an intimidating, hostile, degrading, humiliating or offensive environment for*" or "*is violent to*" colleagues will be in scope. This replacement responds to feedback that the original wording did not mirror relevant employment and equality law concepts and that some elements of it did not have a clear legal definition.

The draft COCON guidance being consulted on includes the types of behaviour that would fall within the expanded scope of COCON, general factors for assessing compliance and what conduct is out of scope because it relates to an employee's personal or private life (which is outside the scope of COCON). If the guidance is taken forward, firms may want to consider documenting decisions not to classify NFM as a COCON breach by reference to these factors.

NFM in a person's private or personal life that does not come within the scope of COCON may, however, be relevant to the assessment of their fitness and propriety as elaborated in the draft FIT guidance (see below). The draft COCON guidance includes factors that are relevant when deciding whether conduct will be regarded as personal or private and whether it falls within COCON (which is set out in the table below). These examples are similar to those set out by the FCA in CP23/20 but with some additional ones (e.g. regarding social media use). The examples are useful but invariably not exhaustive. There will always be grey areas, which the FCA acknowledges. For example, if a manager is sending abusive texts to a colleague after their relationship has failed, does it make a difference if the texts are sent only after hours from a personal phone, on a personal phone late at night from the office or from an employer issued phone after work? In the immediate aftermath of the rules coming into effect, firms may well err on the side of caution on reporting matters to the FCA as COCON breaches.

Extract from Draft Guidance: Private or Personal Life and COCON

Description of conduct	Whether generally within the scope of COCON
Misconduct by A in relation to a fellow member of the workforce while both are on their <i>firm's</i> premises	Yes
Misconduct by A in relation to a fellow member of the workforce while A is working remotely for their <i>firm</i>	Yes
Misconduct by A in relation to a family member while A is working remotely for their <i>firm</i>	No
Misconduct by A in relation to a member of the public while A is commuting to their <i>firm's</i> place of business for work	No
Misconduct by A in relation to a fellow member of the workforce when both are travelling to a meeting in which they will represent their <i>firm</i>	Yes
Misconduct by A in relation to a client at a business meeting in which A is representing their <i>firm</i>	Yes
Misconduct by A in relation to a fellow member of the workforce at a social occasion organised by their <i>firm</i>	Yes
Misconduct by A in relation to a fellow member of the workforce at a social occasion organised by them or another member of the workforce in their personal capacity	No However: (1) An occasion organised by a manager may be within the scope of COCON, taking into account that the manager's direct reports may feel obliged to attend. (2) If the event takes place after a firm event but at a separate location or venue, it may be within the scope of COCON if it is a continuation of the first event or if the conduct started at the first event and continued in the new venue. Otherwise, COCON is likely to cease to apply because the connection between the event and the activities of the firm has been lost.
Misconduct by A in relation to a fellow member of the workforce at a social occasion, a meeting, a round table, an awards ceremony, a training course or a workshop, in each case organised by a client of their firm, another firm, an industry body or a regulator, in which they will represent their firm or where	Yes

Description of conduct	Whether generally within the scope of COCON
the main reason for the invitation is their working for their firm.	
M is a member of a profession (such as an accountant, actuary or lawyer) and practises that profession in their job with their firm. M commits misconduct at an event organised by a third party to meet the professional requirements of that profession or by the regulator of that profession.	Yes.
M publishes material on a personal social media account (including sending it on a messaging app) held by M. As this table is just about whether conduct takes place in M's private life (and hence is outside the scope of COCON under COCON 1.1.6R to COCON 1.1.7R), this example assumes that the publication would otherwise breach COCON.	This is an example of how it is not possible to give a definitive answer to a scenario based on a single element. Factors to take into account are: (i) whether the material is directed at a fellow member of the workforce (if it is, that points towards the conduct being within scope); (ii) whether there is another connection between M and the subject of the misconduct that is not based on M's work with their firm (if there is such a connection, that may point away from the application of COCON); (iii) whether it is part of a course of conduct that includes other incidents that are more closely connected with M's work at the firm; (iv) whether the content of the social media posts is related to work at the firm; or (v) whether M uses a work-issued device. The fact that M uploads the posts during working hours or while on the firm's premises is not a strong factor pointing towards the application of COCON. If the conduct takes place over the firm's systems (for instance through the firm's e-mail system) it is likely to be within the scope of COCON.
Notes 1. 'M' refers to a member of a firm's conduct rules staff....	

The group of individuals in relation to whom serious misconduct can give rise to a breach of COCON is broad, it covers 'employees' (defined widely by the regulators), service providers and consultants. However, it does not capture conduct towards former employees, so for example a repeated failure to provide a reference that might amount to an act of victimisation under the EQA

would not be captured (albeit such conduct might be relevant to the assessment of their fitness and propriety under the FIT Handbook).

Firms will need to notify the FCA if they take disciplinary action for NFM that is a breach of the Conduct Rules in accordance with their notification obligations for Senior Management Functions ("**SMFs**"), certified persons and conduct rules staff.

Territorial implications: COCON applies to SMF managers and Material Risk Takers ("**MRTs**") wherever the conduct occurs. In practice where the misconduct in question has occurred overseas, domestic regulatory and employment requirements may lead to tensions in relation to the application of the new FCA rules to SMFs and MRTs.

For all other Conduct Rules staff, COCON applies to conduct of staff at a UK office or (in the case of a UK firm) when dealing with a client of the firm in the UK from an establishment overseas.

NON-FINANCIAL MISCONDUCT: FITNESS AND PROPRIETY ("F&P")

The draft guidance to FIT sets out, in more detail, how NFM forms part of the F&P test. It clarifies that misconduct in a person's private or personal life or in their working life outside the regulatory system may be relevant to their fitness and propriety even though it does not of itself involve a breach of standards that are equivalent to those required under the regulatory system.

The guidance gives the examples of dishonesty, lack of integrity and violence or sexual misconduct in an individual's private or personal life as relevant to the assessment of F&P. It also provides that repeated breaches of a law may raise doubts as to whether the individual will follow the requirements of the regulatory system. The guidance provides the example that a minor driving offence would not normally be relevant to F&P but that a frequent repetition of such an offence would be potentially relevant.

The draft FIT guidance provides that even if there is little risk of an individual's misconduct in their private or personal life being repeated in their work it will nevertheless be relevant to their F&P if it demonstrates a willingness to: (i) disregard ethical or legal obligations; (ii) abuse a position of trust; (iii) exploit the vulnerabilities of others; and/or (iv) it is sufficiently serious such that, were the person permitted to work at a firm, it could undermine public confidence in the regulatory system (or any part thereof) or otherwise impact the FCA's statutory objectives.

The draft guidance in relation to F&P and conduct will still leave room for interpretation in specific cases. However, for firms who have been used to having the latitude to form a "house view" this may be reduced if the guidance is introduced. If the guidance is not progressed the FCA may nevertheless keep it as some type of benchmark that firms will be expected to apply in practice when assessing F&P and possible breaches of COCON. As such, it is possible that firms would be better off having the guidance than not.

To what extent will firms be required to actively explore an individual's conduct outside the workplace in respect of F&P assessments? The draft FIT guidance provides that generally, a firm need not monitor the private lives of its staff to assess whether there is conduct that is relevant to fitness. A firm need only look into the private life of a member of staff being assessed under FIT if there is a good reason to (e.g. if the firm becomes aware of an allegation which, if true, would call into question their fitness under FIT). Acknowledging that a firm may have limited ability to investigate and that, in some cases, it will be more appropriate for the relevant law enforcement or other authorities to

investigate the draft guidance nevertheless considers that a firm should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety.

Whether or not the guidance is progressed, firms may wish to expressly require certified employees to self-report or to report the conduct of colleagues as part of a speak-up culture (if they do not already).

Firms will also need to consider their policy approach to the investigation of employees' private lives and what amounts to being on notice of an issue meriting an investigation.

In particular, firms may wish to address, in their policies and procedures, the draft COCON guidance that senior conduct rules staff members should disclose matters about their private or personal life if they are material to their assessment of F&P.

At the time of writing, no further details of proposals to remove or water down the FCA certification regime have been disclosed (according to the FCA's April Regulatory Initiatives Grid, formal engagement is planned with firms following the Treasury's commitment to consult on reforming the certification regime by replacing it with something more proportionate). If any such changes are implemented, this will likely reduce the pool of employees to whom the NFM rules will apply.

SENIOR LEVEL AND BOARD ENGAGEMENT

In its [Culture and non-financial misconduct survey – findings](#) the FCA observed that *"the responses... suggest that large firms' governance and oversight of non-financial misconduct could be falling short of our expectations for the size, nature and complexity of the firms' businesses"* and stated that it wanted *"firms to discuss non-financial misconduct at senior management and board level and consider whether they need to take steps to improve..."*. Although this is not expressly addressed in the draft COCON or FIT guidance it is clear that in line with the FCA's drive for a stronger culture of accountability underpinned by the Senior Managers and Certification Regime senior engagement will be expected to be proactive rather than reactive on the subject of NFM. The draft guidance also includes specific provisions in relation to acting with due, skill care and diligence as a manager, in respect of harassment in the workforce.

REGULATORY REFERENCES

The FCA will not be updating its rules in relation to regulatory references to clarify that it might be necessary to provide information on NFM or misconduct outside work.

In addressing concerns on the implications of the NFM Rules for regulatory references, the FCA clarified, in its feedback, that where a firm has taken disciplinary action for misconduct that was also a conduct rule breach it must be disclosed in a regulatory reference. The FCA has made it clear that part of its focus is to ensure steps are taken to prevent "rolling bad apples" (i.e. people moving from firm to firm without appropriate action being taken or without past serious NFM being disclosed). However, this does not apply if the NFM took place more than 6 years earlier and was not "serious" for the purposes of the existing guidance in the senior management arrangements, systems and control ("**SYSC**") sourcebook.

The FCA has not addressed the question of when or how a firm should address, in a regulatory reference (e.g. in Question G), an inconclusive outcome to an investigation into NFM. However, they do make clear that even

if the truth of an allegation has not been established, it may be appropriate to report it to the FCA.

If a firm takes disciplinary action in relation to historical misconduct, then it would appear that this would be within the scope of a regulatory reference disclosure.

TREATMENT OF HISTORICAL CONDUCT

The FCA does not intend the NFM Rules to apply retrospectively and it does not expect firms to do any retrospective analysis of whether it has incorrectly determined a conduct rule breach in the past.

If guidance is made, it will consider whether any transitional arrangements are required and will provide guidance to firms to assess the relevance of past conduct rule breaches to F&P.

However, what is potentially unclear is whether firms are expected to address and apply the new rules retrospectively to historical misconduct that comes to light after the rules come into effect.

TIMEFRAME/ PREPARATORY STEPS

The guidance is open for consultation until 10 September 2025. The FCA will only proceed with the guidance if there is clear support for it. If it does proceed it aims to publish it by the end of 2025 to give firms time to update their processes.

The NFM Rules come into force on **1 September 2026**.

Firms will now need to consider the NFM Rules closely and how their own policies, processes and frameworks align with COCON. There is scope for a significant impact on workplace culture and governance that may have already been kick started on 26 October 2024 when the new statutory obligation on employers to take reasonable steps to prevent sexual harassment at work came into force. In October 2026 changes being introduced by the Employment Rights Bill will amplify this statutory preventative duty to require employers to take **all** reasonable steps to prevent sexual harassment. Prior to this in April 2026 the whistleblowers' protection regime will be expanded to workers who make disclosures in relation to sexual harassment. New regulations setting out what steps are to be regarded as "reasonable", to determine whether an employer has taken all reasonable steps to prevent sexual harassment will not however come into effect until 2027.

PROPOSALS NOT TAKEN FORWARD

The FCA will not proceed with any amendments to the threshold conditions ("COND") or the SYSC sourcebooks based on feedback received as well as considering that the existing rules and guidance on regulatory references in SYSC 22 are sufficient.

PRACTICAL CONSIDERATIONS

Firms should consider:

- how they currently approach NFM and the extent to which it is at odds with the NFM Rules and draft guidance;
- implications of the NFM Rules mean for workplace governance processes including their annual review and certification, regulatory references and related HR/ Compliance systems and policies;

- how they approach and document triggers for workplace investigations, disciplinary processes and FCA notification (and which stakeholders are engaged with on these);
- how they will meet their duty to notify conduct rules staff and their managers about the NFM Rules and take all reasonable steps to make sure they understand how they apply to them (including training);
- how to address operational and senior manager/Board oversight (of, for example, workplace culture);
- developing early communications campaigns around NFM, culture and accepted behaviours and the consequences of infringement.

See the Clifford Chance Regulatory Investigations and Financial Crime Insights Blogpost: [FCA updates rules on non-financial misconduct](#)

[Policy Statements on 'Tackling Non-Financial Misconduct in the Financial Sector'](#) and [Consultation on guidance in the Code of Conduct \(COCON\) and the Fit and Proper Test for Employees and Senior Personnel \(FIT\) CP25/18 sourcebooks CP25/18](#)

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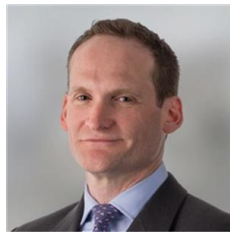
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