

Non-Financial Misconduct

In January 2024, Sarah Pritchard (FCA Executive Director for Markets and International), told the Treasury Committee's 'Sexism in the City' inquiry that the regulator intended to intensify its efforts to tackle non-financial misconduct (e.g. bullying, sexual harassment and racially motivated misconduct) across the City.

This follows the regulator's consultation paper in 2023 which proposed new rules to promote diversity and inclusion in the industry and enhance the rules and guidance in relation to non-financial misconduct. A summary of these enhancements is set out below.

#1

Fitness and propriety

Senior managers and certification staff must be fit and proper to perform their role. The main assessment criteria are **honesty, integrity and reputation; competence and capability; and financial soundness**.

The proposed changes clarify that non-financial misconduct within the workplace (e.g. bullying) is relevant to fitness and propriety and that similarly serious behaviour in a person's personal or private life may also be relevant.

The FCA has also previously indicated that a failure by a senior manager to address non-financial misconduct within their firm could call into question their fitness and propriety.

#2

Conduct rules

The **Individual Conduct Rules apply to almost all employees**. Their scope is narrower than the fit and proper test as they are, broadly, restricted to conduct in the course of the firm's regulated activities (except in the case of banks).

The FCA proposes to expand the scope of the Conduct Rules to make it clear that they cover serious cases of **bullying, harassment and other similar behaviour towards colleagues**.

The FCA has also drafted new guidance that gives examples of what behaviour would fall within the Conduct Rules and what would not (e.g. because it relates to an employee's personal or private life).

#3

Other considerations

Non-financial misconduct may link to other legal or regulatory issues. For example:

- 1) Criminal offences may lead to criminal prosecution.
- 2) Non-financial misconduct may result in disciplinary action by a firm, whether or not an FCA rule has been breached.
- 3) Where non-financial misconduct highlights cultural issues within a firm, it may result in regulatory action against the firm.
- 4) Whistleblowing processes operated by your firm and/or the FCA can be used to report non-financial misconduct.

