

# FCA Guidance on non-financial misconduct in the financial services sector

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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.

From 1 September 2026, the FCA Code of Conduct sourcebook (COCON) will clarify that the non-financial misconduct (NFM) rules on bullying, harassment and similar behaviour between staff apply to non-banks as well as banks (the Harassment Rule or COCON 1.1.7R). On 12 December the FCA confirmed that it would proceed with proposed NFM guidance; publishing its [Policy Statement 25/23: Tackling non-financial misconduct in financial services](#). The focus of the FCA in introducing the guidance is on maintaining trust in financial services.

In response to its [Consultation on guidance CP25/18](#) the FCA has revised its draft guidance. The new content includes:

- additional guidance (including illustrative tables) on how the non-financial misconduct elements of COCON apply to mixed businesses (i.e. where a firm also conducts non-SMCR financial activities);
- flow-charts to help firms navigate which rules/ guidance apply (and their application); and
- clarification of the extent to which firms must investigate unproven allegations about private life (and interaction with social media provisions).

Although the FCA guidance is detailed, they have made clear that judgement will still need to be exercised by firms on a case-by-case basis.

This briefing explores the finalised NFM guidance and suggests preparatory steps that in-scope firms should consider taking.

## Non-Financial misconduct: conduct rules

With effect from 1 September 2026 the scope of COCON will be expanded 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). This means NFM towards colleagues will be within scope of the conduct rules when it occurs in relation to the performance of the individual's role. It will no longer be restricted to conduct that forms part of, or is for the purpose of, financial services activities. This is conduct which the FCA regards as already within the scope of COCON for banks.

Serious misconduct can broadly be described as bullying, harassment, being offensive or insulting or causing distress and similar behaviour in

relation to a work colleague. The guidance sets out a non-exhaustive list of factors for firms to consider when deciding if NFM is serious enough to breach FCA rules.

The COCON guidance sets out the types of NFM behaviour within scope, general factors for compliance, and what conduct is out of scope because it relates to an employee's personal or private life. In terms of record keeping, firms may wish to consider documenting decisions not to classify NFM as a COCON breach by reference to these factors.

When assessing whether NFM towards a colleague constitutes a breach of COCON, relevant factors include: (1) whether the behaviour is repeated or forms part of a pattern; (2) its duration; (3) the severity of its impact on the recipient; (4) the seniority of the individual concerned; (5) any disparity in seniority and whether the individual has influence over the recipient's career; (6) mitigating or aggravating circumstances, including those arising subsequently; (7) any prior warnings or disciplinary action for similar conduct by the firm, previous employers, police or regulators; (8) any previous undertakings not to repeat such behaviour; and (9) whether the conduct is criminal or would warrant dismissal.

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 Fit and Proper test for Employees and Senior Personnel (FIT) guidance (see below). The 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). The examples are useful but not exhaustive. The FCA acknowledges there will always be grey areas. For example, if a manager sends abusive texts to a colleague after their relationship has ended, does it matter if the texts are sent after hours from a personal phone, late at night from the office, or from an employer-issued phone after work? When the rules come into effect, firms may well err on the side of caution on reporting matters to the FCA as COCON breaches.

### 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	Yes

Description of conduct	Whether generally within the scope of COCON
both are travelling to a meeting in which they will represent their <i>firm</i>	
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	<p>No</p> <p>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.</p>
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 the main reason for the invitation is their working for their firm.	Yes

Description of conduct	Whether generally within the scope of COCON
<p>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.</p>	<p>Yes.</p>
<p>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.</p>	<p>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.</p>
<p><b>Notes</b></p> <p>1. 'M' refers to a member of a firm's conduct rules staff....</p>	

The final guidance contains useful flow charts showing who and what COCON applies to, when the Harassment Rule applies, and how to determine whether NFM breaches FCA rules.

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 Equality Act 2010 (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. The FCA is currently considering conduct rule breach reporting as part of its wider review of the Senior Managers & Certification Regime as set out in its July consultation [CP25/21](#).

### **Territorial application**

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 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 draft guidance example that a frequent repetition of a minor driving offence would be potentially relevant has been removed.

The final FIT guidance states that even if there is little risk of misconduct in private life being repeated at work, it is still relevant to F&P if it shows a willingness to disregard ethical or legal obligations, abuse a position of trust, exploit vulnerabilities, or is serious enough to undermine public confidence in the regulatory system or impact the FCA's regulatory objectives. However, firms are not expected to apply the FCA's statutory objectives as a separate criterion when assessing F&P.

The final NFM guidance still leaves room for interpretation in specific cases but provides less latitude for firms used to forming a 'house view'.

To what extent must firms explore an individual's conduct outside work for F&P assessments? The FIT guidance states that, generally, a firm does not need to monitor staff's private lives to assess fitness. A firm should only look into a staff member's private life if there is a good reason, such as an allegation that, if true, would call their F&P into question.

The guidance clarifies that firms are not expected to investigate trivial or implausible allegations or those it would be more appropriate for the relevant law enforcement or other authorities to investigate. Nevertheless, the FCA considers that a firm should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety, for example asking for an explanation from the individual.

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 constitutes being on notice of an issue that merits an investigation.

In particular, firms may wish to address, in their policies and procedures, the 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.

### **Management, senior level and board engagement**

The final NFM guidance highlights the important role managers play in fostering healthy and inclusive workplace cultures where people are empowered to speak up and raise concerns. It sets out examples of reasonable steps a manager might take to protect staff from NFM, and to respond appropriately when it occurs, and clarifies circumstances in which it would not be reasonable to expect a manager to act. If a manager fails to take reasonable steps to protect staff against harassment and other specified types of misconduct that will amount to breach of conduct rule 2 (Acting with due skill, etc as a manager). However additional language makes it clear that 'managers' are accountable only to the extent of their knowledge and authority, and not for failing to stop NFM they could not reasonably have known about. Manager is not a defined term and who is in scope will invariably vary from firm to firm, but the FCA has clarified that it is not limited to a line manager.

The non-exhaustive list of examples of conduct by a manager that would breach conduct rule 2 includes failing to take seriously or to deal appropriately with complaints of harassment and failing to take reasonable steps to provide a safe environment for people to raise concerns about such treatment. Training on bystander intervention along with internal understanding and ownership of speak up, harassment and whistleblowing policies and processes may need to be revisited and revised accordingly to address this.

### **Social media**

The guidance clarifies the relevance of staff behaviour on social media, including messaging apps, to the assessment of F&P. Firms are generally not required to monitor the private social media activity of staff subject to FIT standards. The NFM guidance clarifies that, absent indications of material risk, there is no regulatory expectation for firms to proactively oversee staff's personal online conduct. Social media activity that could be relevant includes threats of violence, clear involvement in criminal activity,

or conduct that demonstrates a material risk of misconduct—such as harassment.

Staff may lawfully express their views on social media, even if those views are controversial or cause disagreement or upset among colleagues, without this automatically calling their fitness and propriety into question provided there is no material risk of regulatory breach.

The guidance does not prevent firms from taking disciplinary action for breaches of its social media or other internal policies which may be quite stringent.

## **Regulatory references**

The FCA has previously clarified 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.

In July 2025 in [CP 25/21](#) the FCA proposed some draft guidance on what may need to be included in a regulatory reference if an employee leaves the firm before an investigation into potential misconduct was concluded. This states that the firm should actively consider whether to include the details of the suspected misconduct in a reference considering:

- whether the suspected misconduct would be material enough to disclose if it were true;
- whether the firm has good enough grounds for its belief for it reasonably to consider that it would be relevant to the new employer's assessment of whether the employee is fit and proper;
- whether including it would be consistent with fairness (i.e., does it have reasonable grounds for believing that the misconduct has taken place or that the information is true); and
- the extent to which including the information is otherwise permissible under privacy, employment and other provisions of relevant law.

The Policy Statement implementing any new regulatory references guidance is expected in mid-2026. Going forward in many cases firms may wish to conclude an investigation, in spite of the employee's departure, to ascertain what has occurred in practice and to identify any systemic behavioural or cultural issues.

## **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.

The FCA has clarified that NFM that occurred before 1 September 2026 but that only comes to light after that date should be handled in line with the version of the Handbook in force at the time.

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.

## **Timeframe/ preparatory steps**

The NFM guidance and the Harassment Rule come into force on **1 September 2026** and now that the NFM guidance is finalised the FCA will now focus on how firms are tackling NFM in practice.

Firms will now need to consider the NFM guidance closely and how their own policies, processes and frameworks align with COCON and FIT. 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 Act 2025 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.

## **Practical considerations**

Firms should consider:

- how they currently approach NFM and the extent to which it is at odds with the NFM guidance;
- implications of the Harassment Rule and NFM guidance 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 Harassment Rule and NFM guidance 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.

[Policy Statement 25/23: Tackling non-financial misconduct in financial services](#)

[Senior Managers & Certification Regime Review Consultation Paper: CP 25/21](#)



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