Clifford Chance

BRIEFING

Non-financial misconduct in financial services regulation - where do we stand?

11 March 2026

On 2 July 2025, the Financial Conduct Authority (the "**FCA**") released its long-awaited rules on non-financial misconduct alongside a consultation paper on proposed accompanying guidance about how those rules should be applied. The new rules, which will come into force on 1 September 2026, confirm that serious bullying, harassment or violence amount to Conduct Rules breaches in respect of which the FCA may take enforcement action. This aligns the rules which apply to non-banks with those which already apply to banks.

On 12 December 2025, the FCA published a policy statement confirming its final guidance on non-financial misconduct, after 95% of those who responded to the FCA's consultation agreed that the additional guidance would help them to take action. The guidance covers how firms should apply the new rules and the factors that they should consider when assessing whether someone is fit and proper for their role. Like the new rules, the guidance will come into force on 1 September 2026.

In this updated briefing, we consider the FCA's stance on non-financial misconduct to date, its updated rules, and the potential impact of those rules looking forward.

Key issues

WHAT HAS BEEN THE FCA'S STANCE TO DATE?

In recent years, the FCA has made no secret of its wish to bring non-financial misconduct within the scope of its regulatory remit, and has taken assertive action, including through enforcement action, to demonstrate its commitment to doing so.

Supervisory approach

In September 2018, following the rise of the "#metoo" movement and the subsequent publication of the Women and Equalities Committee's report on sexual harassment in the workplace, Megan Butler, the FCA's Executive Director of Supervision (Investment, Wholesale and Specialists Division), wrote a well-publicised letter which expressed that the FCA saw sexual misconduct as falling within the scope of the financial services regulatory framework in three key ways:

1. through supervision of workplace culture;
2. through fitness and propriety assessments (in respect of employees performing certification or senior management functions); and
3. potentially, through the Conduct Rules (in respect of all staff except ancillary ones).

Since then, the FCA has periodically reiterated that non-financial misconduct falls within its remit. For example, in a December 2018 speech, Christopher Woolard, then the Executive Director of Strategy and Competition at the FCA, summarised the FCA's position as "*non-financial misconduct is misconduct, plain and simple*". Likewise, in January 2020, the FCA sent a "Dear CEO" letter to insurance firms, setting out that non-financial misconduct was a "*key root cause of harm*".

The FCA also indicated that the Senior Managers and Certification Regime ("**SMCR**") was intended to be a key tool in addressing non-financial misconduct as well as cultural issues. The 2020 "Dear CEO" letter to insurance firms, for example, set out that tackling non-financial misconduct would be a key focus for the FCA in its supervision of senior managers, and specifically that "*a senior manager's failure to take reasonable steps to address non-financial misconduct could lead [the FCA] to determine that they are not fit and proper*". Likewise, in July 2021, the Regulators' "Discussion Paper on Diversity and Inclusion in the Financial Services Sector" (DP 21/2) stated: "*... we have been taking increasing steps to enhance diversity and inclusion, for example through a more assertive supervisory focus on non-financial misconduct under the Senior Managers and Certification Regime* ".

In July 2023, Nikhil Rathi, the FCA's Chief Executive wrote a letter to Harriett Baldwin MP, the Chair of the Treasury Select Committee, confirming that the FCA had been investigating Crispin Odey and the asset management firm he founded, Odey Asset Management LLP ("**OAM**") (further details about that investigation are set out below). In the letter, Mr Rathi commented that the FCA remained "*focused on improving the culture of the firms it regulates*", and that "*a corporate culture that tolerates sexual harassment or other non-financial misconduct is unlikely to be one in which people feel able to speak up and challenge decisions, or one in which they will have faith that concerns will be independently and fairly assessed*".

Similar sentiments were expressed on 8 September 2023 in a "Dear CEO" letter to the wholesale banking sector, which identified that non-financial

misconduct was one of the FCA's key priorities for the sector, and noted that a corporate culture which tolerates sexual harassment or other non-financial misconduct "*raises questions about a firm's decision making and risk management*".

In March 2024, the Treasury Committee published a report on its "Sexism in the City" inquiry, setting out that while there had been some progress on gender diversity in financial services, serious cultural issues including widespread sexism, bullying, and a lack of accountability continued to hinder women's advancement and safety in the sector. In setting out its recommendations, the report called for stronger regulatory action by the FCA as well as the Prudential Regulation Authority ("**PRA**"). In May 2024, the FCA published a response to those findings, stating: "*Taking into account the Committee's recommendations, we are now prioritising our work on non-financial misconduct, including sexual harassment and bullying*". As part of its response to the Treasury Committee's report, the FCA also conducted a survey into non-financial misconduct in financial services to understand how wholesale financial services firms detect, handle, and respond to non-financial misconduct. In its press release on the results of the survey published on 25 October 2024, Sarah Pritchard, Executive Director of Markets and International, reiterated the importance the Regulator placed on tackling non-financial misconduct stating: "*where non-financial misconduct is allowed to persist it can undermine trust and confidence, and create a culture where wrongdoing goes unchallenged, causing harm*".

On 16 October 2025, the Treasury Committee published a letter from Sarah Pritchard, now Deputy Chief Executive of the FCA, to Dame Meg Hillier MP providing an update on its response to the recommendations outlined in the Treasury Committee's March 2024 report. In that letter, the FCA made clear that it was continuing to prioritise supervisory oversight of non-financial misconduct, stating that it "*will continue to act on any issues relating to non-financial misconduct that are reported to [it] and continue to engage with firms on this topic*".

Enforcement action

The FCA's policy statements have been matched by enforcement activity, with the FCA taking action against several individuals in relation to non-financial misconduct:

- On 5 November 2020, the FCA announced that it had prohibited three individuals - Russell Jameson, Mark Horsey and Frank Cochran - from working in financial services on the basis of convictions for sexual offences. In announcing those prohibitions Mark Steward, then Executive Director of Enforcement and Market Oversight, said: "*The FCA expects high standards of character, probity and fitness and properness from those who operate in the financial services industry and will take action to ensure these standards are maintained.*"
- In March 2021, the FCA announced it intended to prohibit another approved person, Jon Frensham, who had been convicted of attempting to meet a child following sexual grooming. The FCA determined that Mr Frensham was not a fit and proper person to perform any function in relation to any regulated activity because he lacked the necessary integrity and reputation. Mr Frensham referred his case to the Upper Tribunal which upheld the FCA's decisions (although made some criticisms of the FCA's approach).

- In November 2022 the FCA issued a final decision notice against Ashkan Zahedian prohibiting him from performing any regulated activity. In this instance, Mr Zahedian had been convicted of grievous bodily harm, which the FCA considered demonstrated a "*clear and serious lack of integrity and reputation such that he is not fit and proper to perform regulated activities*."
- In November 2024, the FCA issued a final decision notice prohibiting Ari Harris, a former company director (as an SMF29), from performing any function in relation to regulated activities in financial services. Mr Harris had been imprisoned for wounding/ grievous bodily harm without intent. The judgment stated he "*left the scene … appearing not to show any care or responsibility to a victim who [he] had harmed."* Mr Harris had failed to notify the FCA of the criminal proceedings which resulted in his conviction and imprisonment. When the firm put in an application for approval for a different SMF29, he failed to explain the circumstances (i.e. his imprisonment). The FCA found that Mr Harris's conviction, his deliberate failure to disclose it to the FCA and his deliberate provision of false and misleading information to the FCA, as well as the circumstances of the offence, "*demonstrate a clear and serious lack of honesty, integrity and reputation, such that he is not fit and proper to perform regulated activities*".

Each of these cases concerned regulated individuals who had been convicted of sexual or violent offences, and the FCA's action focused on whether a person who committed non-financial misconduct might, as a result of those actions no longer meet the Fit and Proper test.

More recently, the FCA has also investigated and taken action in relation to non-financial misconduct as a breach of the Conduct Rules, in particular where the conduct in question did not concern a criminal conviction:

- In March 2025, the FCA issued a final decision notice prohibiting Crispin Odey from performing any function in relation to regulated activities in financial services. The FCA found Mr Odey had breached Individual Conduct Rule 1 ('You must act with integrity') by deliberately frustrating OAM's disciplinary process in order to protect his own interests, and by showing a reckless disregard for governance, causing OAM to breach regulatory requirements. In this case, OAM's Executive Committee (the "**ExCo**") had investigated allegations of sexual harassment and assault by female employees and concluded that Mr Odey had behaved inappropriately. Mr Odey had then used his majority shareholding to remove OAM's ExCo, appoint himself as sole member, and postpone disciplinary proceedings indefinitely. The FCA found that Mr Odey demonstrated a lack of integrity, and consequently failed to meet the FCA's fit and proper test. Mr Odey has referred the FCA's decision to the Upper Tribunal.
- In July 2025, the FCA issued a final decision notice in respect of Jes Staley for failing to comply with Individual Conduct Rule 1 (as well as Individual Conduct Rule 3 which required him to be open and co-operative with the Authority, and Senior Manager Conduct Rule 4 of COCON, which required him to disclose appropriately any information of which the FCA or the PRA would reasonably expect notice), by recklessly approving a letter to the FCA which contained two misleading statements about the nature of his relationship with Jeffrey Epstein and the point of their last contact.

THE SIGNIFICANCE OF INTEGRITY

In each of the cases to date, findings of a lack of integrity were key drivers of the FCA's decision to take action. Integrity was also a key focus of the Upper Tribunal's consideration of *Frensham*. The FCA assesses fitness and propriety by reference to honesty, integrity and reputation; competence and capability; and financial soundness. Non-financial misconduct is seen as being particularly relevant to the honesty, integrity and reputation aspects of the assessment.

As we detail below, while it is clear that an evaluation of whether a person's integrity is central to the assessment of that person's fitness and propriety, the FCA and the Upper Tribunal have taken seemingly different views on *when* a lack of integrity means that a person is no longer fit and proper. This has created some uncertainty as to when the FCA may take enforcement action to address non-financial misconduct, and may have contributed to the FCA's decision to include specific references to non-financial misconduct in its rules.

Frensham

The FCA determined that Jon Frensham lacked integrity and was not of good repute, and was therefore not a fit and proper person to perform any function in relation to any regulated activity. The Regulator found Mr Frensham had committed a sexual offence (for which he was later convicted and sentenced) whilst he was an approved person and while on bail for another offence, and also found that he failed in his obligation to be open and transparent with the FCA by failing to inform the FCA about (a) his arrest and being remanded in custody in respect of the offence, and (b) the decision by the Chartered Insurance Institute (CII) not to renew his Statement of Professional Standing and to expel him from membership.

Mr Frensham referred the FCA's decision to the Upper Tribunal. In considering the case, the Upper Tribunal drew from the principles set out in earlier Solicitors Regulation Authority cases:

- In *Solicitors Regulation Authority v Wingate* [2018] 1 WLR 3969, the Court of Appeal had specifically considered the standard of conduct expected of a professional person (in that case, a solicitor) acting with integrity. The Court held: "*Integrity connotes adherence to the ethical standards of one's own profession [...] Obviously, neither courts nor professional tribunals must set unrealistically high standards [....]. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.*"
- In *Beckwith v SRA* [2020] EWHC 3231 (Admin), the Administrative Court approved the definition of integrity offered in Wingate, drawing from the principle that "*in the context of the regulation of a profession there is an association between the notion of having integrity and adherence to the ethical standards of the profession*." The Court further held that "*there is no free-standing legal notion of integrity in the manner of the received standard of dishonesty*". Instead, the standard of conduct required by the obligation to act with integrity "*must be drawn from and informed by appropriate construction of the contents of the relevant rules*", so as to facilitate a "*principled approach to the important point raised by the circumstances of this appeal: the extent to which it is legitimate for professional regulation to reach into personal*

lives of those who are regulated." The Court applied the same principle in relation to the obligation on solicitors to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services. The content of the obligation had to be derived from and informed by appropriate construction of the relevant rules. There was a "*qualitative distinction*" between conduct that does or may tend to undermine public trust in the profession and "*conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful*".

The Upper Tribunal agreed that, since Mr Frensham had been convicted of a criminal offence concerning a child, his personal reputation had clearly been severely damaged. However, to justify regulatory action in circumstances where the relevant behaviour occurred in his private rather than professional life, Mr Frensham's actions must have engaged the standards of behaviour required of the individual concerned by the applicable regulatory provisions. In other words, in such circumstances, a distinction has to be drawn between personal integrity and professional integrity, and the Regulator must determine whether in all the circumstances, the failings of personal integrity also amount to failings of professional integrity.

In upholding the FCA's decision, the Upper Tribunal was satisfied that it was reasonably open for the Regulator to establish a link between Mr Frensham's offences and the integrity objective. The Upper Tribunal did not consider that the FCA would have been able to make this decision based solely on the fact of Mr Frensham's conviction, but could when taking into account:

- the circumstances in which the offence came to be committed (including the fact Mr Frensham was on bail for another suspected offence when he committed the offence), and
- Mr Frensham's failure to be open and co-operative with the Regulator in a number of different respects.

The Tribunal's conclusion relied heavily on the fact that Mr Frensham had breached his bail conditions and had failed to be open and transparent with the FCA, rather than on the fact of his criminal conviction.

Although Mr Frensham's reference to the Upper Tribunal was dismissed, the Upper Tribunal made criticisms of the FCA's case. The Tribunal found the manner in which the FCA sought to link Mr Frensham's offence to his professional role on the basis of the nature of the offence alone to be "*speculative and unconvincing*", and that it had made bare assertions without evidence to support them. Consequently, it found the Regulator failed to clearly link the facts of the case to the relevant regulatory provisions.

The Upper Tribunal suggested that it would have been helpful had the FCA's assertions been backed up by criminological or psychological evidence which could support the view that the serious offence Mr Frensham committed created "*a significant risk that he would likewise seek to exploit vulnerable clients (such as the elderly) who seek to rely on him*". The Tribunal also found it unhelpful to the FCA's case that Mr Frensham had continued to work since his offending, apparently without incident and that the FCA had not taken any action sooner.

Zahedian

In the *Zahedian* case, the FCA took the view that the violent nature of Ashkan Zahedian's offences showed "*deliberate and criminal disregard for appropriate standards of behaviour*", which reflected on his character. In other words, Mr Zahedian demonstrated a clear and serious lack of integrity. Further, the FCA considered that the associated publicity following his conviction meant that Mr Zahedian did not have the requisite reputation to perform functions in relation to regulated activities and posed a risk to the reputation of any future firm (plus potentially the financial services sector itself). Accordingly, he was not fit and proper to perform regulated activities.

The FCA's focus on Mr Zahedian's personal character without seeking to tie it to his professional integrity does not appear to be consistent with the position taken by the Upper Tribunal in the *Frensham* case, which held that the FCA must assess whether the failings of *personal* integrity also amount to failings of *professional* integrity. The FCA did not, however, acknowledge this difference in the decision and, given Mr Zahedian did not escalate the case to the Upper Tribunal, the Upper Tribunal has not opined on this approach.

The net result of these decisions was uncertainty, both about the exact parameters of the tests to be applied by the FCA when assessing integrity and about the scope of its regulatory remit concerning non-financial misconduct for non-bank firms.

CONSULTING ON NON-FINANCIAL MISCONDUCT

Presumably alive to the challenges of taking action in relation to instances of non-financial misconduct on the basis of the existing rules, and potentially also to the apparent inconsistencies in enforcement cases, in September 2023, the FCA and PRA published Consultation Papers (CP23/20 and CP18/23) on proposed rules and expectations aimed at improving diversity and inclusion in regulated firms. This included proposed amendments to the Regulators' rules to specify where they apply to non-financial misconduct. Specifically, the FCA proposed amendments to its Handbook to explicitly address non-financial misconduct within the Conduct Rules, Fit and Proper assessments, and Suitability guidance on the Threshold Conditions. Similarly, the PRA proposed to update SS35/15 (Strengthening individual accountability in insurance) and SS28/15 (Strengthening individual accountability in banking) to clarify that the PRA may take into consideration established patterns of behaviour when assessing fitness and propriety.

The FCA's and PRA's consultation papers originally proposed addressing diversity and inclusion. On 11 March 2025, the FCA confirmed that it had decided not to move forward with such rules for financial firms. See further details on this in our RIFC Insights blog post.

As noted above and discussed further below, on 2 July 2025, the FCA published its rules on non-financial misconduct alongside a consultation paper on proposed accompanying guidance about how those rules should be applied. That guidance was confirmed in a policy statement published by the FCA on 12 December 2025.

NEW RULES AND GUIDANCE INTRODUCED – WHAT THIS MEANS FOR TACKLING NON-FINANCIAL MISCONDUCT

Code of Conduct

As expected, the FCA's new rules on non-financial misconduct and accompanying guidance brings changes to the Code of Conduct Rules ("**COCON**") section of the Handbook, which includes a non-exhaustive list of examples of dishonest or misleading conduct in the course of providing financial services that would be in breach of the Conduct Rules. Under the current version (which remains in place until 1 September 2026), COCON does not include any specific reference to non-financial misconduct. The FCA's new rules will introduce specific reference in COCON to non-financial misconduct, which covers serious instances of bullying, harassment or violence towards "colleagues" (the definition of which includes fellow employees, employees of group companies and contractors). Although the FCA's guidance is detailed, the FCA has made clear that judgement will still need to be exercised by firms on a case-by-case basis. The scope of the revisions now made to the substance of COCON differ from the FCA's original proposals. The original proposal referred to "*seriously offensive, malicious, or insulting conduct*" and "*unreasonable and oppressive conduct causing serious alarm or distress to a fellow member of the workforce*". This has been replaced with "*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, which will be in scope. This 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 FCA has therefore amended the language to more closely align it with relevant legal concepts and definitions (although the FCA has been careful to make clear that this definition is not limited by those definitions or concepts for example, in relation to protected characteristics, and that it has been framed to cover a wider range of workplace misconduct that it considers relevant to its regulatory remit).

Significantly, the changes also amend a discrepancy between the rules that apply to banks and non-banks, so that the FCA's rules on non-financial misconduct align. Under the existing rules, in banks, the Conduct Rules apply to the performance of any functions relating to the carrying on of activities by the firm (whether regulated or not).For non-banks the Conduct Rules were, broadly speaking, limited to regulated activities.

The final guidance accompanying the revised rules is an updated version of guidance on which the FCA had already consulted in 2023. The guidance makes clear that COCON does not cover individuals' private and personal lives and that the FCA does not expect firms to monitor employees' private lives to identify anything relevant to fitness and propriety. It also contains a non-exhaustive list of criteria and scenarios aimed at assisting firms with identifying where individuals' work and personal and private lives begin and end for these purposes. For example, misconduct by a Conduct Rules staff member in relation to a fellow member of the workforce at a social occasion organised by their firm would be in scope, but misconduct in relation to a fellow member of the workforce at a social occasion organised by them in their personal capacity would not be in scope.

In addition, to reflect the feedback on the proposed guidance published in July 2025, in a policy statement published in December 2025, the FCA has made some further relatively minor revisions to the text on which it consulted. These changes include more closely aligning the guidance with employment law and clarifying that managers' accountability is relative to their knowledge and authority, that firms are not expected to investigate trivial or implausible allegations and that there is no requirement for firms to breach privacy law. It also includes some additional examples and flow charts.

Notwithstanding this guidance, including the additional clarifications made, distinguishing between events organised in a personal capacity and work events will be difficult in some cases (e.g. an after party to a social occasion organised by the firm) and will present challenges for firms seeking to investigate potential breaches.

Fitness and propriety

Although the FCA's guidance indicates that firms are not expected to actively enquire into employees' personal or private lives, it makes clear that where firms do become aware of information which, if substantiated, would call into question employees' fitness and propriety, firms should consider what they can do to assess this possible impact, noting that misconduct in a person's personal or private life may be relevant to an assessment of fitness and propriety. It adds that this may be the case even where it does not involve a breach of standards that are equivalent to those required under the regulatory system and/or there is little or no risk of that behaviour being repeated in their work for their firm. The FCA had previously indicated that this will be the case if the individual's behaviour is "*disgraceful or morally reprehensible or otherwise sufficiently serious*", but the guidance is now drafted in more neutral terms. Specifically, it refers to a "*willingness to: (i) disregard ethical or legal obligations; (ii) abuse a position of trust;* [or] *(iii) exploit the vulnerabilities of others*" as indicators of conduct which, if sufficiently serious, could undermine public confidence in the regulatory system or otherwise impact on the Regulator's statutory objectives (and which may therefore have a bearing on an individual's fitness and propriety).

In terms of the implications of the new rules for regulatory references, the FCA clarified in its publication of the new rules in July 2025 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 non-financial misconduct being disclosed). However, this does not apply if the non-financial misconduct 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 Controls ("**SYSC**") sourcebook.

In addition to the above, in its consultation paper (CP25/21) on the review of the SMCR (published on 15 July 2025 and which closed on 7 October 2025), the FCA is proposing guidance to clarify that Conduct Rule breaches need not be included in a regulatory reference if the firm did not take disciplinary action (as defined in the Financial Services and Markets Act 2000) because it did not consider the conduct to be serious enough to warrant it, and if it believes that the breach is insufficiently severe or

serious to impact an assessment of fitness and propriety. The FCA cross refers to the draft guidance in CP25/18 on relevant factors to consider when assessing the impact on fitness and propriety after a Conduct Rule breach. Deciding the information to include in regulatory references can, however, be a question of judgement based on individual circumstances (and the FCA proposes in CP25/21 new guidance on verification and fairness to help firms make that judgement).

Further details about these rule revisions and the accompanying guidance can be found in our Clifford Chance briefing: FCA Guidance on non-financial misconduct in the financial services sector.

Fit and Proper test

As noted above, the FCA's new guidance includes further clarification about when an individual's behaviour may be relevant to an assessment of fitness and propriety. Otherwise, however, the recent updates to the FCA's rules do not include any changes to the FCA's Fit and Proper test for Employees and Senior Personnel ("**FIT**") section of the FCA Handbook.

We do not consider this indicates that the FCA does not intend to continue to take action against individuals for non-financial misconduct on the grounds that they are not fit and proper. After all, the FCA's enforcement cases to date have primarily focused on whether individuals who have committed non-financial misconduct are fit and proper. That is likely to remain a key focus for the Regulator.

The FCA Handbook already provides guidance as to how firms should assess honesty, integrity and reputation as well as a non-exhaustive list of factors to be taken into account. The guidance provides that an SMCR firm determining the honesty, integrity and reputation of staff being assessed under FIT should consider all relevant matters, including those set out in the FIT section of the FCA Handbook, whether arising in the UK or abroad.

The Handbook also provides that firms should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that candidate or person. If any staff being assessed under FIT has a conviction for a criminal offence, the firm should consider the seriousness of and circumstances surrounding the offence, the explanation offered by that person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.[1]

FIT contains a list of factors to which the FCA and firms should have regard in assessing integrity. However, these focus on financial misconduct: for example, whether the person has been the subject of any adverse finding in civil proceedings, particularly in connection with investment or other financial business, misconduct, or fraud. Currently, there is no express reference to non-financial misconduct. This position is to be revised with effect from 1 September 2026 by the Handbook text included in the December 2025 policy statement, including incorporating references to violence or sexual misconduct, and whether findings have been made of harassment, victimisation, bullying or discrimination.

[1] As regards the competence and capability the guidance in the FCA Handbook provides that the FCA would expect an SMCR firm determining the competence and capability to consider convictions, dismissals and suspensions from employment for drug or alcohol abuses or other abusive acts only in relation to a person's continuing ability to perform their role.

In accordance with FIT, firms must ensure that individuals performing a senior management function or a certification function are fit and proper to carry out their role, and FIT provides guidance on how firms should make that assessment. As the FCA set out in its "Dear CEO" letter to insurance firms in January 2020: "*a senior manager's failure to take steps to address non-financial misconduct could lead us to determine that they are not fit and proper*".

In principle, this would not necessarily require or depend on action in respect of specific underlying misconduct, but instead could be based on evidence of broader cultural failings. In other words, the FCA may consider a senior manager's failure to take action to embed a healthy culture to be evidence itself of a lack of competence or, in certain circumstances, integrity.

Culture and Psychological Safety

In assessing whether non-financial misconduct amounts to a breach of the Conduct Rules and/or impacts a fit and proper assessment, it continues to be important for firms to consider the FCA's wider perspective and to understand how the FCA links non-financial misconduct to its wider statutory objectives. This may impact on the interpretation of the scope of the Conduct Rules and the FIT assessment, and it may also impact the firm's wider relationship with the Regulator.

Pursuant to section 1B FSMA, the FCA's operational objectives include securing protection for consumers (the "consumer protection objective") and protecting and enhancing the integrity of the UK financial system (the "integrity objective"). SUP 1A.3.2A of the FCA Handbook explains that in its supervisory approach, the FCA will have a focus on culture and governance.

In recent years, the FCA has placed increasing significance on the role of healthy and purposeful cultures in pursuing its operational objectives. As Megan Butler explained in her letter to the Women and Equalities Commission, the FCA views non-financial misconduct as a potential symptom and/or cause of a poor culture, which in turn may drive other forms of misconduct or impact the FCA's statutory objectives:

"A culture where sexual harassment is tolerated is not one which would encourage people to speak up and be heard, or to challenge decisions. Tolerance of this sort of misconduct would be a clear example of a driver of poor culture. "

Likewise, in the "Dear CEO" letter to insurance firms, the FCA identified non-financial misconduct and an unhealthy culture as a key root cause of harm:

"*We view both lack of diversity and inclusion, and non-financial misconduct as obstacles to creating an environment in which it is safe to speak up, the best talent is retained, the best business choices are made, and the best risk decisions are taken.*"

In February 2025, the FCA again expressed this sentiment in a speech on culture, delivered by Emily Shepperd, the FCA's chief operating officer: "*One of the clearest warning signs of a failing culture is non-financial misconduct. Behaviours like bullying, harassment and discrimination. […] Turning a blind eye to toxic behaviours not only drives away good staff, but has to raise serious questions about a firm's wider decision-making and risk management. These environments where people don't feel psychologically safe to speak up can become breeding grounds for even bigger problems – hidden mistakes, ignored risks, and ultimately, harm to consumers and our markets. And that is why healthy firm cultures are, and will continue to be, not just a moral issue, but a regulatory concern too.*"

The Regulator's perspective is that if non-financial misconduct makes staff feel psychologically unsafe, that may prevent staff from working effectively more broadly, including, for example, by inhibiting staff from speaking-up / offering appropriate upward challenge. More broadly, it considers that tolerance of non-financial misconduct (including harassment and bullying) may serve to harm diversity and inclusion, and foster groupthink (and that this, in turn, would damage society's view of the financial services sector, protection for consumers, and the UK's competitiveness and economic growth). The FCA's December 2025 policy statement states: "Tackling NFM in firms helps foster healthy and inclusive workplace cultures where people are empowered to speak up and raise concerns. This supports our objectives by… Fostering psychologically safe workplaces that nurture creativity and promote innovation in consumers' interests."

Systems and controls

The FCA expects firms to manage the risks associated with non-financial misconduct and poor culture through the implementation of effective governance and controls. For example, in a speech on 28 November 2022, Emily Shepherd, FCA COO and Executive Director of Authorisations, said: "*The FCA expects senior leaders to nurture healthy cultures in the firms they lead. Cultures that are purposeful. That have sound controls and good governance.*" Similarly, in 23 November 2023, Emily Shepherd spoke of the importance of transparency in enabling good governance, and for this to "*run all the way through to the top*", so that "*boards… have the information they need to set cultural and strategic direction*".

These expectations were highlighted by the FCA's investigation into Mr Odey's conduct which included investigation into whether OAM had contravened the FCA's Principles for Business by failing to conduct its affairs with due skill, care and diligence, and/or failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems and controls. OAM is currently in the process of winding down and is no longer authorised by the FCA, so enforcement action was not taken against the firm. However, as detailed above, the FCA has taken action against Mr Odey, as OAM's founder and majority owner. Specifically, the FCA found that Mr Odey had breached the requirement of Individual Conduct Rule 1 to act with integrity, including by showing a reckless disregard for governance, causing OAM to breach regulatory requirements.

In his July 2023 letter to the Treasury Select Committee, sent in relation to the Odey investigation, Mr Rathi stated: "*We expect firms to have effective systems in place to identify and mitigate risks of all kinds. Should allegations or evidence of non-financial misconduct come to light we expect a regulated firm to take them seriously through appropriate internal procedures. We can investigate and act against authorised firms that fail in this regard for inadequate systems and controls.*"

The FCA's updated rules and guidance may prompt additional scrutiny of not only specific incidences of non-financial misconduct, but of the measures maintained by firms and managers to set and communicate expectations in this area. It is therefore an opportune time for firms to review, evaluate and update as necessary their arrangements they have in place. For example, COCON will now carry specific provisions that a failure to set up and maintain policies, systems and controls to protect staff against harassment, or to operate them so as to detect and prevent harassment, may amount to a breach of the requirement to act with due skill and diligence as a manager (rule 2).

In reviewing their systems and controls, firms should also take into account the consultation papers published by HM Treasury, the FCA, and the PRA on 15 July 2025, which are aimed at simplifying the SMCR. These include proposals to remove the existing Certification Regime from legislation (giving scope for the FCA and PRA to design a more proportionate replacement through their own rule-making powers) along with other clarificatory and streamlining proposals. Further details are included in our RIFC Insights blog post A further policy statement on this is expected in mid-2026.

As referenced above, certification, appraisal, disciplinary, referencing and reporting processes may all be impacted by these recent developments and may require some revisions or additions. They will also need to consider the interaction with broader employment law obligations, including those regarding taking reasonable steps to prevent harassment in the workplace (which will be augmented to "all" reasonable steps from October 2026, as a result of the Employment Rights Act 2025). Firms will also wish to consider which additional training may be needed and which steps it may be appropriate for them to take to ensure that Senior Managers' responsibilities for these areas and the "reasonable steps" they are taking to discharge them are clearly understood and recorded. Relevant governance approaches may also need to be revisited, including interaction between internal stakeholders such as HR, Legal, Compliance, Risk and ultimately the Board.

INVESTIGATING NON-FINANCIAL MISCONDUCT

Firms are, of course, expected to take their own steps to investigate and sanction non-financial misconduct where needed, including via disciplinary action and correct use of regulatory references. In this regard, and as mentioned above, we note that the FCA's revised guidance reminds firms that they may need to disclose non-financial misconduct at work or in private life in a regulatory reference.

In investigating potential instances of non-financial misconduct, firms must also heed the FCA's notification requirements, including:

- SUP 15.11 which sets out the requirements for notifying Conduct Rule breaches;

- Principle 11 (and the PRA's Fundamental Rule 7) which require firms to notify the Regulators of anything relating to the firm of which the Regulators would reasonably expect notice; and
- SUP 10C.14.18 which provides that if a firm becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of a senior manager, it must inform the FCA within seven business days.

As Megan Butler wrote in her letter to the Women and Equalities Committee: "*Firms must inform us promptly of potentially serious misconduct involving their employees, including criminal convictions and other sanctions, upheld complaints, and disciplinary proceedings*."

ENFORCEMENT OF NON-FINANCIAL MISCONDUCT – LOOKING AHEAD

As described in this briefing, the FCA has drawn its regulatory perimeter to allow it to sanction non-financial misconduct, with implications for both firms and individuals. Whilst enforcement action against individuals for non-financial misconduct has been rare, the recent FCA cases have highlighted the Regulator's willingness to hold individuals to account where serious misconduct has been committed, even where that conduct is unrelated to regulated activities.

Explicit references to non-financial misconduct in the FCA's rules underline its commitment to taking action in this area. Refinements to rules and guidance have gone some way to addressing the uncertainty emerging from enforcement activity to date by making clear that the FCA is not required to demonstrate a link between personal and professional integrity when pursuing enforcement action against a regulated individual. In its December 2025 policy statement, the FCA stated: "*This publication brings our policy work on NFM to a close. We will now focus on how firms are tackling it in practice*". Firms and individuals should therefore expect regulatory scrutiny and possible action where non-financial misconduct occurs.

Non-financial misconduct cases have, to date, focused on the fitness and propriety of regulated individuals. This is likely to continue to be the main basis on which the FCA seeks to address non-financial misconduct. However, under the updated rules, action for breaches of the Conduct Rules will become a more feasible option in relation to workplace misconduct such as bullying or harassment. The amendments to COCON will also enable the FCA to take action against a broader range of individuals and in a broader range of situations than has been the case to date.

However, these changes, and the clarity they bring, will not necessarily lead to increased numbers of enforcement cases. Since the FCA has a commitment to efficiency and to selecting cases with maximum deterrent effect, it is to be expected that the FCA's focus will, for the time being at least, remain principally on senior individuals.

Meanwhile, firms must remain mindful that in investigating workplace-related non-financial conduct, the Regulators' may scrutinise the adequacy of the firm's systems and controls. To manage this risk, firms should implement and maintain adequate measures that set out clear expectations in relation to employees' non-financial conduct (and provide training where needed), and which make sure that issues are effectively

investigated, addressed and, where necessary, reported. Firms, and in particular individuals holding senior management functions, must also continue to consider their risks under the SMCR (taking into account the Regulators' recent proposals).

Further reading

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

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