

Consultation Paper

CP25/18***

Tackling non-financial misconduct in financial services

Consultation on guidance in the Code of
Conduct (COCON) and the Fit and Proper
Test for Employees and Senior Personnel
(FIT) sourcebooks

including

Policy Statement on amendment to the
Code of Conduct (COCON) (CP23/20)

July 2025

How to respond

This relates to Consultation Paper (CP) 23/20 which is available on our [website](#).

We are asking for comments on the consultation proposals in Chapter 3 by **10 September 2025**.

You can send them to us using the form on this Consultation Paper's [webpage](#).

If you are unable to access the online survey platform, you may choose to respond either in writing or by email.

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- a list of the names of respondents who made representations where those respondents consented to the publication of their names,
- an account of the representations we receive, and
- an account of how we have responded to the representations.

In your response, please indicate:

- if you consent to the publication of your name. If you are replying from an organisation, we will assume that the respondent is the organisation and will publish that name, unless you indicate that you are responding in an individual capacity (in which case, we will publish your name),
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Irrespective of whether you indicate that your response should be treated as confidential, we will publish an account of all the representations we receive in our Policy Statement.

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Foreword

Too often where we see poor market conduct, or consumers being failed by financial services firms, we find cultural failure within firms.

One of the clearest warning signs of a failing culture is non-financial misconduct – behaviours such as bullying and sexual harassment – going unchallenged. Failure to tackle toxic behaviours drives away good people, prevents staff from speaking up and undermines performance. It damages growth and enables financial misconduct.

There is an important role for regulators to play in tackling these issues. This includes making sure that steps are taken to prevent ‘rolling bad apples’ – people moving from firm to firm without appropriate action being taken or without past serious non-financial misconduct being disclosed.

Many financial firms have taken a clear stand on these issues. But many, including the overwhelming majority of those who responded to our consultation on *Diversity and Inclusion in the Financial Sector* (CP23/20), have asked us to strengthen our existing rule set. This supports firms in acting decisively when non-financial misconduct is identified and to share substantiated cases when people change jobs.

Firms are, by now, well aware that non-financial misconduct can be a relevant regulatory concern. And those that get this wrong run significant risks: financial and reputational, as well as regulatory.

At present, there is a discrepancy between the rules that apply to banks and non-banks. We are changing that so our rules on NFM will align.

By amending the scope of our Code of Conduct in non-banks, we’re giving them greater confidence about what is in scope of our requirements, strengthening their ability to take action and prevent harm.

Our rules and guidance must be both proportionate and effective. We have already responded decisively to feedback by focusing our rule change and draft guidance on the areas that make the most difference, correspondingly reducing costs for firms.

Firms are used to making judgements in these cases, and it is impossible to give an exhaustive list of the circumstances in which misconduct will breach our rules, so firms will still need to exercise judgement. But we are asking if firms would find guidance helpful and seeking views on refreshed wording, reflecting feedback on our earlier consultation.

Our new 5-year strategy has deepening trust at its heart. We will continue to work closely with industry to drive positive cultural change.

Sarah Pritchard
Deputy Chief Executive

Chapter 1

Summary

- 1.1** In September 2023, we published Consultation Paper [CP23/20](#) proposing a new regulatory framework on Diversity and Inclusion (D&I) in the financial sector. We are now confirming final rules in a Policy Statement (PS), extending existing non-financial misconduct (NFM) rules in banks to non-banks, detailed in Chapter 2.
- 1.2** We are also consulting on whether additional Handbook guidance is needed to support firms in applying our rules consistently (Chapter 3). Table 1 outlines key elements of the draft guidance together with proposals we are not taking forward.

Table 1 Key elements of guidance for consultation and proposals not taken forward

Guidance	Key elements	Included in CP?
Code of Conduct (COCON)	<p>Guidance on the scope of COCON, including guidance and examples of:</p> <ul style="list-style-type: none"> the boundary between work and private life when conduct is outside of a firm's <i>SMCR financial activities</i> when NFM may be out of scope in a non-bank <p>Factors to consider when determining whether NFM breaches the conduct rules, including whether:</p> <ul style="list-style-type: none"> the misconduct was 'serious' it was reasonable for it to have the perceived effect it related to Individual Conduct Rule 1 or Rule 2 <p>Examples of reasonable steps for managers to protect staff against NFM.</p>	✓
Fit and Proper test for Employees and Senior Personnel (FIT)	<p>Explanatory material on how various types of conduct, including NFM, are relevant to the FIT section of our Handbook, including:</p> <ul style="list-style-type: none"> regulatory breaches, eg of COCON conduct connected to work behaviour in private or personal life social media and employee monitoring relevance to competence and capability 	✓
Threshold Conditions (COND)	Guidance on the relevance of NFM and discriminatory practices in firms to our assessment of their suitability to undertake regulated activities.	X
Senior Management Arrangements, Systems and Controls (SYSC)	Guidance to remind firms they may need to disclose NFM at work or in private life in a regulatory reference.	X

- 1.3** As set out in our public statement of 12 March 2025, we are no longer taking forward the D&I proposals consulted on in CP23/20.
- 1.4** Following updates to our policy and methodology, and changes to the wider legislative environment, we reassessed our cost benefit analysis (CBA). We discuss the costs and benefits of our policy and the revisions to the CBA in Chapter 4.
- 1.5** Original NFM package costs were estimated at £303m (implementation) and £180m (ongoing). The rule change is estimated at £25m (implementation) and £15m (ongoing), rising to £75m and £40m respectively if new guidance is adopted. We are seeking feedback on these estimates.
- 1.6** Our regulatory framework complements, but does not replace, criminal law, firms' internal disciplinary processes and employment tribunal routes.

Who this affects

- 1.7** This publication applies to all FSMA firms with a Part 4A permission and staff in those firms who are subject to COCON.
- 1.8** It may also interest other stakeholders, including:
- regulated firms without a Part 4A permission
 - industry groups/trade bodies
 - consumer groups and individual consumers
 - policy makers and other regulatory bodies
 - industry experts and commentators
 - academics and thinktanks

The wider context of this publication

- 1.9** This work builds on the July 2021 Discussion Paper (DP21/2) we published jointly with the PRA and our September 2023 Consultation Paper (CP23/20), which received 257 responses.
- 1.10** Our NFM proposals gained strong support, and respondents agreed generally that NFM was a regulatory issue. Of the 173 respondents who expressed a view, 80% supported our approach, including 90% of trade bodies and 80% of authorised firms. The Treasury Select Committee (TSC) also endorsed the need for stronger regulation.
- 1.11** Our approach aligns with the FCA Strategy 2025 to 2030, aiming to raise standards, increase accountability and build trust in financial services. Increasing market and consumer confidence will underpin innovation, informed risk taking and economic growth.
- 1.12** Our proposals are compatible with employment law, including the Equality Act 2010 (Equality Act) and the duty to protect workers from sexual harassment (Worker Protection (Amendment of Equality Act 2010) Act 2023 (WPA)).

- 1.13** While there is overlap, our regime addresses wider forms of misconduct and is not limited to protected characteristics. It aims to make sure that firms address serious misconduct robustly and consistently and prevent perpetrators from causing further harm.
- 1.14** We began developing these proposals before HMT issued its 2024 remit letter. We consider our policy supports the recommendations set out in that letter.
- 1.15** We remain committed to transparency, as shown in our 2024 NFM survey report, helping firms benchmark and learn from peers.

How tackling NFM supports our objectives

- 1.16** In CP23/20 (Chapter 2), we outlined the link between our previous proposals and our statutory objectives.
- 1.17** Integrating NFM into our rules supports all 3 of our operational objectives, as well as our secondary objective to facilitate the growth and international competitiveness of the UK economy.
- 1.18** Robust and appropriate action to tackle NFM within firms helps foster healthy and inclusive workplace cultures where people are empowered to speak up and raise concerns. This supports our objectives by:
- Deterring wrongdoing that can harm individuals and contribute to an unhealthy workplace culture.
 - Preventing the development of workplace cultures that facilitate further wrongdoing and regulatory breaches that result in consumer harm and damage to market integrity.
 - Countering 'rolling bad apples' by including NFM in the regulatory references provided to prospective employers.
 - Attracting and retaining a wider range of people in financial services, increasing diversity of thought and experience.
 - Fostering psychologically safe workplaces that nurture creativity and promote innovation in the interests of consumers.
 - Promoting constructive challenge and better decision-making, supporting good governance and appropriate risk taking.
 - Upholding regulatory standards and public confidence in the financial sector.
- 1.19** These benefits will also support growth and international competitiveness by helping to improve the UK financial sector's reputation, strengthening its access to global talent and increasing market and consumer confidence.

What are we changing

- 1.20** We are changing the rules governing the scope of COCON as it applies to non-banking firms to make it clear that serious misconduct such as bullying, harassment and violence is a matter of regulatory concern.
- 1.21** The new rule will expand the scope of COCON in non-banks to match that in banks for these types of NFM from 1 September 2026. This will also allow us time to finalise any accompanying guidance that we may publish (subject to consultation) before the rule comes into effect.

Outcomes we are seeking and measuring success

- 1.22** This publication sets out a rule change to help tackle NFM in firms across the financial sector. We expect that aligning the conduct rules in banks and non-banks for cases of serious NFM will help drive consistency of approach and enable robust action by firms.
- 1.23** The rule change will make it clearer when NFM can be a breach of our rules and give firms the confidence they need to take action under our regime, helping to deter misconduct and counter 'rolling bad apples' (see 1.16 to 1.19).
- 1.24** In CP23/20, we said we expected the rule change to lead to an increase in notifications of conduct rule breaches for NFM. This is because more incidents of NFM in non-banks will be brought into scope of our rules.
- 1.25** However, we recognise that the number of rule breaches is not in itself a clear indicator of firm culture. For example, a high number of reported incidents could reflect a healthy speak-up culture, while a low number could signal the opposite.
- 1.26** Firms have a legal duty to protect their workers from harassment and similar behaviour and are required to take proactive steps to prevent sexual harassment. In the longer term, this could lead to a reduction in incidents of NFM which would mean fewer notifications under our rules.
- 1.27** So, we are not setting expectations for the number of rule breaches reported to us. We will continue to monitor these in line with existing practice.

Next steps

- 1.28** The consultation on the draft guidance in Chapter 3 will be open for 10 weeks until 10 September 2025. You can respond using our dedicated online survey or one of the other methods in the 'How to respond' section. We then plan to review the feedback and set out our final regulatory approach before the end of this year.

Implementation period

- 1.29** The new COCON rule will come into force on 1 September 2026. We have aligned this date with the existing conduct rule breach reporting period applicable to most firms to make it easier for them to implement. All affected firms have until that date to amend existing policies and procedures.
- 1.30** If we do publish Handbook guidance following this consultation, we would aim to do so by the end of this year so firms have good time to update their processes.
- 1.31** We remind firms of their duty under section 64B FSMA to notify conduct rules staff about the rules and take all reasonable steps to make sure they understand how they apply to them (COCON 2.3).

Equality and diversity considerations

- 1.32** As a public body, we have a duty under the Equality Act to 'have due regard' to the need to: eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Equality Act; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and to foster good relations between people who share a protected characteristic and those who do not.
- 1.33** Our policy could help advance our equality objectives by reducing instances of harassment and discrimination within financial services firms and encouraging firms to create more inclusive working environments.
- 1.34** We have considered feedback on the potential impact on equality and diversity. Respondents were strongly supportive overall, but some raised concerns about the possibility of unintended consequences.
- 1.35** We have addressed these concerns by revising the wording of the new rule (see Chapter 2) and amending the draft Handbook guidance on which we are now consulting (see Chapter 3).

Chapter 2

Policy Statement: Code of Conduct (COCON)

- 2.1** This chapter sets out the feedback received, and our response, to our proposal to amend the rules on NFM in our Code of Conduct (COCON). Feedback on our proposed guidance is discussed in Chapter 3.
- 2.2** In this chapter, 'NFM' refers to the types of serious misconduct described in the new rule at COCON 1.1.7FR. Broadly, these are bullying, harassment and violence, unless otherwise stated.

Consultation proposals

- 2.3** In CP23/20, we proposed to change the scope rules for non-banks to make bullying, harassment and similar behaviour between staff subject to the wider scope rules that apply to banks.
- 2.4** The scope of COCON is relatively wide in banks. But in non-banks it applies primarily to conduct that forms part of, or is for the purpose of, the *SMCR financial activities* of the firm.
- 2.5** Although NFM can amount to a breach of our rules for non-banks, this change would more closely align the rules between banks and non-banks and bring more incidents into the scope of COCON.
- 2.6** In line with our existing regulatory remit, NFM that only related to a part of a non-bank's business that did not involve *SMCR financial activities* would still not be in scope of COCON.

We asked:

- Question 5:** To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?

Overview: feedback on the proposed rule change

- 2.7** There was strong support for our proposal to make it clearer that serious NFM can be a breach of the conduct rules. There were also 37 substantive comments on our COCON proposals.
- 2.8** These centred on the risk of inconsistent application, unfair outcomes, lack of clarity and apparent divergence from employment law.

Our response: making the rule

In light of the strong support, we are making the proposed COCON rule change we set out in our CP so as to more closely align the rules on NFM in banks and non-banks.

We revised the wording of the rule in response to feedback to the CP. We consider the changes have no effect on the compatibility statement in CP23/20 (Annex 3).

We discuss the feedback on the new rule and how it applies in the context of our existing regulatory approach below.

Divergence from employment law

Feedback

- 2.9** We received 37 comments on our apparent divergence from employment and equality law, which some respondents said would increase the risk of unfair outcomes and legal challenge.
- 2.10** Many respondents criticised the wording of the rule as it did not match the definition of harassment in the Equality Act and some of the terms (such as 'offensive,' 'unreasonable' and 'oppressive') were not defined in law.
- 2.11** There were also concerns about an apparent lack of objectivity in the way a breach was to be determined.

Our response

The conduct rules are distinct from employment law and employers' internal disciplinary codes. COCON sets out conduct rules for staff and provides guidance about those rules to firms whose staff are subject to them. We have statutory powers as an enforcement body for breaches of COCON.

We have revised the rule to align it more clearly with employment law. We consider this change will assist interpretation and application of the rule, reducing the risk of unfair outcomes.

We think it important not to limit our rule to conduct related to a 'relevant protected characteristic'. So, we have framed it to cover a wider range of workplace misconduct that we consider relevant to our statutory objectives (see 1.12 to 1.13).

Scope of COCON

Feedback

- 2.12** Some respondents were unclear as to why the rule change applied only to non-banks and asked us to confirm that NFM was covered in all firms.
- 2.13** We were also asked to confirm whether the proposed Handbook rules and guidance were extensions of COCON or simply clarifications of existing rules, particularly for banks.
- 2.14** Some respondents were concerned we were extending the scope of COCON to behaviour outside the workplace, adding complexity to the regulatory perimeter.
- 2.15** There were also some questions about whether we were changing the territorial scope of COCON.
- 2.16** Two respondents challenged the restriction of the new rule to NFM against colleagues and suggested it should cover a wider range of work-related misconduct.

Our response

As stated in 2.5, NFM can amount to a breach of our rules in any firm but under the current rule set will more commonly breach COCON in a bank than in a non-bank.

We are widening the scope rules for non-banks to align the approach across all SM&CR firms and bring more instances of NFM into our regulatory remit. The new rule comes into effect on 1 September 2026 and will not apply retrospectively. There is no change to the existing rules on territorial scope.

Under [section 64A FSMA](#), conduct in private or personal life is entirely out of scope of our statutory power to make rules of conduct for individuals. This is different from assessments of fitness and propriety, which can take account of any relevant matters wherever they occur.

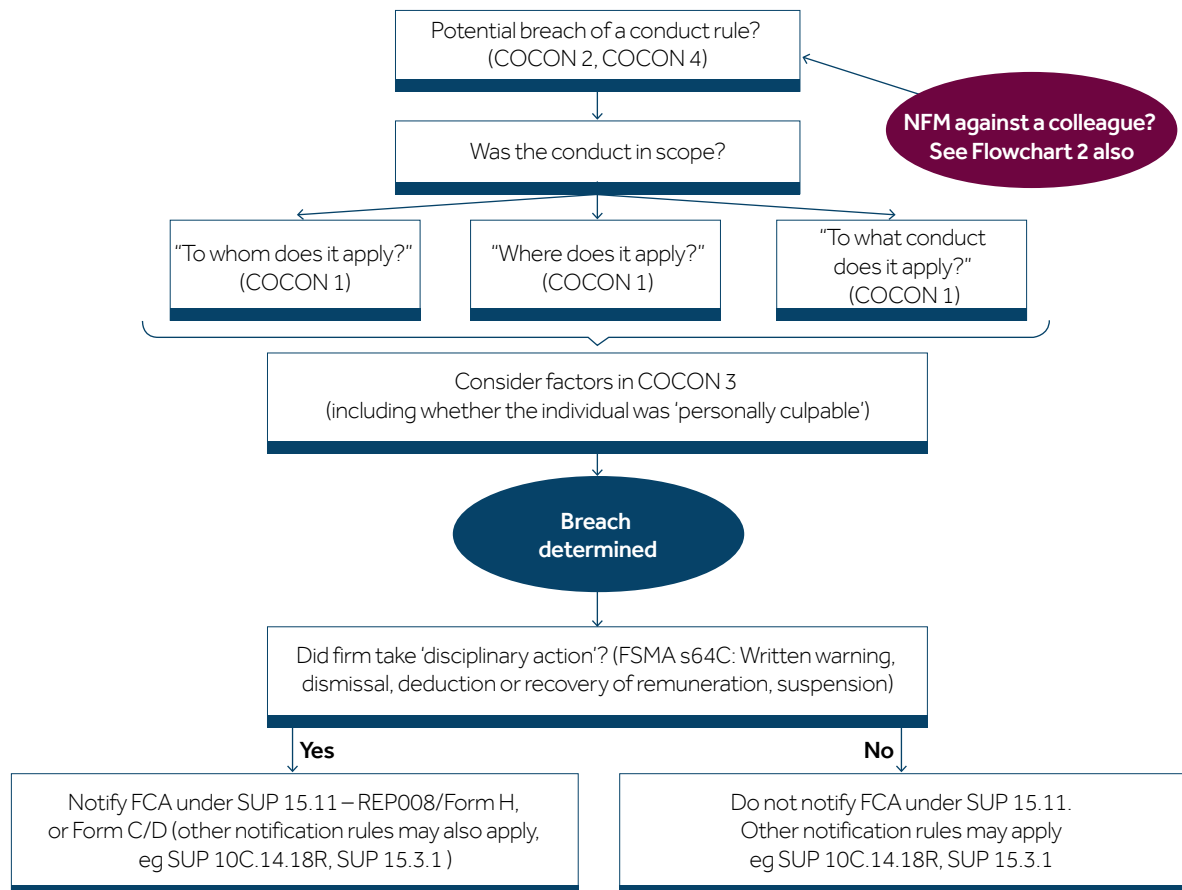
COCON is separate from employment law. This means an employer may, in some circumstances, be able to take disciplinary action for misconduct in a non-work setting that would not amount to a breach of COCON.

While the new rule widens the scope of COCON in non-banks only for NFM against colleagues, it is possible for other work-related conduct to breach COCON under the existing scope rules. For example, this could include misconduct towards clients and business contacts.

-
- 2.17** The graphics below set out key considerations for determining whether a conduct rule breach has taken place and may need to be reported to us under our rules. These processes apply whether or not we finalise the draft guidance in Chapter 3.

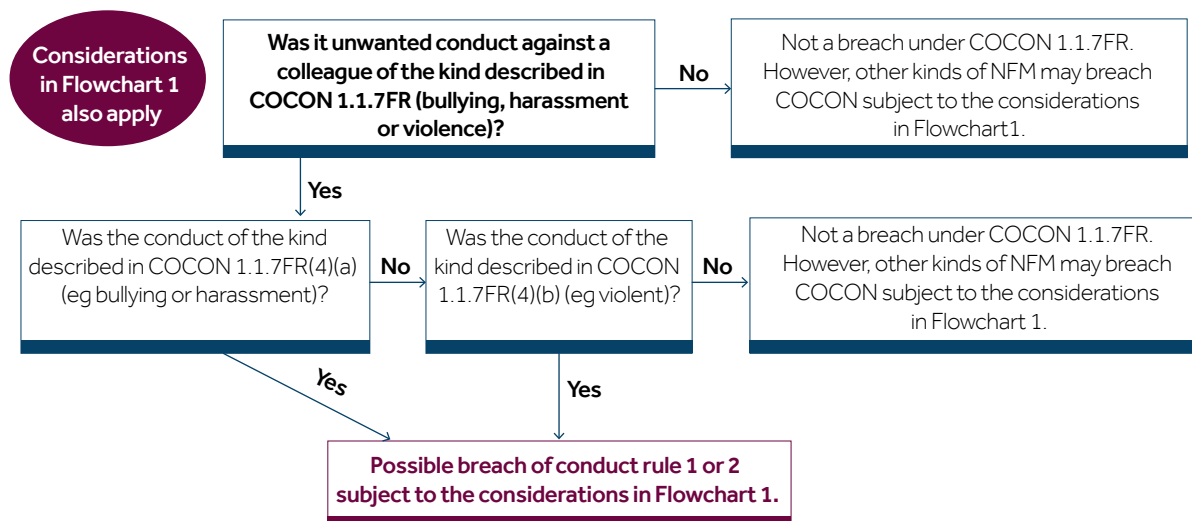
2.18 Flowchart 1 sets out general considerations for identifying a conduct rule breach and whether it is reportable to us under SUP 15.11. Firms may also be required to notify us of misconduct under other notification rules.

1. Identifying and reporting a conduct rule breach: general considerations



2.19 Flowchart 2 summarises factors for identifying whether work-related NFM falls within the new rule at COCON 1.1.7FR under the rules as amended by this PS.

2. Additional factors for identifying whether NFM falls within the new rule at COCON 1.1.7FR (from 1/9/26)



Historic rule breaches and regulatory references

Feedback

2.20 Some respondents said the proposals could introduce a change to regulatory requirements as they had previously interpreted the rules differently.

2.21 Several respondents asked us to clarify how our changes would apply to historic incidents of NFM and how these should be reflected in regulatory references.

Our response

The new COCON rule does not apply retrospectively. If guidance is made, we will consider whether any transitional arrangements are required.

If it comes to a firm's notice that it incorrectly determined a conduct rule breach under the rules that applied at the time, it should rectify its past notification in line with our rules (SUP 15).

We do not expect a firm to do any retrospective analysis of whether it has incorrectly determined a conduct rule breach in the past.

Example

Firm A disciplined an employee for misconduct that it determined was also a conduct rule breach. The firm had not realised that COCON 1.1.7AR restricted the application of COCON in non-banking firms and it is obvious that the conduct was outside the scope of that rule. The firm should update its past breach notification as it was not reasonable to interpret the rules in force at the time in this way.

The firm should not include the incorrect conduct rule breach in any future regulatory reference (Question F). However, if it reasonably believes the misconduct is relevant to an assessment of fitness and propriety, it should disclose it under Question G.

NFM and regulatory references

Feedback

- 2.22** Some respondents were concerned about the broad scope of Question G on the current regulatory reference template ('Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper?').

Our response

The purpose of a regulatory reference is to enable firms to share information that is important to an assessment of a candidate's fitness and propriety.

We consider Question G to be fundamental to the purpose of a regulatory reference and so we do not intend to amend it. It enables firms to comment on matters that might reasonably be considered relevant to an assessment, but that would not otherwise be included in the template. The risk of inappropriate or unfair references is mitigated by extensive Handbook guidance and the duty under general law to provide fair and accurate information in references (see eg SYSC 22.5.4G – 22.5.5G).

We also remind firms that, while they must 'have regard' to certain matters when answering Question G, they are not *required* to provide information they reasonably believe to be irrelevant to an assessment. This is the case even if that information would need to be disclosed in an SMF application or, if they were an approved person, under SUP 10C.14.

Example

An individual is accused of serious NFM towards a colleague, but the subsequent disciplinary investigation uncovers conclusive evidence that the alleged misconduct did not occur. It is unlikely to be appropriate to include the allegation in a regulatory reference, even though the fact that an investigation took place would have to be disclosed in any SMF application.

- 2.23** A handful of respondents raised additional points about regulatory references, as outlined below.
- 2.24** We know there is some confusion about the impact of current SYSC 22.2.2R(3)(c), which lifts the 6-year time limit for providing information if it relates to 'serious' misconduct. This rule does not mean that certain information must automatically be disclosed in perpetuity. The existing guidance at SYSC 22.5.10G to 22.5.11G outlines relevant considerations.
- 2.25** The implication of this existing guidance is that whether something is 'serious' for this purpose depends on context. So, it would not be correct to assume that certain misconduct must *always* be considered serious. See also 3.19 to 3.21.
- 2.26** We remind firms that the obligation to disclose a conduct rule breach in response to Question F would only occur if disciplinary action (see [section 64C FSMA](#)) had been taken.
- 2.27** We also remind firms they must disclose the information requested in Question F, where applicable. This means that where a firm has taken disciplinary action for misconduct that was also a conduct rule breach, it must be disclosed. This does not apply if it took place more than 6 years earlier and was not 'serious' for the purposes of the existing guidance in SYSC 22.5.10G to 22.5.11G.

Chapter 3

Proposals for consultation: additional guidance in COCON and FIT

- 3.1** This chapter sets out proposals for potential new Handbook guidance in COCON and FIT, reflecting feedback on the draft guidance we consulted on in CP23/20.
- 3.2** The purpose of the proposed guidance, if made, is to:
- make it easier for SM&CR firms to interpret and consistently apply the conduct rules
 - clarify statutory and FCA requirements for fitness and propriety.
- 3.3** Feedback to CP23/20 showed that Handbook guidance could have both advantages and disadvantages, as set out in Table 2.
- 3.4** We are seeking views on whether additional guidance in COCON and FIT is needed and, if so, on the form any such guidance should take. We will only take this guidance forward if there is clear support for us to do so.

Table 2 Handbook guidance: potential advantages and disadvantages for firms

Advantages	Disadvantages
Addresses knowledge gaps and areas of uncertainty	Guidance cannot be exhaustive, so firms will still need to use their own judgement
Makes it easier to interpret and consistently apply our rules	Guidance and examples may not be sufficiently futureproof
Supports firms to make judgements in complex cases	May increase compliance burden
Reduces the risk of inconsistent or unfair outcomes for individuals	Firms may have to modify their existing approach
Reduces additional costs (eg HR, legal, compliance) due to uncertainty and legal risk	

Question 1: To what extent do you agree that new Handbook guidance in COCON and FIT is needed to help firms apply FCA rules?

Code of Conduct (COCON)

Overview: feedback on our proposed guidance

- 3.5** There was strong support for our proposals to provide Handbook guidance on how NFM can be a breach of the conduct rules. Most respondents said this would lead to a more consistent approach across industry.

- 3.6** While some called for more detailed guidance, others raised concerns about the volume and complexity of the draft guidance.
- 3.7** 37 respondents were concerned about potential risks of the guidance as originally drafted, including divergence from employment law, inconsistent application and unfair outcomes.

Our response: revised draft guidance

We are consulting on a revised draft of the guidance previously consulted on in CP23/20.

We discuss the feedback we received and our response below.

Divergence from employment law

Feedback

- 3.8** There were 37 substantive comments on potential risks arising from differences between our guidance and employment law requirements.

Our response

We have revised the draft guidance to clarify our intentions and further reduce the risk of unfair outcomes by more clearly aligning it with employment law.

The guidance emphasises that it is always necessary to take account of all the circumstances of the case (see also COCON 3).

We have also added guidance on the need to consider both subjective and objective factors in cases of NFM, based on section 26(4) Equality Act.

This says that two factors will always be relevant when deciding whether the conduct has had the effect set out in the new rule ('violating dignity', etc):

- the perception of the subject of the misconduct, and whether
- it was reasonable for the conduct to have had that effect.

This means there would be no rule breach if either:

- the subject of the misconduct did not feel their dignity had been violated (for example), or
 - it was unreasonable to consider the conduct to have had such an effect.
-

Requests for additional guidance and examples

Feedback

- 3.9** Some respondents said the draft guidance did not go far enough. They said more guidance, examples and case studies were needed to define a common standard for firms. For example, on the boundary between work-related and private or personal contexts and on breaches of Individual Conduct Rule 2.
- 3.10** A few respondents queried why we were not providing more comprehensive guidance on the application of the conduct rules to other forms of NFM.

Our response

We have updated the guidance consulted on in CP23/20 with new material and additional examples, incorporating many suggestions from respondents.

This covers:

- The scope of COCON, with examples of scenarios illustrating the boundary between work and private or personal life.
- Examples to help illustrate when conduct is outside of a firm's *SMCR financial activities*.
- An example of how NFM may be outside the scope of COCON because it only relates to a non-financial services business of a firm.
- Guidance on the distinction between breaches of Individual Conduct Rules 1 (integrity) and 2 (due skill, care and diligence).
- Material about the factors for determining whether NFM is serious enough to amount to a breach.
- Examples of reasonable steps for managers.

We have deleted or reframed some elements of the guidance that respondents said they found unhelpful or confusing, including:

- The description of a 'good working environment.'
 - The non-exhaustive list of examples of serious misconduct.
 - Aspects of the list of factors for determining whether NFM is serious.
-

'Serious' misconduct: subjectivity

Feedback

- 3.11** Most respondents supported the proposal for guidance to explain that the new rule was limited to serious instances of bullying, harassment and similar behaviour.

- 3.12** However, there were specific concerns about the use of the word 'serious' on the grounds that it was subjective and unclear.
- 3.13** Respondents raised the description of 'a good working environment' and the examples of conduct that would be serious enough to breach a rule for the same reasons.
- 3.14** There were also concerns about a lack of objectivity in some of the factors for deciding whether NFM was serious, as well as requests for guidance on applying them.

Our response

Our use of the term 'serious' aimed to make sure that minor incidents of poor workplace behaviour were not brought unnecessarily into scope of our rules. This reflects the requirement for the conduct to have had a significant negative effect on the subject (eg 'violating', 'humiliating', 'degrading').

The requirement for seriousness is consistent with the effect of the harassment provisions of the Equality Act. There is no conflict between applying our rules and a firm's ability to take appropriate disciplinary measures for lower-level misconduct in line with its internal codes of conduct.

We have removed the description of a 'good working environment' and the examples of conduct that would breach COCON from the draft guidance. We have also provided more guidance on factors for determining seriousness and the need to take an objective view.

'Serious' misconduct: internal disciplinary policies

Feedback

- 3.15** Some respondents recommended we allow firms to apply their internal disciplinary policies, instead of the seriousness factors, to determine whether misconduct amounted to a conduct rule breach.
- 3.16** Respondents also suggested it would be easier for firms to apply their own disciplinary thresholds to decide whether the misconduct amounted to a breach of Individual Conduct Rule 1 (integrity) or Rule 2 (due skill, care and diligence).
- 3.17** They asked us to be clearer about Rule 1 breaches amid concerns about unfair outcomes for individuals with mitigating circumstances or who had not shown a lack of integrity.
- 3.18** We were asked to confirm whether any misconduct that attracted a disciplinary outcome would always amount to a conduct rule breach. Respondents also asked us to specify our expectations of firms when breaches occurred, particularly of Rule 1.

Our response

Not all misconduct for which a firm might reasonably take disciplinary action under its own disciplinary policy will also amount to a breach of COCON. For example, some misconduct will not fall within the scope of our rules (see COCON 1), while some may not be serious enough to meet our regulatory threshold.

The revised guidance would make it clear that seriousness is not the deciding or distinguishing factor in determining whether NFM is a breach of Rule 1 or Rule 2. In line with regulatory law, only deliberate or reckless misconduct is considered a breach of Rule 1 (integrity). This means that in the absence of those factors, NFM is likely to be a breach of Rule 2.

It would not be appropriate for us to provide detailed guidance about firms' disciplinary policies and what sanctions may be appropriate for breaches of the conduct rules. So, we have not included such material in the draft guidance.

Use of 'serious' and 'significant' in different parts of the Handbook

Feedback

- 3.19** Many respondents requested guidance on the meaning of 'serious' as used in COCON and other parts of the Handbook.
- 3.20** The concept of seriousness is used in SYSC 22 to determine whether misconduct older than 6 years needs to be disclosed in a regulatory reference (SYSC 22.5.10G – 22.5.11G). Some respondents were unclear whether there was a conflict between the concepts of seriousness for the purposes of the draft COCON guidance and SYSC 22.
- 3.21** Some respondents were also confused by what we meant by 'particularly serious' when we explained in the CP (4.23) how severe a conduct rule breach for NFM would generally need to be for us to consider enforcement action.

Our response

As set out above, the use of 'serious' in COCON meant that the NFM had to have a seriously negative effect to amount to a potential rule breach. In SYSC 22, it refers to whether a past matter may be sufficiently serious not to be subject to the normal 6-year time limit for regulatory references.

If a firm incorrectly believed that any misconduct that was serious for the purposes of COCON *automatically* meant waiving the 6-year time limit for regulatory references, it could result in an unfair reference. References must be fair, in line with employers' obligations under general law.

Similarly, the concept of significance is used in SUP 15.3.11R to decide whether a breach of a rule needs to be reported to us immediately. SUP 15.3.12G gives guidance on how to determine significance.

We remind firms that whether a conduct rule breach is 'significant' for the purposes of SUP 15.3 has no bearing on whether separate notification is required under SUP 15.11. In other words, a conduct rule breach where certain disciplinary action was taken is reportable even if it was not 'significant.'

On our CP comments about 'particularly serious' NFM breaches, we clarify that this referred to circumstances where we would consider taking enforcement action. This is a separate consideration from whether NFM is serious enough to breach COCON in the first place.

We will consider a range of factors when deciding whether to investigate a potential breach of our rules or take action if there has been a breach. We particularly consider whether the action or potential action from any investigation would be an impactful deterrent. We set out our investigation opening criteria on our website.

Question 2: To what extent do you agree the draft COCON guidance would help you to apply our rules?

Question 3: Do you have any comments on the draft COCON guidance?

Fit and Proper test for Employees and Senior Personnel (FIT)

- 3.22** The draft guidance explains in more detail how NFM forms part of the Fit and Proper test for Employees and Senior Personnel (FIT) section of our Handbook. FIT sets out factors to which we and firms should have regard when assessing whether an individual is fit and proper to perform their role.

Consultation proposals in CP23/20

- 3.23** We proposed to explain how bullying and similar misconduct in the workplace are relevant to fitness and propriety and how similarly serious behaviour in a person's personal or private life is also relevant. We proposed giving examples of NFM, such as sexual or racially motivated offences.

- 3.24** One of the purposes of FIT is to maintain confidence in the UK's financial system. Our CP explained that there is a risk to public confidence when individuals commit serious NFM, even if it takes place outside the workplace and there is little likelihood of it being repeated at work. The CP also clarified that, in our view, conduct that could damage public confidence is likely to mean that the person is not fit and proper.
- 3.25** We considered that explaining our views clearly in FIT would reduce the risk of inconsistent interpretation and application of our guidance in firms and judicial settings.
- 3.26** The CP also proposed some new material in SYSC on regulatory references. This would remind firms that any misconduct, even outside of work, could be relevant to assessing fitness and propriety and so may need to be included on a reference.

We asked:

Question 5: To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?

Feedback

- 3.27** There was considerable support for our FIT proposals. Key concerns included how we would expect firms to deal with NFM in private life, the intersection between work and private life and the language used in our draft instrument.

Our response

We are consulting on a revised draft of the guidance previously consulted on in CP23/20.

We discuss the feedback we received and our response below.

NFM in private life

Feedback

- 3.28** 50 respondents, largely trade associations and firms, commented on NFM in private life. Some respondents asked us to be clear about whether we expected firms to proactively monitor their employees' private lives or social media, highlighting the legal or practical difficulties and expense of this.
- 3.29** 13 respondents were concerned about the extra costs connected to investigating events in private life. Some requested additional guidance to give firms more clarity on which types of NFM outside the workplace would be relevant to fitness and propriety.

Our response

FIT already applies to all relevant matters wherever in the world they occur. This means that firms sometimes have to consider events outside work, such as criminal convictions, allegations or posts on social media. Firms commonly cover these situations in their employment contracts and internal disciplinary procedures and some respondents provided examples from their own experience.

In the draft guidance we are consulting on, we would make it clear that a firm will normally rely on formal findings, such as criminal convictions or the findings of a court, tribunal, regulator, arbitrator, public enquiry or other body, when assessing whether wrongdoing in private life has taken place.

We would also make it clear that we do not expect firms to monitor their employees' private lives to identify anything that is relevant to fitness.

However, a firm may become aware of information about an individual's private life that would – if substantiated – call into question their fitness and propriety under FIT. In these circumstances, the firm should consider what steps it can reasonably take to assess this possible impact. For example, the firm should, where appropriate, ask for an explanation from the member of staff. Many firms already do this.

We would remind firms that not being able to establish the truth of an allegation of this kind does not mean they should not report it to us if, were it established to be true, it would reasonably be material to an assessment of fitness and propriety. This is in line with our current rules and does not require firms to assume or assess an individual's guilt.

Subjective language and technical detail

Feedback

- 3.30** 42 respondents commented on the language of the draft guidance, particularly on the words 'moral' and 'disgraceful'. They were concerned these were subjective terms which would be difficult for firms to apply fairly and consistently.
- 3.31** Some respondents asked for more guidance on when misconduct in private life unconnected to work or a regulated role should be considered 'sufficiently serious' to be relevant to fitness and propriety.
- 3.32** We received 38 responses on the technical detail of our proposed amendments. Many of these concerned the workability of our draft instrument and its interaction with employment law.
- 3.33** A few respondents said it would be difficult to apply aspects of the guidance, such as determining whether certain incidents of NFM were likely to prejudice our statutory objectives. They asked whether it was appropriate to delegate this decision to firms.

Our response

We would replace terms such as 'moral soundness' and 'disgraceful or morally reprehensible' behaviour with more neutral language. This aims to address respondents' concerns about subjectivity and firms' ability to apply the standard consistently.

We would include more examples of the types of conduct both inside and outside work or a regulated role that may be relevant to fitness and propriety. For example, conduct that is dishonest or shows a lack of integrity as well as repeated minor breaches of law or of other standards and requirements.

We have revised the guidance on the relevance of misconduct in private or personal life where there is little or no risk of it being repeated at work. We would say that conduct may be relevant if it shows a willingness to disregard ethical or legal obligations, abuse a position of trust or exploit others' vulnerabilities.

We would make it clear that a custodial sentence (even if suspended) is likely to indicate that misconduct in private life is sufficiently serious to be relevant to fitness and propriety. This would be subject to other considerations such as the length of time that has passed and evidence of rehabilitation. A case always turns on its particular facts, so the indicators of seriousness would be weighed against other relevant matters.

Our statutory objectives are a key factor in deciding whether something is relevant to fitness and propriety. For example, upholding public confidence so that trust is maintained in financial services is one of the key purposes of the regime. We have revised the draft guidance to make this clearer.

We would also provide new guidance to help firms assess the relevance of past conduct rule breaches to fitness and propriety. We note that a conduct rule breach does not automatically indicate that an individual is unfit. See 3.5 to 3.21 above and Chapter 2 for more detail on COCON.

Social media

Feedback and our response

- 3.34** Multiple respondents asked us to clarify our approach to NFM on social media.
- 3.35** Social media activity may be relevant to fitness and propriety for the same reasons as other conduct. If our guidance is finalised, we would make it clear that, in principle, a person can lawfully express in their private or personal life their views on social media, even if those views are controversial or offensive and even if work colleagues are upset by those views, without calling into question their fitness under FIT.

3.36 However, if a person's social media activity in their private life indicates a real risk the person will breach the requirements and standards of the regulatory system, then such activity will be relevant to their fitness and propriety. Examples could include threats of violence or clear involvement in criminal activities.

Question 4: To what extent do you agree the draft FIT guidance would help you assess fitness and propriety?

Question 5: Do you have any comments on the draft FIT guidance?

Question 6: Do you agree that the new Handbook guidance – if made – should come into effect at the same time as the new COCON rule (1 September 2026)?

Question 7: If no, when do you think any new Handbook guidance should come into effect?

Chapter 4

Cost Benefit Analysis

- 4.1** In CP23/20, we provided a Cost Benefit Analysis (CBA) of our proposed rules and guidance. This section summarises the updates we have made, the costs and benefits of guidance proposed in Chapter 3 for consultation, and our response to consultation feedback on our CBA. As we have not significantly changed the new rule, we are not required to prepare a new CBA under section 138I(5)(a) FSMA.

Updates to the CBA

- 4.2** We previously estimated the total additional costs of our proposals on the Code of Conduct, Fitness and Propriety and the Threshold Conditions at £303m (implementation) and £180m (ongoing) across 45,122 FSMA firms with a Part 4A permission (estimated at 1,570 large and 43,552 small). These figures were based on a cost survey sent out in 2022, as discussed in CP23/20.
- 4.3** Since we published the CBA, there have been changes to the firm population, the external environment and our policy intervention that have impacted our CBA. We have used improved data sources to further refine our cost estimation methodology.
- 4.4** To help us adapt our analysis to account for some of these factors, we recently engaged with a small cross-section of firms of different sizes and sectors that had responded to our 2022 cost survey. In April and May 2025, we contacted 67 firms and received detailed survey responses from 18. We also held 2 focus groups with 10 firms.
- 4.5** This has resulted in us updating our cost estimates (all figures are in 2022 prices as in the original CBA) to reflect:
- Changes in the firm population and cost scaling methodology
 - Changes to the external environment since 2022
 - Reduced scope of policy.
- 4.6** We also describe the expected impact on the benefits of our policy intervention considering these factors.

Changes in the firm population and cost scaling methodology

- 4.7** Since we carried out our cost survey in 2022, the population of firms in scope of our policy has fallen from around 45,000 to just under 38,000. This reflects wider changes to the business population since the early 2020s ([Gov.uk](https://www.gov.uk)).
- 4.8** Our original cost survey received 358 responses. Due to a lack of granular information on firm size, we divided our firm population into 2 groups – large (251 or more employees) and small (fewer than 251). We estimated the total cost to industry by multiplying the average per firm cost for each group by our corresponding estimate for the number of large or small firms in the regulated population.

4.9 This binary categorisation was in line with our approach to the broader D&I proposals which we are no longer taking forward. However, it overestimated both total and per firm average costs. For example, 19% of firms in our cost survey sample were 'large' compared with an estimated 3% of the regulated population. Higher cost estimates from enterprise firms and large groups also drove up the 'large' firm average.

4.10 Since we published CP23/20, we have acquired better data on firm size through an external database of company data (Moody's Orbis, formerly Bureau van Dijk). This has allowed us to scale costs more accurately based on the number of employees in each firm. We consider this to be a more accurate approach as the costs of NFM are likely to scale with employee numbers. The distribution of the population across these groups is shown in Table 3.

Table 3 Estimated firm population, by SIC group

SIC group	Number of employees	Firm population
Micro	1-9	24,489
Small	10-49	10,022
Medium	50-249	2,323
Large	250-999	634
Enterprise	1000+	337
Total	–	37,805

4.11 We used the standard industrial classification of economic activities (SIC) to estimate updated average costs for firms in 5 size categories (micro, small, medium, large, enterprise) shown in Table 4. This more granular approach improves the robustness of our original CBA methodology.

4.12 Updating the firm population estimates and using a more granular approach results in revised cost estimates of approximately £170m (implementation) and £95m (ongoing) for the full NFM policy package we consulted on in 2023.

Table 4 Estimated average cost per firm, by policy proposal and SIC group

SIC group	NFM proposals (COCON and FIT)		Threshold Conditions	
	Implementation	Ongoing (annual)	Implementation	Ongoing (annual)
Micro	£900	£700	£700	£500
Small	£2,500	£1,600	£6,700	£2,900
Medium	£2,900	£1,200	£2,500	£1,800
Large	£8,300	£1,600	£3,000	£900
Enterprise	£9,300	£10,100	£2,600	£3,800

Changes to the external environment since 2022

- 4.13** There have been wider legislative, regulatory and organisational changes since 2022 that may also affect costs, including the employer duty to prevent sexual harassment (1.12 to 1.13).
- 4.14** We recognise that firms' approaches to NFM may have matured and they may have invested more in tackling such misconduct. There is also likely to be some overlap between the measures firms take to meet their legislative and regulatory obligations. This change in approach and additional investment may reduce the additional costs of implementing our new rule and guidance compared with 2022.
- 4.15** To enable us to factor these changes into our CBA, we asked a sample of firms (see 4.4), whether, and how, they would affect their costs. Firms predicted that their costs would fall, as shown in Table 5.

Table 5 The effect of changes to the external environment since 2022 on CBA estimates

Policy concept	Implementation	Ongoing
COCON and FIT	-4%	-10%
Threshold Conditions	-10%	-11%

- 4.16** Factoring in these changes alongside the updated firm population and methodological improvements would further reduce the total costs of the full policy package to £160m (implementation) and £85m (ongoing).

Reduced scope of policy

- 4.17** As set out in this publication, we have decided not to make changes to the Threshold Conditions or SYSC (see Chapter 5). We have also decided to go ahead with the COCON rule only at this stage and to consult again on the COCON and FIT guidance.
- 4.18** Based on the original cost survey, the Threshold Conditions accounted for approximately half the total implementation (52%) and ongoing costs (50%).
- 4.19** Factoring in the changes above and proceeding only with the other NFM proposals (COCON rule, COCON guidance and FIT guidance) would therefore reduce the total costs of the policy package to approximately £75m (implementation) and £40m (ongoing).

Costs and benefits of the new rule

- 4.20** The new rule to widen the scope of COCON will more closely align the treatment of bullying, harassment and violence in non-banks with that in banks. It will enable a more consistent approach to NFM across relevant financial services firms and make it easier to apply our regulatory regime (see 1.16 to 1.19).

4.21 We expect specific benefits of the new rule to include:

- Increased consequences for NFM, strengthening individual accountability and deterrence.
- More consistent treatment of perpetrators within financial services.
- Inclusion of NFM conduct rule breaches on regulatory references, promoting transparency and high standards.
- More focus on prevention and effective mechanisms for responding to NFM.

4.22 We set out the estimated costs of the new rule in Table 6. The scale of costs and benefits of our rule change depends on how clearly, effectively and efficiently firms implement it. As set out in our original CBA, we consider the largest benefits are likely to come from firms consistently applying the rules – which may be achieved to a greater extent by providing firms with both rules and guidance.

4.23 The firms that participated in our recent engagement exercise welcomed the new rule and supported the provision of Handbook guidance. Most considered guidance helpful to enable them to apply the rule effectively.

Costs and benefits of the guidance

4.24 We are consulting on draft guidance for the COCON and FIT sourcebooks, based on the guidance we consulted on in CP23/20. We are seeking views as to whether the guidance would help firms apply our rules (Chapter 3).

4.25 The rule will come into effect on 1 September 2026, so for the purposes of this CBA revision, we have considered the costs and benefits of rules and guidance both separately and as a combined package.

Costs

4.26 Through our engagement with firms, we explored separating the costs and benefits of the COCON rule change from those of the COCON and FIT guidance, to inform policy development and the CBA.

4.27 The breakdowns firms provided allow us to apportion some of the total cost of the NFM rule and guidance to each element of the package. However, firms told us it was difficult to break down their estimates due to the interdependence of rules and guidance. These challenges should be borne in mind when considering the costs of each element.

4.28 If we proceed with guidance, we will seek to implement it at the same time as the rule. We estimate the combined cost of the rule and guidance at £75m (implementation) and £40m (ongoing).

4.29 Table 6 sets out the costs of the new COCON rule alongside those of the COCON and FIT guidance we are consulting on based on the breakdowns by firms.

Table 6 Breakdown of costs of NFM package

Policy element	Total cost to industry		Average cost per firm	
	Implementation	Ongoing (annual)	Implementation	Ongoing (annual)
PS – COCON rule	£25m	£15m	£650	£400
CP – COCON guidance	£20m	£10m	£550	£250
CP – FIT guidance	£30m	£15m	£800	£400
Combined total cost	£75m	£40m	£2,000	£1,050

Benefits

- 4.30** In Chapter 1, we described the benefits of taking robust and appropriate action to tackle NFM within firms (1.16 to 1.19). We also set out the benefits of the new rule above (4.20 to 4.21).
- 4.31** We expect the draft guidance we are consulting on to bring additional benefits, including:
- Addressing knowledge gaps and areas of uncertainty, including those highlighted in responses to CP23/20.
 - Making it easier for firms to interpret and consistently apply our rules and carry out assessments of fitness and propriety.
 - Supporting firms to make judgements in complex cases.
 - Reducing the risk of inconsistent or unfair outcomes for individuals.
 - Reducing additional costs (eg HR, compliance, legal) due to uncertainty and legal risk.
 - Reduced risk of under- or over-reporting of conduct rule breaches.
- 4.32** Some firms told us guidance would help avoid additional ongoing costs by enabling them to make quicker and more certain decisions on whether NFM was a conduct rule breach or relevant to fitness and propriety. The data firms provided indicated that not publishing guidance could increase the costs of complying with the rule by an additional 1-3%. However, firms found this challenging to estimate.
- 4.33** Most firms told us that the higher cost of guidance would be outweighed by the benefits. We think it plausible that publishing only the rule might increase uncertainty, resulting in higher costs and lower benefits relative to the costs and benefits of the rule when the rule is accompanied by guidance.

Conclusion

- 4.34** In our view, the combined benefits of the rule and guidance will outweigh the costs, lead to better overall outcomes than the rule alone and be proportionate. Feedback from firms indicated that Handbook guidance is likely to reduce the additional operational costs and risks of complying with the rule.

- 4.35** We are seeking views on whether guidance is needed through the consultation in Chapter 3. We also invite feedback on the costs and benefits of the proposed guidance.

Question 8: Do you have any comments on the costs and benefits of the guidance discussed in Chapter 3?

Response to feedback on CP23/20

- 4.36** We asked:

Question 18: Do you have any comments on the cost benefit analysis?

Overview

- 4.37** Most respondents agreed that clarifying and strengthening our regulatory framework on NFM would benefit the financial sector, which in turn would benefit consumers and market integrity. Ten respondents raised concerns that the ongoing costs for NFM would be higher than estimated.

Our response

We set out our response to the detailed points of feedback below.

Costs would be higher than estimated

Feedback

- 4.38** Ten respondents (mainly trade associations) considered that the costs of implementing the proposed guidance on COCON and FIT would be higher than estimated. This was because they thought our new guidance would require or result in:

- Divergence from employment law.
- Need for additional HR and compliance resource.
- Training employees on the rules and upskilling HR to handle NFM.
- Employing external counsel to manage legal and reputational risks.
- Proactively monitoring employees and/or investigating events in their private lives.
- Interpreting the unclear terminology in our Handbook.
- Increase in employee relations cases, grievances and litigation.

Our response

We amended the wording of the new rule to address these concerns and are consulting on a revised draft of the COCON and FIT guidance which takes account of all the feedback. We consider this would lessen the burden on HR and compliance staff and make it less likely that firms would need to hire external resource or face litigation due to divergence from legal norms.

Unquantified benefits

Feedback

- 4.39** A few firms raised concerns that, despite providing information on the benefits of the proposed changes, we had been unable to quantify them in monetary terms. This made it difficult for them to judge whether the proposals were proportionate, or the benefits exceeded the costs.

Our response

We outlined the drivers of poor outcomes we are seeking to tackle in our CBA. We explained how and why we expect benefits to stem from tackling these harms. Overall, we consider that strengthening our expectations on NFM will be beneficial both for firms and the market in view of the harms being addressed and the impact that misconduct can have upon a firm's culture.

We explained in the CBA that it was not reasonably possible to estimate a monetary value for the benefits of our proposals (Annex 2, para 58). For example, on NFM:

- Many of the benefits are intangible, such as those from more effective and consistent action on NFM and the resulting improvement in the sector's reputation.
- There is limited data on NFM in the financial sector.
- It is difficult to quantify the benefits of reduced NFM.

More effective efforts to tackle NFM may help firms reduce or avoid the legal and other costs associated with incidents, which can easily run into tens of thousands of pounds. For example, the government's [2021 impact assessment on the WPA](#) estimated the average cost of defending an employment tribunal case at over £13,000.

This publication outlines the wider benefits of setting out our approach to NFM within our regulatory framework and how we expect this would help improve firms' conduct, culture and decision making.

Conflict with our secondary objective

Feedback

- 4.40** One respondent suggested there was a potential conflict with our secondary objective, as the costs of integrating our approach to NFM would be passed on to consumers.

Our response

We do not agree that strengthening our approach to NFM will conflict with our secondary objective to facilitate the growth and international competitiveness of the UK economy.

We noted in Chapter 1 how fostering a more inclusive environment within firms can support our statutory objectives. Conversely, failure to tackle misconduct is likely to increase the risk of harm and lead firms to miss opportunities to remedy problems of all kinds.

Preventing misconduct from developing can help prevent further regulatory breaches that can cause consumer harm and undermine public confidence and market integrity. Reducing NFM can therefore enhance the reputation of the UK financial services sector, helping to strengthen its access to global talent and increase market and consumer confidence. These benefits will support the growth and competitiveness of the wider UK economy.

Chapter 5

Proposals not taken forward: COND and SYSC

- 5.1** This chapter summarises the key feedback on our consultation proposals to explain in more detail how NFM forms part of the Threshold Conditions (COND) and Senior Management Arrangements, Systems and Controls (SYSC) sourcebooks.
- 5.2** We are not proceeding with any amendments to COND or SYSC.

Consultation proposals

- 5.3** We proposed to extend the guidance on the Suitability Threshold Condition in our COND sourcebook to make it clear that NFM and discriminatory practices in firms are relevant to our assessment of their suitability to undertake regulated activities.
- 5.4** We also consulted on updating the guidance around regulatory references in SYSC to make it clear that it might be necessary to provide information on NFM or misconduct outside work to a firm requesting a reference.

Feedback and our response

COND proposals

- 5.5** Generally, respondents were supportive of the COND proposals though some had concerns about our approach to enforcement. Most feedback related to the draft definition of 'discriminatory practices.' Respondents recommending linking this to the definition in the Equality Act to make it easier for firms to understand and apply.
- 5.6** Having considered the feedback and our updated analysis of the relative costs and benefits of our proposals, we have decided not to proceed with our proposals for COND.

SYSC proposals

- 5.7** Some respondents expressed concerns about the broad scope of Question G on the regulatory reference ('Are we aware of any other information that we reasonably consider to be relevant to your assessment of whether the individual is fit and proper?').
- 5.8** There were also requests for more guidance on how to incorporate NFM into regulatory references.
- 5.9** We are not proceeding with the proposed updates to SYSC as we consider the existing rules and guidance on regulatory references in SYSC 22 are sufficient.

- 5.10** Our existing rules on regulatory references require firms to disclose all breaches of the conduct rules for which disciplinary action (as defined in section 64C(2) FSMA) was taken (time limits apply).
- 5.11** Similarly, firms are required to provide any other information they reasonably believe to be relevant to the fit and proper assessment. Relevant information is not restricted to dealings with customers, counterparties, their assets or the markets. (SYSC 22.2.2R)
- 5.12** Please see our commentary on these points in Chapter 2 (2.20 to 2.27).

Annex 1

List of questions in this Paper

Handbook guidance

Question 1: To what extent do you agree that new Handbook guidance in COCON and FIT is needed to help firms apply FCA rules?

COCON

Question 2: To what extent do you agree the draft COCON guidance would help you to apply our rules?

Question 3: Do you have any comments on the draft COCON guidance?

FIT

Question 4: To what extent do you agree the draft FIT guidance would help you assess fitness and propriety?

Question 5: Do you have any comments on the draft FIT guidance?

Question 6: Do you agree that the new Handbook guidance – if made – should come into effect at the same time as the new COCON rule (1 September 2026)?

Question 7: If no, when do you think any new Handbook guidance should come into effect?

CBA

Question 8: Do you have any comments on the costs and benefits of the guidance discussed in Chapter 3?

Annex 2

Compatibility statement

Compliance with legal requirements

- 1.** This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA). It sets out the FCA's view of how the proposed guidance complies with the following duties in FSMA.
- 2.** Section 1B(1) says that in discharging its general functions (including giving guidance) the FCA must, so far as is reasonably possible, act in a way which (a) is compatible with its strategic objective, and (b) advances one or more of its operational objectives.
- 3.** Section 1B(4) says that the FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions (including giving guidance) in a way which promotes effective competition in the interests of consumers.
- 4.** Section 1B(4A) says that when discharging its general functions (including giving guidance) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the competitiveness and growth objective
- 5.** In addition, this Annex explains how we have considered the recommendations made by the Treasury under section 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
- 6.** This Annex includes our assessment of the equality and diversity implications of these proposals.
- 7.** Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

8. The proposals set out in this consultation are intended to advance the FCA's operational objectives of protecting and enhancing the integrity of the UK financial system, securing an appropriate degree of protection for consumers and promoting competition in the interests of consumers. We discuss at paragraphs 1.16 to 1.19 how these proposals support our objectives (including our secondary growth and competitiveness objective), as well as in CP23/20 (Chapter 2).
9. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they will advance the operational objectives in the way we have described in this CP and CP23/20.
10. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in section 3B FSMA.

The need to use our resources in the most efficient and economic way

11. We consider the measures proposed in this consultation are a proportionate use of our resources. The proposed guidance would help clarify our expectations regarding certain types of non-financial misconduct and fitness and propriety assessments, reducing burden for stakeholders in interpreting and applying our rules.

The principle that a burden or restriction should be proportionate to the benefits

12. We consider our proposals to be proportionate to the benefits. We have discussed the costs and benefits in Chapter 4.

The general principle that consumers should take responsibility for their decisions

13. We do not consider that the proposed guidance directly impacts this principle, though the improvements we are seeking to achieve may support consumers in taking responsibility for their decisions by contributing to markets working well and improved consumer protection.

The responsibilities of senior management

14. Parts of our proposed guidance provide further information about our expectations for managers. Further, senior management will have a better understanding of how misconduct in private life can be relevant to fitness and propriety and their notification requirements.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

15. The conduct rules and fitness and propriety expectations are cross-cutting requirements and so are intended to apply to a wide range of firms and individuals. We do not consider the proposals we are consulting on would negatively impact this.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

16. In cases where formal FCA action has been taken following a conduct rule breach, or a prohibition due to fitness and propriety concerns, information will generally be published.

The principle that we should exercise our functions as transparently as possible

17. The proposals are the subject of a second consultation having carefully considered feedback to CP23/20. We are doing this to ensure that any guidance we introduce will be proportionate and effective for firms. Giving industry an additional opportunity to provide feedback demonstrates transparency.
18. We have engaged with the PRA and the statutory panels throughout the policy development process. The panels supported our proposals to more clearly integrate NFM into our Handbook but shared some of the concerns raised by respondents to the CP. We discuss our response to feedback in Chapters 2 and 3.

Financial crime

19. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by section 1B(5)(b) FSMA). We consider that these considerations are not relevant to the proposals, which focus on personal misconduct of a non-financial nature.

Compatibility with the duty to promote effective competition in the interests of consumers

20. In preparing the proposals set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. We consider that the proposals will support effective competition, particularly insofar as they promote appropriate risk taking.

Equality and diversity

- 21.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.
- 22.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraphs 1.32 to 1.35 of this Consultation Paper.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 23.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. Our proposed guidance will help firms in their understanding and application of the conduct rules and assessments of fitness and propriety and we are consulting on the guidance for a second time to ensure any published guidance is appropriate, useful and proportionate.
- 24.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals are proportionate and do not create an unnecessary burden on firms or adversely affect competition.

HM Treasury's Remit Letter

- 25.** We consider our consultation proposals are consistent with HM Treasury's November 2024 remit letter as they provide more clarity on our expectations around the application of the conduct rules and assessments of fitness and propriety. The proposed guidance would support an environment where risk taking is appropriate, which in turn can support the contribution of the financial services sector to overall economic growth and creating a regulatory environment which facilitates growth through supporting competition and innovation.
- 26.** We also believe the additional clarity provided by the guidance, if made, will contribute to maintaining and enhancing the UK's position as a world-leading global finance hub.

Annex 3

List of non-confidential respondents to CP23/20

25x25 Limited
7IM
abrdrn
Ada Partners LLP (t/a Ada Ventures)
Aegon UK
Affinity
AFS Compliance Ltd
Age Partnership Limited
AI Capability Ltd
AJ Bell
Alan Henness
Aldermore Bank
Alex Edmans
Altus Consulting
American Express Services Europe Ltd
Arthur J. Gallagher
Association for Financial Markets in Europe (AFME)
Association of British Credit Unions Limited (ABCUL)
Association of British Insurers (ABI)
Association of Financial Mutuals (AFM)
Association of Mortgage Intermediaries (AMI) and Association of Finance Brokers (AFB)
Association of Real Estate Funds (AREF)
Atom Bank plc
Atos BPS Ltd
Autistica
Aviva
AXA
Baillie Gifford & Co
Barclays
BDO LLP
Berg-Davies Associates Ltd
BGC Services (Holdings) LLP
Big Society Capital
Birgit Neu

BlackRock
Brit Insurance
British Insurance Brokers' Association (BIBA)
British Private Equity and Venture Capital Association (BVCA)
BT Group
Bupa
Business Disability Forum
CAF Bank
Callum Smith
Capital One (Europe) plc
CFA Society of the UK
Changing the Chemistry
Charles Stanley & Co Limited
Chartered Banker Institute (CBI)
Chartered Governance Institute (CGI)
Chartered Institute of Personnel and Development (CIPD)
Chartered Insurance Institute (CII)
Chilvester Ltd
City Hive
City HR Association
ClearBank
CMC Markets UK plc
CMS Cameron McKenna Nabarro Olswang LLP
Computershare
Connells Limited
Consumer Credit Trade Association (CCTA)
Create Solutions Ltd
Credit Services Association
Currys Group Limited
DAC Beachcroft LLP
Dan James Smith
Diligenta Limited
Direct Line Group
Diversity Project (IM) CIC (on behalf of Reboot and the Global Institute for Women's Leadership)
Elementary Financial Planning
Emily Chamberlain
Emma Brown
Employment Lawyers Association (ELA)
European Leveraged Finance Association (ELFA)
European Principal Traders Association (FIA EPTA)

European Venues and Intermediaries Association (EVIA)
FCA Financial Services Consumer Panel
FCA Practitioner Panel
Fidelio Partners
Finance and Leasing Association (FLA)
Financial Inclusion Commission
Financial Services Skills Commission
First Actuarial LLP
FTSE Women Leaders Review
Fulcrum Asset Management LLP
GAIN (Group for Autism, Insurance, Investment and Neurodiversity)
Gardner Financial Management
Golden Charter Limited
Green Park
GuardCap Asset Management Limited
Harwood Financial Planning Limited
HSBC Bank (UK) Pension Scheme
Institute and Faculty of Actuaries (IFoA)
Institute of Chartered Accountants of Scotland (ICAS)
International Capital Market Association (ICMA)
International Securities Lending Association (ISLA)
Investment & Life Assurance Group (ILAG)
James Sharpe
Jo Marshall
John Western
Katherine E Wilson
Kingsley Napley LLP
Lane Clark & Peacock LLP
Lean in Network London/UK
Legal and General
Legal Feminist
LGBT Great
Lisa De Vall
Lloyds Banking Group
Lloyds Market Association
Lloyd's of London
London & International Insurance Brokers Association (LIIBA)
London Metal Exchange (LME)
London Stock Exchange Group (LSEG)
LV=

M&G
Managing General Agents' Association (MGAA)
Marsh and Mercer (combined response)
Michael Stanley Jones
Morgan Stanley
MSCI
Munich Re
NatWest Group
New Wave Capital Limited
Newcastle Building Society
NewDay
Nomura International plc
Oscar Wilmott
Paragon Bank plc
Pathway Fund
Paul Tegg
People's Partnership
Personal Investment Management & Financial Advice Association (PIMFA)
Philip Read
Phoenix Group
PrisWM Limited
Progress Together
Protiviti Limited
Purpose Coalition
PwC
Quoted Companies Alliance
Rathbones Investment Management
Richard Hall t/a Crowood Financial Solutions
Robert Jones
Rothesay
Sarah Johnson
Schroders
Seen in the City
Sesame Bankhall Group
ShareAction
Simmons & Simmons LLP
Simon Walters
SimplyBiz Services Limited
Skipton Building Society
SMBC Group

Snap-on U.K. Holdings Limited
Social Mobility Foundation
SPM Group Ltd – Investing In Ethnicity
Standard Chartered Bank
Standards Board for Alternative Investments (SBAI)
StepChange
The Alternative Investment Management Association (AIMA)
The Association of Foreign Banks (AFB)
The City of London Law Society (CLLS)
The Free Speech Union
The Hass Consultancy Ltd
The Independent Order of Oddfellows Manchester Unity Friendly Society Ltd
The Infinite Collective
The Intermediary Mortgage Lenders Association (IMLA)
The Investing and Saving Alliance (TISA)
The Investment Association (IA)
The Parker Review
The Social Investment Consultancy
The Sutton Trust
TheCityUK
Triodos Bank UK Limited
UK Finance
UK Sustainable Investment and Finance Association (UKSIF)
UKCreditUnions Ltd (UKCU)
UpReach
USS (Universities Superannuation Scheme)
Vanquis Banking Group
Weatherbys Bank
Wesleyan Assurance Society
Western Provident Association
Windsor Actuarial Consultants
Working in Mortgages
XPS Pension group
Yellow Pebble Ltd
Zosia Huk
Zurich

Annex 4

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost Benefit Analysis
COCON	Code of Conduct sourcebook
COND	Threshold Conditions sourcebook
CP	Consultation Paper
D&I	Diversity and Inclusion
DP	Discussion Paper
EHRC	Equality and Human Rights Commission
FCA	Financial Conduct Authority
FIT	Fit and Proper test for Employees and Senior Personnel sourcebook
FSMA	Financial Services and Markets Act
NFM	Non-financial misconduct
PRA	Prudential Regulation Authority
PS	Policy Statement
PSED	Public Sector Equality Duty
SM&CR	Senior Managers and Certification Regime
SMCR financial activities	<u>FCA glossary term</u>
SMF	Senior Management Function
SUP	Supervision sourcebook
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
TSC	Treasury Select Committee
WPA	Worker Protection (Amendment of Equality Act 2010) Act 2023

Appendix 1

Made rules (legal instrument)

NON-FINANCIAL MISCONDUCT INSTRUMENT 2025

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 64A (Rules of conduct);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 September 2026.

Amendments to the Handbook

- D. The Code of Conduct sourcebook (COCON) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Non-Financial Misconduct Instrument 2025.

By order of the Board
26 June 2025

Annex

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application and purpose

1.1 Application

...

To what conduct does it apply? (Relationship between the exclusions)

- 1.1.5B R (1) The restrictions of the scope of *COCON* in *COCON* 1.1.7AR to ~~*COCON* 1.1.7ER~~ *COCON* 1.1.7FR (when they apply) are in addition to those in *COCON* 1.1.6R to *COCON* 1.1.7R.
- (2) The restrictions of the scope of *COCON* in *COCON* 1.1.7AR to ~~*COCON* 1.1.7ER~~ *COCON* 1.1.7FR (when they apply) are cumulative.
- 1.1.5C G (1) The effect of *COCON* 1.1.5BR(1) is that:
- (a) conduct that is ~~within~~ not excluded from the scope of *COCON* by *COCON* 1.1.7AR to ~~*COCON* 1.1.7ER~~ *COCON* 1.1.7FR but is outside the scope of *COCON* 1.1.6R to *COCON* 1.1.7R is outside the scope of *COCON*; and ~~vice versa~~
- (b) conduct that is excluded from the scope of *COCON* by one of the *rules* in *COCON* 1.1.7AR to *COCON* 1.1.7FR but is within the scope of *COCON* 1.1.6R to *COCON* 1.1.7R is outside the scope of *COCON*.
- (2) The effect of *COCON* 1.1.5BR(2) is that conduct of a member of the *conduct rules staff* of a *firm*:
- (a) is outside the scope of *COCON* even if it is excluded by only one of the *rules* in *COCON* 1.1.7AR to ~~*COCON* 1.1.7ER~~ *COCON* 1.1.7FR; and

...

To what conduct does it apply? (Limitations in the Act)

1.1.6 R ...

...

1.1.7-A R ...

To what conduct does it apply? (Other limitations: Non-banks)

- 1.1.7A R (1) Where Firm A in *COCON* 1.1.6R to *COCON* 1.1.7R is an *SMCR firm* other than an *SMCR banking firm*, the application of *COCON* is further restricted by this *rule*, subject to *COCON* 1.1.7FR.

...

To what conduct does it apply? (Other limitations: Benchmark firms)

- 1.1.7B R (1) Where a member (M) of the *conduct rules staff* of Firm A as described in *COCON* 1.1.6R to *COCON* 1.1.7R meets the condition in (c) and Firm A meets the conditions in (a) and (b), the application of *COCON* to the conduct of M in relation to Firm A is further restricted by this *rule* (subject to *COCON* 1.1.7FR):

...

To what conduct does it apply? (Other limitations: Rule 6 in *COCON* 2.1)

- 1.1.7C R ...

...

- 1.1.7E R ...

To what conduct does it apply? (Other limitations: Non-banks: Harassment)

- 1.1.7F R (1) This *rule* applies to an *SMCR firm* other than an *SMCR banking firm*.
- (2) Its purpose is to extend the scope of *COCON* beyond the scope set out in *COCON* 1.1.7AR and *COCON* 1.1.7BR.
- (3) *COCON* applies to the conduct of a member of the *conduct rules staff* of a *firm* (Firm A) of a kind described in (4) in relation to any of the following individuals:
- (a) an *employee* of Firm A or of a member of its *group*;
 - (b) an individual who performs a function of Firm A or of a member of its *group*;
 - (c) an individual who provides services to Firm A or to a member of its *group*;
 - (d) an *employee* of a *person* who provides services to Firm A or to a member of Firm A's *group*;
 - (e) an individual who performs a function of a *person* who provides services to Firm A or to a member of Firm A's *group*; or

- (f) an individual when performing an activity that forms part of an activity of Firm A.
- (4) The kind of conduct to which this *rule* applies as referred to in (3) is unwanted conduct of the following kinds in relation to an individual referred to in (3) ('B'):
 - (a) conduct that has the purpose or effect of:
 - (i) violating B's dignity; or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B; or
 - (b) conduct that is violent to B.
- (5) If Firm A carries on businesses some of which involve *SMCR financial activities* and the others of which do not, conduct is not within the scope of this *rule* if it only relates to a business of Firm A that does not involve *SMCR financial activities*.

To what conduct does it apply? (Performing several roles)

1.1.8 G ...

To what conduct does it apply? (Appointed representatives)

1.1.8A R ...

...

Appendix 2

Draft Handbook text

NON-FINANCIAL MISCONDUCT (No 2) INSTRUMENT 2025**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on *[date]*.

Amendments to the Handbook

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)	Annex C

Notes

- D. In the Annexes to this instrument, the notes (indicated by “**Notes**”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- E. This instrument may be cited as the Non-Financial Misconduct (No 2) Instrument 2025.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise stated.

Amend the following definition as shown.

employee

...

- (4) (for the purposes of *SUP* 15.11 (Notification of conduct rule breaches and disciplinary action) and *COCON*) has the meaning in section 64A(6) of the *Act* (Rules of conduct) which, in summary, says an employee of a *person* (the ‘employer’) includes a reference to a *person* who:
 - (a) personally provides, or is under an obligation personally to provide, services to the employer under an arrangement made between the employer and the *person* providing the services or another *person*; and
 - (b) is subject to (or to the right of) supervision, direction or control by the employer as to the manner in which those services are provided.

However, where a *Handbook* provision in (4) refers to *certification employees*, (3) still applies to the definition of *certification employee* and (in the guidance in *COCON* where the context requires) an employer may include a *person who is not authorised*.

...

Annex B

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1 Application

...

To what conduct does it apply? (Other limitations: Non-banks: Harassment)

1.1.7F R ...

1.1.7G G COCON 4.1.8EG to COCON 4.1.8JG give *guidance* on the kind of conduct covered by COCON 1.1.7FR, including the point that COCON 1.1.7FR only covers conduct that is serious.

...

Insert the following new section, COCON 1.3, after COCON 1.2 (Investments). The text is all new and is not underlined.

1.3 Scope of COCON

Introduction

- 1.3.1 G This section deals with the restrictions on the scope of *COCON* based on:
- (1) the activities of the *firm* in *COCON* 1.1.6R to *COCON* 1.1.7R (To what conduct does it apply? (Limitations in the Act)) (*COCON* 1.3.2G to *COCON* 1.3.9G deal with this);
 - (2) the *SMCR financial activities* of a *firm* in *COCON* 1.1.7AR (To what conduct does it apply? (Other limitations: Non-banks)) (*COCON* 1.3.10G to *COCON* 1.3.15G deal with this); and
 - (3) *COCON* 1.1.7BR (To what conduct does it apply? (Other limitations: Benchmark firms)) (*COCON* 1.3.16G deals with this).

COCON does not cover private or personal life

- 1.3.2 G *COCON* 1.1.6R to *COCON* 1.1.7R limit the application of *COCON* to conduct that relates to a function carried out by a member of the *conduct rules staff* where in turn that function relates to the carrying on of an activity by the *firm*. The *firm's* activity may be a *regulated activity* or an

unregulated activity. This limitation on the scope of *COCON* applies in relation to all *firms*.

- 1.3.3 G (1) The effect of *COCON* 1.1.6R to *COCON* 1.1.7R is that conduct relating to the *conduct rules staff* member's private or personal life is outside the scope of *COCON*.
- (2) However, this does not mean that a *senior conduct rules staff member* is not required to disclose information about their private or personal life under *COCON* 2.2.4R (SC4). A *senior conduct rules staff member* should disclose such matters if they are material to an assessment of fitness and propriety under *FIT*.
- 1.3.4 G Relevant factors in deciding whether conduct is within the scope of *COCON* 1.1.6R to *COCON* 1.1.7R include whether:
- (1) the conduct occurred when the *conduct rules staff* member was present on the *firm's* premises;
- (2) the conduct occurred when the *conduct rules staff* member was working on the *firm's* business;
- (3) the conduct involved a client, a professional acquaintance, another member of the *firm's* staff or someone the *conduct rules staff* member had dealt with on behalf of their *firm*;
- (4) the conduct was committed using work equipment or by involving the *firm's* staff;
- (5) the conduct arose in a business context, including an official or an informal event organised or supported by the *firm* or in which the *firm* participates, whether it is held at the *firm's* premises or at another location;
- (6) the conduct occurred at an event that is not organised by the *firm* but which the *firm* requires the individual to attend, such as a training course;
- (7) the position of the *conduct rules staff* member as a *conduct rules staff* member of the *firm* helped them to carry out the conduct; or
- (8) the purpose (misguided or not) of the conduct was to benefit the *firm*.
- 1.3.5 G (1) Whether conduct is within the scope of *COCON* depends on the specific facts of each case. It is therefore not possible to set out scenarios in the *Handbook* and say whether in all cases the conduct in question will be within the scope of *COCON*.
- (2) (1) means that:

- (a) the list of factors in *COCON* 1.3.4G is not exhaustive; and
 - (b) the presence or absence of one of the factors in *COCON* 1.3.4G does not by itself dictate whether conduct is within the scope of *COCON*.
- (3) Another result of (1) is that:
- (a) when the table in *COCON* 1.3.7G says that conduct is generally within the scope of *COCON*, that means that the facts of the scenario are ones that point towards the conduct coming within the scope of *COCON*; and
 - (b) when the table in *COCON* 1.3.7G says that conduct is generally outside the scope of *COCON*, that means that the facts of the scenario are ones that point against the conduct coming within the scope of *COCON*,

but that in an individual case all the other features of the case are also relevant.

- 1.3.6 G (1) The table in *COCON* 1.3.7G sets out examples of when a *person's* conduct is outside the scope of *COCON* because it is part of their private or personal life and when it is not excluded for that reason (subject to *COCON* 1.3.5G).
- (2) As explained in Note (2) to the table, conduct to which 'Yes' applies is not necessarily within the scope of *COCON* as it may be excluded by one of the other scope *rules* in *COCON* 1.1 (Application). For example, it may be excluded by the exclusion in *COCON* 1.1.7AR (To what conduct does it apply? (Other limitations: Non-banks)).
- (3) Another example of the point in (2) is that if M (as referred to in the notes to the table) is based in an overseas office of the *firm* and carries out the conduct from there (or from their home in the country where the overseas office is located), the conduct will be outside the scope of *COCON* under *COCON* 1.1.10R (Where does it apply?) unless M comes within *COCON* 1.1.9R (which deals with *senior conduct rules staff members* and material risk takers) or within *COCON* 1.1.10R(2)(b) (which deals with *clients* in the *United Kingdom*).

- 1.3.7 G Table: Private or personal life and *COCON*

Description of conduct	Whether generally within the scope of <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R
Misconduct by M in relation to a fellow member of the workforce	Yes

while both are on their <i>firm's</i> premises	
Misconduct by M in relation to a fellow member of the workforce while M is working remotely for their <i>firm</i>	Yes
Misconduct by M in relation to a family member while M is working remotely for their <i>firm</i>	No
Misconduct by M in relation to a member of the public while M is commuting to their <i>firm's</i> place of business for work	No
Misconduct by M 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 M in relation to a client at a business meeting in which M is representing their <i>firm</i>	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by their <i>firm</i>	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by M or another member of the workforce in their personal capacity	<p>No</p> <p>However:</p> <p>(1) An occasion organised by a manager may be within the scope of <i>COCON</i>, taking into account that the manager's direct reports may feel obliged to attend.</p> <p>(2) If the event takes place after a <i>firm</i> event but at a separate location or venue, it may be within the scope of <i>COCON</i> 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, <i>COCON</i> is likely to cease to apply because the connection</p>

	between the event and the activities of the <i>firm</i> has been lost.
Misconduct by M 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 <i>firm</i> , another <i>firm</i> , an industry body or a regulator, in which they will represent their <i>firm</i> or where the main reason for the invitation is their working for their <i>firm</i> .	Yes
M is a member of a profession (such as an accountant, actuary or lawyer) and practises that profession in their job with their <i>firm</i> . 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
<p>M publishes material on a personal social media account (including sending it on a messaging app) held by M.</p> <p>As this table is just about whether conduct takes place in M's private life (and hence is outside the scope of <i>COCON</i> under <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R), this example assumes that the publication would otherwise breach <i>COCON</i>.</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.</p> <p>Factors to take into account are:</p> <ul style="list-style-type: none"> • whether the material is directed at a fellow member of the workforce (if it is, that points towards the conduct being within scope); • whether there is another connection between M and the subject of the misconduct that is not based on M's work with their <i>firm</i> (if there is such a connection, that may point away from the application of <i>COCON</i>); • whether it is part of a course of conduct that includes other incidents that are more closely connected with M's work at the <i>firm</i>; • whether the content of the social media posts is related to work at the <i>firm</i>;

	<ul style="list-style-type: none"> • whether M uses a work-issued device. <p>The fact that M uploads the posts during working hours or while on the <i>firm's</i> premises is not a strong factor pointing towards the application of <i>COCON</i>.</p> <p>If the conduct takes place over the <i>firm's</i> systems (for instance through the <i>firm's</i> e-mail system) it is likely to be within the scope of <i>COCON</i>.</p>
<p>Notes</p> <p>(1) 'M' refers to the member of a <i>firm's conduct rules staff</i> carrying out the conduct in question.</p> <p>(2) 'Yes' means that, in accordance with <i>COCON</i> 1.3.5G(3)(a), the scenario is based on a factor that points towards the conduct being within <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R and thus within the scope of <i>COCON</i> unless excluded by <i>COCON</i> 1.1.1AR to <i>COCON</i> 1.1.5AR (To whom does it apply?), <i>COCON</i> 1.1.7AR to <i>COCON</i> 1.1.7FR or by <i>COCON</i> 1.1.8BR to <i>COCON</i> 1.1.11CR (Where does it apply?).</p> <p>(3) 'No' means that, in accordance with <i>COCON</i> 1.3.5G(3)(b), the scenario is based on a factor that points towards the conduct being outside <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R and thus outside the scope of <i>COCON</i>.</p>	

- 1.3.8 G However, conduct excluded from *COCON* as described in the table in *COCON* 1.3.7G can still be relevant to fitness and propriety, as described in *FIT* 1.3 (Assessing fitness and propriety).
- 1.3.9 G The scope of *COCON* is not limited to conduct that is authorised by the *firm* or carried out with a view (misguided or not) that it is for the *firm's* benefit. Conduct is not excluded from the scope of *COCON* just because the *firm* forbids it (for instance in a staff handbook) or it is calculated to harm the *firm*. Thus, for example, the following conduct is within the scope of *COCON* 1.1.6R to *COCON* 1.1.7R:
- (1) misappropriating a client's or the *firm's* assets;
 - (2) providing false or inaccurate details about the member of the *conduct rules staff's* training, qualifications, past employment record or experience;
 - (3) misusing the assets or confidential information of a client or the *firm* to make a personal profit;
 - (4) misconduct against a client;

- (5) harassment of a fellow member of the workforce; and
- (6) maliciously sabotaging a *firm*'s information technology systems or altering or erasing its data.

SMCR financial activities

- 1.3.10 G *COCON* 1.3.11G to *COCON* 1.3.15G deal with a *conduct rules staff* member for whom the scope of *COCON* is limited to conduct in relation to their *firm*'s *SMCR financial activities* by *COCON* 1.1.7AR.
- 1.3.11 G When *COCON* is restricted to *SMCR financial activities*, it covers more than conduct involving direct dealings with counterparties and customers (and potential ones) or their assets at the point of sale or at the time of the transaction or service. It can also cover matters such as the following:
- (1) conduct arising out of such direct dealings, such as record-keeping, valuations and reporting;
 - (2) after-sale or post-transaction activities such as settlement, queries, dealing with the exercise of rights by the *firm* or the customer, complaints, cancellations, renewals and generally dealing with the customer or counterparty through the lifecycle of the product or relationship;
 - (3) designing and operating policies and procedures relating to the conduct of the *firm*'s relationship with counterparties and customers, such as:
 - (a) product or services design;
 - (b) policies and procedures about what services and products to sell or buy;
 - (c) policies and procedures about product distribution;
 - (d) policies and procedures for the conduct of the relationship between the *firm* and a customer in relation to products and services already sold or delivered; and
 - (e) policies and procedures for the monitoring of customer outcomes for products and services already sold or delivered; and
 - (4) management and monitoring of these activities.
- 1.3.12 G *COCON* is not restricted to the activities in *COCON* 1.3.11G. For example, it covers:
- (1) participation in meetings of the *firm*'s *governing body* and its committees and other management forums;

- (2) conduct in relation to internal systems, controls and operations supporting the activities in *COCON* 1.3.11G;
 - (3) conduct in relation to acquisition and management of resources used to support the activities in *COCON* 1.3.11G; and
 - (4) conduct in relation to systems and controls to monitor and control risks such as liquidity, operational, solvency, market and trading risks.
- 1.3.13 G (1) Conduct of an individual is not within the scope of *COCON* just because it is carried on in relation to an activity of their *firm* that is connected to an *SMCR financial activity* that is carried on by the *firm* but that is not itself an *SMCR financial activity*.
- (2) For example, the misconduct of the *employee* in the following examples is not within the scope of *COCON*:
- (a) A *firm*'s main business is to sell physical goods. It sells some of them on credit and so has *permission* for consumer credit. An *employee* steals some of the *firm*'s stock.
 - (b) A *firm*'s main business is to sell cars. It also sells connected insurance and so has *permission* for *insurance distribution activities*. An *employee* commits a serious driving offence while moving one of the cars the *firm* sells.
 - (3) However, conduct in (2) is relevant to the fitness and propriety under *FIT* of the *employee*, if the *employee* is subject to *FIT*.
- 1.3.14 G *COCON* 1.1.7FR says that the restriction of the scope of *COCON* to conduct in relation to a *firm*'s *SMCR financial activities* under *COCON* 1.1.7AR does not apply to harassment and similar conduct in relation to a fellow member of the workforce. Instead, *COCON* 1.1.7FR(5) excludes such conduct if it clearly only relates to a part of the *firm*'s business that does not carry on *regulated activities* or other *SMCR financial activities*, as explained further in *COCON* 1.3.15G.
- 1.3.15 G (1) This paragraph gives an example of how the exclusion in *COCON* 1.1.7FR(5) applies to conduct of a *conduct rules staff* member in relation to a fellow member of the workforce when a *firm* has both a financial services business and a non-financial services business.
- (2) The example relates to human resources and is based on an example in *SYSC* 25.3.4G (Management responsibilities maps: Exclusion of non-financial services activities for some firms).
- (3) If the *firm*'s human resources function covers the *firm*'s entire workforce without separating the parts that deal with the *firm*'s financial services business and its other business, the activities of someone working in that function are within the scope of *COCON*.

- (4) On the other hand, the *firm* may separate the part of its human resources function that deals with those working in its financial services business from the part that deals with the other part of its business. In that case, the conduct of staff within the part of the human resources function that only covers the *firm's* non-financial services business may be outside the scope of *COCON*.
- (5) In particular, if both the *conduct rules staff* member committing the misconduct and the subject of the misconduct work in the part of the human resources function that does not deal with the financial services business, the misconduct may fall outside the scope of *COCON* 1.1.7FR.

Benchmark firms

- 1.3.16 G *COCON* 1.1.7FR also applies to a *pure benchmark SMCR firm* to which the restrictions in *COCON* 1.1.7BR apply.

Amend the following as shown.

4 Specific guidance on conduct rules

4.1 Specific guidance on individual conduct rules

Rule 1: You must act with integrity: General

- 4.1.1 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule* 1.
- ...
- (19) ...
- (20) Subjecting a fellow member of the workforce to detriment for complying with *rule* 3 in *COCON* 2.1 or *rule* SC4 in *COCON* 2.2 or for using the *firm's* whistleblowing procedures. While this paragraph may in practice usually be most relevant to a manager, this kind of misconduct can be committed by any member of the workforce.

Rule 1: You must act with integrity: Misconduct in relation to fellow members of the workforce

- 4.1.1A G Although *COCON* 4.1.1CG to *COCON* 4.1.1EG do not cover every kind of misconduct between members of the workforce of a *firm* that might be a breach of Individual Conduct *Rule* 1, they do describe when behaviour that can be described as bullying or harassment will be a breach of that *rule*.
- 4.1.1B G Although *COCON* 1.1.7FR does not apply to an *SMCR banking firm*, *COCON* 4.1.1CG to *COCON* 4.1.1EG apply to such *firms*.

4.1.1C G COCON 3.1 (General factors for assessing compliance) is the starting point for deciding whether there has been a breach of COCON. Subject to that, conduct is a breach of Individual Conduct Rule 1 if:

(1) it falls within COCON 1.1.7FR, taking into account:

(a) whether it is serious (see COCON 4.1.8EG);

(b) (so far as applicable) COCON 4.1.8IG; and

(c) COCON 4.1.8JG; and

(2) it falls within COCON 4.1.1DG.

4.1.1D G (1) Conduct only breaches Individual Conduct Rule 1 if it involves a lack of integrity.

(2) This means that misconduct in relation to a fellow member of the workforce described in COCON 4.1.1CG(1) falls outside the scope of rule 1 if the conduct rules staff member:

(a) thought that there was a good and proper reason for the conduct and that the conduct and its effect were proportionate to the intended aim of the conduct; or

(b) did not intend to have a negative impact on the subject of the misconduct, did not know that they were doing so and was not reckless about the effect of their conduct.

(3) A belief of the kind referred to in (2)(a) should be reasonable. An unreasonable belief that conduct is justified may itself show a lack of integrity. For example, the fact that the individual carrying out the conduct in question believes that sexual harassment is not blameworthy is not a reason for Individual Conduct Rule 1 not to apply.

(4) Conduct excluded from rule 1 under (1) may fall under rule 2 instead.

4.1.1E G A conduct rules staff member may in principle rely on COCON 4.1.1DG(2) on more than one occasion. Nevertheless, repeated instances of the same misconduct could make it less likely that the conduct rules staff member could believe that it did not have negative effects. If they have been warned about the behaviour or someone has complained to them about it, it is less likely that they could reasonably think that it is justified.

...

Acting with due skill, etc as a manager (rule 2): General

...

4.1.8 G ...

Acting with due skill, etc as a manager (rule 2): Harassment in the workforce

4.1.8-A G A manager should try to prevent harassment and other kinds of misconduct referred to in COCON 4.1.1AG or COCON 4.1.8BG. What a manager should do in a particular situation will depend on the exact facts. A manager will not be in breach of Individual Conduct Rule 2 if they have acted reasonably. There will often be a number of different reasonable courses of action that can be taken in a particular case.

4.1.8-B G The following is a non-exhaustive list of examples of conduct by a manager in relation to the matters referred to in COCON 4.1.8-AG that would breach rule 2:

- (1) failing to take reasonable steps to protect staff against treatment of the kind described in COCON 4.1.1AG or COCON 4.1.8BG including failing to:
 - (a) intervene to stop such behaviour where appropriate if the manager knows or should know of it;
 - (b) appropriately operate the firm's policies, systems and controls to detect and prevent such behaviour; and
 - (c) (if the manager has sufficient authority to do this) set up and maintain such policies, systems and controls;
- (2) failing to take seriously or to deal appropriately with complaints of behaviour of the type described in COCON 4.1.1AG or COCON 4.1.8BG; and
- (3) failing to take reasonable steps to provide a safe environment for people to raise concerns about such treatment.

4.1.8-C G In considering whether a manager has breached rule 2 for any of the reasons in COCON 4.1.8-BG, the FCA will take into account any limits or constraints on a manager's ability to act in such ways. For example:

- (1) the relevant policies and processes may be set elsewhere in the firm or its group; or
- (2) it may be the firm's policy that the firm's human resources function deals with allegations of misconduct.

4.1.8-D G A firm may allocate responsibility for fair treatment of its staff to a particular senior manager or central function. If it does, any other manager still has responsibility for developing and embedding healthy cultures in their areas of responsibility, albeit under the direction or supervision of the centralised function or the senior manager. COCON 4.1.8-AG is relevant to both managers.

Acting with due skill, etc as a member of the Board (rule 2)

4.1.8A G ...

Misconduct in relation to fellow members of the workforce (rule 2)

4.1.8B G Although COCON 4.1.8DG to COCON 4.1.8KG do not cover every kind of misconduct between members of the workforce of a firm that might be a breach of Individual Conduct Rule 2, they do describe when behaviour that can be described as bullying or harassment will be a breach of that rule.

4.1.8C G Although COCON 1.1.7FR does not apply to an SMCR banking firm, COCON 4.1.8DG to COCON 4.1.8KG apply to such firms.

4.1.8D G COCON 3.1 (General factors for assessing compliance) is the starting point for deciding whether there has been a breach of COCON. Subject to that, conduct is a breach of Individual Conduct Rule 2 if:

(1) it falls within COCON 1.1.7FR, taking into account:

(a) whether it is serious (see COCON 4.1.8EG);

(b) (so far as applicable) COCON 4.1.8IG; and

(c) COCON 4.1.8JG; and

(2) it falls within COCON 4.1.8KG.

4.1.8E G COCON 1.1.7FR only covers conduct that is serious. The factors that the FCA will take into account when deciding whether misconduct in relation to a fellow member of the workforce is serious enough to amount to a breach of COCON include:

(1) whether the conduct is repeated or part of a pattern;

(2) the duration of the conduct;

(3) the size of the impact on the subject of the conduct (the rule applies to effects which are serious and marked, and not to those which are, though real, of lesser consequence);

(4) the seniority of the person whose conduct is in question;

(5) the difference in seniority between the person whose conduct is in question and the subject of the conduct and whether the person whose conduct is in question has control or influence over the other's career;

(6) whether the subject of the misconduct has specific characteristics or vulnerabilities, particularly if this is a factor in the conduct in question;

- (7) whether the person whose conduct is in question has been warned or disciplined for similar conduct by the *firm*, a previous employer, the police or a regulator;
- (8) whether the person whose conduct is in question has previously undertaken not to do the act or engage in the behaviour in question; and
- (9) whether the conduct is criminal or would justify dismissal.

4.1.8F G Although matters occurring after the conduct in question are generally relevant to mitigation or aggravation rather than to whether conduct is a breach of a *rule* in the first place, such matters can be relevant to whether conduct is serious. That is because one of the elements in judging whether conduct is serious enough to be a breach of Individual Conduct *Rule 2* is whether the conduct is repeated or part of a pattern (see *COCON* 4.1.8EG). That means behaviour occurring after an incident can be relevant to whether there is a breach of Individual Conduct *Rule 2*. Therefore, the mitigating and aggravating factors in *FIT* 1.3.10G(3) to (7) (Breaches of requirements of the regulatory system) can also be relevant to whether there has been a breach.

4.1.8G G Whether or not misconduct has been the subject of a formal complaint is not generally relevant to the seriousness of that conduct. The fact that it has been the subject of such a complaint may be relevant evidence, for instance in helping to show what the effect of the conduct was.

4.1.8H G As respects *COCON* 4.1.8EG(8):

- (1) The mere fact that the person whose conduct is in question has, in accordance with the *firm's* general policy, undertaken to comply with the *firm's* staff handbook or other internal policies for staff and the conduct in question breaches a requirement of such policies is unlikely to be of great significance.
- (2) The fact that before the misconduct in question, the *firm* has warned the individual in question about conduct of that type or has required the individual to undertake not to repeat conduct of that type is likely to be significant.

4.1.8I G (1) In deciding whether conduct has the effect in *COCON* 1.1.7FR(4)(a), it is necessary to take into account all the circumstances of the case. The remainder of this paragraph covers two factors that are always relevant.

- (2) One of those factors is the perception of the subject of the misconduct. The result of this subjective question is that if the subject of the conduct does not perceive their dignity to have been violated, or any of the other things referred to in *COCON*

1.1.7FR(4)(a) to have occurred, then the conduct should not be found to have had that effect.

- (3) The second of the factors referred to in (1) is whether it is reasonable for the conduct to have had the effect in COCON 1.1.7FR(4)(a). The result of this objective question is that if it was not reasonable for the conduct to be regarded as violating the dignity of the subject of the conduct or creating any of the other effects in COCON 1.1.7FR(4)(a), then it should not be found to have done so.

4.1.8J G (1) Conduct can fall within COCON 1.1.7FR whether it consists of a single incident, several incidents or a course of conduct.

- (2) Conduct within COCON 1.1.7FR covers a wide range of behaviour. It is not limited to words, communications and gestures. For example, it can also cover physical violence.

4.1.8K G (1) Conduct only breaches Individual Conduct Rule 2 if it involves lack of due skill, care and diligence.

- (2) For example, a *conduct rules staff* member carrying out conduct falling within COCON 1.1.7FR(4)(a) will not breach the *rule* if:

(a) they thought that the conduct would have no ill effects on the subject of the conduct; and

(b) a reasonable person with the skills that the *conduct rules staff* member carrying out the conduct has and ought to have:

(i) would have thought the same; and

(ii) would have thought that the conduct was justified.

...

4.2 Specific guidance on senior manager conduct rules

...

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

...

4.2.29 G In determining whether or not a *person's* conduct complies with *rule* SC4 in COCON 2.2.4R, the factors which the *FCA* would expect to take into account include:

- (1) whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned; and

- (2) ~~whether the information related to the individual themselves or to their *firm*; and [deleted]~~
- (3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

...

Annex C

Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 General

...

1.3 Assessing fitness and propriety

General matters

1.3.1 G ...

...

1.3.5 G ...

Breaches of requirements of the regulatory system

- 1.3.6 G (1) Breaches (or the risk of future breaches) of the requirements of the *regulatory system* are obviously relevant to fitness and propriety under the *regulatory system* and thus to *FIT* because they are part of the regime under which fitness and propriety under *FIT* is assessed.
- (2) Such breaches will often take place in an individual's work life but, as explained in *FIT* 1.3.11G, such conduct may also occur outside work.
- 1.3.7 G (1) Breaches of the *regulatory system* include:
- (a) breach of *COCON* or *APER*;
- (b) (where a *firm* is required to try to ensure that someone in the position of the member of the *staff being assessed under FIT* meets a particular standard) failure to meet that standard; and
- (c) involvement in a breach by the *firm* of the requirements of the *regulatory system*.
- (2) A requirement in (1)(b) might be one relating to the particular position the member of the *staff being assessed under FIT* holds. It may also be one covering a *firm's* workforce generally or a certain section of it to which the member of the *staff being assessed under FIT* belongs, such as the *competent employees rule*.
- 1.3.8 G A breach of *COCON* or of other requirements of the *regulatory system* can be relevant to fitness and propriety under *FIT* 2.1 (Honesty, integrity and reputation) or *FIT* 2.2 (Competence and capability).

- 1.3.9 G (1) One of the purposes of the fitness and propriety requirement is to ensure that *firms* themselves meet the requirements of the *regulatory system*. Ensuring that its staff are fit and proper will help to ensure that the *firm* itself meets the *threshold conditions* and will comply with the standards of the *regulatory system*.
- (2) Thus, conduct by a member of a *firm's staff being assessed under FIT* may show that member to be unfit if:
- (a) it results in the *firm* not meeting the standards in (1); or
 - (b) it is a factor that points towards the *firm* not meeting those standards, even if the position of the member of the *firm's staff being assessed under FIT* in the *firm* is not sufficiently significant for their misconduct to mean that the *firm* does not meet those standards.
- 1.3.10 G A breach of the requirements of the *regulatory system* does not automatically mean that a member of the *staff being assessed under FIT* is not fit and proper. An assessment should be made on a case-by-case basis. In the case of *COCON*, relevant factors include:
- (1) the seriousness of the breach, taking into account matters such as the following (some of the other sub-paragraphs of this paragraph also contain factors relevant to seriousness):
 - (a) whether the breach involved dishonesty, breach of trust or violence;
 - (b) whether the individual knew that their conduct was a breach of *COCON* or their *firm's* internal requirements but carried on the conduct anyway;
 - (c) vulnerability of those affected by the breach;
 - (d) whether the breach was of Individual Conduct *Rule 1* (You must act with integrity), although not every breach of that *rule* means that the individual is unfit;
 - (e) the harm done; and
 - (f) the factors in column (2) of row (A) of the table in SYSC 22.5.11G (Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose);
 - (2) how recent the breach was (the fact that the breach happened a long time ago may lessen the weight of that breach);

- (3) steps (including training) taken by the member of *staff being assessed under FIT* since the breach to address the behaviours involved in the breach or otherwise to address the causes of the misconduct;
- (4) (in the case of a breach caused by lack of competence) whether that lack has been remedied by subsequent training or experience;
- (5) other evidence of rehabilitation;
- (6) remorse and insight into the seriousness of the breach;
- (7) absence of the mitigating factors in (3) to (6);
- (8) the individual's past disciplinary record;
- (9) the individual's record of breaching *COCON* or other requirements of the *regulatory system*;
- (10) the individual's health and life events which may have caused them to act out of character;
- (11) whether the breach was repeated or part of a pattern;
- (12) the seniority of the individual (the fact that the individual held a senior position may make the breach more serious than it would be if they held a junior position);
- (13) the likelihood of recurrence of the relevant conduct, for instance whether the conduct was a one-off lapse; and
- (14) the relevance of the breach to the role for which the member of *staff being assessed under FIT* is being assessed.

1.3.11 G Breaches of the requirements of the *regulatory system* are relevant to fitness and properness even if they take place outside work. Thus, for example, it would be relevant to an individual's fitness if they carried on a *regulated activity* outside work without being *authorised* as required.

1.3.12 G (1) The *FCA's statutory objectives* are a key factor in deciding whether something is relevant to whether a person is fit and proper. Conduct that is inconsistent with the *FCA's statutory objectives* is likely to show that the person concerned is not fit and proper.

(2) Maintaining public confidence in the financial system and financial services industry in the *United Kingdom* is part of the *FCA's statutory objectives*. Therefore, conduct of a type that is likely to damage such public confidence is likely to mean that the person concerned is not fit and proper.

- 1.3.13 G (1) Misconduct may mean that a person is not fit and proper even if that misconduct does not have such great effects that it measurably prejudices the *FCA's statutory objectives* by itself.
- (2) For example, fraud is inconsistent with the *FCA's statutory objectives* and is likely to mean that the person committing it is not fit and proper even if it is small-scale.

Conduct connected to work

- 1.3.14 G (1) Breaches of the law or of requirements not forming part of the *regulatory system* committed during the course of work carried out by a member of the *staff being assessed under FIT* for their *firm* or a previous employer may mean that the person concerned is not fit and proper.
- (2) Such requirements may include requirements of other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies.

Relevance of behaviour in private or personal life

- 1.3.15 G (1) *COCON* is limited to conduct related to a *firm's* activities (see *COCON* 1.1.6R to *COCON* 1.1.7R) and sometimes only to a part of its activities (for example, see *COCON* 1.1.7AR). An assessment of fitness and propriety should not be limited in that way.
- (2) That means that conduct is potentially relevant to an assessment of fitness and propriety even though *COCON* 1.3 (Scope of *COCON*) says that it is generally outside the scope of *COCON* because:
- (a) it relates to the *person's* private or personal life; or
- (b) it does not have a sufficient connection with *SMCR financial activities* or other activities of the *firm* in question.
- (3) For example, conduct described in the table in *COCON* 1.3.7G (Table: Private or personal life and *COCON*) as generally being outside the scope of *COCON* may be relevant to fitness and propriety.

- 1.3.16 G (1) Conduct that:
- (a) takes place in the private or personal life or other activities outside the *regulatory system* of a member of *staff being assessed under FIT*; and
- (b) shows that there is a risk that the person will breach the standards and requirements in *FIT* 1.3.6G (Breaches of requirements of the regulatory system).

may show that the member of the *staff being assessed under FIT* is not fit and proper.

(2) Misconduct that:

- (a) takes place in the private or personal life or other activities outside the *regulatory system* of a member of the *staff being assessed under FIT*; and
- (b) if repeated in the role for which they are being assessed, would breach the standards and requirements in *FIT* 1.3.6G,

may show that they are not fit and proper because of the risk it will be repeated in that role.

(3) Two examples are dishonesty and lack of integrity. Honesty and integrity are both key qualities that *staff being assessed under FIT* should have. Thus, conduct outside the *regulatory system* that is dishonest or shows a lack of integrity is always relevant to fitness and propriety under *FIT*.

(4) Similarly, violence or sexual misconduct against an individual by a member of the *staff being assessed under FIT* in their private or personal life or in work outside the *regulatory system* may show that there is a risk of similar misconduct in relation to:

- (a) customers or counterparties of their *firm*; or
- (b) people working for their *firm*, which, as explained in *COCON* 4.1 (Specific guidance on individual conduct rules), is a breach of the *rules* in *COCON*.

(5) Likewise, a breach of standards or requirements that are similar to ones applying under the *regulatory system* is relevant to fitness and propriety under *FIT*.

(6) Even if a breach of a law or standards and requirements by a member of the *staff being assessed under FIT* would not otherwise be relevant to their fitness and propriety, repeated breaches may raise doubts as to whether they will follow the requirements of the *regulatory system*. Thus, for example, a minor driving offence will not normally be relevant to fitness and propriety but frequently repeated such offences may be.

1.3.17 G (1) 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 if there is little or no risk of it being repeated in their work for their *firm*. Conduct in an individual's personal or private life may be relevant if:

- (a) it demonstrates a willingness to:

- (i) disregard ethical or legal obligations;
 - (ii) abuse a position of trust; or
 - (iii) exploit the vulnerabilities of others; and/or
- (b) 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*.
- (2) A custodial sentence imposed by the court (even if suspended) is likely to mean that the matter is sufficiently serious, but this is subject to consideration of other relevant matters including how old the offence is and rehabilitation since the date of the offence.
- (3) The reason for (1) and (2) is that the person's working in the role for which they are being assessed may damage public confidence in the financial system and financial services industry in the *United Kingdom* and consequently be inconsistent with the *FCA's statutory objectives*.
- (4) One reason for the effect in (3) is that if the *regulatory system* allows persons to carry on working in those circumstances it would reflect negatively on the rigour and quality of the standards expected of those working in such positions and in turn on the quality of those who work in such positions. The regulatory standards that apply to a person working for one *firm* are likely to reflect on the regulatory standards applying generally.
- 1.3.18 G (1) In the *FCA's* view, misconduct of the type in *FIT 1.3.17G* can mean that the person concerned is not fit and proper even if it cannot be shown that the misconduct will by itself cause direct and discernible damage to public confidence in the financial system and financial services industry in the *United Kingdom* or to confidence in their *firm* on the part of customers or those who deal with the *firm*.
- (2) As with other kinds of misconduct (see *FIT 1.3.13G*), it is sufficient if the misconduct is of a type that is inconsistent with the *FCA's statutory objectives*.
- (3) In addition, the fact that a person only works for a small *firm* and that their misconduct does not significantly damage the confidence of the *firm's* clients or those who deal with the *firm* or itself damage confidence in the financial services industry more generally does not prevent the reflection on the standards of the *regulatory system* described in *FIT 1.3.17G(4)*.
- 1.3.19 G The factors in *FIT 1.3.17G(1)(a)* may in some cases be relevant to fitness and properness because they show that there is a risk that the member of the *staff* being assessed under *FIT* will repeat that conduct in a work context or

otherwise breach the standards and requirements in *FIT* 1.3.6G (see *FIT* 1.3.16G).

- 1.3.20 G (1) Generally, a *firm* need not monitor the private lives of its staff who are subject to the standards in *FIT* to see whether there is something that is relevant to fitness under *FIT*. A *firm* need only look into the private life of a member of the *staff being assessed under FIT* if there is a good reason to, for instance if the *firm* becomes aware of an allegation which, if true, would call into question their fitness under *FIT*, including having regard to *FIT* 1.3.17G(1).
- (2) Even if a *firm* is aware of an allegation against a member of the *staff being assessed under FIT* relating to their private life, the *firm* may have a limited ability to investigate. In any case, it is likely that it will be more appropriate for the relevant law enforcement or other authorities to investigate.
- (3) Therefore, the *FCA* accepts that it is likely that a *firm* will often rely on:
- (a) matters of the kind described in *FIT* 2.1.3G (Honesty, integrity and reputation);
 - (b) criminal convictions; or
 - (c) the findings of a court, tribunal, regulator, arbitrator, public enquiry or other body whose responsibility it is to make findings of the relevant kind,
- in deciding whether or not a member of the *staff being assessed under FIT* has committed wrongdoing in their private life of a kind that is relevant to fitness and propriety.
- (4) Nevertheless, a *firm* should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety of a member of the *staff being assessed under FIT* of a matter in (1). For example, the *firm* should where appropriate ask for an explanation from the member of the *staff being assessed under FIT* concerned.
- (5) The *FCA* will not necessarily limit its assessments of fitness and propriety in the way described in (3).
- (6) *Firms* are reminded of their obligations under *SUP* 10C.14.18R (Notifications about fitness, disciplinary action and breaches of COCON). The fact that a *firm* has not been able to establish the truth of an allegation of the kind in (1) does not mean that the *firm* should not report it to the *FCA* if, were it established to be true, it would reasonably be material to an assessment of fitness and propriety.

Social media

- 1.3.21 G (1) This paragraph deals with the use of social media (including a messaging app) by a member of the *staff being assessed under FIT*.
- (2) The factors in this section apply to establishing when social media activity is relevant to fitness and propriety under *FIT* in the same way as they do to establishing the relevance of other kinds of conduct.
- (3) Thus, for example, if a person's social media activity in their private life indicates a real risk that the person will breach the requirements and standards of the *regulatory system*, such activity will be relevant to their fitness and propriety. Examples could include threats of violence or clear involvement in criminal activities.
- (4) Subject to the other points in this section, a person can lawfully express views on social media even if they are controversial or offensive, without calling into question their fitness under *FIT*, even if colleagues at work are upset by those views.
- (5) In accordance with *FIT* 1.3.20G, a *firm* need not monitor the social media activity of its staff who are subject to the standards in *FIT* in their private lives.

Offences

- 1.3.22 G When taking into account offences, the *FCA* will give (and a *firm* should give) particular consideration to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, *money laundering*, market manipulation and *insider dealing*, offences of violence, sexual offences and offences related to a *person's* or a group's demographic characteristics such as racially motivated or aggravated offences, whether or not in the *United Kingdom*.
- 1.3.23 G The *FCA* will (and a *firm* should) take account of the effect of a conviction for a criminal offence on a person's fitness on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.
- 1.3.24 G Offences in *FIT* 1.3.22G are not just relevant if committed in a work context. As described in *FIT* 1.3.17G and *FIT* 1.3.18G (and also in other parts of this section), conduct in the private or personal life or in the working life outside the *regulatory system* of a member of the *staff being assessed under FIT* may be relevant to their fitness and properness.

2 Main assessment criteria

2.1 Honesty, integrity and reputation

2.1.1 G In determining a *person's* honesty, integrity and reputation, the *FCA* will have regard to all relevant matters including, but not limited to, those set out in *FIT* 2.1.3G which may have arisen either in the *United Kingdom* or elsewhere. The *FCA* should be informed of these matters (see *SUP* 10A.14.17R and *SUP* 10C.14.18R), but will consider the circumstances only where relevant to the requirements and standards of the *regulatory system*. For example, under *FIT* 2.1.3G(1), conviction for a criminal offence will not automatically mean an application will be rejected. The *FCA* treats each candidate's application on a case-by-case basis, taking into account the ~~seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted 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~~ matters referred to in *FIT* 1.3.23G.

2.1.1A G A *firm* determining the honesty, integrity and reputation of *staff being assessed under FIT*, should consider all relevant matters, including those set out in *FIT* 2.1.3G, which may have arisen either in the *United Kingdom* or elsewhere. *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~~ matters referred to in *FIT* 1.3.23G.

...

2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FCA* will have regard, and to which a *firm* should also have regard, include, but are not limited to:

- (1) whether the *person* has been convicted of any criminal offence; this must include, where provided for by the Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, ~~money laundering, market manipulation and insider dealing, whether or not in the *United Kingdom*~~ described in *FIT* 1.3.22G;

...

- (3) whether the *person* has been the subject of, or interviewed in the course of, any existing or previous investigation (particularly into a matter of the kind referred to in *FIT* 1.3.22G) or disciplinary proceedings, by the *appropriate regulator*, by other regulatory

authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies;

- (4) whether the *person* is or has been the subject of any proceedings of a ~~disciplinary or criminal nature~~ (particularly of the kind referred to in FIT 1.3.22G) or of a disciplinary nature, or has been notified of any potential such proceedings or of any investigation which might lead to those proceedings;

...

- (11) whether the *person* has been dismissed, ~~or asked to resign and resigned~~, from employment or from a position of trust, fiduciary appointment or similar;

- (11A) whether the *person* has been asked to resign and resigned, from employment or from a position in (11). Whether the *FCA* considers (or a *firm* should consider) a resignation to be relevant will depend on the circumstances – for example, if a *person* is asked to resign in circumstances that cast doubt over their honesty or integrity, including where this is as a result of involvement in misconduct such as bullying, harassment, victimisation or discrimination;

...

- (13) whether, in the past, the *person* has been candid and truthful in all their dealings with any *regulatory body* and whether the *person* demonstrates a readiness and willingness to comply with the requirements and standards of the *regulatory system* and with other legal, regulatory and professional requirements and standards;

- (14) whether the *person* has been found by a tribunal or court to have been engaged in bullying, harassment, victimisation or discrimination; and

- (15) whether the *person* has been the subject of an upheld internal complaint related to bullying, harassment, victimisation or discrimination.

2.2 Competence and capability

- 2.2.1 G In determining a *person's* competence and capability, the *FCA*, in accordance with *FIT 1.1.2G*, will have regard to all relevant matters including but not limited to:

...

- (3) whether the *person* has adequate time to perform the *controlled function* and meet the responsibilities associated with that function; and

- (4) any of the matters in *FIT 2.1.3G*(1) to (12) or *FIT 2.1.3G*(14) and (15) (Honesty, integrity and reputation) so far as relevant to competence

and capability, such as a finding by a court, disciplinary hearing or enquiry that the *person* has been negligent or demonstrated lack of skill in a relevant respect.

- 2.2.1A G In determining ~~a *person's* the~~ competence and capability ~~to perform an FCA designated senior management function or an FCA certification function of staff being assessed under FIT~~, a *firm*, in accordance with FIT 1.1.2G, should have regard to all relevant matters including but not limited to:

...

- (3) whether the *person* has adequate time to perform the function in question and meet the responsibilities associated with that function;
and
- (4) the matters in FIT 2.2.1G(4).

...

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