

Rt Hon Maria Miller MP
Chair, Women and Equalities Committee
House of Commons
London
SW1A 0AA

28 September 2018

Our Ref: SA180731A

Women and Equalities Committee Report on Sexual Harassment in the Workplace

Thank you for your letter of 31 July 2018 following the committee's report on sexual harassment in the workplace. The report raises a number of serious issues which we will continue to consider carefully both as an employer and in our regulatory work.

When I gave evidence to the Committee, I made it clear that we view sexual harassment as misconduct. I thought it would be helpful to reiterate and expand upon some of her remarks, and set out what tools we have available to ensure that the firms we regulate take the issue seriously.

Sexual harassment is misconduct which can drive a poor culture

As I outlined at the hearing, we view sexual harassment as misconduct which falls within the scope of our regulatory framework.

Culture in financial services is widely accepted as a key root cause of the major conduct failings that have occurred within the industry in recent history, and we expect firms to foster healthy cultures which support the spirit of regulation in preventing harm to consumers and markets. A culture where sexual harassment is tolerated is not one which would encourage people to speak up and be heard, or to challenge decisions. Tolerance of this sort of misconduct would be a clear example of a driver of poor culture. It would be an obstacle to creating an environment where the best talent is retained, the best business choices are made and the best risk decisions are taken.

Through our supervision of firms, we seek to ensure that they understand the importance of fostering a healthy culture. We do not only look at issues and their root causes when things go wrong, but consider how a firm's culture is shaped by drivers such as incentives and remuneration, training, leadership, governance arrangements, purpose, and diversity and inclusion. We provide feedback on and challenge the drivers of behaviour we observe through our supervisory engagement with firms, and make it clear that the benefits of diversity of thought cannot be achieved without a culture that is actually diverse and inclusive.

Individual accountability and assessing whether staff are 'fit and proper'

Our Senior Managers and Certification Regime (SMCR) is a key part of our supervisory framework and aims to improve conduct among staff at all levels. It currently applies to all banks, building societies and credit unions, and will be rolled out to insurers from December 2018 and to all other the firms authorised under the Financial Services and Markets Act (FSMA) 2000 from December 2019.

The regime ensures that senior executives are directly accountable for functions which fall under their responsibility. This accountability rests with the most senior individuals – Senior Managers – within an organisation, because these are the individuals with the greatest potential to cause harm to a firm's customers or the markets in which it operates. Senior Managers must be approved by us to carry out these key roles, and we assess their competence, honesty, integrity and reputation to ensure that they are 'fit and proper' to do so. This means we will, for example, consider if an individual has had a criminal conviction, sanctions for discrimination, harassment or sexual misconduct.

In addition, SYSC 5.2 of our handbook requires firms to explicitly identify the Senior Manager with responsibility for ensuring that individuals within a wider population of employees – certified staff – are 'fit and proper'. This person has the responsibility for ensuring their firm takes appropriate steps to assess if its certified staff remain fit and proper at least annually. As with Senior Managers, an individual's competence, honesty, integrity and reputation are each relevant to this assessment. The SMCR also requires firms to provide regulatory references in respect of their certified staff, which include relevant circumstances behind their departure.

For employees of firms not yet subject to the SMCR, we assess individuals' fitness and propriety when they apply to be authorised by the FCA as an 'approved person'. We approve an individual only when we are satisfied that they are fit and proper to perform the controlled functions that they have applied for. Again, an individual's honesty and integrity are explicit factors which inform this assessment.

As you will appreciate, for legal reasons I am not in a position to discuss specific cases. However, I am able to say that there have been instances where either we or a firm we supervise have found an individual not to be fit and proper on the basis of their 'non-financial' conduct, with the consequence that they were unable to be take up or else continue in their role. Where appropriate, we will continue to pursue such measures in future.

Transparency and whistleblowing

Our Principles for Business are the fundamental obligations we place on firms. Principle 11 requires a firm to maintain an open and cooperative relationship with us, as well as disclosing appropriately anything relating to the firm of which we would reasonably expect to be notified. Firms must inform us promptly of potentially serious misconduct involving their employees, including criminal convictions and other sanctions, upheld complaints, and disciplinary proceedings. We expect them to demonstrate to us that they have that the right processes in place to handle and escalate such cases appropriately. In addition, under the SMCR, Principle 11 is reinforced by Senior Manager Conduct Rule 4, which requires Senior Managers to disclose appropriately to us any information of which we would reasonably expect notice. Sexual harassment and other forms of non-financial misconduct can amount to a breach of our Conduct Rules, which include the requirement to act with integrity, and the SMCR imposes requirements on firms to notify us of Conduct Rule breaches – and in particular the need to do so within 7 days where they involve an organisation's most senior staff.

Furthermore, we also expect firms to have appropriate internal whistleblowing and complaints processes in place – a requirement that we assess as part of our supervisory activities. Specifically, SYSC18 of our Handbook sets out our expectations of firms’ internal arrangements on whistleblowing. The most extensive requirements apply to banks, building societies and Solvency II insurers. Our rules require firms to implement appropriate training for managers and those operating a firm’s whistleblowing framework, processes to ensure the effective management of protected disclosures and confidentiality, and measures to prevent the victimisation of whistleblowers. The SMCR requires firms to allocate, to a specific Senior Manager, responsibility for overseeing the effectiveness of the firm’s whistleblowing processes, and we expect firms to allocate this function to a non-executive director.

In addition to whistleblowing to their employer, individuals can raise sexual harassment issues with us directly through our whistleblowing procedures. We consider all whistleblowing information we receive, and would be especially interested if firms were systemically mishandling allegations or incubating a culture of sexual harassment. The Public Interest Disclosure Act 1998¹ (PIDA) provides protection for someone if they are harmed or dismissed because of ‘blowing the whistle’ about a firm or individual. Our rules are clear that so called ‘gagging orders’ do not affect an individual’s ability to ‘blow the whistle’ by making a disclosure to the FCA. We set this out in SYSC 18.5 of our Handbook.

Public Sector Equality Duty

The Public Sector Equality Duty (PSED), and our own diversity and inclusion principles, mean we look at ways to eliminate discrimination, advance equality of opportunity and foster good relations between people with a protected characteristic and those without – both within the Financial Conduct Authority and in the way we regulate. The PSED has particular impact in our oversight of firms’ culture and governance, as well as their treatment of vulnerable consumers. The way we put the PSED into practice is reflected in our Business Plan commitments. We have given a lot of thought to how we can ensure we integrate the PSED into our external work, particularly with regard to board and executive level engagement and encouraging industry to proceed in a certain direction on diversity without resorting to rules.

In closing

How firms handle poor personal misconduct, including allegations of sexual misconduct, is a topic which we are increasingly discussing with firms. We will continue to give it the serious consideration it deserves throughout our work. Our approach is not static, and we will continue to focus on this issue, including through progressing the roll-out of the SMCR as legislation allows and as outlined in our Business Plan and Approach documents.

Thank you for shining a light on this issue and giving us the opportunity to set out how workplace sexual harassment relates to our work with the firms we regulate. Please do not hesitate to be in touch should you have further questions.

Yours sincerely

Megan Butler
Executive Director of Supervision – Investment, Wholesale and Specialists Division

¹ <http://www.pcaw.org.uk/law-policy/a-guide-to-pida>