



Non-financial misconduct: FCA publishes final rules and a new consultation - summary provided by PwC



Dear Members,

The FCA has published a [Policy Statement containing final rules on non-financial misconduct](#) ('NFM'). These are based on aspects of the joint FCA/PRA consultation paper of September 2023 on diversity and inclusion. However, the majority of the document consists of a re-consultation on draft guidance, which takes into account the feedback received by the FCA on its initial 2023 proposals.

The final rules apply to a large proportion of the financial services firms authorised by the FCA, including all banks, building societies, investment firms and insurers/reinsurers. The overarching purpose remains to establish a minimum standard for all firms with the aim of reducing discrimination and misconduct, and promoting healthy and inclusive workplace cultures.

On the one hand, the finalisation of only one aspect of the previous consultation means that immediate actions for firms are limited to ensuring their policies and procedures for dealing with misconduct encompass NFM as defined in the new rules. On the other hand, there is still no certainty as to the FCA's expectations on NFM, though a pragmatic and proportionate approach oriented on stakeholder feedback is clearly the regulator's intention.

A summary of the publication is set out below:

Final rules

Only one aspect of the 2023 proposals has been finalised, namely the addition of a rule which results in NFM being clearly in the scope of the FCA's Conduct Rules for both banks and non-banks.

With a view to more clearly aligning the wording with the definition of harassment in the Equality Act, the FCA has arrived at a final definition of misconduct as *'unwanted' conduct that is 'violent' to a staff member or 'has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment' for them.*

Additional, more subjective terms, such as 'unreasonable', 'oppressive' and 'offensive', have been removed following the consultation but the rule remains considerably broader in scope than misconduct related to the protected characteristics under the Equality Act.

The detailed guidance on the scope of NFM, which was proposed in 2023, has not been finalised but is instead subject to further consultation as part of the publication.

Proposals not taken forward

Some elements of the 2023 proposals on NFM have been dropped, namely the proposed guidance:

- on the relevance of NFM to the threshold condition of suitability; and
- reminding firms that NFM needs to be disclosed in regulatory references - the FCA considers that this is already sufficiently clear.

Re-consultation

The FCA has revised the other elements of the 2023 proposals on NFM in line with stakeholder feedback, and is now re-consulting on them. These are all guidance provisions on the application of the Conduct

Rules and on the relevance of NFM to fitness and propriety assessments. The FCA is very clear that it will only proceed with the proposed guidance if there is clear support for doing so.

Guidance on Conduct Rules

The key changes from the 2023 proposals include:

- greater alignment with employment law concepts;
- removal of subjective terminology, such as 'good working environment';
- more detailed guidance and examples of the boundary between work and private / personal life;
- new guidance on the distinction between breaches of the different Conduct Rules;
- the addition of factors for determining whether the NFM is sufficiently serious to amount to a breach of a Conduct Rule.

Guidance on assessing fitness and propriety

The revised draft guidance continues to explain how poor behaviour, both in the workplace and in a staff member's personal or private life, can be relevant to fitness and propriety assessments. Numerous changes and additions are proposed (compared to the 2023 version), including:

- clarification that the FCA does not expect firms to proactively monitor staff's private lives and social media activities, but should take reasonable steps if they become aware of potentially relevant allegations;
- clarification that expressing personal views on social media is relevant to fitness and propriety if it indicates that there is a real risk the staff member will breach regulatory standards (and that it is not necessarily sufficient that the views are controversial or offensive to work colleagues);
- more examples of potentially relevant types of conduct in and outside of work;
- clarification that a Conduct Rule breach does not automatically mean unfitness.

Timeline and next steps

The new rules must be applied by firms from 1 September 2026. They do not apply to conduct before that date.

The consultation on the proposed guidance runs until 10 September 2025. The FCA intends to publish the outcome of the consultation by the end of the year, with the new guidance also set to apply from 1 September 2026.

Best regards,

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