

Survey on Non-financial Misconduct: Taking Stock

Client Alerts

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Last week, the UK's financial services regulator, the Financial Conduct Authority (FCA) issued a notice to provide information to the Lloyd's insurance market to complete a survey on non-financial misconduct. In January 2024, during the "Sexism in the City" Inquiry, the FCA explained that the survey was intended to "take stock" and share best practice, as well as to inform the new rules which the FCA is developing for all regulated firms on non-financial misconduct. It is expected that a similar notice will be sent to the regulated sector more widely in due course. The FCA has indicated that it hopes to complete the data collection by Summer 2024. While the purpose of the survey is to inform the FCA's work, it is an opportunity for firms to take stock of their own approach to non-financial misconduct, too.

The survey does not ask for information on specific allegations; rather, it seeks aggregated statistics covering the past three years on the volume and type of incidents of non-financial misconduct, the methods of detection, and the actions taken to address these incidents within firms. In particular, the FCA asks firms to ensure their statistics distinguish between conduct involving SMF (Senior Management Function) and non-SMF employees and to clarify whether incidents took place at the office, working from home, working offsite, or social situations related to work. The FCA's request for the statistics to be broken down in this way provides some insight into the lines they may be drawing in establishing the rules.

The notice issued on 6 February 2024, under the FCA's formal powers of compulsion, requires firms to respond by 4 March 2024 (i.e., within 18 working days). Non-compliance with the request may result in public censure, financial penalties, search warrants, or contempt of court.

The short deadline reflects the FCA's expectation that firms should have this information readily available. However, the FCA has stated that it appreciates "that some firms may not have all this data readily accessible or in a structured format, which may require a manual search through HR files" and seems amenable to requests for extra time to comply. Nevertheless, the fact that the FCA expects the information to be readily available signals that firms should also reflect on their policies and record-keeping procedures on non-financial misconduct.

Notably, the FCA recognises that a higher volume of allegations collected by a firm is not necessarily indicative of a worse environment but could indicate an effective and transparent speaking up culture. It notes that, conversely, a low volume of incidents may indicate that the speak up environment is not working well. It would be unsurprising, however, if survey responses on either side of the spectrum (or indeed responses inconsistent with previous reporting to the FCA) could result in further information requests from the FCA and eventually lead to supervision or even enforcement action.

Although tackling non-financial misconduct has been on the FCA's agenda for several years, the regulator is coming under greater pressure to accelerate action. The Treasury Committee in its "Sexism in the City" Inquiry has expressed concerns about the continued prevalence of non-financial misconduct, including sexual harassment and discrimination in the financial services sector.

This compulsory survey with its tight deadlines comes hot on the heels of the FCA and Prudential Regulation Authority (PRA)'s consultation on non-financial misconduct, which closed in December 2023. It is clear that the regulators are now ramping up their efforts to clamp down on non-financial misconduct in the City, energised by the focus from parliament and the media.

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