

Insights

FCA DRAFT GUIDANCE ON NON-FINANCIAL MISCONDUCT PUBLISHED TODAY

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The Financial Conduct Authority (FCA) has today published its most recent paper on non-financial misconduct (NFM), clarifying its expectations on bullying and harassment in financial services.

The paper contains updated draft guidance on how firms should consider NFM when assessing potential breaches of Conduct Rules, and whether an individual is fit and proper to work in financial services. This includes how firms should consider use of social media and the relevance of behaviour in private and personal life.

The guidance is open for consultation until 10 September 2025. The FCA says it will only proceed with the guidance if there is clear support for it.

Katherine Pope provides her initial observations on the guidance from an employment law perspective:

- The FCA has clarified that it does not intend to duplicate existing legal obligations under the Equality Act 2010 (EqA). This is helpful, as the previously proposed definition of “discriminatory practices” seemed broader than the EqA’s definition of discrimination, potentially leading to confusion. The FCA considers it important not to limit its rules to conduct related to a relevant protected characteristic. However, when assessing whether conduct is sufficiently serious to amount to a breach of the Conduct Rules, it is relevant whether the subject of the misconduct has ‘specific characteristics or vulnerabilities, particularly if this is a factor in the conduct in question’.
- The press release refers to the recent duty to prevent sexual harassment in the workplace, introduced in October 2024. Consistent with the planned addition to the Employment Rights Act of sexual harassment as a relevant failure for whistleblowing purposes, failure by a manager to take reasonable steps to provide a safe environment for people to raise concerns about bullying or harassment may amount to a breach of the requirement to act with due skill under Rule 2. Notably, the obligation is not limited to concerns of sexual harassment - subjecting a colleague to a detriment for blowing the whistle is added to the list of examples of conduct that may breach the requirement to act with integrity under Rule 1.

- The FCA has grappled further with the difficult question of when behaviour has a sufficient connection to work for the purposes of the Conduct Rules. Further detail has been added to its table of examples of where the line is to be drawn, noting that material published on a personal social media account is an example of how it is 'not possible to give a definitive answer to a scenario based on a single element.'
- Unsurprisingly, the FCA remains of the view that certain conduct outside work may be relevant to an individual's fit & proper status. This may be the case even if there is little or no risk of such conduct being repeated at work, as it may demonstrate a willingness to disregard ethical or legal obligations, abuse a position of trust or to exploit the vulnerabilities of others. A firm is not generally expected to monitor the private lives of staff subject to 'fit & proper' assessments, and need only look into matters of private life where there is a good reason to, for example if the firm becomes aware of an allegation which, if true, would call the individual's fitness into question.

Further analysis of the latest proposals will follow in additional updates – do watch this space!

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