A&O SHEARMAN

The FCA's non-financial misconduct survey: Decoding the findings

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In February 2024, the FCA sent a survey to 1,028 wholesale firms (insurers, market intermediaries, banks and brokers) asking about recorded incidents of non-financial misconduct between 2021 and 2023. With a 96% response rate, this was the first comprehensive data-gathering exercise that the FCA has undertaken to provide “*a baseline assessment of behaviours*” in relation to incidents of non-financial misconduct and how firms handle them.

The FCA has now published the output of its survey, the results of which are very data-rich and come with some necessary health warnings as to the limitations of interpreting the FCA’s data in isolation and without context. However, the FCA’s findings show some significant variations in terms of how different firms handle a range of types of non-financial misconduct, as well as the most prevalent types of non-financial misconduct within the financial services industry.

We explore some of the key findings arising from the FCA’s survey below (including some that were not picked up in the FCA’s own commentary) and key actions that firms should be taking in response.

Detection

The survey revealed that most (61%) non-financial misconduct are being identified through firms’ grievance processes, or other similar formal processes for escalation.

Whistleblowing channels within firms have also proven to be crucial in identifying such misconduct, with 16% of all reported incidents being flagged through these formal channels. However, the effectiveness of whistleblowing varies widely across sectors. For instance, only 6% of incidents at wholesale intermediaries are reported via whistleblowing, compared to a notable 32% at wholesale banks.

The survey also revealed further insights into firms’ whistleblowing procedures. While 99% of wholesale banks reported having current whistleblowing procedures in place, the figures drop to 95% for wholesale brokers and intermediaries, and 90% for wholesale insurers, despite these procedures being mandatory.

Market surveillance tools, which typically involve routine monitoring of emails and telephone lines for market abuse purposes, seem to play a limited role in identifying non-financial misconduct. The exception to this trend is seen among wholesale brokers, where these tools account for 10% of reported incidents, a significantly higher proportion than in other firms.

Incidents

Types of firm

The number of reported non-financial misconduct incidents increased by 72% across all firms surveyed, with a total of 5,380 incidents reported between 2021 and 2023.

However, there were significant differences in the number of reported incidents between different types of firms:

- Wholesale banks reported a 56% increase in the number of reported incidents between 2021 and 2023 and had the overall larger number of reported incidents, reflecting their larger employee base. However, wholesale banks also had the highest number of non-financial misconduct incidents per 1,000 employees, averaging 6.2 incidents per 1,000 employees between 2021 and 2023.
- Other firms exhibited even more pronounced increases: wholesale insurers saw a 134% rise, wholesale intermediaries reported a 176% increase, and wholesale brokers experienced a 139% uptick. Despite these significant surges, these firms maintained lower average incidents per 1,000 employees compared to wholesale banks.

Types of conduct

Bullying and harassment (23%), discrimination (19%) and sexual harassment (12%) emerged as the most common types of non-financial misconduct reported by firms.

The incidence of these misconduct types varied significantly among different types of firms. Wholesale insurers reported the highest instances of bullying and harassment, constituting 29% of all incidents. Wholesale banks and brokers followed closely with 26% and 22% respectively. Conversely, sexual harassment was most prevalent among wholesale intermediaries, accounting for 16% of reported incidents, whereas this was the least common type of conduct reported by wholesale banks (6%).

A significant portion of reported incidents, 41%, were classified under 'other' conduct. The FCA elaborated that this broad category included a range of issues such as alcohol misuse, inappropriate or offensive language, misuse of confidential information, retaliation against colleagues who report misconduct, violations of expense policies, performance-related issues, and general breaches of company policies and procedures.

Action

The FCA’s survey found that it was very rare for a firm to not investigate allegations of non-financial misconduct, with only 1% of all such complaints not being investigated.

Despite this, a significant 35% of allegations were not upheld after investigation. Complaints pertaining to bullying and harassment were particularly unlikely to be upheld, with 47% of these allegations not upheld. Discrimination complaints were even less likely to be upheld, with 62% not upheld. Wholesale banks were marginally less likely to uphold complaints than other firms, regardless of the type of alleged misconduct.

It was also not uncommon for firms to be unable reach a decision as to whether complaints should be upheld following investigation, with an average of 8% of complaints across all firms resulting in an inconclusive outcome.

Consequences

It is rare for firms to not take some sort of action where they uphold non-financial misconduct allegations – just 2% of upheld complaints resulted in no action being taken against the perpetrator, underscoring the seriousness with which these issues are treated.

Disciplinary action

The most common consequence that flowed from upheld non-financial misconduct complaints was disciplinary action, with 78% of upheld complaints resulting in some sort of disciplinary action. The specifics of these actions, however, varied considerably between different firms:

- Across all firms, 16% of disciplinary processes resulted in the perpetrator of non-financial misconduct being dismissed. This outcome was rarer within wholesale banks, with only 6% of their disciplinary processes leading to dismissal.
- Written warnings were a popular outcome for disciplinary processes and were issued in 25% of disciplinary cases.

Some firms disclosed to the FCA that they lack current disciplinary policies. While 96% of wholesale banks reported having such policies, the results were lower for wholesale insurers (88%), wholesale intermediaries (87%) and wholesale brokers (78%).

Beyond disciplinary actions, training and coaching emerged as a favoured approach, adopted in 27% of cases where non-financial misconduct complaints were upheld.

The consequences that perpetrators of non-financial misconduct faced also varied considerably based on the type of conduct in question:

- Sexual harassment: Disciplinary action was taken in 64% of cases, with 41% of these actions resulting in dismissals or written warnings.
- Violence or intimidation: These cases saw disciplinary action in 73% of instances, with 51% leading to dismissals or written warnings.
- Bullying or harassment: Disciplinary action was less common, occurring in 35% of cases, with only 9% resulting in dismissals or written warnings.
- Discrimination: Disciplinary action was taken in just 24% of these cases, and only 6% of these actions led to dismissals or written warnings.

Remuneration adjustments

Firms are increasingly inclined to apply malus to adjust the unvested variable pay of employees who are found to have engaged in non-financial misconduct, as opposed to other forms of remuneration adjustment or the application of clawback. Malus was applied in 7% of incidents reported across all firms.

However, not all firms reported having current remuneration policies in place to set out their approach to applying malus and clawback. While 92% of wholesale banks reported having such policies in place, only 80% of wholesale insurers, 84% of wholesale brokers and just 46% of wholesale intermediaries had these policies in place.

Regulatory references

The vast majority (92%) of firms told the FCA that they would include instances of non-financial misconduct in regulatory references for relevant employees. This approach corresponds with the FCA's expectations outlined in its forthcoming guidance on non-financial misconduct. Most firms surveyed also confirmed to the FCA that they would update a regulatory reference that they had provided, following the identification of a non-financial misconduct incident.

Between 2021 and 2023, the FCA reported a 169% increase in the number of regulatory references that firms had provided that contained information about non-financial misconduct.

Non-disclosure and settlement agreements

Employees who complained about alleged discrimination or bullying were most likely to enter into confidentiality or settlement agreements, although the number of these agreements entered into with employees (regardless of the nature of their complaints) dropped significantly (by 29%) between 2021 and 2023, with the biggest drop seen amongst wholesale banks.

When presenting these findings, the FCA noted that there may be reasons why firms use confidentiality agreements or clauses within settlement agreements. For example, to protect commercially sensitive information when an employee leaves a firm. However, the FCA reminded firms that confidentiality agreements or clauses cannot be used to prevent individuals raising concerns with the FCA and that agreements or clauses should include explicit exclusions to allow the disclosure of concerns to the FCA, other regulators and law enforcement agencies.

Governance and oversight

A material number of firms (38%) confirmed that their boards or board-level committees do not receive management information about non-financial misconduct, and 33% of firms confirmed that they have no formal governance to decide the regulatory consequences for employees who are involved in non-financial misconduct incidents.

The FCA acknowledged that firms' approaches to governance and management information, including in relation to non-financial misconduct, should be proportionate to their size and complexity. However, based on the responses to its survey the FCA concluded that larger firms' governance and oversight of non-financial misconduct could be falling short of expectations for the size, nature and complexity of their business.

Next steps

The FCA has not mentioned plans to repeat this survey, or an equivalent data gathering exercise in the future. However, some firms that found it challenging to respond to the FCA's survey due to the data that they collect about non-financial misconduct, or how they store that data, have made changes to put themselves in a better position should the FCA make a similar request of them in the future.

The FCA's publication of the results of its survey foreshadows the publication of its new finalised guidance for firms about non-financial misconduct, which is due by the end of 2024.