



FCA findings on non-financial misconduct - how should firms respond?

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What should UK financial services firms be doing in response to the FCA's survey findings on non-financial misconduct?

On 25 October 2024, the FCA published the results of a [survey](#) it had sent to 1,028 wholesale banks, brokers and insurance firms asking about recorded incidents of non-financial misconduct between 2021 and 2023. It was the first comprehensive non-financial misconduct data gathering exercise across these sectors and provides some interesting insights into behaviours.

Following the publication of these results, firms now need to ensure that non-financial misconduct is firmly on their board's agenda. The FCA have said that they expect firms to reflect on the data, to discuss non-financial misconduct at senior levels, and consider what steps need to be taken to improve culture, identify risks and address non-financial misconduct on an ongoing basis.

In this insight we consider and analyse the survey and the results and set out what actions firms should take now.

Key results and TLT analysis

Number of incidents

The number of reported non-financial misconduct incidents increased between 2021 and 2023.

With the rise in reported non-financial misconduct there is a temptation for headlines to suggest things are going backwards in terms of behaviours. However, the fact that reported incidents have increased is not necessarily a bad thing. As acknowledged by the FCA, and in line with the trends we are seeing in the market, a large number of reports could actually indicate a healthy speak-up culture. Conversely, the results in respect of smaller firms (with a very high proportion of those with fewer than 50 employees indicating no incidents) may indicate a lack of "speak up" given the intimate structure, or that avenues for detecting non-financial misconduct are not functioning effectively.

Forms of non-financial misconduct

The most reported types of non-financial misconduct were bullying and harassment (26%) and discrimination (23%). Sexual harassment incidents amounted to between 6 and 16% of reported non-financial misconduct: such a low percentage may be reflective of a reluctance to report sexual misconduct due to perceived stigma. However, 41% of non-financial misconduct incidents were reported in the "other" category which included misuse of alcohol, data or IT security breaches, retaliatory responses to allegations, and conduct breaches / breaches of policies or procedures.

This is demonstrative of the range of behaviours that can amount to non-financial misconduct and the challenges facing organisations in reporting and recording incidents which vary in type and potentially severity.

Identification of non-financial misconduct

Firms identified 50% of incidents through reactive routes such as grievances or other processes such as line managers.

The fact that most incidents were detected through reactive routes suggests that there is more work to be done by firms/ their leaders to drive a psychologically safe culture where poor conduct is challenged in the moment.

Action taken

Disciplinary or 'other' actions were taken in only 43% of cases. Some types of reported non-financial misconduct, such as violence and intimidation, more often resulted in disciplinary actions.

That disciplinary action is only taken in 43% of cases is arguably low given the focus of the regulator on this topic. The statistics may be reflective of the potentially career-limiting consequences for the perpetrator of disciplinary sanctions. On the other hand, this could be reflective of the evidentiary challenges of such cases, the fact that those accused frequently resign prior to the end of an investigation or indeed the challenges firms face in interpreting regulatory standards.

The number of references containing information on non-financial misconduct rose from 16 in 2021 to 43 in 2023 which reflects an understanding in the industry that non-financial misconduct should be shared on regulatory references where there is a reason to believe that the misconduct affects fitness and propriety. It is however perhaps not surprising that firms feel able to react to cases like violence and intimidation more purposefully than discrimination where the acts may be more subtle and the evidence potentially finely balanced.

The total number of confidentiality and settlement agreements signed by complainants fell over the 3 years surveyed according to the data from the wholesale banks sector. However, discrimination had the highest percentage of incidents resulting in the signing of either a settlement or confidentiality agreement.

The Sexism in the City Inquiry identified that those on the receiving end of non-financial misconduct tend to be the ones who leave employment. The results of this survey indicate that this could be changing as the number of settlement agreements signed by complainants has decreased. Our assessment is that this may be influenced by the Solicitor's Regulation Authority (SRA) Warning Notice on the use of Non-Disclosure Agreements restricting what lawyers are prepared to bring to the table.

It is of note that 62% of discrimination allegations were not upheld. The FCA has commented that the sector “*should reflect... and consider whether these are explainable.*” In our experience, discrimination allegations are not upheld for a variety of reasons. However, organisations should be cautious of taking the approach in cases where it is one person’s word against another that the complainant is not to be believed. Allegations should be considered in their context and as part of wider organisational and cultural review.

Governance

38% of respondents did not receive management information about non-financial misconduct, and 33% have no formal governance structure or committee to decide outcomes for non-financial misconduct cases.

There are clearly some major structural shortcomings which will require immediate action.

Remuneration adjustments were rare across all sectors in response to non-financial misconduct and, when adjusted, were mostly against unvested variable pay. The rarity of performance adjustment is surprising given the link that FCA rules draw between adjustment and fitness and propriety.

What should firms do now?

The FCA comments that the results should be “*a catalyst for regulated firms’ boards and trade associations to prioritise and act on issues of non-financial misconduct that lead to poor working cultures and can ultimately harm consumers or market integrity*”.

Non-financial misconduct remains as an area of priority for the regulator and the message remains that proactivity is expected from the sector on this topic.

Our top 5 next steps are set out below:

1. Senior engagement

As set out by the FCA, firms should consider the results of the survey at senior management or board level. Whilst boards might delegate the day-to-day handling of non-financial misconduct to HR and compliance, they must be able to demonstrate that they have sufficient oversight. To this end, meaningful management information on non-financial misconduct should be reported to the board (or board level committee) on an ongoing basis. This is particularly important given the aspirations of the FCA to become a data driven regulator. Firms should also consider whether to adopt the new Code of Conduct for Directors recently published by the Institute of Directors, which is a voluntary and practical tool designed to assist directors in making better decisions.

2. Encourage employees to speak up

It is important that firms promote a culture in which employees feel able to speak up about non-financial misconduct. Both the results of this survey and the Sexism in the City Inquiry highlight a reluctance to blow the whistle in the sector. As such, a key area of focus for firms should be to ensure that employees feel that they can confidentially raise concerns via whistleblowing procedures. The importance of firms

supporting a speak up culture is further emphasised by the Employment Rights Bill in which it is proposed that a specific sexual harassment whistleblowing category will be introduced to protect those that raise such complaints.

3. Holistically review workplace culture

Firms should also consider how they can be proactive in identifying non-financial misconduct, rather than just relying on reports from employees. For instance, engaging with staff to understand where any potential issues lie via 1-2-1s, staff surveys, exit interviews, focus groups and open-door policies. Managers and HR should also be alert to warning signs that non-financial misconduct is taking place such as sickness absences, or changes in behaviour / performance. The FCA sees a role for industry bodies in this area as well as for employee engagement, so proactivity with employee forums will go some way to support in understanding the scale of the problem.

4. Ensure mechanisms for investigation are robust

When non-financial misconduct is raised or detected, firms should ensure that allegations are taken seriously, and that there are effective systems in place to identify and appropriately investigate any allegations. As part of this, firms should ensure formal governance arrangements around decision-making are in place, particularly in the light of the Sexism in the City Inquiry's questioning as to whether firms' HR teams were in fact well placed to investigate and manage allegations of non-financial misconduct. Flexibility should be baked into any policies and procedures to ensure that incidents falling in the "other" category don't fall between the cracks. It is also important that policies and procedures include pastoral care arrangements given the impact that conduct investigations can have on wellbeing.

5. Align with other initiatives

Firms should note that the new duty to take "reasonable steps" (to become "all reasonable steps" under the Employment Rights Bill) to prevent sexual harassment at work is already in force, and strategies used and steps taken to comply with that may apply equally to preventing and dealing with other types of non-financial misconduct. As such, firms may wish to have regard to the [Equality and Human Rights Commission \(EHRC\) technical guidance](#) covering harassment and the [8 step guide for preventing sexual harassment at work](#), extending this to other types of non-financial misconduct, and addressing these at the same time. Please see our [briefing](#) for more information on this. The EHRC has also very recently published [a checklist and action plan](#) for employers to assist them in preventing sexual harassment at work.

Although the results from this survey give food for thought, unfortunately they are a far cry from the guidance being sought by the industry. Ultimately, the industry still urgently requires the anticipated Policy Statement from the FCA but frustratingly, the survey results suggest that the wait for guidance will continue.

As identified in our previous [insight](#) the FCA has the opportunity to mirror (in total or in part) the [SRA guidance on sexual misconduct](#), whether that be just in the context of sexual misconduct, or adopting the elements that are equally applicable to non-financial misconduct more widely.

In the meantime, and in the absence of detailed guidance from the FCA, the SRA guidance is helpful, and can be used by firms when assessing cases, to help formulate thoughts on non-financial misconduct more generally.

How can TLT help?

TLT's expert team are uniquely placed in the market to support your organisation with non-financial misconduct. With an excellent track record of working in partnership with our clients on the most sensitive of topics our team can support with cultural audits, investigations into non-financial misconduct, supporting you with your relationship with the regulator and your reporting requirements as well as supporting and advising on disciplinary issues, negotiations and employment disputes. Our Investigations and Employment Teams work seamlessly to ensure holistic advice and coverage at all stages of investigations and reviews.

This publication is intended for general guidance and represents our understanding of the relevant law and practice as at November 2024. Specific advice should be sought for specific cases. For more information see our [terms & conditions](#)