

DIGGING DEEPER ON NON-FINANCIAL MISCONDUCT

FCA LAUNCHES NON-FINANCIAL MISCONDUCT SURVEY FOR LLOYD'S AND LONDON MARKET INTERMEDIARIES AND MANAGING GENERAL AGENTS

1. What has happened?

- 1.1 The FCA has published a letter that it has sent to regulated Lloyd's managing agents and London market insurers (including protection and indemnity clubs), and Lloyd's and London market insurance intermediaries and managing general agents, requesting information relating to incidents of non-financial misconduct ("NFM") in these firms for 2021, 2022 and 2023.¹ The survey is an information gathering exercise to collect data on the volume and type of NFM incidents, the methods of detection and the actions taken to address these incidents within firms, and distinguishes between incidents involving Senior Management Functions ("SMF") and non-SMF incidents.
- 1.2 The survey does not intend to gather information on specific allegations, and firms are asked not to include personal information or name any individuals in their responses. The survey includes high level questions on regulatory references, governance and management information, and policies and procedures governing diversity and inclusion ("D&I"), remuneration, disciplinary matters and whistleblowing.
- 1.3 NFM for these purposes includes bullying, sexual harassment and discrimination, and the FCA is requesting data that includes incidents that took place at the office, working from home, working offsite (including off-site training and conferences), client entertainment or sponsored events, and social situations related to work. It would not include private events organised by members of

staff among themselves with no other connection to work.

- 1.4 The information requested likely extends beyond that which the FCA would usually have sight of, as it includes allegations of NFM that have not been substantiated. While allegations can be captured by existing disclosure obligations placed on regulated firms—principally Principle 11 of the FCA's Principle's for Businesses, those in the FCA's Supervision Handbook at Chapter 15 ("SUP 15"), and requirements stemming from the Senior Managers and Certification Regime ("SM&CR")—this is not always the case, and the FCA explicitly asks that incidents that did not meet its reporting thresholds be included in responses.
- 1.5 The survey has been issued using the FCA's powers to gather information under section 165(1) of the Financial Services and Markets Act 2000 ("FSMA"), and firms must complete the survey by 5 March 2024. The FCA confirms in the letter that it can impose a public censure order, apply for a search warrant or issue a financial penalty against businesses that do not respond by this deadline.

2. The broader context

- 2.1 NFM is high up the current UK regulatory agenda, and a fast-evolving landscape for firms to navigate. In September 2023 the FCA published a consultation paper on measures to improve D&I in financial services and to strengthen expectations on how firms should manage allegations of NFM ("CP23/20").² In that paper, the FCA is proposing to better integrate NFM considerations into staff fitness and propriety assessments, the FCA's

¹ FCA, *Notice to provide information* (6 February 2024). Available at <https://www.fca.org.uk/publication/correspondence/culture-nfm-survey-letter-insurers-insurance-intermediaries.pdf>. The survey is yet to be published.

² FCA, *Diversity and inclusion in the financial sector - working together to drive change CP23/20* (September 2023). Available at <https://www.fca.org.uk/publication/consultation/cp23-20.pdf>.

Conduct Rules and the suitability criteria for firms to operate in the financial sector (under the FCA's Threshold Conditions).

- 2.2 An FCA policy statement responding to this consultation is not expected until the second half of 2024. Taking the temperature in this interim period, a transcript of evidence published by the House of Commons Treasury Committee ("**the Committee**") in relation to its 'Sexism in the City' inquiry underscores the political pressure that is on the regulators to tackle NFM. When that evidence was presented, Dame Angela Eagle probed how the FCA's proposals on NFM in its consultation paper CP23/20 would "*root out bad apples once and for all*", particularly in light of "*compelling evidence that everybody knows who these people are, but nobody actually reports them*" (which Nikhil Rathi, Chief Executive of the FCA, agreed was "*deeply troubling*"). She further stated that while there have been "*attempts to change things...the overall picture seems to be depressingly the same*".³ It is therefore unlikely that the FCA will soften the proposals on NFM in CP23/20.

3. Immediate next steps and implications

- 3.1 The FCA states that the information collected will enable it to build a clearer understanding of when and where NFM occurs, provide a baseline assessment of the sector and inform its ongoing supervisory work programmes. A similar survey is expected imminently for wholesale banks.⁴
- 3.2 This survey will place a spotlight on weaknesses in the systems and procedures that firms have to mitigate risks relating to NFM. These firms must be prepared to engage with the regulators beyond the confines of this survey if any incidents of NFM are unearthed that should have been reported to the FCA, but were not, or where a systemic pattern of misconduct emerges.
- 3.3 We would expect the FCA to review the data it receives from this survey carefully and to pay particular attention to any disparities in the way firms are recording incidents of NFM. Such disparities could inform the FCA's future recommendations on how firms investigate and

record NFM, and the type of information the FCA will come to expect from firms on NFM. Notably, the FCA makes it clear that a high volume of incidents is not necessarily indicative of a worse environment, and could instead point to an effective and transparent speaking up culture. Conversely, where a firm is reporting nil-returns or a low volume of incidents, this is not necessarily an indication of an environment that is working well.

- 3.4 When preparing their responses to the FCA's survey, firms should bear in mind their broader employment law obligations, including under whistleblowing and discrimination legislation, and ensure that all allegations identified have been handled in accordance with those obligations.
- 3.5 The survey provokes interesting questions about how firms record NFM—the FCA's letter notes that some firms may have to manually search through HR files to collect this data—and how they ensure that this data is held in a compliant manner.
- 3.6 Casting the net wider, the survey provides a timely reminder for all regulated firms to review their processes for identifying, recording and escalating incidents of NFM given the regulatory focus on this topic. We will be sharing our views on this topic via a series of content pieces throughout 2024, so look out for these in due course (and speak to one of the Contacts listed below if you would like to know more).

³ House of Commons Treasury Committee, *Oral evidence: Sexism in the City, HC 240* (17 January 2024) Q193. Available at <https://committees.parliament.uk/event/20317/formal-meeting-oral-evidence-session>.

⁴ See House of Commons Treasury Committee, *Oral evidence: Sexism in the City*, Q194.

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