

## Why tackling non-financial misconduct isn't as easy as it seems

For most compliance professionals, non-financial misconduct has been on the radar for years. But it has shot up the agenda since a landmark probe by the Financial Conduct Authority at the start of 2024. A host of high-profile cases of bullying and harassment also hit the headlines, bubbling some of the City's ugly truths to the surface.

Firms have now had a few months to digest the watchdog's final rules and guidance in a bid to get a grip on the issue. However, lawyers and regulatory experts who are still dealing with non-financial misconduct cases say the landscape remains an incredibly tough one to navigate.

The FCA's changes come into effect on 1 September 2026. One of the main things they will do is extend the scope of the conduct rules to non-banks. Many have welcomed the move, given the non-bank sector is where many of the strongest allegations have been made in recent years; rather than high-street lenders, it has been claims against hedge fund mogul Crispin Odey, private equity firm Triton and broker BGC that have grabbed attention.

The FCA is also asking firms to take a broader range of non-financial misconduct into account when assessing fitness and propriety. What that has done, those working on claims say, is focus firms' HR departments on collecting better data - but it doesn't make navigating allegations of misconduct outside the workplace against staff any easier.

One regulatory lawyer I spoke to recently said they once investigated complaints against a partner at their own firm after being sent messages by that partner's spouse. Upon investigation, it turned out the spouse was suffering from an acute mental health crisis themselves. The messages turned increasingly hostile, but were ultimately unproven.

"I've had very difficult conversations with people about work conduct, home life and everything in between," the lawyer said. "What it's not about is expecting people to have a perfect life."

There are also perverse incentives at play for those investigating non-financial misconduct. When Simmons and Simmons was asked to investigate allegations of inappropriate behaviour against Crispin Odey, then chief executive of eponymous hedge fund Odey Asset Management, its report dug up scores of complaints from women dating back years. Crispin Odey then fired the executive board that commissioned the review. But he also fired the law firm too, according to a person close to the review.

Another regulatory lawyer said that, despite attempts to clarify the rules from the FCA, they were still well short of guidance that would clear up grey areas like exactly what constitutes work-related activity and where responsibility for suspect behaviour at external events starts and ends.

Maria Symeon, a partner at Pathlight Associates, cautions that while the legal friction surrounding off-duty behaviour is a genuine challenge, firms must look at the bigger picture.

"Focusing too heavily on these 'grey areas' risks missing the regulator's ultimate point," she says. "The FCA's new PS 25/23 guidance makes it explicitly clear that non-financial misconduct is no longer just an HR headache, it is a prudential red flag. We have to stop viewing the assessment of a candidate's integrity as merely a 'commercial decision'."

While she finds it encouraging that the NFM rules are forcing HR departments to focus on collecting better data, she warns against letting the issue devolve into a pure compliance exercise. "It's easy to underestimate the impact of even one leader's negative behaviour and the ensuing implication on culture," she adds.

Others say the FCA will still have a tough time on its hands when trying to ban individuals from financial services; even under the new rules, it will still have to prove that such conduct is relevant to the regulator's minimum standards to work in the sector, like integrity and honesty.

"If things are about integrity I don't have a problem... it's about being suitable for [the job]," says another regulatory lawyer. "I don't think that person should be a leader, but it's not that easy."

The FCA does set out in one of its flowcharts explaining the rules in its consultation that non-financial conduct could be a breach of individual conduct rule 1 (integrity) or and individual conduct rule 2 (due care, skill, and diligence), but the final rules don't say expressly that any particular case must breach those thresholds.

And even in cases like Jes Staley's, where the regulator was able to marshal reams of correspondence about the banker's relationship with former sex offender Jeffrey Epstein, the former Barclays boss decided to battle his ban.

"Individuals always fight, firms don't," noted another regulatory lawyer.

The new rules won't reply retrospectively either - meaning that victims couldn't rely on the framework to help regulators take action for past wrongs. The FCA explicitly states that firms do not need to "carry out retrospective analysis to check whether they correctly determined past conduct rule breaches".

The FCA dropped proposals for further guidance on regulatory references. But as several lawyers have told me, most in the City believe that hiring should be a commercial decision. The references are simply advisory. One black mark - or grey one - might be, in the view of one business, enough to disqualify a candidate from working for them. For others it might not be. As long as they are aware of the risks, and have measures in place to stop them from happening again, why shouldn't a firm be allowed to take on said individuals?

Such questions will continue to be front of mind for many compliance experts looking to get a grip on discrimination in finance. But don't expect there to be any easy answers.