

Governance and Cross-Cutting Standards  
Financial Conduct Authority  
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By email: [CP25-18@fca.org.uk](mailto:CP25-18@fca.org.uk)

12 September 2025

Dear Governance and Cross-Cutting Standards

**RE: CP25/18 Tackling non-financial misconduct in financial services - Consultation on guidance in the Code of Conduct (COCON) and the Fit and Proper Test for Employees and Senior Personnel (FIT) sourcebooks**

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private capital industry in the UK. With a membership of around 600 firms, we represent UK-based venture capital, private equity and private credit firms, as well as their professional advisers and investors. There are almost 13,000 UK companies backed by private capital which currently employ over 2.5 million people in the UK. In 2024, £29.4bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. This increased investment has fuelled the growth of businesses across the UK, with six in ten (58%) of the businesses backed in 2024 located outside of the capital.

We welcome the opportunity to respond to the FCA's Consultation Paper CP25/18: Tackling non-financial misconduct in financial services, which builds on the proposals initially outlined in CP23/20 and the FCA's wider work on firm culture and individual accountability.

We recognise the importance of tackling serious non-financial misconduct (NFM), including bullying, harassment and violence, as a regulatory concern. Misconduct of this nature can significantly undermine and damage workplace culture, discourage individuals from speaking up, and ultimately harm firm performance, consumer outcomes and market integrity. As the FCA notes, failing to challenge such behaviour may enable broader misconduct and allow individuals who have committed serious NFM to simply move between firms without appropriate consequences.

We support the FCA's decision to amend the Code of Conduct (COCON) to clarify that serious NFM is within scope of the individual conduct rules across all firms subject to the Senior Managers and Certification Regime (SMCR). Aligning the rules for non-banking firms with those already in place for banks is a proportionate and practical step. The new rule, which comes into effect on 1 September 2026, will provide greater clarity and confidence for firms in responding to serious NFM under the regulatory framework.

In parallel with the rule change, we welcome the consultation on proposed guidance to support consistent interpretation and application of both COCON and the Fit and Proper Test for Employees and Senior Personnel (FIT). In principle, we are broadly supportive of new guidance. At the same time, however, we emphasise the importance of ensuring that any guidance is clear, proportionate and aligned with legal norms to avoid confusion, duplication or unintended consequences. Our detailed comments on the draft guidance are set out below.

We have only responded to the consultation questions on which our members have specific views.

All FCA Handbook references are to the draft Handbook text in CP25/18, unless stated otherwise.

**Question 1: To what extent do you agree that new Handbook guidance in COCON and FIT is needed to help firms apply FCA rules?**

In principle, we are broadly supportive of new guidance.

However, the guidance is far too complex. The extent and detail of our comments in this response illustrate the complexity of the guidance. This compounds an existing challenge for readers of the labyrinthine COCON scoping provisions.

We suggest the COCON guidance should be made available in an easier to read format, outside of the FCA Handbook (see Question 3). There are a number of reasons for this:

- we consider it extremely important that any FCA material (be that in the form of, for example, consultation papers, policy statements, rules, guidance etc.) is as concise as possible and serves a clear purpose. In this respect, we welcome recent [comments](#) made by Nikhil Rathi on the FCA streamlining its work, ending duplication, cutting unnecessary regulatory burdens and supporting growth;
- misconduct, and in particular NFM, is a difficult and evolving area and the FCA should also ensure that any guidance does not become “stale”;
- firms will need to reference the COCON guidance in difficult circumstances. Using another format would allow the FCA to be more flexible and direct about what constitutes good and bad practice and where lines should be drawn;
- an alternative format would also make it easier for non-lawyers and non-compliance professionals (e.g., Human Resources personnel to interpret and apply the guidance.

We have identified in more detail below specific areas of concern, where we would welcome further clarification.

Finally, if the FCA does not proceed with this guidance (noting that the FCA intends to take this guidance forward only if there is clear support for it), the FCA should clarify the status of the guidance. Given that it has been the subject of two consultations, it may, in effect, be viewed by firms as the FCA’s *de facto* regulatory expectations in this area.

**Question 2: To what extent do you agree the draft COCON guidance would help you to apply our rules?**

Please see our response to Question 1 and Question 3.

**Question 3: Do you have any comments on the draft COCON guidance?**

We are broadly supportive of what the FCA is seeking to achieve with the draft guidance, particularly on the distinction between conduct in an individual’s private life and in their work life (the former not falling within scope of COCON).

Having said that, the guidance is, in our view, very difficult to follow. It is structurally complex (e.g. with dense text, use of cross-references etc.) and overly legalistic. In our view, the guidance should be more digestible and easier to navigate, noting also that, in practice, its typical ‘target audience’ will not always be a Legal and Compliance function but will often be HR or similar functions.

To help address these concerns, we would suggest that the FCA adopts a more “narrative” approach using scenarios and examples of good practice and bad practice, with such guidance not forming part of COCON but instead sitting outside the FCA Handbook (e.g. on an FCA webpage). This would also provide the FCA with more flexibility to update its expectations in this evolving area.

We have set out several observations below which are relevant should the FCA issue the COCON guidance notwithstanding the above comments,. However, our suggestion is that the guidance on COCON does not sit within the FCA Handbook but is made available in another format and by another medium.

- **COCON 1.1.7GG and COCON 4.1.8EG:** we note that COCON 1.1.7FR only captures conduct that is “serious”. While we consider this to be a helpful and necessary qualifier, it is not entirely clear why the concept of “seriousness” appears to be restricted to conduct falling within COCON 1.1.7FR (as opposed to other forms of conduct which may be relevant for COCON purposes). It is also not clear why similar weight to the concept of “seriousness” is not provided for in, for example, FIT (which references “seriousness” solely in the context of criminal offences).
- **COCON 1.3.3G:** subsection 1 states that conduct in an individual’s private life is outside the scope of COCON (i.e. in accordance with s64A FSMA), but subsection 2 suggests that conduct in an individual’s private life is within scope of Senior Manager Conduct Rule 4. These positions do not appear to be compatible with each other. As such, we would be grateful if the FCA could provide additional guidance on the precise circumstances in which conduct in an individual’s private life falls within scope of Senior Manager Conduct Rule 4.
- **COCON 1.3.12G:** we understand this guidance is intended to expand on what counts as “SMCR financial activities”. If that is right, we suggest it should be clarified to state that “*SMCR financial activities are not restricted to the activities...*”. If this is not the intention, this should also be clarified.
- **COCON 1.3.14G:** the reference to both “*regulated activities*” and “*SMCR financial activities*” (in the context of COCON 1.1.7FR(5)) appears incorrect, given that the latter rule references only “*SMCR financial activities*”. We suggest the reference is deleted.
- **COCON 1.3.14G – 1.3.15G:** as noted within the rule itself, the purpose of COCON 1.1.7FR is to bring within scope of COCON NFM an SMCR firm (other than an SMCR banking firm) which would otherwise fall outside the scope of COCON by virtue of current COCON 1.1.7AR(1). Broadly speaking, COCON 1.1.7AR(1) currently restricts the application of COCON within such firms to conduct that forms part of, or is for the purpose of, *SMCR financial activities*. However, COCON 1.1.7FR(5), read with COCON 1.3.14G – 1.3.15G, suggests that NFM under COCON 1.1.7FR will not be within scope of COCON unless it involves *SMCR financial activities*. This creates a somewhat confusing position and, in turn, questions the precise purpose of and rationale for COCON 1.1.7FR. As we said in response to Question 3, this also demonstrates the complexity of the cross-referencing challenge and underlines the practical difficulty of navigating, interpreting and applying the draft COCON guidance, particularly for those outside of a Compliance or Legal function.
- **COCON 1.3.15G(4) and (5):** while this guidance addresses a situation where both the individual committing the misconduct and the individual who is the subject of the misconduct work within a part of the business which does not deal with the firm’s financial services business, it would be helpful for the guidance to also address a situation where one of the individuals is within part of the business that deals with the firm’s financial services business where the other individual is not. We think the guidance in COCON 1.3.15G(5) implies that it is sufficient for only one of the individuals to be in the part of the firm carrying on financial services business for the NFM to be in scope of COCON, although we query what happens where such an individual is making the allegation and the alleged perpetrator works in the non-financial services part of the business.
- **COCON 4.1.1AG, COCON 4.1.1CG, COCON 4.1.8BG and COCON 4.1.8DG:** this guidance refers to conduct that “*will be a breach of*” or “*is a breach of*” Individual Conduct Rules 1 or 2. We would query such definitive language in FCA guidance (rather than in the text of the rule itself). Within guidance, it would be more accurate to caveat the language, e.g. “*would indicate a breach of*”.
- **COCON 4.1.1DG(3):** this guidance helpfully introduces an element of objectivity, although it is not apparent why this objectivity is restricted to COCON 4.1.1DG(2)(a) and does not also apply to (b).
- **COCON 4.1.8-AG:** this guidance suggests that a manager is only expected to try to prevent harassment where such harassment *would itself constitute a COCON breach*. However, whether it would constitute

such a breach may not be determinable until sometime after the event, as such, the expectation of a manager in this situation is unclear. We also note that ‘manager’ is not defined. While 4.1.8G indicates that a manager would be a senior individual with responsibility for the business of the firm, 4.1.8AG isn’t framed in the same way, and it would be helpful to provide clarity as to who would be considered a ‘manager’. For example, is it intended to cover all individuals with line management responsibility or should seniority also be a relevant factor (which would align with how the term is used in 4.1.8G)?

- **COCON 4.1.8EG:** it is not evident why this guidance pertains only to Conduct Rule 2 and not Conduct Rule 1.
- **COCON 4.1.8FG, COCON 4.1.8GG and COCON 4.1.8HG:** it is not evident why this guidance pertains only to Individual Conduct Rule 2.
- **COCON 4.1.8KG(1):** this guidance states that, to breach Individual Conduct Rule 2, there must be a lack of due skill, care *and* diligence. We understand this to mean that a lack of only one or two components would not amount to a breach.
- **COCON 4.1.8KG(2) and COCON 4.1.1DG:** it is not clear why the guidance on the individual’s thoughts or intentions differs as between Individual Conduct Rule 1 and Individual Conduct Rule 2.
- **Interchangeable use of terminology and headings:** the guidance refers, in some instances, for example, to “rule 1” and “Individual Conduct Rule 1”, “misconduct in relation to fellow members of the workforce” and “harassment in the workforce”, “harassment” and “bullying or harassment”, a firm’s “SMCR financial activities” and a firm’s “financial services business”. The distinction between these terms is unclear. Where possible, please consider using one term for consistency and to avoid confusion.

#### Question 4: To what extent do you agree the draft FIT guidance would help you assess fitness and propriety?

Please see our response to Question 1 and Question 5.

#### Question 5: Do you have any comments on the draft FIT guidance?

We are broadly supportive of certain aspects of the draft guidance – in particular, FIT 1.3.20G which clarifies the FCA’s expectations on firms with respect to monitoring and investigating the private lives of staff.

However, certain other aspects of the draft guidance are, in our view, not necessary and may, in some instances, result in duplication and/or cause confusion.

We would make a number of observations:

- As the FCA notes in its response at para 3.29 of CP25/18, “FIT already applies to all relevant matters wherever in the world they occur” (i.e. in the workplace, outside the workplace, in the UK, outside the UK etc.). For that reason, we would query whether it is necessary or helpful to add a significant amount of new text on scope, which seeks, without a clear rationale in all instances, to split out (a) conduct inside the workplace (and, in turn, work inside vs. outside the regulatory system) vs. conduct outside the workplace; and (b) breaches of requirements forming part of the regulatory system vs. breaches of requirements not forming part of the regulatory system. For example:
  - **FIT 1.3.6G – 1.3.13G (breaches of requirements of the regulatory system):** the rationale for (all of) this guidance is not clear, given that current FIT 2.1.3G(5) already refers to contraventions of the regulatory system as being something to be taken into account when assessing fitness and propriety.

- **FIT 1.3.14G (conduct connected to work), FIT 1.3.15G – 1.3.20G (relevance of behaviour in private or personal life), FIT 1.3.21G (social media):** there is no clear rationale for this guidance given that, as above, FIT already applies to all relevant matters wherever in the world they occur. We would support retaining FIT 1.3.15G, as a concise signpost to the scoping difference between COCON and FIT.
- **FIT 1.3.7G(1)(b):** the guidance could be interpreted as meaning that an individual's failure to satisfy fitness and propriety standards would (by default) constitute a regulatory breach *by that individual* (which will not necessarily be the case, especially as fitness and propriety requirements pertain more so to the firm's and the FCA's actual assessment of fitness and propriety).
- **FIT 1.3.10G:** we support the guidance that a breach of the requirements of the regulatory system does not automatically mean an individual is not fit and proper and that case-by-case assessments should be carried out. However, there is no clear rationale for restricting this to breaches of the requirements of the regulatory system and, as such, we would suggest expanding it to any breach or matter which may form part of a fitness and propriety assessment.
- **FIT 1.3.10G:** the guidance includes a useful list of relevant factors to help determine whether a breach of COCON would, in turn, mean an individual is not fit and proper. Again, we would suggest expanding it beyond COCON breaches to any breach or matter which may form part of a fitness and propriety assessment.
- **FIT 1.3.12G(2):** while we do not disagree that conduct of a type that is likely to damage public confidence in the financial sector is likely to mean that the individual concerned is not fit and proper, we consider this to be a very high bar. While FIT 1.3.13G and FIT 1.3.18G seek to address this point, we would query whether it is necessary to refer to the FCA's statutory objectives in this manner.
- **FIT 1.3.16G(3):** the rationale for referencing dishonesty and lack of integrity as considerations when assessing fitness and propriety is unclear, given that current FIT 1.3.1BG already refers to these as being relevant considerations. Further, we would suggest not restricting this guidance to conduct outside the regulatory system given that such conduct is potentially relevant in any circumstance.
- **FIT 1.3.16G(4):** we would suggest not restricting this guidance to violent or sexual misconduct in an individual's private or personal life or in work outside the regulatory system given that such conduct is potentially relevant in any circumstance.
- The guidance could be interpreted as meaning that certain types of misconduct are only relevant for the purposes of a fitness and propriety assessment if there is a risk of similar misconduct being repeated by the individual in the workplace, but that certain other types of misconduct will be relevant for the purposes of a fitness and propriety assessment even where there is little or no risk of similar misconduct being repeated by the individual in the workplace. It is not clear if this is the FCA's intention. For example:
  - **FIT 1.3.16G(4):** refers to violence or sexual misconduct having occurred where there *is a risk* of similar misconduct being repeated in the workplace; and
  - **FIT 1.3.17G(1):** refers to misconduct displaying certain attributes (e.g. disregarding ethical obligations) having occurred where there *is little or no risk* of similar misconduct being repeated in the workplace (but then FIT 1.3.19G appears to refer to a situation where there is a risk, as opposed to where there is little or no risk, of repetition in the workplace)
- **FIT 1.3.22G and FIT 2.1.3G(1):** the guidance on particular consideration being given to offences of a certain type appears to be duplicated.

- **Interchangeable use of terminology:** the guidance refers, in some instances, for example, to an individual's "*private or personal life*" and, in other instances, to an individual's "*private life*" – we understand these are likely to mean the same thing but it would be helpful, where possible, to use one term for consistency and to avoid confusion (a similar observation can be made for other parts of the FCA Handbook).

**Question 6: Do you agree that the new Handbook guidance – if made – should come into effect at the same time as the new COCON rule (1 September 2026)?**

We do not have any particular concerns with this timing, although we also note that certain of the draft guidance has a broader impact (i.e. its relevance is not restricted to the new COCON rule taking effect on 1 September 2026).

**Question 7: If no, when do you think any new Handbook guidance should come into effect?**

Please see our response to Question 6.

**Question 8: Do you have any comments on the costs and benefits of the guidance discussed in Chapter 3?**

We support the FCA's objective of tackling non-financial misconduct and welcome the clarity provided by aligning COCON treatment across SMCR firms. In our view, clear expectations and practical examples can improve consistency of outcomes, support healthier workplace cultures, and reduce the risk of individuals moving between firms without appropriate scrutiny.

We recognise there will be implementation and ongoing costs. For most of our members these arise from policy updates, targeted training for managers and HR and record-keeping. These costs are proportionately higher for smaller firms with limited in-house legal and HR capacity. We therefore strongly prefer that the COCON guidance is reproduced in an alternative, more accessible format outside the Handbook

If you have any questions or there are points it would be helpful to discuss further, please contact Nick Chipperfield ([nchipperfield@bvca.co.uk](mailto:nchipperfield@bvca.co.uk)) and Tom Taylor ([ttaylor@bvca.co.uk](mailto:ttaylor@bvca.co.uk)).

Yours faithfully,



Tim Lewis

**Chair, BVCA Regulatory Committee**