

The Conduct Rules are being implemented to improve behavior and conduct of all staff in financial services. It is intended to improve the culture in firms and the industry as a whole, requiring a minimum standard of behavior at all levels.

All Conduct Rule breaches must be reported to the FCA and details will be included on regulatory references for Senior Managers.

Determining whether a behavior or action is a Conduct Rule breach can be difficult as there are often many factors to consider, including whether the individual concerned is a Senior Manager, Certified Person or Conduct Rules staff. Many issues may be considered under Fitness and Propriety where they are not necessarily a Conduct Rules breach.

This paper briefly considers whether the behavior and action described in 4 case studies would be considered a Conduct Rules breach. Full assessment is not provided as more information on the situation, behavior, action, individual, firm, culture and Conduct Rules risk appetite would be required.

Case Study 1 – Bullying in the Workplace

Following a complaint to HR, an operations manager is found to be bullying direct reports, demanding completion of an unachievable workload within standard business hours and requiring the additional work to be completed using unpaid overtime. Where this behavior was not adapted the manager would provide a poor performance review and behave in a hostile manner. This was reported to HR by a new employee as the existing direct reports accepted this as part of the job. Those employees under the direct reports were not affected.

This is likely to be viewed as a cultural rather than conduct issue although if the operations manager was a Senior Manager, Certified Person or Conduct Rules staff it could be raised as an issue under Conduct Rule 1 and could also be raised as an issue for a Senior Manager or Certified Person under personal character in Fitness and Propriety. It is unlikely that a Conduct Rule breach would be relevant however some action to resolve the cultural issue in the department and possibly the firm would be likely as a result.

Case Study 2 – Hate Crime

A manager is convicted of a religious hate crime outside of the workplace as a result of a fight outside of a place of worship following their consumption of alcohol resulting in the minor injuries of a worshiper. The manager maintains the incident was not religiously motivated, rather an argument that started due to their accidentally bumping into the worshiper, knocking them to the ground with the situation escalating thereafter. The manager informs the company immediately of the incident and provides continual updates of the case in a timely manner.

As this happened outside of the workplace and did not affect the business this would not be relevant as a Conduct Rule breach however if there was a conviction for a Senior Manager there should be an investigation under personal character in Fitness and Propriety as part of their criminal records checks.

Case Study 3 – Influencing Performance Reporting

A business director (below Board level) receives monthly performance reporting from direct reporting managers which summarises business unit performance and provides an overall RAG assessment based on quantitative MI and a qualitative assessment taking into account other factors influencing the business unit. Regularly, the overall RAG assessment of one client facing business unit is shown to be amber or green where the underlying MI is red with a brief explanation of minimal customer impact to support the change.

The business director continually accepts the overall assessments based on the summary provided, using the overall RAG assessments to inform the company performance scorecard.

For a Senior Manager this would be a breach of Senior Manager Conduct Rules 1, 2 & 3 but is more likely to be raised as an issue under Senior Manager Conduct Rule 2 in relation to a failure to implement reasonable steps.

For a Senior Manager, Certified Person or Conduct Rules Staff this could be raised under Conduct Rule 2 but would be unlikely that a Conduct Rule breach would be relevant unless remedial action was prescribed, taken and the behavior was continually repeated.

Case Study 4 – Contact Details

Over a year ago, the line manager of Andy Welch (AW) discovered that he had sent the names and contact details of all the London office's clients to a friend. The friend planned to use them for marketing purposes in his business. The line manager stopped this from happening and decided not to tell HR.

Last week, AW used his line manager's email account to send an email to a client, apologising for a colleague's late response to the client's request. When questioned about this, AW said that he did this to protect the colleague, and assumed that the line manager would not mind.

Considering the line manager, if they were a Senior Manager, this would be a breach under Senior Manager Conduct Rule 2 for the initial incident as the manager took no action to report or rectify the data breach. The second incident would be a breach under Senior Manager Conduct Rules 1 & 2.

For both incidents a Senior Manager, Certified Person or Conduct Rules staff this would be a breach of Conduct Rules 2 & 4.

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For both incidents if AW was a Senior Manager, Certified Person or Conduct Rules staff this would be a breach of Conduct Rules 2 & 4.