TISA

Response by TISA to the FCA's consultation on Tackling non-financial misconduct in financial services (CP 25/18)

Phil Turnpenny

Policy Executive, TISA

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About TISA

Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have approximately 270 member firms involved in the supply and distribution of savings and investment products and associated services.

Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **four distinct workstreams**:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*
4. **Corporate Responsibility**
   Exploring issues that directly impact society, the environment, and the economy.

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

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Introduction

TISA welcomes the opportunity to respond to the FCA's consultation CP 25/18 on Tackling non-financial misconduct in financial services. We support its aims to:

- Extending existing non-financial misconduct rules in banks to non-banks.
- Consult on whether additional handbook guidance is needed to support firms in applying the rules consistently.
- Reassess the cost benefit analysis following updates to policy and methodology.
- Complement, but not replace, criminal law and firm's internal disciplinary processes and employment tribunal routes.

TISA also recognises the consumer benefits stemming from these rules, including:

- Early indicators of poor firm culture: The rules help identify warning signs that could lead to misconduct and ultimately harm consumers.
- Better safeguards against problematic staff: Clear guidance on how firms should share information when employees change jobs helps prevent individuals with a history of misconduct from moving unchecked between firms.
- Improved market behaviour: By encouraging a culture where staff feel confident to speak up and misconduct is not tolerated, firms are more likely to deliver fairer and higher-quality service to consumers.

To ensure these benefits are realised ,firms need clarity on several aspects of the consultation as detailed in the following answers.

Question responses

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

We agree that new Handbook guidance in COCON and FIT is needed to help firms apply the FCA's rules effectively.

One key area where we require clarity is around the FCA's understanding /definition of Non-Banks.

We would suggest that solo regulated firms of the core and enhanced nature would have treated COCON in the same way as dual regulated firms, given SMCR Financial Services Activities are the foundation of their business model. With this in mind, the lack of clarity around this point may lead to an increase in litigation risk for core and enhanced solo regulated firms, where decisions have been made in relation to non-financial misconduct (NFM) which has resulted in dismissal, or the recording of such breaches on Regulatory References.

The FCA suggests revisions should be made to future regulatory references and past reporting where firms have applied COCON incorrectly, adding to the burden and complexity created by an imprecise and confusing reference to non-banks. (See p.15 CP25/18)

Many, if not all, of the FCA's examples of the application of the COCON extension to non-banks focus on firms which would be considered limited solo regulated firms where a large proportion of the business would not be regulated by the FCA e.g. Car dealerships offering consumer credit (See 1.3.13G(2)). The CP does not include references to core / enhanced solo regulated firms, such as brokerages, asset managers etc. which would suggest the FCA view of non-banks is restricted to limited SMCR firms.

Further commentary within the consultation paper also impacts clarity such as paragraph 2.5 – where it states that NFM can amount to a breach of FCA rules, but under current rules will more commonly breach COCON in a bank than a non-bank.

In referencing (i) non-banks (ii) not being more specific as to the meaning and (iii) interpretating the application of COCON restrictively for solo regulated firms, the FCA is opening core and enhanced firms up to litigation risk in instances where firms have tried to apply the principles of the FCA's Conduct agenda/rules, acting fairly and good faith to uphold the standards of the regulatory system and the objectives of the FCA.

We therefore recommend that the reference to non-banks be clarified, or that the FCA confirm that where a firm is a core / enhanced firm, all activities would therefore be considered SMCR activities and therefore subject to COCON in the same way it has been applied to banks. This would remove unnecessary uncertainty, align with the intent of SMCR, and reduce litigation and operational risk.

Clarity on the issue of non-banks would also address the following considerations:

- Consistent application of rules and to avoid disproportionate resource allocation on trying to interpret and understand retrospective changes to regulatory references. Unclear terminology risks creating uneven supervisory expectations and inconsistent enforcement outcomes.

- Without clarity, some firms may interpret "non-bank" more narrowly, leading to uneven application of COCON standards across the market. This could distort competition, weaken overall conduct standards, and undermine the FCA's Consumer Duty objectives, particularly the requirement to act to deliver good outcomes for retail customers, where misconduct is not treated consistently across all firms.

- The original purpose of SMCR was to establish a consistent accountability framework across financial services. Treating core/enhanced solo-regulated firms differently from dual-regulated banks in relation to NFM undermines that alignment.

- The FIT rules require firms to assess whether individuals are fit and proper. Inconsistent application of COCON in core/enhanced solo-regulated firms makes it harder to evidence these decisions in a defensible way. Clear guidance would reduce the risk of employment tribunal challenges and PRA/FCA supervisory criticism.

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

We agree that the draft in COCON guidance will help apply the FCA's rules effectively, particularly in providing examples of conduct that may amount to breaches and in drawing clearer links between COCON and the Fitness and Propriety (FIT) regime clarifying how NFM in a person's private life may still be relevant to Fitness assessments. However, there are areas where that require further clarity (See Question 3).

3. Do you have any comments on the draft COCON guidance?

Breach of conduct rules and disciplinary action:

With the flow chart on p.13 of the consultation paper, the FCA has clarified that a Conduct Rule could be breached, without the firm determining the need for disciplinary action. In such cases these are classified as non-reportable conduct rule breaches unless they meet the criteria of the Form D (SUP 10C.14.18R) or where the firm's threshold conditions have been breaches (SUP 15.3.1).

The flow chart, while clear, seems inconsistent with the FCA's "Our Response" box on page 21, where the FCA state that "some misconduct may not be serious enough to meet our regulatory threshold."

We would suggest that firms have interpreted and applied the Conduct Rules closer to the sentiment set out on page 21 (Our Response), than the flowchart, and therefore in direct relationship to formal disciplinary procedures, i.e. written warning or above, and/or reduction in variable compensation. In this sense, an investigation resulting in formal disciplinary action is the starting point for firms in determining whether a Conduct Rule has been breached – given that where no disciplinary action is required, it is unlikely to meet the regulatory threshold of a Conduct Rule Breach and firms would find it hard to consider an act / omission which may breach a Conduct Rule, which would not also result in a disciplinary action.

In response, we suggest that the concept of unreportable Conduct Rule breaches is discontinued, given that,

as it stands, it seems to be misaligned with current industry practices, adds ambiguity to the threshold for Conduct Breaches, and does not serve a clear purpose, given that (i) anything which is not considered a (reportable) Conduct Breach, can still be taken into consideration when assessing F&P for regulated role holders (ii) leads to ambiguity as to the application and threshold of FIT / F&P considerations (iii) is not be disclosed on regulatory references (iv) leads to ambiguity as to the treatment of Conduct Rules staff which are not subject to FIT with reference to the regulatory threshold for a Conduct Breach.

IC1 (Integrity) vs. IC2 (Due care, skill diligence): The impact on *Seriousness*

NFM is likely to breach either breach IC1 (Integrity) or IC2 (Due care, skill diligence).

For IC1, consideration is made around actions/behavior being deliberate or reckless. With this in mind, where an individual (i) thought there was good / proper reason for their conduct, and/or (ii) the conduct was proportionate to the intended aim and/or (ii) did not intend to have a negative impact, or did not know they were having such an impact (must be reasonable belief – 4.1.8KG(2)), then their behavior is unlikely to breach IC1.

In instances where the above is true, the CP suggests that the behavior may breach IC2 (Due care, skill diligence) with reference to 4.1.8KG.

In providing the updated guidance the FCA is re-affirming the suggestion that a breach of IC1 is a more serious breach of regulatory standards as it requires intent or at the least an active mindset.

Can the FCA confirm whether firms should be weighting breaches of IC1 more severely and would therefore factor in determining whether the NFM was serious?

If there is more weighting to IC1, can the FCA provide its view on how and whether this will drive decisions around F&P and malus and clawback?

Perceived Effect and Reasonableness: The Subject of NFM

4.1.8IG (3) outlines the relevance of the reasonableness of the subject's perception that the conduct violated their dignity etc.

Could the FCA provide clarity on what factors should be considered when determining whether the subject's perception was reasonable, and whether this would be consistent with the criteria in assessing the reasonableness of the perception of the individual causing the conduct under 4.1.8KG (2)?

COCON Breaches and Line Managers

The proposed guidance acts to clarify that firms should consider whether the Line manager has also breached a conduct rule, typically IC2 (Due care, skill, and diligence) for not taking reasonable steps to:

I. Stop forms of retaliation against individuals who have reported NFM / breach or participated in an investigation.

II. Prevent NFM they know about – or should know about.

III. Implement policies / systems and controls to detect and address NFM.

IV. Appropriately investigate complaints and ensure a fair outcome.

V. Create psychological safety / safe environment for people to raise concerns – this could include instances where complaints have not been dealt with appropriately.

VI. Escalate concerns where lack authority to resolve.

While generally supportive of the guidance, which effectively does not change the responsibilities in relation to IC2, we would ask the FCA to provide further clarity on:

1. The definition of Managers, and whether this should be strictly interpreted.

   This is particularly relevant where Line Managers sit outside the jurisdiction and are part of the functional reporting line of the individual.

   This will also be relevant where the individual has a local matrix line, and that local matrix manager, while not the formal line manager, has closer geographical proximity, has more influence over the team culture and triggering processes linked to the prevention, detection and investigation aspects outlined above.

   This point also goes towards the territoriality limitation of the regime.

2. What are the FCA's expectation for firms to look up the management chain, past the initial line manager and whether consideration should be given to the role of the SMF and breaches of SC1 (Control business effectively) and SC2 (Meeting standards of the regulatory system)?

3. Whether the considerations outlined in the guidance are directly linked to the competencies of the *Manager of Certified Persons* function and even where no breach / disciplinary is confirmed, whether F&P to hold this function would be impacted?

Approach to Conduct: At work, and outside of work

The clarity of the guidance in terms of the scope of COCON being limited to NFM within the workplace, and the clarity around what could be considered to be the workplace or workplace adjacent is helpful, recognizing grey areas will remain in some circumstances.

Additionally, the guidance on what firms may rely on when considering F&P and aspects of a person's private life/behavior which may impact the assessment is also helpful, i.e. criminal convictions, findings of a court, tribunal, regulator, arbitrator, public enquiry when assessing wrong doing in a private life. The FCA has made it clear that firms have no obligation to actively monitor private lives on an ongoing basis.

However, the guidance states that where a firm becomes aware of relevant information, firms should take

reasonable steps to consider the impact on F&P, and ask the individual concerned for an explanation. We would like the FCA to confirm that this information means information substantiated by a finding from a public office, i.e., criminal convictions, findings of a court, tribunal, regulator, arbitrator, public enquiry.

We are also of the opinion that the following FCA statement within the CP should not form part of firm obligations and be specifically retracted:

Not being able to establish the truth of an allegation of this kind does not mean they (a firm) should not report it to us, if were it established to be true would be material to the F&P assessment.

The above adds a disproportionate and unreasonable burden on firms to report unsubstantiated allegations, which opens the firm and the FCA up to reputational and legal risk and does not support the public interest or the FCA's objectives.

An approach to factual accuracy more consistent with the principles of fairness and due care which is outlined in SUP 22.5.4 (Regulatory References) and the guidance in SYSC 22.5.2G would allow for better outcomes for individuals, firms, and the FCA.

Social Media

The guidance (p.25 paragraph 3.35) states that, where the decision to finalise the guidance is made, that the FCA would make it clear that in principle a person can lawfully express in their private personal life, their views on social media, even if those views are controversial or offensive, even if work colleagues are upset by those views, without calling FIT into question.

While we understand the FCA is trying to balance the right to privacy and the concept of free speech with its rules, this seems inconsistent with the sentiment of other guidance related to Conduct outside of work and its relationship with FIT / F&P.

These inconsistencies are starker where views may be sexually or racially motivated and/or where views are held which may:

I. Pose a risk that it would be repeated in role.

II. If known about, impact the psychological safety / culture of a function / team, with knock on impacts on the effectiveness of systems and controls, and the ability of Line Managers to discharge their duties in line with the current CP's guidance.

III. Undermine the firm's reputation, public confidence or the FCA's wider objectives.

The FCA do state that if a person's social media activity in their private life indicates a real risk the person will breach the requirements and standards of the regulatory system, then such activity will be relevant to their fitness and propriety, e.g. threats of violence or clear involvement in criminal activities. However, this is highly subjective, which may lead to an inconsistent approach across the industry and does not clearly address the points above.

We would suggest that a table, similar to that set out in 1.3.7G (Private or Personal Life COCON) be developed with reference to instances when views expressed on social media may be considered against the criteria set out in FIT and the assessment of F&P.

Fitness & Propriety- Link with COCON and Reportable and Non-Reportable Conduct Breaches

In addition to the points raised above linked to F&P / FIT; clarity is requested on the weight that should be placed on breaches of COCON on firm's assessment of F&P. This is of particular importance given that FIT only applies to Certified Persons and SMFs, which given their regulatory status should be held to higher standards.

The FCA has stated that breaches of COCON do not automatically mean an individual is not F&P, and that seriousness of the conduct should be considered.

We agree that seriousness should play a part in the determination of an individual's F&P. However, the clarity around regulatory threshold for Conduct Breaches and the impact on F&P as a result of the guidance has been diminished, given the FCA has clarified the concept of non-reportable COCON breaches.

Low-level Repeated Infractions

The FCA has referenced low level repeated infractions outside of the workplace and the suggestion that this could indicate a systemic rule breaking attitude impacting FIT – e.g., multiple and frequency minor motor offences.

We suggest a similar approach to unsubstantiated information, and ask the FCA to clarify that firms should only rely on determination made by public offices on whether low-level repeated infractions outside of the work place would amount to something more serious, e.g. in the case of multiple minor motor offences, this could lead to a removal of a license and other more serious consequences. Firms cannot be expected to make this type of judgement without reference to determinations made by public offices.

For low-level repeated infractions within the workplace, firms are best placed to decide as to whether this impacts F&P.

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

We agree that the draft FIT guidance will assist firms in assessing fitness and propriety by providing clearer direction on how NFM should be taken into account, including in circumstances where the conduct occurs outside the workplace. The additional examples and reframed language help reduce subjectivity in decision-making and support a more consistent application of the FIT criteria across the industry.

We particularly welcome the explicit recognition that certain behaviours in an individual's personal life may still be relevant to fitness and propriety assessments, provided they raise credible concerns about integrity, reputation, or reliability.

We also welcome the clarification that firms are not required to proactively monitor private lives, but should act when credible information (e.g., criminal convictions, tribunal findings, or other substantiated evidence) comes to light and the shift from highly subjective terminology (e.g., "morally reprehensible") to more neutral and assessable descriptors.

We also welcome the removal of concepts such as "oppressive conduct causing serious alarm or distress" which were included in the previous consultation paper and the closer alignment of COCON (e.g. at 1.1.7F) with concepts in employment law which firms are used to applying (e.g. the definition of harassment of the Equality Act 2010). However, some difficult areas for employers remain.

However, there remain areas where additional clarity is required to maximise the effectiveness of the guidance, which are detailed in our responses detailed in this document in Questions 1 through 3.

We would also like to raise the following with specific reference to the guidance:

I. We note that the FCA is also proposing a reasonableness test at 4.1.1D, such that if it is not objectively reasonable for an individual to claim that a colleague's conduct violated dignity or created an intimidating or hostile environment, then it will not be misconduct for Conduct Rules purposes (4.1.8I). Employers do not currently apply a reasonableness test to allegations of harassment, as this is not a concept that is present in the Equality Act 2010 (which focuses on the subjective effect on the victim) and it is not clear how an employer will make a determination that a victim's complaint of harassment was unreasonable for COCON purposes and yet will still be harassment for employment law purposes, or what factors should be taken into account.

II. Similarly, some perpetrators of harassment may argue that thought that there was a good and proper reason for the conduct and that the conduct and its effect were proportionate to the intended aim of the conduct. The guidance at 4.1.1D(3) suggests that there is an objective reasonableness test that firms should apply to that type of assertion. That is not a determination that employers are currently required to make in employment law and it is not clear how that assessment should be made.

III. Member firms will note that the rules only apply to conduct that is serious. However, an unintended consequence of these rules may be that firms find that they are required to investigate matters formally in order to form a view that the matters are not serious so that they can produce evidence to support that determination. That could have the consequence that issues that previously could have dealt with informally are now more likely to be dealt with formally under conduct frameworks, which would require further resource and could stifle management. Firms dealing with allegations of bullying in an HR context have a range of tools to deal with complaints of bullying (including informal action, mediation, and coaching, as well as formal disciplinary action). It may be that employers do not turn to those tools so readily where an allegation of bullying is made which could trigger a regulatory sanction.

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5. Do you have any comments on the draft FIT guidance?

Taking into consideration the concerns and issues noted in our response to Questions 1 through 4, we generally are supportive of the FCA's intention to give firms a clearer, fairer, and more consistent

framework for assessing fitness and propriety in light of NFM.

See also below.

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 agree that aligning the implementation date of the new Handbook guidance with the introduction of the new COCON rule on 1 September 2026 is a sensible approach. This ensures firms can embed the guidance and the rule into their governance, training, and decision-making processes at the same time, avoiding the risk of phased or inconsistent adoption.

However, there are important considerations to ensure that firms can implement the changes effectively:

I. Firms will require sufficient time to update internal policies, processes, training materials, and disciplinary frameworks to reflect both the new rule and guidance. Clear FCA communications and finalised text well in advance of the implementation date will be essential.

II. The FCA should confirm that the implementation date applies equally to all SMCR firm types (dual-regulated, core, enhanced, and limited-scope) to prevent divergence in application.

III. Firms will need a coordinated approach to train staff on both the new COCON rule and the Handbook guidance, particularly where there are significant changes in interpretation of non-financial misconduct (NFM) and fitness and propriety assessments.

IV. The FCA should clarify whether the implementation date affects how firms deal with historic conduct and regulatory references, to avoid uncertainty over whether past cases need to be reassessed before or after September 2026.

V. Early engagement from the FCA on how they will supervise and enforce the new requirements post-implementation will help firms calibrate their risk appetite and avoid overly cautious or inconsistent application.

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

Subject to consideration of the points made in response to Q. (above) we support a 1 September 2026 implementation date for both the rule and guidance.

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

We generally agree with the regulator that the benefits of the guidance will outweigh the costs but contend that the proposed cost estimates are an underestimation of the true operational and legal burdens. While the FCA estimates the combined implementation cost of the rule and guidance at £75m, we believe this does not fully account for hidden costs such as training, legal counsel, and the potential increase in employee relations cases.