Volume 2, Number 2 March–April 2025

THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL

fastcase® FULL COURT PRESS

The Global Regulatory Developments Journal

Volume 2, No. 2 March–April 2025

THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL (ISSN 2995-7486) at $495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint.

For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

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Publisher: Leanne Battle
Production Editor: Sharon D. Ray
Cover Art Design: Morgan Morrissette Wright and Sharon D. Ray

The photo on this journal's cover is by Gaël Gaborel—A Picture of the Earth on a Wall—on Unsplash

Cite this publication as:

The Global Regulatory Developments Journal (Fastcase)

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https://www.fastcase.com/

POSTMASTER: Send address changes to THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

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ISSN 2995-7486

UK's Financial Conduct Authority Publishes Results of Non-Financial Misconduct Survey

Rob Moulton, Nicola Higgs, Nell Perks, Becky Critchley, and Charlotte Collins*

In this article, authors discuss the results of a recent survey on non-financial misconduct published recently by the UK's Financial Conduct Authority.

The UK's Financial Conduct Authority (FCA) has published the results[1] of a survey on non-financial misconduct it undertook earlier last year involving over 1,000 firms in the wholesale sector (investment banks, brokers, and wholesale insurance firms). This was the first time the FCA has looked in detail at how firms record and manage allegations of non-financial misconduct. The results therefore give the FCA and firms new insight into how firms are handling such incidents.

The FCA expects firms to benchmark themselves against the findings, think about how they can keep striving to improve their culture, and ensure that incidents related to non-financial misconduct are dealt with appropriately.

What Did the Survey Find?

Broadly, firms were asked to report to the FCA all non-financial misconduct-related incidents occurring in 2021, 2022, and 2023, along with the most recent or final disciplinary action or outcome for each incident.

Number and Type of Incidents

The FCA observed a significant increase in the number of non-financial misconduct allegations reported to firms between 2021

The Global Regulatory Developments Journal / March–April 2025, Vol. 2, No. 2, pp. 109–113.

ISSN 2995-7486.

and 2023, both in terms of the total number and the number of incidents per 1,000 employees. Wholesale banks reported the highest number of incidents, even when taking into account their larger employee population. Generally, larger firms tended to report more incidents. The most frequent methods of detection were grievances or other similar formal processes for escalation. Whistleblowing was most commonly used in wholesale banks, which could perhaps indicate stronger whistleblowing arrangements at these firms.

The most common concern was bullying and harassment, which accounted for around one-quarter of the concerns raised, followed by discrimination, which accounted for just under one-fifth of incidents. However, the data varied by firm type, with wholesale banks reporting proportionately fewer sexual harassment cases, but more discrimination cases, than wholesale brokers. The FCA notes that 41 percent of concerns were categorised as "other," showing how difficult it can be to label many instances of non-financial misconduct. Firms defined this category themselves, and it included behaviours such as alcohol misuse, inappropriate or offensive language, misuse of expenses, and data protection breaches.

Outcomes

Disciplinary action or similar was taken in 43 percent of cases overall (including cases that were not upheld). Wholesale insurance intermediaries took disciplinary action in 63 percent of cases, with 21 percent of incidents not being upheld. Wholesale banks, however, did not uphold 45 percent of incidents. Across all firms surveyed, disciplinary action was taken in over 70 percent of cases when complaints were upheld. However, 62 percent of reported discrimination incidents and 47 percent of reported bullying and harassment incidents were not upheld. Overall, a low number of incidents (1-2 percent) were not investigated.

The survey found that certain behaviours, such as violence and intimidation, and sexual harassment, more commonly resulted in disciplinary action. When action was taken following non-financial misconduct, the most common outcomes were a written warning or other action such as training or coaching. Disciplinary action rarely resulted in remuneration adjustment. When it did, the adjustment was mostly against unvested variable pay. Incidents concerning illegal drugs, sexual harassment, and violence or intimidation were most likely to result in dismissal.

In the banking sector, the total number of confidentiality and settlement agreements put in place fell noticeably over the period covered by the survey. This change might reflect the heightened focus on the appropriateness of such tools in recent years. No clear trend on such agreements emerged among the other firms surveyed. Confidentiality and settlement agreements were most often agreed in relation to instances of discrimination. Overall, settlement agreements were used much more frequently than confidentiality agreements.

In terms of the impact on regulatory references, the FCA observed that 92 percent of firms said they would include incidents of non-financial misconduct in a regulatory reference, and 87 percent said they would update a reference following an incident of non-financial misconduct.

Firms reported an increasing trend of amending employees' fit-and-proper assessments following instances of non-financial misconduct. Over the period surveyed, 93 individuals had their assessments amended, mostly due to instances of sexual harassment or "other" non-financial misconduct.

Drawing Conclusions

The FCA acknowledges that the data needs to be interpreted with caution, as a large number of complaints could equally indicate either a healthy culture in which people feel able to speak up and issues are being dealt with more openly, or a poor culture in which a high number of concerns are prevalent. The FCA is also keen to stress that not all recorded incidents will be substantiated, and some may be factually incorrect or vexatious. There may also be certain factors which skew the data, such as the fact that restrictions relating to the COVID-19 pandemic were in place for a proportion of the period surveyed. Therefore, while the data is helpful in evidencing general trends, the FCA cautions against drawing firm conclusions. Many of the incidents reported will necessarily have resulted from highly nuanced situations and so reducing these to a statistic will always have its drawbacks.

Governance and Processes

Along with providing interesting data, the findings importantly highlight certain shortcomings in firms' policies and procedures. For example, not all firms had an up-to-date whistleblowing and/or remuneration policy in force in accordance with FCA rules.

The survey also revealed that a significant proportion of larger firms had no formal governance structure or committee that decides the outcomes and disciplinary actions for those involved in non-financial misconduct cases, and/or no board-level management information on non-financial misconduct. This was more prevalent among London market insurers and intermediaries. The FCA is concerned that the data suggests larger firms' governance and oversight of non-financial misconduct could be falling short of expectations.

The Wider Picture

The survey fits into the FCA's broader focus on culture and non-financial misconduct. The FCA is due to finalise its new guidance on non-financial misconduct shortly. The guidance is eagerly awaited by firms, as it should provide more support with deciding where to draw the line in difficult cases, which are always challenging for firms to deal with.

The survey also follows on from the findings of the "Sexism in the City" report, which set out a number of key issues relating to non-financial misconduct in the financial services industry. There have been reports that the Treasury Committee intends to follow up with the FCA on its findings.

What Should Firms Do Now?

The FCA hopes that these results will help drive momentum for firms to keep improving in this area. It stresses the importance of firms not only considering their specific processes for reporting and dealing with non-financial misconduct, but also continuing their broader work on culture. The FCA clarifies that it expects firms to discuss this at both senior management and board level.

Therefore, firms should benchmark themselves against the results and consider any areas for improvement. While this can be a difficult area to navigate, some aspects of the findings lend themselves to concrete action. In particular, firms should consider regulatory obligations relating to whistleblowing, remuneration, regulatory references, and fit-and-proper assessments, and ensure they are complying with the requirements. They should also review governance arrangements for dealing with non-financial misconduct.

The FCA envisages that trade associations will play a key role in coordinating industry-wide analysis and actions as a result of the survey. It is not planning to issue any best practice recommendations for firms at the moment, but the findings will inform its ongoing supervisory work.

Notes

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1. https://www.fca.org.uk/data/culture-non-financial-misconduct-survey-findings.