FCA Non-Financial Misconduct (NFM) Checklist

The recent FCA Non-Financial Misconduct survey highlights the need for firms to strengthen their frameworks around workplace culture, governance, and accountability. This checklist has been produced for LIIBA members and is a starting point to help firms identify FCA expectations around promoting integrity, respect, and safety across all work environments, including offices, remote work, offsite, and social events tied to work.

The checklist is intended to help firms consider how they might address key areas of culture, leadership, reporting, and regulatory compliance, with specific questions around building a strong framework that addresses non-financial misconduct risks, such as bullying, harassment, and discrimination, ensuring these behaviours are properly managed and mitigated.

1. Culture and Leadership

- How does the firm actively promote clear, accessible policies defining non-financial misconduct, including bullying, harassment, discrimination, and other conduct concerns?

- How are policies on non-financial misconduct regularly reviewed, updated, and how is it evidenced that these are consistently applied?

2. Policies and Procedures

- How does the firm actively promote clear, accessible policies defining non-financial misconduct, including bullying, harassment, discrimination, and other conduct concerns?

- How are policies on non-financial misconduct regularly reviewed, updated, and how is it evidenced that these are consistently applied?

3. Training and Awareness

- How does the firm provide regular training on recognising and addressing non-financial misconduct, including real-life scenarios and expected behaviours?

- How are all levels of staff, including management, trained on the connection between non-financial misconduct and FCA conduct principles?

4. Whistleblowing and Reporting Mechanisms

- Can the firm evidence it has a confidential, well-publicised whistleblowing policy to encourage reporting of non-financial misconduct without fear of retaliation?

- How are whistleblowing and other reporting channels monitored to ensure they are accessible and trusted by employees?

5. Detection and Incident Tracking

- How does the firm detect potential non-financial misconduct and are multiple methods (surveys, HR data analysis, whistleblowing) used?

- How are informal concerns tracked and reviewed systematically to identify patterns or trends in misconduct?

6. Handling and Investigation of Reports

- How are all non-financial misconduct reports investigated promptly, fairly, and in a documented, consistent manner?

- How does the firm apply fair and proportionate outcomes to cases of non-financial misconduct, regardless of employee seniority?

7. Outcomes and Disciplinary Actions

- How are the outcomes of misconduct cases (e.g., warnings, dismissals, pay adjustments) documented and reviewed to ensure they align with firm policies?

- How does the firm assess and document the rationale for specific disciplinary actions taken in response to misconduct cases?

8. Regulatory References and Fitness & Propriety Assessments

- How are incidents of non-financial misconduct considered when determining an individual's fitness and propriety under the SM&CR framework?

- How does the firm ensure consistency regarding inclusion of relevant, substantiated non-financial misconduct incidents in regulatory references?

9. Governance and Oversight

- How does the firm's governance structure allow senior leaders and the Board to review trends and incidents related to non-financial misconduct?

- Is non-financial misconduct a regular agenda item in Board or relevant committee meetings, and is sufficient Management Information (MI) provided?

10. Management Information (MI) Quality

- How does the firm capture data on reported incidents, whistleblowing activity, employee survey results, and analyse trends regarding of non-financial misconduct?

- How does the firm identify/highlight cultural risks, turnover, absenteeism, and survey results to inform improvements in workplace culture?

- How are senior managers able to view and challenge / investigate potential issues in cases where there are no whistleblowing reports?

11. Speak-Up Culture and Psychological Safety

- What initiatives or practices Does the firm have in place to ensure a safe environment where employees feel comfortable reporting misconduct?
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- How are employees encouraged to voice concerns without fear of repercussions, and how can the firm evidence that protections for whistleblowers are well-documented?

12. Remuneration Adjustments and Financial Disincentives

- How are remuneration adjustments or other financial disincentives used appropriately as consequences for non-financial misconduct?

- How does the firm document reasons for using or not using financial penalties, such as clawbacks, in misconduct cases?

13. Use of Settlement and Confidentiality Agreements

- Does the firm have clear policies on the use of settlement or confidentiality agreements, including FCA-mandated exclusions for protected disclosures?

- How can firms demonstrate that confidentiality agreements are used appropriately and only when necessary to avoid hindering transparency?

14. Root Cause Analysis

- What process does the firm use to conduct a root cause analysis of significant non-financial misconduct cases to identify systemic cultural or procedural issues?

- How is MI on root causes shared with senior management to help mitigate similar issues in the future?

15. Effectiveness of Reporting Systems

- Has the firm reviewed the effectiveness and accessibility of its reporting systems, including third-party whistleblowing services if applicable?

- How are anonymous reporting channels made available, and how is regular feedback gathered from employees on their comfort with these systems?

16. Monitoring

- How does the firm use data monitoring or HR analytics (e.g., absenteeism, performance patterns) to detect potential misconduct indicators, and demonstrate this is in compliance with privacy laws?

- How is regular analysis of exit interview data conducted to identify cultural or conduct issues within the firm?

17. Continuous Improvement and Benchmarking

- Has the firm conducted a gap analysis to benchmark against FCA survey findings and implemented improvements where needed?

- What process is in place for regularly updating non-financial misconduct policies, systems, and training as per FCA guidance?

18. Senior Managers and SM&CR Compliance

- How are senior managers and certified staff held accountable for preventing and addressing non-financial misconduct under SM&CR responsibilities?

- How are senior managers monitored for behaviours that align with the firm's cultural values and standards?

19. Alignment with FCA Conduct Rules

- How does the firm ensure that employees understand how non-financial misconduct breaches FCA Conduct Rules, particularly Conduct Rules 1, 2, and 3*?

- How are senior managers informed of their specific responsibilities under Conduct Rule 4** to create a healthy culture?

20. Documenting and Evidencing Improvements

- How does the firm document its response to FCA's findings, including any actions taken to improve culture, governance, and reporting?

- What is the process for maintaining continuous improvement in handling non-financial misconduct, ensuring alignment with FCA expectations and protecting workplace integrity?

21. Notifying the FCA of non-financial misconduct issues:

- What is the firms process for identifying and assessing non-financial misconduct incidents that require notification to the FCA, including those related to bullying, harassment, and discrimination?

- How do senior managers demonstrate awareness of their responsibility to notify the FCA of significant non-financial misconduct incidents, ensuring that these notifications are timely, accurate and in line with SMCR reporting requirements***?

- What is the firm's whistleblowing policy/guidance on when reported incidents of non-financial misconduct should be escalated to the FCA or other relevant regulators?

Conduct Rule 1: You must act with integrity.
Conduct Rule 2: You must act with due skill, care and diligence.
Conduct Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.

**Senior Manager Conduct Rule 4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.*

***Under the SM&CR firms are obligated to report certain non-financial misconduct incidents to the FCA within specific timeframes. For SMF holders, any disciplinary action related to breaches of the Conduct Rules must be reported to the FCA within **seven business days** of the firm becoming aware of the matter. This is done using Form D via the FCA's Connect system.*

For other staff subject to the Conduct Rules, firms are required to submit an annual report - REP008, detailing any disciplinary actions taken for Conduct Rule breaches. This report should be submitted within two months of the end of the reporting period.

Introduction to the UK Employment Rights Bill Compliance Checklist

The UK Employment Rights Bill, introduced to Parliament on 10 October 2024, represents a significant overhaul of employment legislation, aiming to modernise and enhance workers' rights while fostering a fair and productive business environment.

As an insurance intermediary, it is crucial to ensure that your firms' policies and practices align with the new legal requirements. The following checklist is designed to guide you through the key areas of compliance:

1. Immediate Entitlements and Protections

Parental and Bereavement Leave

- Have you updated your policies to grant parental and bereavement leave from the first day of employment?

- Are employees informed about their rights to these leaves during onboarding?

Protection Against Unfair Dismissal

- Does your dismissal procedure include protections against unfair dismissal starting from day one of employment?

- Are managers trained to understand and implement these protections effectively?

2. Employment Contracts and Working Conditions

Zero-Hours Contracts

- Have you reviewed and revised contracts to remove zero-hours arrangements?

- Do your contracts provide predictable working hours and income stability?

Fire and Rehire Practices

- Are your policies compliant with the prohibition of terminating contracts solely to re-engage employees on less favourable terms?

- Have you established fair procedures for contract variations that involve employee consultation?

3. Flexible Working Arrangements

Right to Request Flexible Working

- Is there a clear policy allowing all employees to request flexible working arrangements?

- Do you have a transparent process for evaluating and responding to these requests?

4. Whistleblowing and Reporting Mechanisms

Reporting Non-Compliance

- Are there clear channels for employees to report non-compliance with the Employment Rights Bill provisions?

- Do your whistleblowing policies protect employees from retaliation when they report concerns?

5. Policy Documentation and Communication

Employee Handbook

- Has the employee handbook been updated to reflect new rights and entitlements under the Employment Rights Bill?

- Are all employees provided with the updated handbook, and is it accessible to them?

6. Monitoring and Review

Compliance Audits

- Do you have a schedule for regular audits to assess compliance with the new legislation?

- Is there a process for documenting compliance efforts and addressing any identified gaps?

7. Onboarding and Early Employment Practices

- Are new employees informed of their rights under the Employment Rights Bill during the onboarding process?

- Have you reviewed the induction program to include detailed information about entitlements such as flexible working, parental leave, and bereavement leave?

8. Handling Grievances

- Are grievance procedures updated to reflect protections against unfair dismissal from the first day of employment?

- Are grievance outcomes reviewed regularly to identify patterns or areas for improvement in workplace policies?

9. Record Keeping and Data Transparency

- Are records of working hours, leave requests, and dismissal decisions maintained to demonstrate compliance with the legislation?

- Have you implemented a transparent system for documenting flexible working requests and management responses?

10. Long-Term Monitoring and Improvement

- Do you have a process to regularly review and improve workplace policies in light of ongoing changes in employment law?

- Are employee satisfaction surveys conducted periodically to measure the impact of these policies and identify areas for further action?

The Equality and Human Rights Commission (EHRC) sexual harassment guidance

On 26 October 2024, new provisions under the Worker Protection (Amendment of Equality Act 2010) Act 2023 came into effect. Employers are now legally required to take proactive steps to prevent workplace sexual harassment, including harassment by third parties such as clients or customers.

The EHRC is tasked with enforcing this new duty and has the authority to investigate breaches, even without a specific harassment incident. Employment tribunals can also impose a 25% uplift in compensation for claims where employers are found to have failed in their preventative duties.

To support compliance, the EHRC has published updated technical guidance outlining necessary measures, such as conducting risk assessments, establishing robust anti-harassment policies, providing training, and creating safe reporting mechanisms. (gov.uk, equalityhumanrights.com)

This checklist is designed to help employers assess their readiness and compliance with the new law.

1.Risk Assessments

- Have you conducted a workplace risk assessment to identify factors that may increase the likelihood of sexual harassment (e.g., lone working, night shifts, third-party interactions)?

2. Anti-Sexual Harassment Policy

- Do you have a clearly defined and widely communicated anti-sexual harassment policy that includes specific examples relevant to your workplace?

3. Reporting Mechanisms

- Are there safe, accessible, and confidential channels for employees to report incidents of sexual harassment, including anonymous options?

4. Third-Party Harassment

- Have you implemented measures to address and mitigate risks of harassment by third parties such as customers or contractors?

5. Training Programmes

- Is regular, mandatory training provided to all employees, including management, on recognising, preventing, and addressing sexual harassment?

6. Management Responsibilities

- Are managers trained to respond effectively to reports of harassment and understand their responsibilities under the new law?

7.Monitoring and Review

- Do you have processes in place to regularly monitor, review, and update your anti-harassment measures and assess their effectiveness?

8. Transparency and Accountability

- Do you ensure transparency in how harassment reports are handled, while maintaining confidentiality, to build trust among employees?

9. Diversity and Inclusion

- Are your workplace policies and practices inclusive, addressing the specific risks faced by vulnerable groups (e.g., women, LGBT+ individuals, disabled workers)?

10.Disciplinary Measures

- Do your policies include clear disciplinary actions for perpetrators of sexual harassment and ensure fair treatment of all parties involved?

Sources

To ensure compliance with the Employment Rights Bill 2024 and the Equality and Human Rights Commission's (EHRC) updated sexual harassment guidance, the following resources are available:

- An official summary of the Employment Rights Bill, detailing its key provisions and objectives - Employment Rights Bill: factsheets - GOV.UK

- In-depth factsheets covering specific aspects of the bill, including rights to leave, statutory sick pay, and protections against unfair dismissal - Employment Rights Bill: supporting documents - GOV.UK

- Guidance from the EHRC on preventing and addressing sexual harassment in the workplace, reflecting the latest legal obligations - Sexual harassment and harassment at work: technical guidance | EHRC

- A practical checklist designed to assist employers in implementing effective measures to prevent sexual harassment - Employer 8-step guide: Preventing sexual harassment at work | EHRC

- An official announcement detailing the government's introduction of significant reforms to employment rights - Government unveils significant reforms to employment rights - GOV.UK

- The EHRC's official statement regarding the enforcement of the Worker Protection Act and its implications for employers - EHRC statement as Worker Protection Act comes into force | EHRC

- Analytical documents assessing the economic and social impacts of the Employment Rights Bill's provisions - Employment Rights Bill: impact assessments - GOV.UK

- Detailed technical guidance from the EHRC on addressing sexual harassment and harassment at work - Sexual harassment and harassment at work: technical guidance | EHRC

- The TUC provides an overview of the Worker Protection Act, detailing the new preventative duty for employer:
  - What is the Worker Protection Act? New preventative duty explained | TUC
  - Preventing Sexual Harassment | TUC
  - SH Checklist.pdf

- ACAS offers comprehensive guidance on steps employers can take to prevent sexual harassment, emphasising the importance of proactive measures and a zero-tolerance culture.
  - What sexual harassment is - Sexual harassment - Acas
  - Creating a sexual harassment policy - Sexual harassment - Acas
  - Preventing sexual harassment - Sexual harassment - Acas