

NON-FINANCIAL MISCONDUCT: FIVE THINGS - UPDATED



CRISIS MANAGEMENT
Part of the Horizon Scanning series

In April 2024 [we set out five things](#) we are thinking about concerning non-financial misconduct (NFM) in the financial sector. Building on this theme, we recently brought together senior leaders from a range of financial sector firms to discuss how to approach NFM in an ever-evolving regulatory and social landscape. The discussion, which was conducted under the Chatham House Rule, showed that firms are encountering similar issues across the financial sector. We would be pleased to discuss any of these issues in more detail.

1. IDENTIFICATION OF NFM SHOULD BE A DYNAMIC AND EVOLVING, RATHER THAN A STATIC, PROCESS.

What might otherwise be less serious NFM can be exacerbated through subsequent dishonesty, misrepresentation or lack of transparency on the part of the perpetrator or their colleagues. Multiple instances of less serious NFM may be spread across a period of time, building a more serious picture. It is important to adopt processes to spot these trends.

2. CREATING A TRANSPARENT 'SPEAKING UP' CULTURE IS A BALANCING ACT.

More allegations tend to come out of the woodwork when an issue comes to light, and sometimes public disclosure of a less serious instance of NFM will prompt more serious disclosures. Firms need to ensure that they get all the information they need, and that the relevant people are heard, whilst being fair to the alleged perpetrator. The FCA's [recent proposals](#) on a new, more proactive approach to publicising its enforcement investigations may propel this tension to the foreground where individuals under investigation are named by the regulator (although such instances would not be the norm).

3. TAKING A FIRM STANCE ON NFM SHOULD NOT GET IN THE WAY OF GIVING EMPLOYEES CONSTRUCTIVE FEEDBACK.

Firms have told us that NFM-based grievances increase during appraisal season, and that negative feedback can prompt NFM grievances against managers. Firms need to act reasonably and objectively when giving feedback. Equally, negative feedback can be given appropriately when it is justified without amounting to NFM. Managers shouldn't shy away from difficult conversations; it risks creating more issues down the line.

4. ALLEGATIONS OF NFM AGAINST SENIOR INDIVIDUALS NEED TO BE HANDLED DIFFERENTLY.

The stakes are higher where an individual is a senior manager or holds a certified function—their career in financial services could be on the line. A more rigorous approach is needed to the investigation and how it is recorded, and to the assessment of regulatory reporting. We recommend that you involve the legal function (who can bring in external lawyers if appropriate) at an early stage to advise on the process, to mitigate legal and regulatory risk and advise on best practice.

5. THINK HOLISTICALLY ABOUT HOW TO RECORD AND MONITOR NFM ISSUES.

In particular, think about identifying and cataloguing the various ways in which allegations of NFM can be raised, including through grievances, whistleblowing and informal complaints. This will help with spotting thematic patterns which could point to a need to pay closer attention to your culture, or to the behaviour of certain individuals or teams. A comprehensive approach to categorisation will be vital if, as is highly likely, regulators continue to ask for data on instances of NFM within firms.

CONTACT US TO FIND OUT MORE



Philip Linnard
Partner

T +44(0) 20 7090 3961
E philip.linnard@slaughterandmay.com



Philippa O'Malley
Partner

T +44(0) 20 7090 3796
E philippa.o'malley@slaughterandmay.com



Jan Putnis
Partner

T +44(0) 20 7090 3211
E jan.putnis@slaughterandmay.com



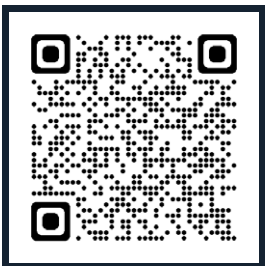
Nick Bonsall
Partner

T +44(0) 20 7090 4276
E nick.bonsall@slaughterandmay.com



Jonathan Cotton
Partner

T +44(0) 20 7090 4090
E jonathan.cotton@slaughterandmay.com



To view the full Horizon Scanning 2024 programme, including our podcast series, please scan the QR code or visit www.slaughterandmay.com/horizonscanning