

October 2024

The FCA's 'culture and non-financial misconduct survey' results – Uncomfortable reading...

In February 2024, the FCA sent a survey to 1,028 regulated wholesale financial services firms asking about recorded incidents of non-financial misconduct ("**NFM**") in 2021, 2022 and 2023. They have now published the results. They make for interesting, but uncomfortable reading for firms.

The firms surveyed:

London market insurers	197
London market intermediaries	382
Wholesale banks	181
Wholesale brokers	268

In the results, an "incident" is an alleged or confirmed occurrence of non-financial misconduct that was reported to or identified by the firm.

The FCA surveyed regulated wholesale financial services firms about:

- Non-financial misconduct
- Policies and procedures relating to firms' culture

The FCA do observe that the results can be said to demonstrate good or bad trends.

".... we are approaching our analysis with caution and understand the limitations of reviewing the data in isolation and without an understanding of the context of incidents. We are mindful of the potential for misleading conclusions if generalised inferences are made without careful consideration. For instance:

- a high number of incidents does not necessarily suggest a worse environment – it may in fact be an indication of a healthy speak up culture, and may reflect size and scale of a firm
- nil or a low number of incidents does not necessarily suggest a positive or improving environment
- not all recorded incidents will be substantiated, and some may be factually incorrect or vexatious"

Number of incidents reported in 2021, 2022 and 2023 by portfolio

	London market insurers	London market intermediaries	Wholesale banks	Wholesale brokers	Total
2021	102	89	1,136	36	1,363
2022	177	167	1,282	44	1,670
2023	239	246	1,776	86	2,347

Proportion of incidents reported by non-financial misconduct type for 2021 to 2023 by portfolio

	Other non-financial misconduct	Violence or intimidation	Possession or use of illegal drugs	Discrimination	Bullying and harassment	Sexual harassment (as outlined in the Equality Act 2010)
London market insurers	36%	2%	1%	19%	29%	13%
London market intermediaries	44%	8%	3%	14%	15%	16%
Wholesale banks	41%	1%	1%	25%	26%	6%
Wholesale brokers	42%	4%	1%	17%	22%	14%

Wholesale banks had the lowest proportion of reported sexual harassment cases, but a greater proportion of reported discrimination cases when compared with other portfolios.

London market intermediaries had the highest relative proportion of reported incidents of violence or intimidation when compared with other portfolios.

As to what was meant by 'other', firms' examples included:

- intoxication or misuse of alcohol within the workplace or work-related environment (sometimes contributing to poor conduct and other inappropriate behaviour)
- inappropriate or offensive language or communication style within the firm or towards third parties (both verbally and in electronic communications)
- data protection and information technology security breaches such as inappropriate sharing, access, or misuse of confidential company information
- employees engaging in retaliatory behaviour in relation to allegations made against them
- misuse of expenses or gifts and hospitality
- performance issues and related conduct breaches
- breaches of firms' policy and procedures
- Some of the incident types described by firms could be categorised as financial misconduct or employee performance issues

Some of the incident types described by firms could be categorised as financial misconduct or employee performance issues.

Proportion of non-financial misconduct incidents detected by different methods by portfolio

	Whistleblowing (formal process)	Grievance or other similar formal processes for escalation	Surveillance (market surveillance tools)	Other	Total
London market insurers	15%	70%	1%	18%	104%
London market intermediaries	6%	65%	1%	29%	101%
Wholesale banks	32%	52%	6%	21%	111%
Wholesale brokers	10%	56%	10%	29%	105%

Grievances or "other formal escalation processes" were the main ways that firms have identified NFM.

Whistleblowing was most prevalent in wholesale banks.

Firm's reported "other" detection methods included:

- reports from third parties who had witnessed misconduct
- informal concerns raised with human resources function, compliance function or line managers
- line managers taking a proactive approach to identifying misconduct, particularly about staff conduct or compliance with company procedures

Outcomes

London market intermediaries had the:

- highest proportion of disciplinary action, with action taken on 63% of reported incidents
- lowest proportion of incidents not upheld (21%)

Wholesale banks had the highest proportion of reported incidents not upheld between 2021 and 2023 at 45%.

Proportion of outcomes by portfolio

	Awaiting decision or no disciplinary action taken	Disciplinary or other action taken
London market insurers	47%	53%
London market intermediaries	37%	63%
Wholesale banks	61%	39%
Wholesale brokers	45%	55%

Proportion of actions taken by portfolio – excluding complaints not upheld

	Other (D&I training, coaching etc)	Verbal warning	Written warning	Dismissal
London market insurers	29%	8%	21%	19%
London market intermediaries	23%	4%	30%	23%
Wholesale banks	35%	18%	12%	6%
Wholesale brokers	19%	13%	36%	16%

Proportion of cases where no action taken by portfolio

	Complaint not upheld	Investigation unable to conclude	Complaint upheld - no action taken	Complaint not investigated
London market insurers	31%	7%	5%	2%
London market intermediaries	21%	9%	1%	1%
Wholesale banks	45%	7%	1%	1%
Wholesale brokers	34%	8%	2%	0%

Proportion of actions taken for all years by non-financial misconduct type

Category	Other (D&I training, coaching etc)	Verbal warning	Written warning	Dismissal
Sexual harassment (as outlined in the Equality Act 2010)	18%	5%	19%	22%
Bullying and harassment	22%	4%	7%	2%
Discrimination	16%	2%	4%	2%
Possession or use of illegal drugs	5%	0%	12%	21%
Violence or intimidation	16%	6%	30%	21%
Other non-financial misconduct	19%	17%	12%	6%

62% of reported discrimination incidents and 47% of reported bullying and harassment incidents between 2021 and 2023 were not upheld.

Disciplinary or other action was taken in:

- 73% of violence or intimidation incidents
- 64% of sexual harassment incidents

Incidents that were most likely to lead to dismissal included:

- possession or use of illegal drugs (21%)
- sexual harassment (22%)
- violence or intimidation (21%)

Further outcomes included:

- settlement agreements signed by either the complainant or the subject of a complaint
- a confidentiality agreement signed by the complainant
- remuneration adjustments

The total number of confidentiality and settlement agreements signed by complainants fell between 2021 and 2023.

Total number of confidentiality and settlement agreements signed by complainant for all portfolios by year

Year	Settlement agreement	Confidentiality agreement
2021	126	87
2022	134	73
2023	101	51

The number of settlement agreements signed by the subject of a complaint remained stable between 2021 and 2023

Year	Settlement agreement
2021	44
2022	54
2023	47

Confidentiality agreements were used:

- most frequently for discrimination (124 times) and bullying and harassment (42 times)
- infrequently for sexual misconduct and violence or intimidation
- never in respect of possession of illegal drugs

Adoption of different policies varied across portfolios

Category	London market insurers	London market intermediaries	Wholesale banks	Wholesale brokers
Documented D&I strategy	71%	58%	70%	48%
Current remuneration policy in force	80%	46%	92%	84%
Current disciplinary Policy in force	88%	87%	96%	78%
Current whistleblowing Policy in force	90%	95%	99%	95%

And finally... governance and management information

38% of total respondents stated that a board or a board level committee did not receive management information (MI) about non-financial misconduct.

33% of total respondents stated that they have no formal governance structure or committee that decides the outcomes and disciplinary actions for those involved in non-financial misconduct cases.

Percentage of large firms with no formal governance structure/committee for NFM decisions or no board level MI

Category	London market insurers	London market intermediaries	Wholesale banks	Wholesale brokers
No formal governance structure or committee that decides on the outcomes and disciplinary actions for those involved in NFM cases	37%	39%	21%	10%
Board or board level committee does not receive any MI around non-financial misconduct	44%	26%	9%	30%

Our takeaways:

- In terms of raw data, the incidence of reported NFM is on the increase – but this could be for good or bad reasons;
- The incidence of such reported NFM in terms of numbers, types and outcomes varied significantly between the portfolios of firms surveyed;
- Grievances are unsurprisingly the largest source of reported NFM, but we consider that the relatively small number identified by whistleblowers is surprising;
- The number of firms still without relevant policies in place is also a surprise; and
- It is extraordinary that there are so many firms where either a board or a board level committee did not receive management information (MI) about NFM, or they have no formal governance structure or committee that decides the outcomes and disciplinary actions for those involved in NFM.

What is clear is the regulated firms must prioritise how they deal with NFM as it is clearly near the top of the FCA's agenda...

Contact us



David Capps

Partner, London

T: +44 20 7809 2463

E: david.capps@shlegal.com