

**NON-FINANCIAL MISCONDUCT (No 2) INSTRUMENT 2025****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

**Commencement**

- B. This instrument comes into force on 1 September 2026, immediately after the Non-Financial Misconduct Instrument 2025 comes into force.

**Amendments to the Handbook**

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)	Annex C

**Citation**

- D. This instrument may be cited as the Non-Financial Misconduct (No 2) Instrument 2025.

By order of the Executive Regulation and Policy Committee of the FCA  
9 December 2025

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

*employee*

...

- (4) (for the purposes of *SUP* 15.11 (Notification of conduct rule breaches and disciplinary action) and *COCON*) has the meaning in section 64A(6) of the *Act* (Rules of conduct) which, in summary, says an employee of a *person* (the ‘employer’) includes a reference to a *person* who:
  - (a) personally provides, or is under an obligation personally to provide, services to the employer under an arrangement made between the employer and the *person* providing the services or another *person*; and
  - (b) is subject to (or to the right of) supervision, direction or control by the employer as to the manner in which those services are provided.

However, where a *Handbook* provision in (4) refers to *certification employees*, (3) still applies to the definition of *certification employee* and (in the guidance in *COCON* where the context requires) an employer may include a *person* who is not authorised.

...

## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Application and purpose

##### 1.1 Application

1.1.1 G Under section 64A of the *Act*, the *FCA* may make *rules* about the conduct of certain *persons* working in *firms*. COCON contains those rules.

1.1.1-A G COCON 1 Annex 2 (What COCON covers) contains flow diagrams explaining how COCON 1.1 works.

...

To what conduct does it apply? (Relationship between the exclusions)

...

1.1.5C G (1) The effect of ~~COCON 1.1.5BR(1)~~ COCON 1.1.5BR is ~~that:~~ shown in section 3 of COCON 1 Annex 2 (What conduct COCON applies to).

(a) ~~conduct that is not excluded from the scope of COCON by COCON 1.1.7AR to COCON 1.1.7ER but is outside the scope of COCON 1.1.6R to COCON 1.1.7R is outside the scope of COCON; and~~

(b) ~~conduct that is excluded from the scope of COCON by one of the rules in COCON 1.1.7AR to COCON 1.1.7ER but is within the scope of COCON 1.1.6R to COCON 1.1.7R is outside the scope of COCON.~~

(2) ~~The effect of COCON 1.1.5BR(2) is that conduct of a member of the conduct rules staff of a firm:~~

(a) ~~is outside the scope of COCON even if it is excluded by only one of the rules in COCON 1.1.7AR to COCON 1.1.7ER; and~~

(b) ~~is outside the scope of:~~

(i) ~~Rule 4 in COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) even if the only rule excluding it is COCON 1.1.7ER; and~~

- (ii) ~~Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) even if the only rule excluding it is COCON 1.1.7CR.~~

...

To what conduct does it apply? (Other limitations: Non-banks: Harassment)

1.1.7F R ...

1.1.7G G COCON 4.3 (Specific guidance on harassment) gives guidance on the kind of conduct covered by COCON 1.1.7FR, including the point that COCON 1.1.7FR only covers conduct that is serious.

...

Where does it apply?

1.1.8B R ...

1.1.8C G The effect of COCON 1.1.8BR is shown in section 4 of COCON 1 Annex 2 (Territorial scope).

...

Insert the following new section, COCON 1.3, after COCON 1.2 (Investments). The text is all new and is not underlined.

### 1.3 Scope of COCON

#### Introduction

1.3.1 G This section deals with the restrictions on the scope of *COCON* based on:

- (1) the activities of the *firm* in *COCON* 1.1.6R to *COCON* 1.1.7R (To what conduct does it apply? (Limitations in the Act)) (*COCON* 1.3.2G to *COCON* 1.3.9G deal with this);
- (2) the *SMCR financial activities* of a *firm* in *COCON* 1.1.7AR (To what conduct does it apply? (Other limitations: Non-banks)) (*COCON* 1.3.10G to *COCON* 1.3.16G deal with this); and
- (3) *COCON* 1.1.7BR (To what conduct does it apply? (Other limitations: Benchmark firms)) (*COCON* 1.3.17G deals with this).

*COCON* does not cover private or personal life

1.3.2 G *COCON* 1.1.6R to *COCON* 1.1.7R limit the application of *COCON* to conduct that relates to a function carried out by a member of the *conduct rules staff* where in turn that function relates to the carrying on of an activity by the *firm*. The *firm's* activity may be a *regulated activity* or an

*unregulated activity*. This limitation on the scope of *COCON* applies in relation to all *firms*.

- 1.3.3 G (1) The effect of *COCON* 1.1.6R to *COCON* 1.1.7R is that conduct relating to the *conduct rules staff* member's private or personal life is outside the scope of *COCON*.
- (2) However, this does not mean that a *senior conduct rules staff member* is not required to disclose information about their private or personal life under *COCON* 2.2.4R (SC4). A *senior conduct rules staff member* should disclose such matters if they are material to an assessment of fitness and propriety under *FIT*.
- 1.3.4 G Factors that point towards conduct being within the scope of *COCON* 1.1.6R to *COCON* 1.1.7R include:
- (1) the conduct occurred when the *conduct rules staff* member was present on the *firm's* premises;
- (2) the conduct occurred when the *conduct rules staff* member was working on the *firm's* business;
- (3) the conduct involved a client, a professional acquaintance, another member of the *firm's* staff or someone the *conduct rules staff* member had dealt with on behalf of their *firm*;
- (4) the conduct was carried out using equipment supplied by or made available by the *firm* or by involving the *firm's* staff;
- (5) the conduct arose in a business context, including an official or an informal event organised or supported by the *firm* or in which the *firm* participates, whether it is held at the *firm's* premises or at another location;
- (6) the position of the *conduct rules staff* member as a *conduct rules staff* member of the *firm* helped them to carry out the conduct; or
- (7) the purpose (misguided or not) of the conduct was to benefit the *firm*.
- 1.3.5 G (1) Whether conduct is within the scope of *COCON* depends on the specific facts of each case. It is therefore not possible to set out scenarios in the *Handbook* and say whether in all cases the conduct in question will be within the scope of *COCON*.
- (2) Paragraph (1) means that:
- (a) the list of factors in *COCON* 1.3.4G is not exhaustive; and
- (b) the presence or absence of one of the factors in *COCON* 1.3.4G is not by itself conclusive.

- (3) Another result of (1) is that:
- (a) when the table in *COCON* 1.3.7G says that conduct is generally within the scope of *COCON*, that means that the facts of the scenario are ones that point towards the conduct coming within the scope of *COCON*; and
  - (b) when the table in *COCON* 1.3.7G says that conduct is generally outside the scope of *COCON*, that means that the facts of the scenario are ones that point against the conduct coming within the scope of *COCON*,

but that in an individual case all the other features of the case are also relevant.

- 1.3.6 G (1) The table in *COCON* 1.3.7G sets out examples of when a *person's* conduct is outside the scope of *COCON* because it is part of their private or personal life and when it is not excluded for that reason (subject to *COCON* 1.3.5G).
- (2) As explained in Note (2) to the table, conduct to which 'Yes' applies is not necessarily within the scope of *COCON* as it may be excluded by one of the other scope *rules* in *COCON* 1.1 (Application). For example, it may be excluded by the exclusion in *COCON* 1.1.7AR (To what conduct does it apply? (Other limitations: Non-banks)).
- (3) Another example of the point in (2) is that if M (as referred to in the notes to the table) is based in an overseas office of the *firm* and carries out the conduct from there (or from their home in the country where the overseas office is located), the conduct will be outside the scope of *COCON* under *COCON* 1.1.10R (Where does it apply?) unless M comes within *COCON* 1.1.9R (which deals with *senior conduct rules staff members* and material risk takers) or within *COCON* 1.1.10R(2)(b) (which deals with *clients* in the *United Kingdom*).

- 1.3.7 G Table: Private or personal life and *COCON*

Description of conduct	Whether generally within the scope of <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R
Misconduct by M in relation to a fellow member of the workforce while both are on their <i>firm's</i> premises.	Yes
Misconduct by M in relation to a fellow member of the workforce	Yes

while M is working remotely for their <i>firm</i> .	
Misconduct by M in relation to a family member while M is working remotely for their <i>firm</i> .	No
Misconduct by M in relation to a member of the public while M is commuting to or from their <i>firm</i> 's place of business for work.	No
Misconduct by M in relation to a fellow member of the workforce when both are travelling to a meeting in which they will represent their <i>firm</i> .	Yes
Misconduct by M in relation to a client at a business meeting in which M is representing their <i>firm</i> .	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by their <i>firm</i> .	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by M or another member of the workforce in their personal capacity.	<p>No</p> <p>However:</p> <p>(1) An occasion organised by a manager may be within the scope of <i>COCON</i>, taking into account that the manager's direct reports may feel obliged to attend.</p> <p>(2) If the event takes place after a <i>firm</i> event but at a separate location or venue, it may be within the scope of <i>COCON</i> if it is a continuation of the first event or if the conduct started at the first event and continued in the new venue. Otherwise, <i>COCON</i> is likely to cease to apply because the connection between the event and the activities of the <i>firm</i> has been lost.</p>
Misconduct by M at a social occasion, a meeting, a round table, an awards ceremony, a training	Yes

course or a workshop, in each case organised by a client of their <i>firm</i> , another <i>firm</i> , an industry body, a training organisation or a regulator, in which they will represent their <i>firm</i> or where the main reason for the invitation is their working for their <i>firm</i> .	
M is a member of a profession (such as an accountant, actuary or lawyer) and practises that profession in their job with their <i>firm</i> . M carries out misconduct at an event organised by a third party to meet the professional requirements of that profession or by the regulator of that profession.	Yes
<p>M publishes material on a personal social media account (including sending it on a messaging app) held by M.</p> <p>As this table only covers whether conduct takes place in M's private life (and hence is outside the scope of <i>COCON</i> under <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R), this example assumes that the publication would otherwise breach <i>COCON</i>.</p>	<p>This is an example of how it is not possible to give a definitive answer to a scenario based on a single element.</p> <p>Factors to take into account include:</p> <ul style="list-style-type: none"> <li>• whether the material is directed at a fellow member of the workforce (if it is, that points towards the conduct being within scope);</li> <li>• whether there is another connection between M and the subject of the misconduct that is not based on M's work with their <i>firm</i> (if there is such a connection, that may point away from the application of <i>COCON</i>);</li> <li>• whether it is part of a course of conduct that includes other incidents that are more closely connected with M's work at the <i>firm</i>;</li> <li>• whether the content of the social media posts is related to work at the <i>firm</i>;</li> <li>• whether M uses a work-issued device.</li> </ul> <p>The fact that M uploads the posts during working hours or while on the <i>firm</i>'s premises is not a strong factor</p>



	<p>pointing towards the application of <i>COCON</i>.</p> <p>If the conduct takes place over the <i>firm's</i> systems (for instance through the <i>firm's</i> e-mail system) it is likely to be within the scope of <i>COCON</i>.</p>
<b>Notes</b>	
(1) 'M' refers to the member of a <i>firm's conduct rules staff</i> carrying out the conduct in question.	
(2) 'Yes' means that, in accordance with <i>COCON</i> 1.3.5G(3)(a), the scenario is based on a factor that points towards the conduct being within <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R and thus within the scope of <i>COCON</i> unless excluded by <i>COCON</i> 1.1.1AR to <i>COCON</i> 1.1.5AR (To whom does it apply?), <i>COCON</i> 1.1.7AR to <i>COCON</i> 1.1.7FR or by <i>COCON</i> 1.1.8BR to <i>COCON</i> 1.1.11CR (Where does it apply?).	
(3) 'No' means that, in accordance with <i>COCON</i> 1.3.5G(3)(b), the scenario is based on a factor that points towards the conduct being outside <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R and thus outside the scope of <i>COCON</i> .	

- 1.3.8 G However, conduct excluded from *COCON* as described in the table in *COCON* 1.3.7G can still be relevant to fitness and propriety, as described in *FIT* 1.3 (Assessing fitness and propriety).
- 1.3.9 G The scope of *COCON* is not limited to conduct that is authorised by the *firm* or carried out with a view (misguided or not) that it is for the *firm's* benefit. Conduct is not excluded from the scope of *COCON* just because the *firm* forbids it (for instance, in a staff handbook) or it is calculated to harm the *firm*. Thus, for example, the following conduct is within the scope of *COCON* 1.1.6R to *COCON* 1.1.7R:
- (1) misappropriating a client's or the *firm's* assets;
  - (2) providing false or inaccurate details about the member of the *conduct rules staff's* training, qualifications, past employment record or experience;
  - (3) misusing the assets or confidential information of a client or the *firm* to make a personal profit;
  - (4) misconduct against a client;
  - (5) harassment of a fellow member of the workforce; and
  - (6) maliciously sabotaging a *firm's* information technology systems or altering or erasing its data.

## SMCR financial activities

- 1.3.10 G *COCON* 1.3.11G to *COCON* 1.3.16G deal with a *conduct rules staff* member for whom the scope of *COCON* is limited to conduct in relation to their *firm's SMCR financial activities* by *COCON* 1.1.7AR.
- 1.3.11 G When *COCON* is restricted to *SMCR financial activities*, it covers more than conduct involving direct dealings with counterparties and customers (and potential ones) or their assets at the point of sale or at the time of the transaction or service. It can also cover matters such as the following:
- (1) conduct arising out of such direct dealings, such as record-keeping, valuations and reporting;
  - (2) after-sale or post-transaction activities such as settlement, queries, dealing with the exercise of rights by the *firm* or the customer, complaints, cancellations, renewals and generally dealing with the customer or counterparty through the lifecycle of the product or relationship;
  - (3) designing and operating policies and procedures relating to the conduct of the *firm's* relationship with counterparties and customers, such as:
    - (a) product or services design;
    - (b) policies and procedures about what services and products to sell or buy;
    - (c) policies and procedures about product distribution;
    - (d) policies and procedures for the conduct of the relationship between the *firm* and a customer in relation to products and services already sold or delivered; and
    - (e) policies and procedures for the monitoring of customer outcomes for products and services already sold or delivered; and
  - (4) management and monitoring of these activities.
- 1.3.12 G *COCON* is not restricted to the activities in *COCON* 1.3.11G. For example, it covers:
- (1) participation in meetings of the *firm's governing body* and its committees and other management forums;
  - (2) conduct in relation to internal systems, controls and operations supporting the activities in *COCON* 1.3.11G;

- (3) conduct in relation to acquisition and management of resources used to support the activities in *COCON* 1.3.11G; and
- (4) conduct in relation to systems and controls to monitor and control risks such as liquidity, operational, solvency, market and trading risks.
- 1.3.13 G (1) Conduct of an individual is not within the scope of *COCON* just because it is carried on in relation to an activity of their *firm* that is connected to an *SMCR financial activity* that is carried on by the *firm* but that is not itself an *SMCR financial activity*.
- (2) For example, the misconduct of the *employee* in the following examples is not within the scope of *COCON*:
- (a) A *firm*'s main business is to sell physical goods. It sells some of them on credit and so has *permission* for consumer credit. An *employee* steals some of the *firm*'s stock.
- (b) A *firm*'s main business is to sell cars. It also sells connected insurance and so has *permission* for *insurance distribution activities*. An *employee* commits a serious driving offence while moving one of the cars the *firm* sells.
- (3) However, conduct in (2) is relevant to the fitness and propriety under *FIT* of the *employee*, if the *employee* is subject to *FIT*.
- 1.3.14 G (1) *COCON* 1.1.7FR says that the restriction of the scope of *COCON* to conduct in relation to a *firm*'s *SMCR financial activities* under *COCON* 1.1.7AR does not apply to harassment or similar conduct in relation to a fellow member of the workforce. Instead, *COCON* 1.1.7FR(5) excludes such conduct if it clearly only relates to a part of the *firm*'s business that does not carry on *regulated activities* or other *SMCR financial activities*, as illustrated further in the table in *COCON* 1.3.15G.
- (2) *COCON* 1.3.15G gives examples of how the exclusion in *COCON* 1.1.7FR(5) applies to conduct of a *conduct rules staff* member in relation to a fellow member of the workforce when a *firm* has both a financial services business and a non-financial services business.
- (3) The example relates to internal audit. The example corresponds to the example in *SYSC* 25.3.4G (Management responsibilities maps: Exclusion of non-financial services activities for some firms).
- 1.3.15 G Table: Application of *COCON* to a firm with mixed businesses

Description of business	Whether generally within the scope of <i>COCON</i>
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<p>(1) F's internal audit function covers its entire business without separating the parts that deal with its financial services business and its other business. The <i>conduct rules staff</i> member carrying out the misconduct and the subject of the misconduct work in the internal audit function.</p>	<p>The conduct is within scope.</p>
<p>(2) Same as (1) except that the subject of the misconduct works outside the internal audit function.</p>	<p>The conduct is within scope even if the subject of the misconduct works for the non-financial services part of the business.</p>
<p>(3) F separates the part of its internal audit function that deals with its financial services business from the part that deals with the other part of its business. Both the <i>conduct rules staff</i> member carrying out the misconduct and the subject of the misconduct work in the part of the internal audit function that does not deal with the financial services business.</p>	<p>The conduct is outside scope. It would be within scope if either the <i>conduct rules staff</i> member carrying out the conduct or the subject of the conduct work in the part of the internal audit function that deals with the financial services business.</p>
<p>(4) F's internal audit function covers its entire business as described in (1). Within the function, certain individuals deal with the financial services business, and other individuals deal with the non-financial services business. The <i>conduct rules staff</i> member carrying out the misconduct deals with the financial services part of F's business and the subject of the misconduct deals with the non-financial services business or vice versa.</p>	<p>The conduct is within scope.</p>
<p>(5) F's internal audit function covers F's and the rest of its <i>group's</i> entire business without separating the parts that deal with the <i>group's</i> financial services business and the <i>group's</i> other business. The <i>conduct rules staff</i> member carrying out the misconduct works in the internal audit function and the subject of the misconduct works in another company in F's <i>group</i>.</p>	<p>The conduct is within scope.</p>

<p>(6) F's internal audit function covers the whole of its <i>group's</i> activities. F separates the part of the internal audit function that deals with the <i>group's</i> financial services business from the part that deals with the other part of the <i>group's</i> business. The <i>conduct rules staff member</i> carrying out the misconduct works in the part of the internal audit function that does not deal with the financial services business. The subject of the misconduct works in another company in the <i>firm's group</i>.</p>	<p>The conduct is outside scope.</p> <p>It is outside scope even if the subject of the misconduct's job involves <i>SMCR financial activities</i> carried out by another company in F's <i>group</i>. This is because, even if the conduct relates to <i>SMCR financial activities</i>, it does not relate to <i>SMCR financial activities</i> carried on by F.</p>
<b>Notes</b>	
<p>(1) When the table says that conduct is outside scope, that means that <i>COCON</i> 1.1.7FR does not apply and instead <i>COCON</i> 1.1.7AR or <i>COCON</i> 1.1.7BR applies.</p>	
<p>(2) When the table says that conduct is within scope, that means that <i>COCON</i> 1.1.7FR applies and the conduct is within the scope of <i>COCON</i> unless excluded by <i>COCON</i> 1.1.1AR to <i>COCON</i> 1.1.5AR (To whom does it apply?) <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R (To what conduct does it apply? (Limitations in the Act)) or by <i>COCON</i> 1.1.8BR to <i>COCON</i> 1.1.11CR (Where does it apply?).</p>	
<p>(3) See <i>COCON</i> 4.3.16G (Subject of the misconduct) for the meaning of the phrase 'subject of the conduct'.</p>	
<p>(4) 'F' refers to the <i>firm</i> for which the member of the <i>conduct rules staff</i> carrying out the conduct in question works.</p>	

- 1.3.16 G The flow diagram in *COCON* 4 Annex 1 3.7G gives further *guidance* on how *COCON* 1.1.7FR works.

#### Benchmark firms

- 1.3.17 G *COCON* 1.1.7FR also applies to a *pure benchmark SMCR firm* to which the restrictions in *COCON* 1.1.7BR apply. The flow diagram in *COCON* 4 Annex 1 3.7G gives further *guidance* on how *COCON* 1.1.7FR works for such a *firm*.

Insert the following new Annex, *COCON* 1 Annex 2, after *COCON* 1 Annex 1 (Guidance on the role and responsibilities of non-executive directors of SMCR firms). The text is all new and is not underlined.

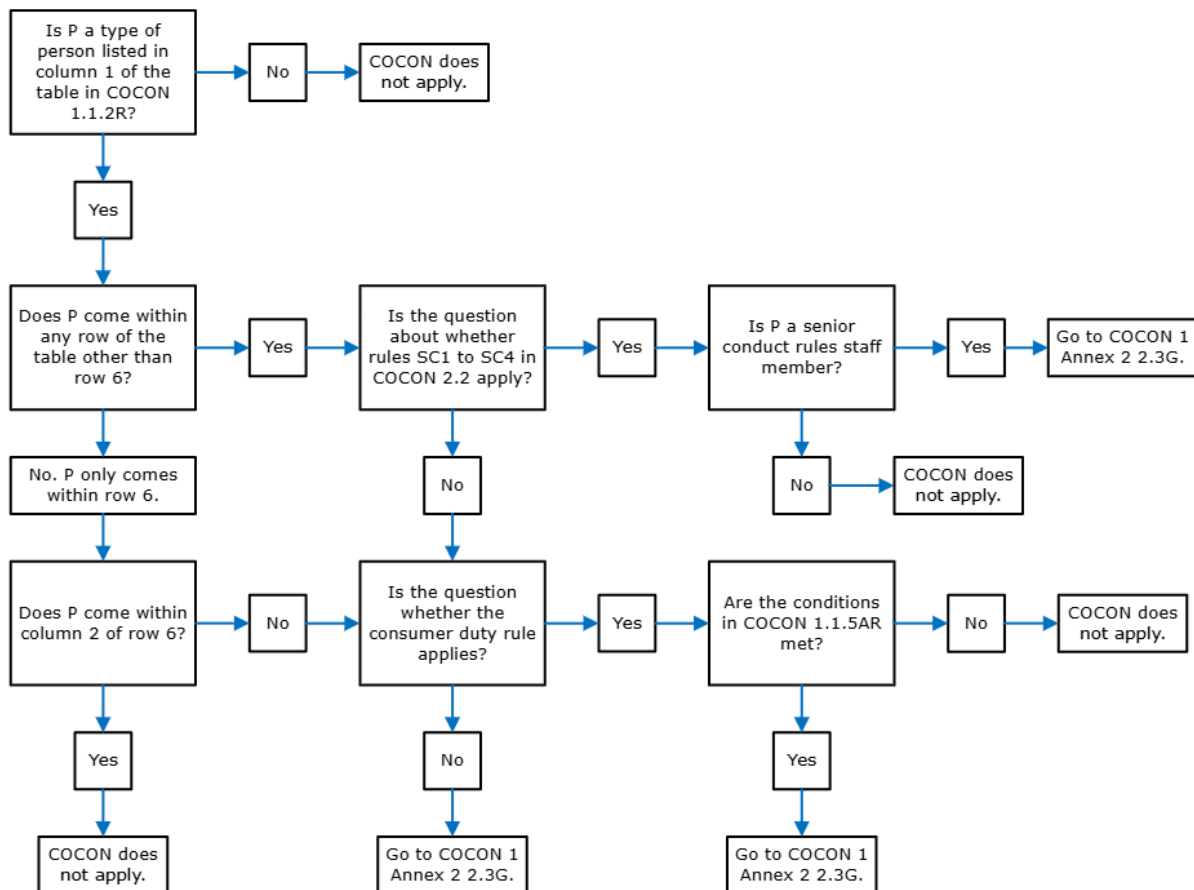
### 1 Annex 2 How the application rules in *COCON* 1.1 (Application) work

## Section 1: Purpose of this Annex and introduction

- 1 Annex 2 1.1 G The purpose of this Annex is to describe how *COCON* 1.1 (Application) works in the form of flow diagrams.
- 1 Annex 2 1.2 G *COCON* does not apply unless all the following conditions are met:
- (1) the person whose conduct is in question is of a kind to whom *COCON* applies (section 2 of *COCON* 1 Annex 2 deals with this);
  - (2) the conduct is of a kind to which *COCON* applies (section 3 of *COCON* 1 Annex 2 deals with this); and
  - (3) the conduct is within the territorial scope of *COCON* (section 4 of *COCON* 1 Annex 2 deals with this).
- 1 Annex 2 1.3 G In this Annex:
- (1) ‘P’ means the person whose conduct is in question;
  - (2) ‘F’ means the *firm* P works for;
  - (3) the ‘consumer duty rule’ means *Rule 6* in *COCON* 2.1; and
  - (4) the ‘harassment rule’ means *COCON* 1.1.7FR.
- 1 Annex 2 1.4 G If a flow diagram in one section of this Annex says that *COCON* does not apply, there is no need to look any further in that flow diagram or in any later flow diagram or section of this Annex.
- 1 Annex 2 1.5 G This Annex deals with the 3 sets of *rules* in *COCON* 1.1 (Who?, What? and Where?) in the same order as *COCON* 1.1. However, a person wanting to see whether conduct is within the scope of *COCON* can apply them in any order. For example, if conduct takes place outside the *UK*, a person may wish to apply the territorial scope *rules* first. If the answer is that the conduct is outside the territorial scope of *COCON*, *COCON* does not apply and there is no need to look at any other part of *COCON* 1.1.
- 1 Annex 2 1.6 G *COCON* 4 Annex 1 contains more detailed flow diagrams dealing with conduct within the harassment rule.

## Section 2: Who does COCON apply to?

- 1 Annex 2 2.1 G This section deals with the types of people *COCON* applies to. It is *guidance* on *COCON* 1.1.1AR to *COCON* 1.1.5AR.
- 1 Annex 2 2.2 G Flow diagram: Who *COCON* applies to



1 Annex 2 2.3 G The flow diagram in *COCON* 1 Annex 2 2.2G does not cover *COCON* 1.1.4R(2).

1 Annex 2 2.4 G *COCON* 1.1.4R(2) says that the only senior manager conduct *rule* in *COCON* 2.2 that applies to a director of a *UK SMCR firm* who is not an *SMF manager* and does not perform the functions of one is *rule* SC4. In particular, that means that the only senior manager conduct *rule* that applies to many *non-executive directors* is SC4.

### Section 3: What conduct COCON applies to: Introduction

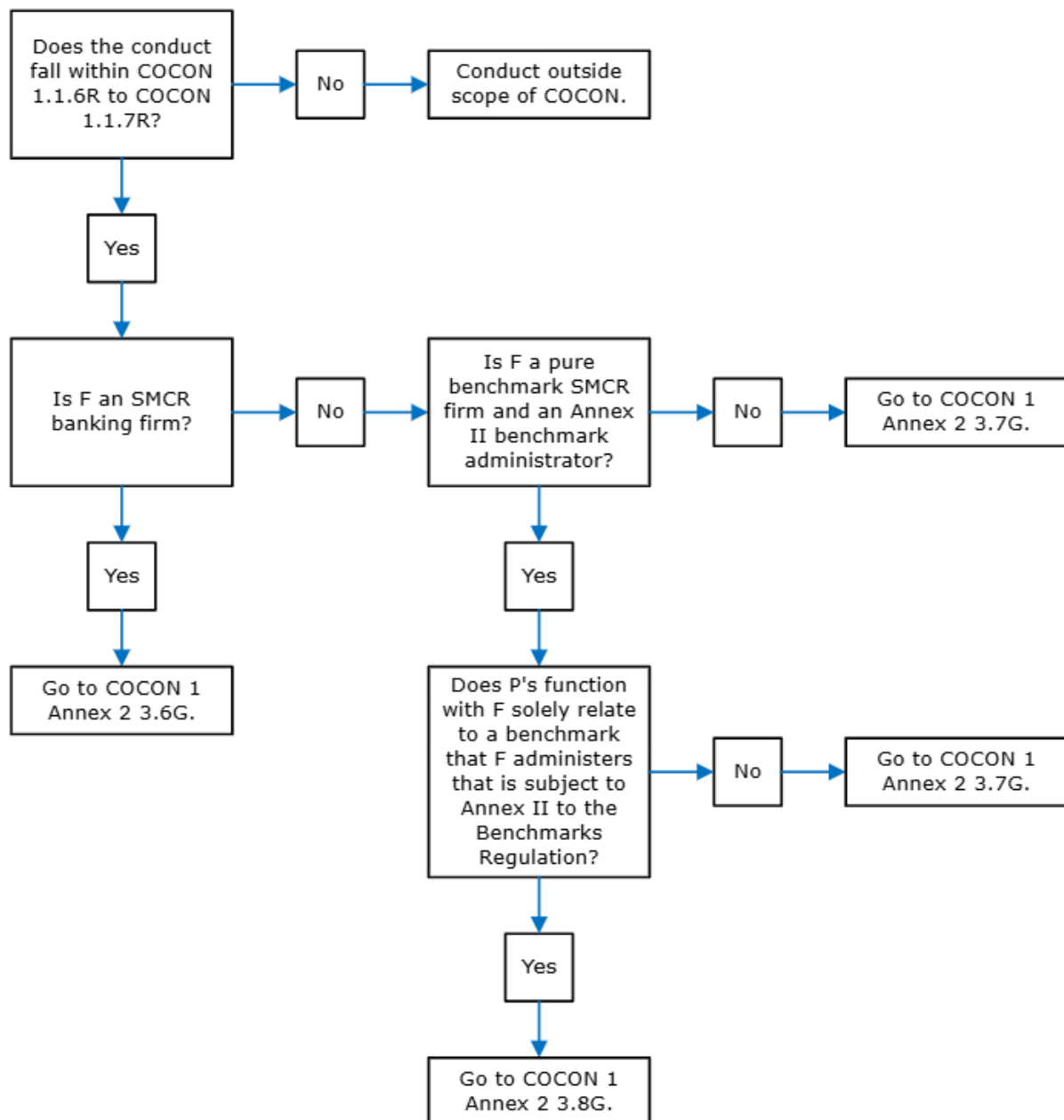
1 Annex 2 3.1 G This section deals with the types of conduct *COCON* applies to. It is *guidance* on *COCON* 1.1.5BR to *COCON* 1.1.8AR. In particular, it explains *COCON* 1.1.5BR.

1 Annex 2 3.2 G *COCON* 1 Annex 2 3.4G contains the first part of the flow diagram. If this part of the flow diagram says that *COCON* does not apply, that means that the conduct in question is not within the scope of *COCON*. There is no need to go further in the flow diagram.

1 Annex 2 3.3 G After that, the flow diagram splits into 3 parts, depending on what kind of *firm F* is.

### What conduct COCON applies to: Questions applicable to all firms

1 Annex 2 G Flow diagram: What conduct COCON applies to: Questions applicable to all  
3.4 firms

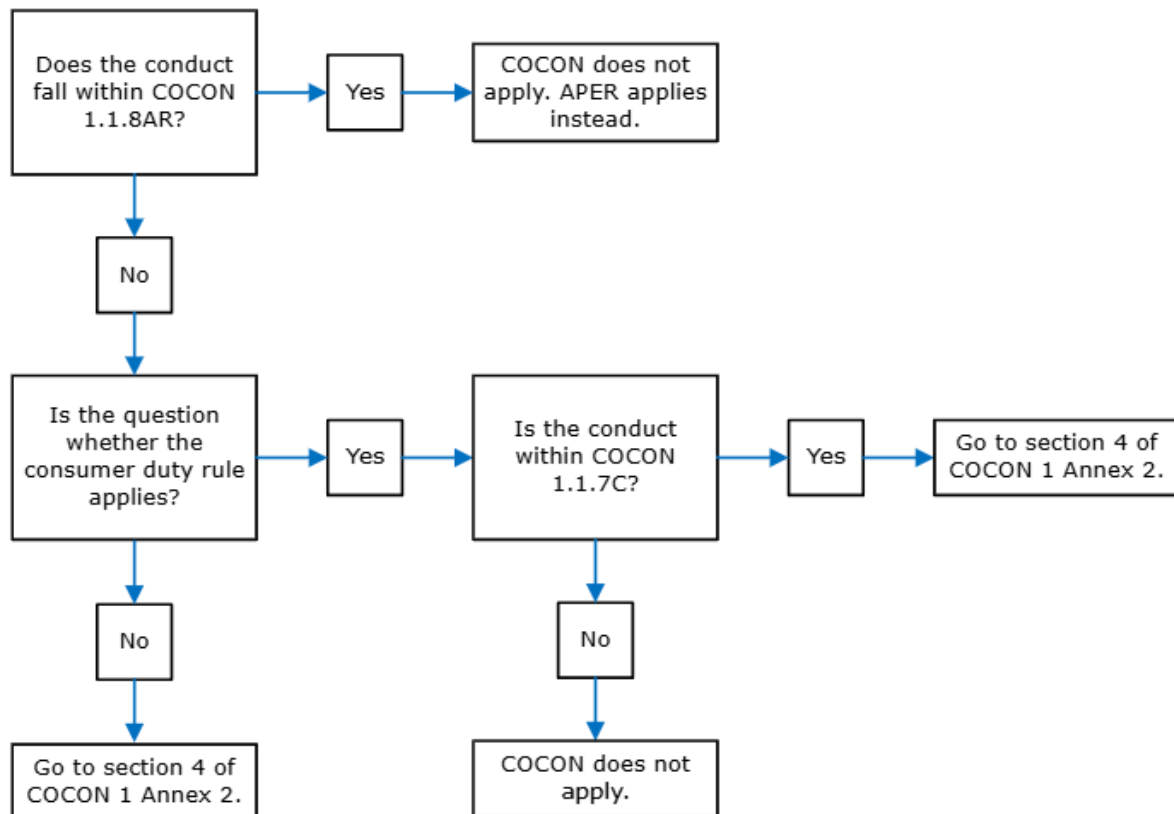


1 Annex 2 3.5 COCON 1.3.2G to COCON 1.3.9G contain *guidance* on COCON 1.1.6R to COCON 1.1.7R as referred to in the flow diagram in COCON 1 Annex 2 3.4G.

What COCON applies to: SMCR banking firms

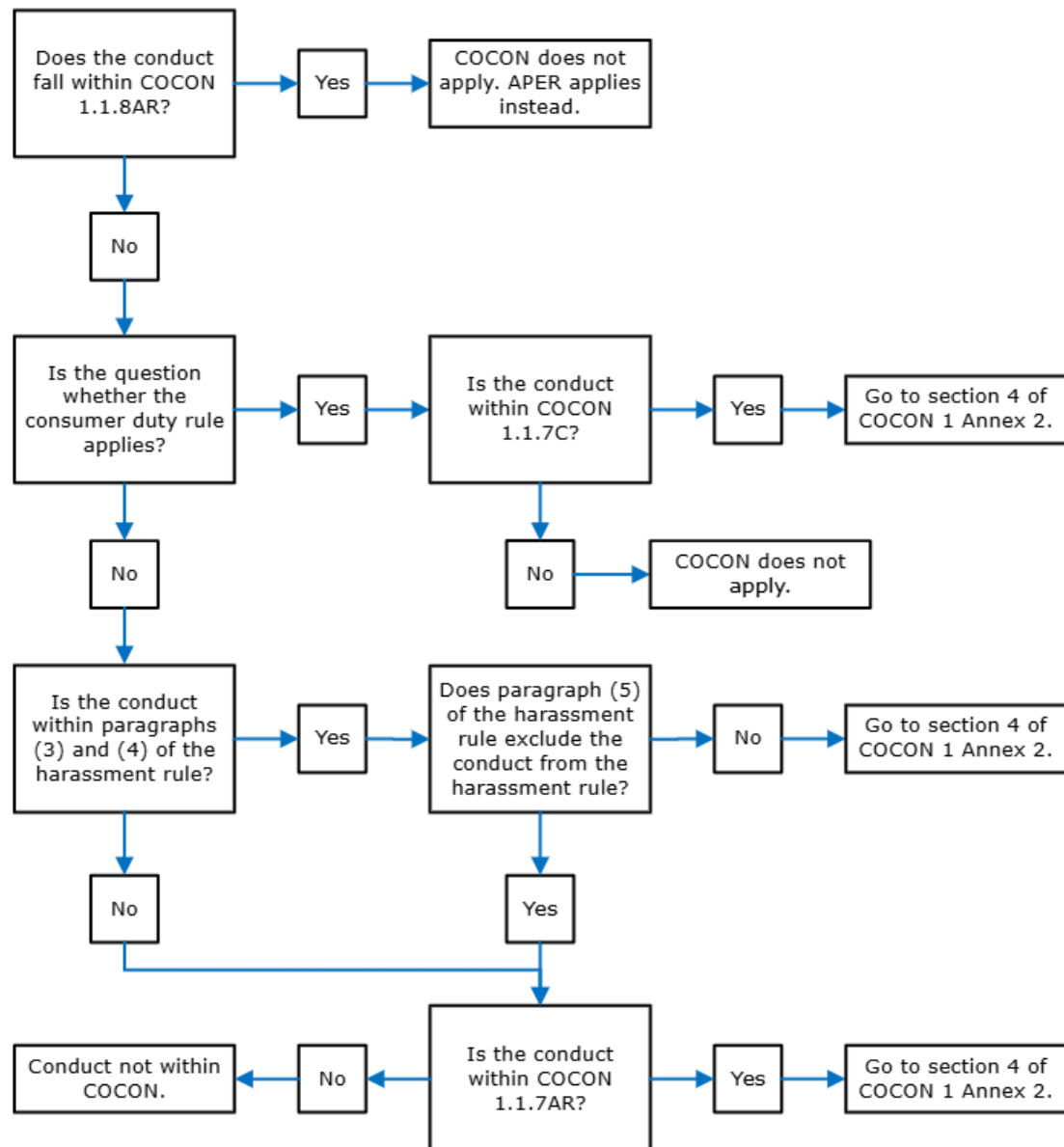
1 Annex 2 G Flow diagram: SMCR banking firms  
3.6





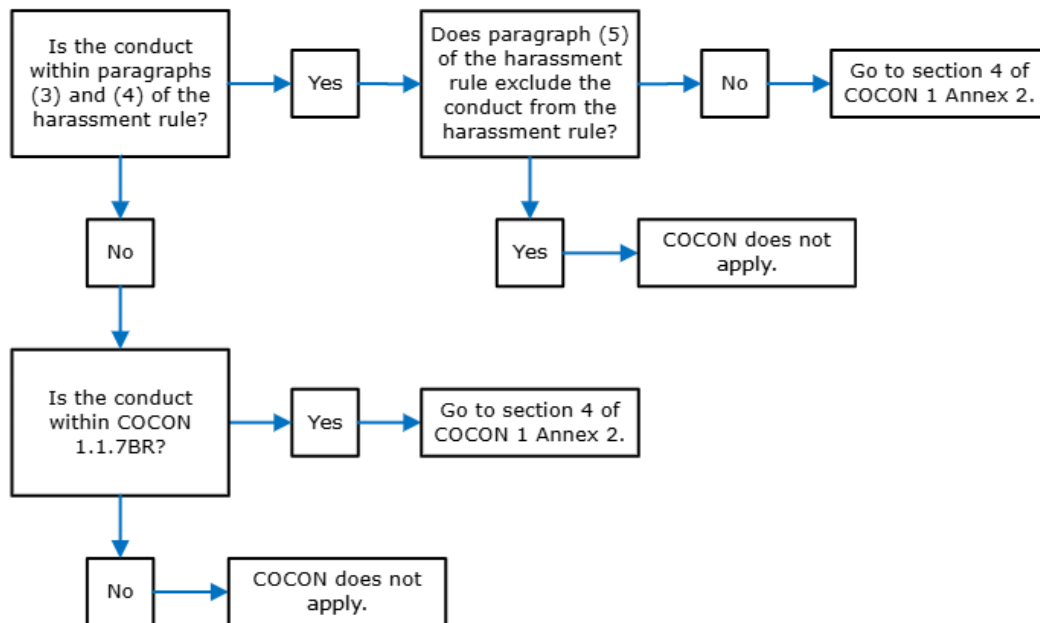
What COCON applies to: Firms other than SMCR banking firms and benchmark administrators

1 Annex 2 3.7 G Flow diagram: Firms other than SMCR banking firms or benchmark administrators



What COCON applies to: Benchmark administrators

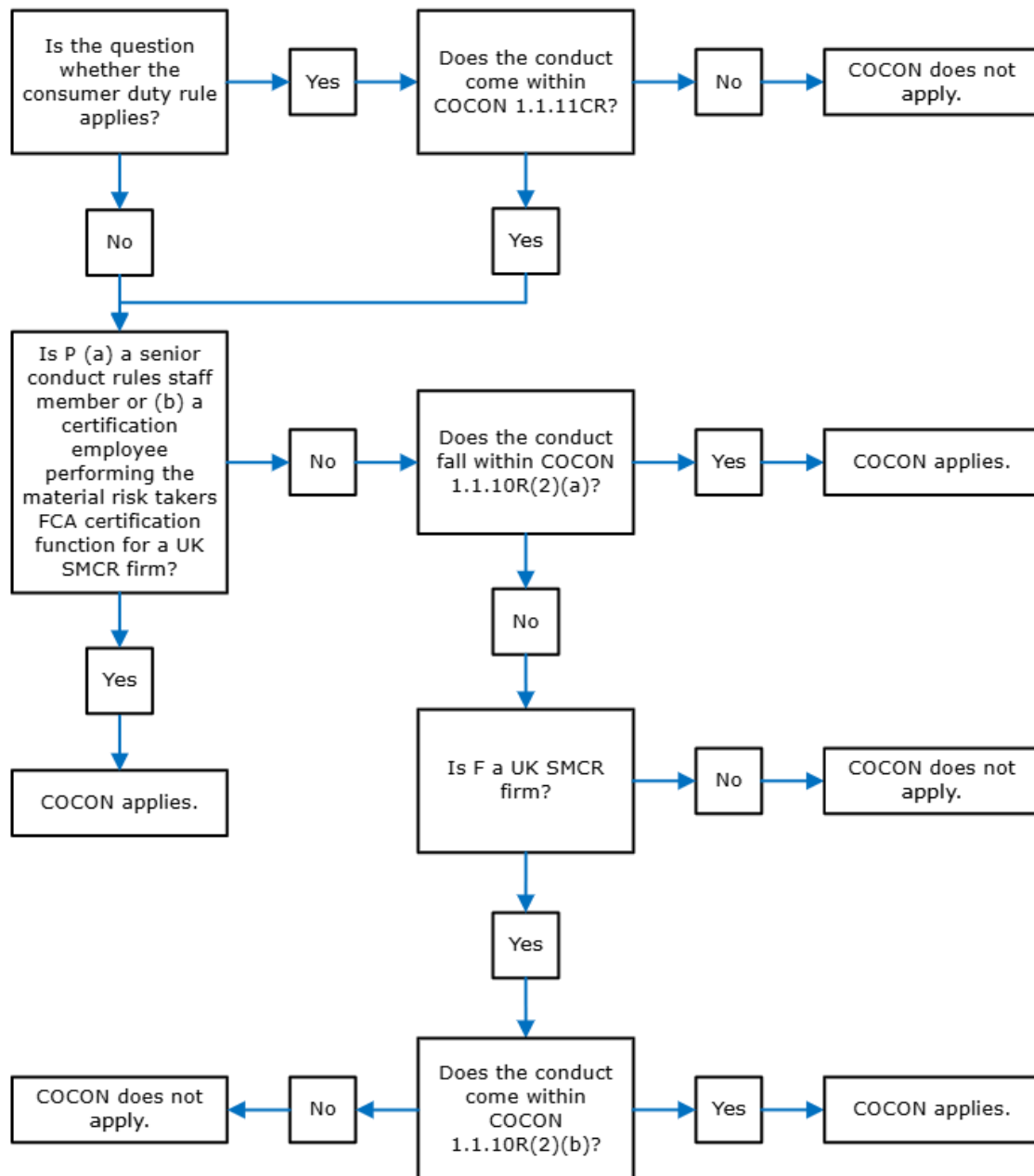
1 Annex 2 G Flow diagram: Benchmark administrators  
3.8



#### Section 4: Territorial scope

1 Annex 2 G This section deals with the territorial scope of *COCON*. It is *guidance* on  
4.1 *COCON* 1.1.8BR to *COCON* 1.1.11DR.

1 Annex 2 G Flow diagram: Territorial scope  
4.2



## Section 5: Topics not covered

- 1 Annex 2 G This Annex does not cover the effect described in *COCON* 1.1.11BG (effect on the territorial scope of *COCON* of the *Regulated Activities Order*) or *COCON* 1.1.12R (requirements of an *EU* measure passed or made before *IP completion day*).
- 5.1

Amend the following as shown.

- 4 **Specific guidance on conduct rules**
- 4.1 **Specific guidance on individual conduct rules**

## Rule 1: You must act with integrity

- 4.1.1 G The following is a non-exhaustive list of examples of conduct that would be in breach of *rule 1*.

...

(19) ...

(20) Subjecting a fellow member of the workforce to significant detriment for complying with *rule 3* in *COCON 2.1* or *rule SC4* in *COCON 2.2*, or for using the *firm's* whistleblowing procedures. While this paragraph may in practice usually be most relevant to a manager, this kind of misconduct can be carried out by any member of the workforce.

(21) Harassment of a fellow member of the workforce (see *COCON 4.3* (Specific guidance on harassment) for more on this).

## Rule 2: You must act with due skill, care and diligence

...

- 4.1.3 G The following is a non-exhaustive list of examples of conduct by any *conduct rules staff* that would be in breach of *rule 2*.

...

(6) ...

(7) Harassment of a fellow member of the workforce (see *COCON 4.3* (Specific guidance on harassment) for more on this).

Acting with due skill, etc as a manager (rule 2): General

- 4.1.3A G In *COCON 4.1.4G* to *COCON 4.1.8-DG*, the term 'manager' is not limited to a line manager.

[*Editor's note*: the amended subheading 'Acting with due skill, etc as a manager (rule 2): General' also applies to *COCON 4.1.5G* to *COCON 4.1.8G*.]

...

- 4.1.8 G ...

Acting with due skill, etc as a manager (rule 2): Harassment in the workforce

- 4.1.8-A G A manager should try to prevent harassment and other kinds of misconduct referred to in *COCON 4.3.1G* (Purpose) that breaches *COCON*. What a manager should do in a particular situation will depend on the exact facts. A manager will not be in breach of *rule 2* if they have acted reasonably. There

will often be a number of different reasonable courses of action that can be taken in a particular case.

4.1.8-B     G     The following is a non-exhaustive list of examples of conduct by a manager in relation to misconduct referred to in COCON 4.1.8-AG that would breach rule 2:

- (1)     failing to take reasonable steps to protect staff against misconduct of that kind, including failing to:
  - (a)     intervene to stop such behaviour where appropriate if the manager knows or should reasonably have known of it;
  - (b)     appropriately operate the *firm*'s policies, systems and controls to detect and prevent such behaviour; and
  - (c)     (if the manager has sufficient authority to do this) set up and maintain such policies, systems and controls;
- (2)     failing to take seriously or to deal appropriately with complaints of misconduct of the type referred to in COCON 4.1.8-AG; and
- (3)     failing to take reasonable steps to provide a safe environment for people to raise concerns about such treatment.

4.1.8-C     G     In considering whether a manager has breached rule 2 for any of the reasons in COCON 4.1.8-BG, the FCA will take into account whether it was reasonable for the manager to take action in the circumstances and whether there were any limits or constraints on the manager's ability to act. For example:

- (1)     the relevant policies and processes may be set elsewhere in the *firm* or its *group*;
- (2)     whether or not the manager has the authority to take action in the particular case may be relevant; and
- (3)     it may be the *firm*'s policy that the *firm*'s human resources function deals with allegations of misconduct.

4.1.8-D     G     A *firm* may allocate responsibility for fair treatment of its staff to a particular senior manager or central function. If it does, this does not absolve other managers of their regulatory responsibilities. COCON 4.1.8-AG is relevant to all the managers referred to in this paragraph.

...

## **4.2     Specific guidance on senior manager conduct rules**

...

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

...

4.2.29 G In determining whether or not a *person's* conduct complies with *rule* SC4 in *COCON* 2.2.4R, the factors which the *FCA* would expect to take into account include:

- (1) whether it would be reasonable for the individual to assume that the information would be of material significance to the regulator concerned; and
- (2) ~~whether the information related to the individual themselves or to their firm; and [deleted]~~
- (3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.

...

Insert the following new section, COCON 4.3, after COCON 4.2 (Specific guidance on senior manager conduct rules). The text is all new and is not underlined.

### 4.3 Specific guidance on harassment

#### Purpose

4.3.1 G This section describes when behaviour that can broadly be described as bullying, harassment, being offensive or insulting or causing distress and similar behaviour in relation to a work colleague is a breach of Individual Conduct *Rule* 1 (*COCON* 2.1.1R) or Individual Conduct *Rule* 2 (*COCON* 2.1.2R).

4.3.2 G Although this section does not cover every kind of misconduct between members of the workforce of a *firm* that might be a breach of Individual Conduct *Rule* 1 or Individual Conduct *Rule* 2, it does describe when behaviour of the kind in *COCON* 4.3.1G will be a breach of those *rules*.

#### Summary

4.3.3 G *COCON* 3.1 (General factors for assessing compliance) is the starting point for deciding whether there has been a breach of *COCON*. Subject to that, behaviour of the kind in *COCON* 4.3.1G is a breach of Individual Conduct *Rule* 1 or Individual Conduct *Rule* 2 if:

- (1) the conduct is of the type described in *COCON* 1.1.7FR(4); and
- (2) the conduct in question involves:

- (a) a lack of integrity (in the case of Individual Conduct *Rule 1*); or
- (b) a failure to act with due skill, care and diligence (in the case of Individual Conduct *Rule 2*).

4.3.4 G The flow diagrams in *COCON* 4 Annex 1 (How *COCON* applies to harassment) explain *COCON* 4.3.3G in more detail and show how to decide whether conduct within *COCON* 4.3.1G is a breach of *COCON*.

#### Application to banks

- 4.3.5 G
- (1) This section applies to an *SMCR banking firm* as well as to other kinds of *SMCR firm*.
  - (2) This section cross refers to *COCON* 1.1.7FR (To what conduct does it apply? (Other limitations: Non-banks: Harassment)) even though that *rule* does not apply to an *SMCR banking firm*.
  - (3) The reason that this section cross-refers to that *rule* in the case of *SMCR banking firms* as well as other kinds of *SMCR firm* is that behaviour of the kind in *COCON* 4.3.1G is only capable of coming within *COCON* if it is of a kind described in *COCON* 1.1.7FR(4). This is the case for both an *SMCR banking firm* and for any other kind of *SMCR firm*.
  - (4) Therefore this section applies *COCON* 1.1.7FR(4) to an *SMCR banking firm* as *guidance* for the purpose of this section.
  - (5) The rest of *COCON* 1.1.7FR is not relevant to an *SMCR banking firm*.

#### Harassment

- 4.3.6 G The factors to take into account in deciding whether conduct comes within *COCON* 1.1.7FR(4) include:
- (1) whether it is serious (see *COCON* 4.3.7G to *COCON* 4.3.11G);
  - (2) its effect (see *COCON* 4.3.12G to *COCON* 4.3.14G);
  - (3) its purpose (see *COCON* 4.3.15G); and
  - (4) the factors in *COCON* 4.3.16G to *COCON* 4.3.18G.

#### Seriousness

- 4.3.7 G *COCON* 1.1.7FR(4) only covers conduct that is serious.



- 4.3.8 G The factors that the *FCA* will take into account when deciding whether misconduct in relation to a fellow member of the workforce is serious enough to amount to a breach of *COCON* include:
- (1) whether the conduct is repeated or part of a pattern;
  - (2) the duration of the conduct;
  - (3) the size of the impact on the subject of the conduct (the *rule* applies to effects which are serious and marked, and not to those which are, though real, of lesser consequence);
  - (4) the seniority of the person whose conduct is in question;
  - (5) the difference in seniority between the person whose conduct is in question and the subject of the conduct and whether the person whose conduct is in question has control or influence over the other's career;
  - (6) mitigating and aggravating factors even if they take place subsequently (the factors in *FIT* 1.3.10G(3) to (7) (Breaches of requirements of the regulatory system) are relevant here also);
  - (7) whether the person whose conduct is in question has been warned or disciplined for similar conduct by the *firm*, a previous employer, the police or a regulator;
  - (8) whether the person whose conduct is in question has previously undertaken not to do the act or engage in the behaviour in question; and
  - (9) whether the conduct is criminal (particularly if it is of the kind described in *FIT* 1.3.22G (Offences)) or would justify dismissal.
- 4.3.9 G Although matters occurring after the conduct in question are generally relevant to mitigation or aggravation rather than to whether conduct is a breach of a *rule* in the first place, *COCON* 4.3.8G(6) includes such matters because one of the elements in judging whether conduct is serious enough to be a breach of *COCON* is whether the conduct is repeated or part of a pattern.
- 4.3.10 G Whether or not misconduct has been the subject of a formal complaint is not generally relevant to the seriousness of that conduct. The fact that it has been the subject of such a complaint may be relevant evidence, for instance in helping to show what the effect of the conduct was.
- 4.3.11 G As respects *COCON* 4.3.8G(8):
- (1) The mere fact that the person whose conduct is in question has, in accordance with the *firm's* general policy, undertaken to comply with the *firm's* staff handbook or other internal policies for staff and

the conduct in question breaches a requirement of such policies is unlikely to be of great significance.

- (2) The fact that, before the misconduct in question, the *firm* has warned the individual in question about conduct of that type or has required the individual to undertake not to repeat conduct of that type is likely to be significant.

#### Effect of the conduct

- 4.3.12 G In deciding whether conduct has the effect in *COCON* 1.1.7FR(4)(a), it is necessary to take into account all the circumstances of the case. *COCON* 4.3.13G and *COCON* 4.3.14G cover 2 factors that are always relevant.
- 4.3.13 G One of those factors is the perception of the subject of the misconduct. The result of this subjective question is that if the subject of the conduct does not perceive their dignity to have been violated, or any of the other things referred to in *COCON* 1.1.7FR(4)(a) to have occurred, then the conduct should not be found to have had that effect.
- 4.3.14 G The second of the factors referred to in *COCON* 4.3.12G is whether it is reasonable for the conduct to have had the effect in *COCON* 1.1.7FR(4)(a). The result of this objective question is that if it was not reasonable for the conduct to be regarded as violating the dignity of the subject of the conduct or creating any of the other effects in *COCON* 1.1.7FR(4)(a), then it should not be found to have done so.

#### Purpose of the conduct

- 4.3.15 G The purpose of conduct as well as its effect is relevant to whether it is of the type described in *COCON* 1.1.7FR(4)(a). *COCON* 1.1.7FR(4)(a) covers conduct whose purpose is to violate dignity or to cause any of the other effects described in that *rule* even if the conduct does not actually have that effect. For example, a person may breach *COCON* if they send a hostile and intimidatory communication that is intercepted by the employing *firm* before it is received by the person to whom it is sent.

#### Subject of the misconduct

- 4.3.16 G (1) If behaviour has the effect described in *COCON* 1.1.7FR(4)(a) on an individual listed in *COCON* 1.1.7FR(3), it can still be a breach of *COCON* if it is targeted at someone else or it is not targeted at anyone.
- (2) Thus, a person's conduct can breach *COCON* by reason of its effect on a witness to that conduct.
- (3) References in this section to the subject of conduct or misconduct and similar phrases should be interpreted accordingly.

#### Single incident

- 4.3.17 G Conduct can come within *COCON* 1.1.7FR(4) whether it consists of a single incident, several incidents or a course of conduct.

Physical acts

- 4.3.18 G Conduct within *COCON* 1.1.7FR(4) covers a wide range of behaviour. It is not limited to words, communications and gestures. For example, it can also cover physical violence.

Individual Conduct Rule 1

- 4.3.19 G (1) Conduct only breaches Individual Conduct *Rule* 1 if it involves a lack of integrity.
- (2) A person does not show a lack of integrity merely because they act without due care. A lack of integrity involves an element of intention, recklessness or turning a blind eye (for example, being aware that something is likely but avoiding confirming it).
- 4.3.20 G While this section does not set out a complete explanation of what integrity means, one consequence of *COCON* 4.3.19G is that misconduct in relation to a fellow member of the workforce falls outside the scope of *rule* 1 if the *conduct rules staff* member:
- (1) thought that:
- (a) there was an appropriate reason for the conduct; and
- (b) the conduct and its intended effect were proportionate to the intended aim of the conduct; or
- (2) did not intend to have an effect on the subject of the misconduct of the kind described in *COCON* 1.1.7FR(4), did not know that they were doing so and was not reckless about the effect of their conduct.
- 4.3.21 G A belief of the kind referred to in *COCON* 4.3.20G(1) should be reasonable. An unreasonable belief that conduct is justified may itself show a lack of integrity. For example, the fact that the individual carrying out the conduct in question believes that sexual harassment is not blameworthy is not a reason for Individual Conduct *Rule* 1 not to apply.
- 4.3.22 G Conduct excluded from *rule* 1 under *COCON* 4.3.19G may fall under *rule* 2 instead.

Individual Conduct Rule 2

- 4.3.23 G (1) Conduct only breaches Individual Conduct *Rule* 2 if it involves a lack of due skill, care and diligence.
- (2) For example, a *conduct rules staff* member carrying out conduct falling within *COCON* 1.1.7FR(4)(a) will not breach the *rule* if a

reasonable person with the skills that the *conduct rules staff* member carrying out the conduct has and ought to have:

- (a) would have thought that the conduct would not have the effects described in *COCON* 1.1.7FR(4) on the subject of the conduct; or
- (b) would have thought that the conduct was justified.

#### Repeated conduct

- 4.3.24 G (1) A *conduct rules staff* member may in principle rely on *COCON* 4.3.23G on more than one occasion.
- (2) Nevertheless, repeated instances of the same misconduct could make it less likely that the *conduct rules staff* member did not know that it would have the effects described in *COCON* 1.1.7FR(4) (in the case of Individual Conduct *Rule* 1) or that it would be reasonable to believe that (Individual Conduct *Rule* 2).
- (3) If they have been warned about the behaviour or someone has complained to them about it, it is less likely that they could reasonably think that it is justified.

Insert the following new annex, *COCON* 4 Annex 1, after the new *COCON* 4.3 (Specific guidance on harassment), as inserted by this instrument. The text is all new and is not underlined.

#### **4 Annex 1 How *COCON* applies to harassment**

##### Section 1: Purpose of this Annex and introduction

- 4 Annex 1 1.1 G The purpose of this Annex is to describe how *COCON* applies to behaviour of the kind in *COCON* 4.3.1G in the form of flow diagrams. It does not cover when behaviour by a manager relating to such conduct may be a breach of *COCON* or the senior manager conduct *rules* in *COCON* 2.2.
- 4 Annex 1 1.2 G Such behaviour does not breach *COCON* unless all of the following conditions are met:
- (1) the person whose conduct is in question is of a kind to whom *COCON* applies (section 2 of *COCON* 4 Annex 1 deals with this);
  - (2) the conduct is of a kind that comes within *COCON* (section 3 of *COCON* 4 Annex 1 deals with this);
  - (3) the conduct is within the territorial scope of *COCON* (section 4 of *COCON* 4 Annex 1 deals with this); and

- (4) the conduct is a breach of one of the *rules* in *COCON* 2.1 (Individual conduct rules) (section 5 of *COCON* 4 Annex 1 deals with this).

4 Annex  
1 1.3

G In this Annex:

- (1) ‘P’ means the person whose conduct is in question;  
(2) ‘F’ means the *firm* P works for; and  
(3) ‘the harassment rule’ means *COCON* 1.1.7FR.

4 Annex  
1 1.4

G This Annex deals with the 3 sets of *rules* in *COCON* 1.1 (Who?, What? and Where?) in the same order as *COCON* 1.1. However, a person wanting to see whether conduct is within the scope of *COCON* can apply them in any order. For example, if conduct takes place outside the *UK*, a person may wish to apply the territorial scope *rules* first. If the answer is that the conduct is outside the territorial scope of *COCON*, *COCON* does not apply and there is no need to look at any other part of *COCON* 1.1.

4 Annex  
1 1.5

G This Annex is based on the flow diagrams in *COCON* 1 Annex 2 (How the application rules in *COCON* 1.1 (Application) work) with parts not relevant to the harassment rule removed and with more detail about harassment added.

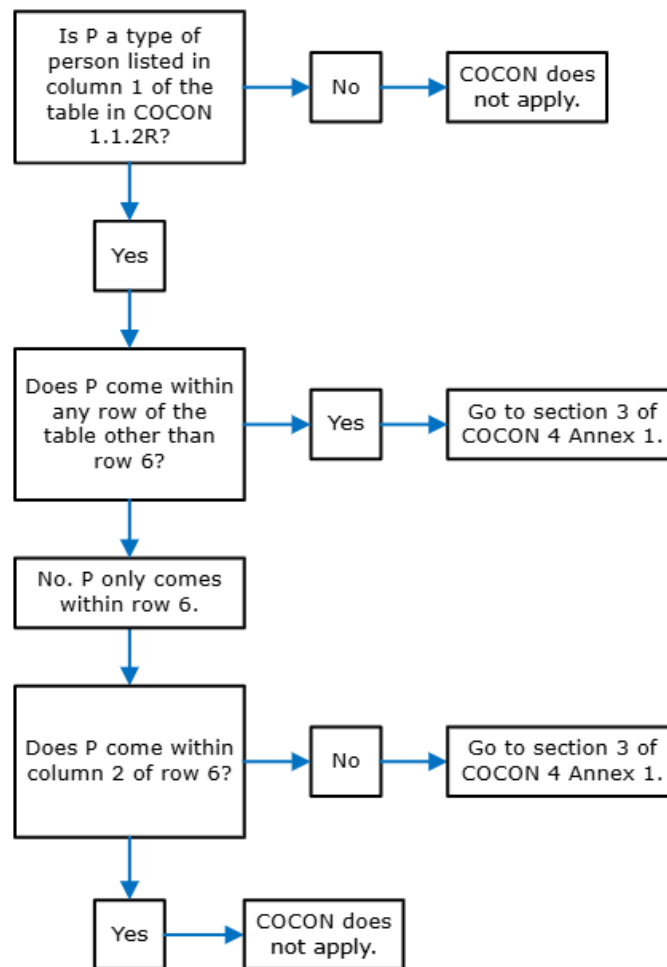
## Section 2: Who does COCON apply to?

4 Annex  
1 2.1

G This section deals with the types of people *COCON* applies to where the question is whether behaviour of the kind in *COCON* 4.3.1G comes within *COCON*.

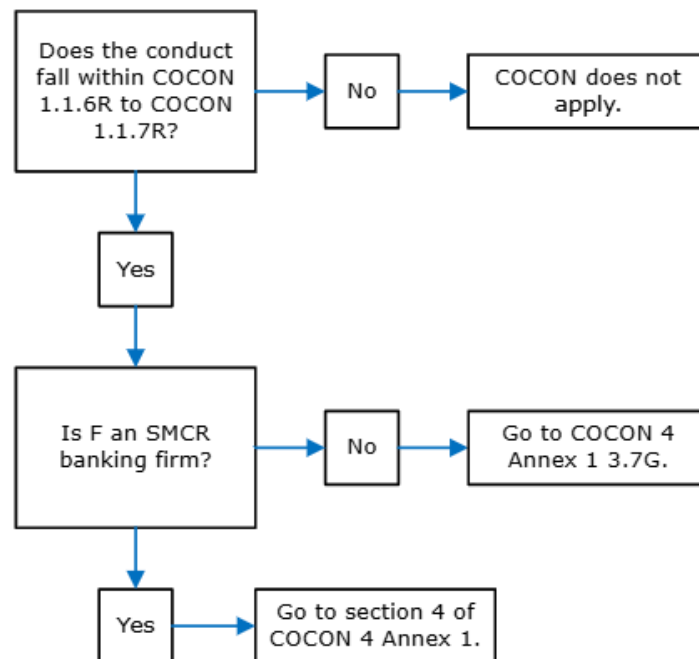
4 Annex  
1 2.2

G Flow diagram: Who COCON applies to

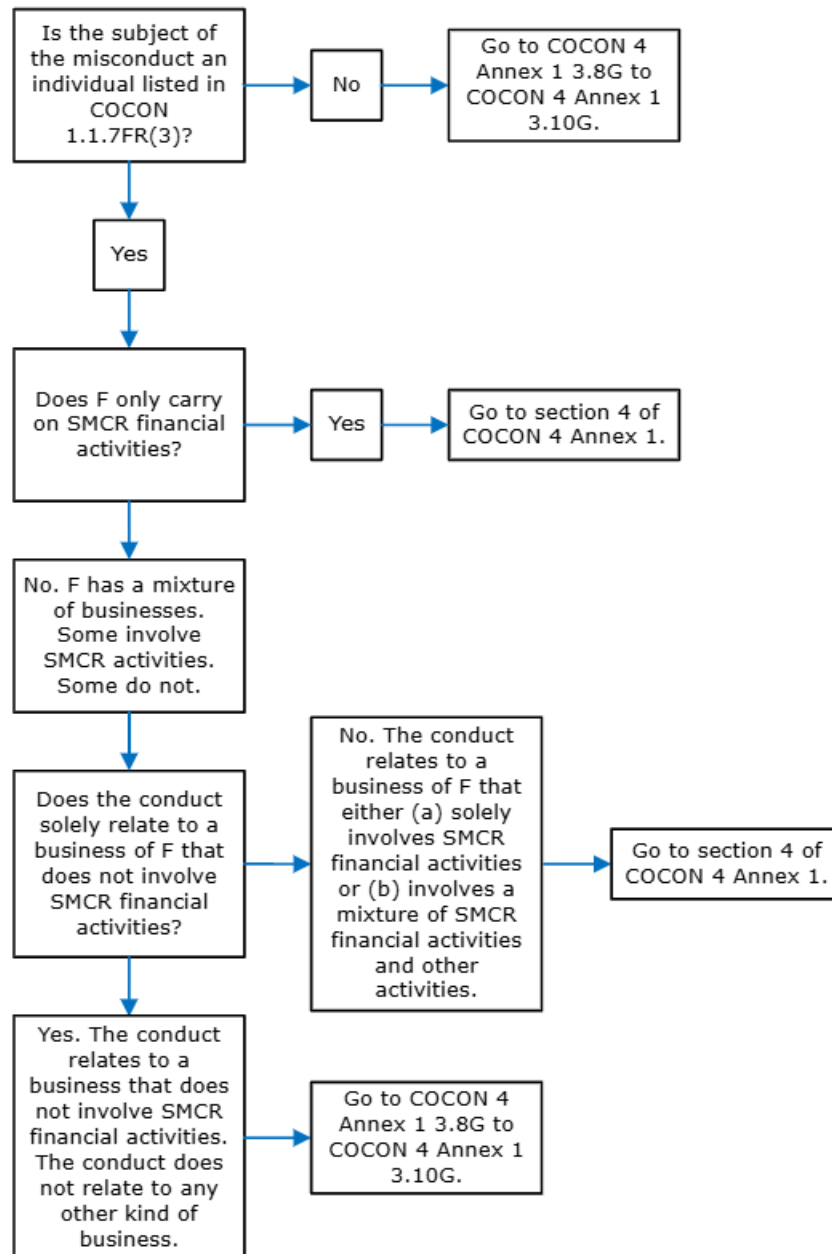


### Section 3: What does COCON apply to?

4 Annex 1 3.1	G	This section deals with what behaviour of the kind in <i>COCON</i> 4.3.1G comes within <i>COCON</i> .
4 Annex 1 3.2	G	<i>COCON</i> 4 Annex 1 3.4G contains the first part of the flow diagram. If this part of the flow diagram says that <i>COCON</i> does not apply, that means that the conduct in question is not within the scope of <i>COCON</i> . There is no need to go further in the flow diagram.
4 Annex 1 3.3	G	There is then a second flow diagram ( <i>COCON</i> 4 Annex 1 3.7G), which applies when P works for any kind of <i>SMCR firm</i> except for an <i>SMCR banking firm</i> .
4 Annex 1 3.4	G	Flow diagram: Conduct COCON applies to: Flow diagram applying to all firms

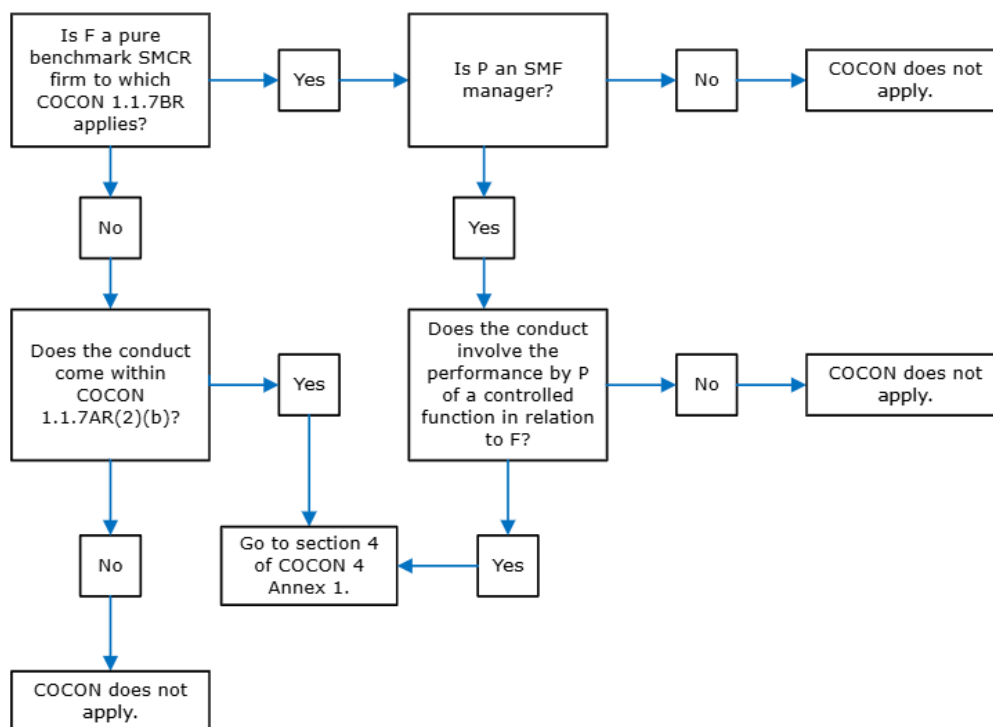


- 4 Annex 1 3.5 G *COCON* 1.3.2G to *COCON* 1.3.9G contain *guidance* on *COCON* 1.1.6R to *COCON* 1.1.7R as referred to in the flow diagram in *COCON* 4 Annex 1 3.4G.
- 4 Annex 1 3.6 G
- (1) As explained in *COCON* 4 Annex 1 1.1G, this Annex only covers misconduct in respect of a work colleague.
  - (2) *COCON* 1.1.7FR(3) (To what conduct does it apply? (Other limitations: Non-banks: Harassment)) deals with that restriction in the case of an *SMCR firm* that is not an *SMCR banking firm* and that restriction is reflected in the flow diagrams in this Annex.
  - (3) *COCON* 1.1.7FR(3) does not apply to an *SMCR banking firm*. In the case of an *SMCR banking firm*, the *rules* in *COCON* do not have a restriction based on whether conduct relates to a work colleague. Therefore, the flow diagrams in this Annex do not reflect the restriction of the scope of this Annex described in (1) in the case of an *SMCR banking firm*.
- 4 Annex 1 3.7 G Flow diagram: Conduct COCON applies to: Firms other than SMCR banking firms



- 4 Annex 1 3.8 G If the result of applying the flow diagram in *COCON* 4 Annex 1 3.7G is that reference is made to this paragraph, the conduct is not within the harassment rule. In turn, that normally means that the conduct is not a breach of *COCON*.
- 4 Annex 1 3.9 G However, the conduct can still be a breach of *COCON* in accordance with the flow diagram in *COCON* 4 Annex 1 3.10G.
- 4 Annex 1 3.10 G Flow diagram: Where the harassment rule does not apply

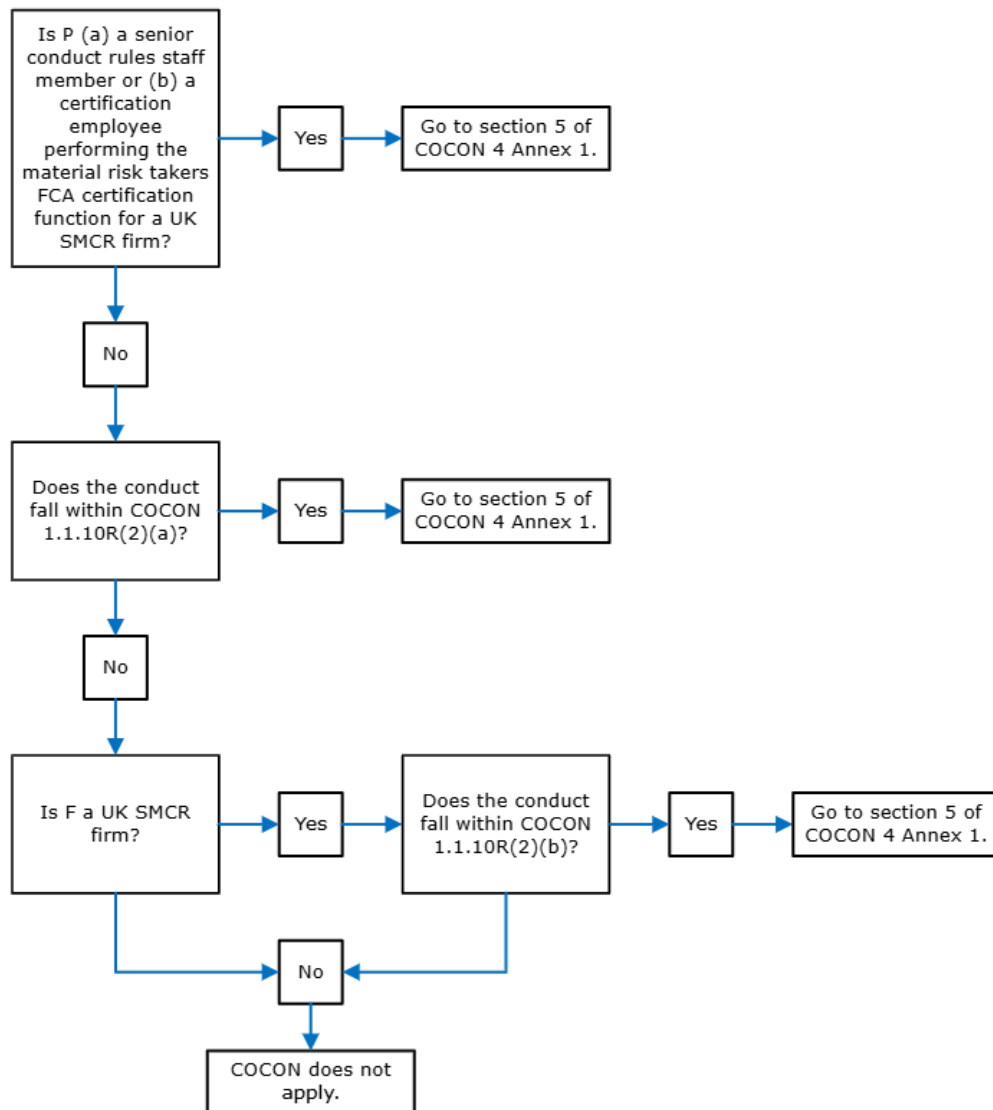




#### Section 4: Territorial scope of COCON

4 Annex 1 G This section deals with the territorial scope of *COCON*.  
4.1

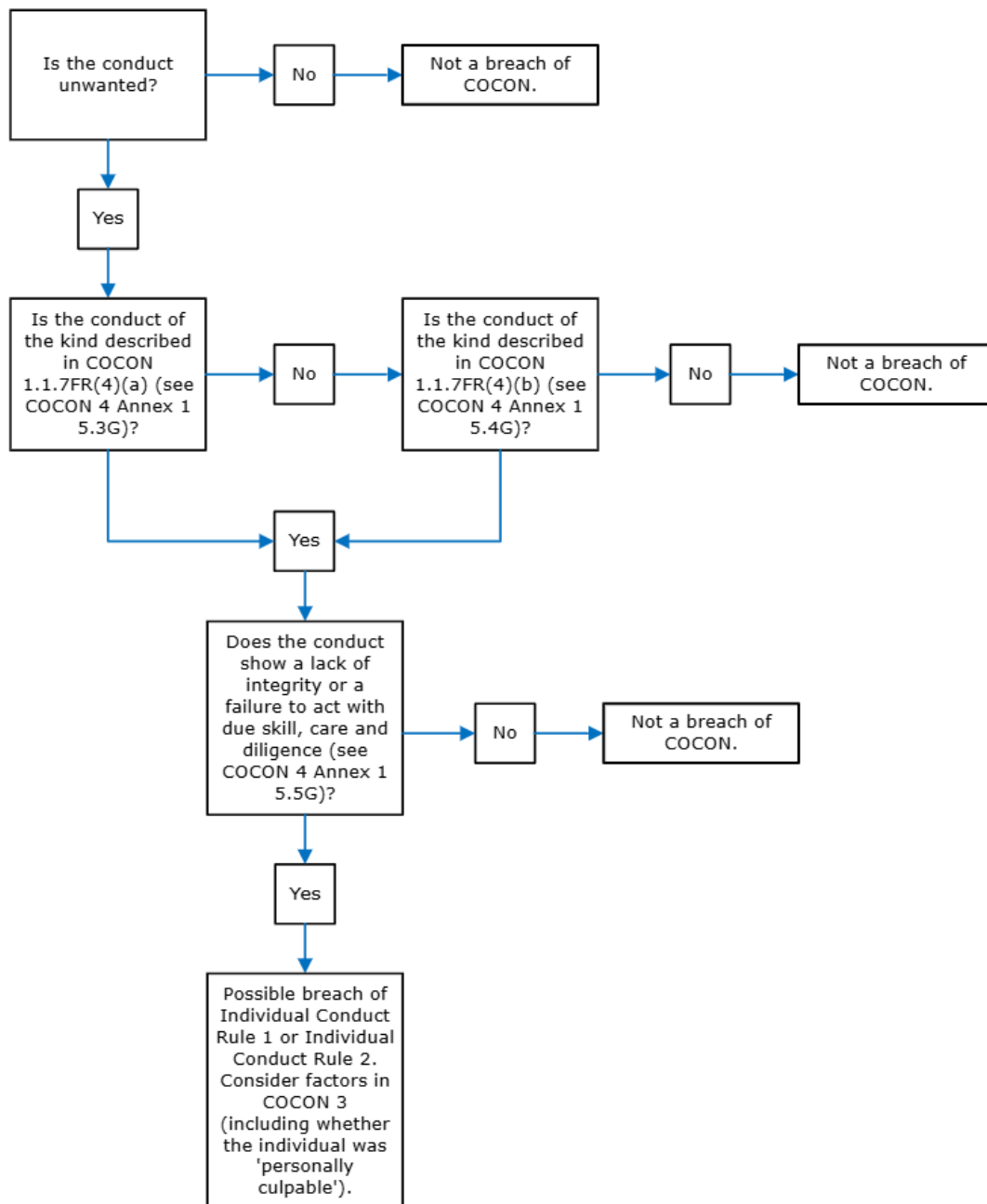
4 Annex 1 G Flow diagram: Territorial scope  
4.2



### Section 5: Final questions

4 Annex 1 5.1 G This section deals with the remaining questions to be asked when deciding whether behaviour of the kind in *COCON* 4.3.1G is a breach of *COCON*.

4 Annex 1 5.2 G Flow diagram: Remaining questions



4 Annex 1 5.3 G *COCON* 4.3.6G to *COCON* 4.3.18G deal with whether conduct is of the kind described in *COCON* 1.1.7FR(4)(a).

4 Annex 1 5.4 G *COCON* 4.3.17G to *COCON* 4.3.18G deal with aspects of whether conduct is of the kind described in *COCON* 1.1.7FR(4)(b).

4 Annex 1 5.5 G *COCON* 4.3.19G to *COCON* 4.3.24G deal with whether conduct otherwise comes within Individual Conduct *Rule* 1 or Individual Conduct *Rule* 2.

## Annex C

## Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

### 1 General

...

### 1.3 Assessing fitness and propriety

#### General matters

[*Editor's note:* the new subheading 'General matters' applies to FIT 1.3.1G to FIT 1.3.5G.]

1.3.1 G ...

...

1.3.3 G (1) An assessment of fitness and propriety should take into account all the factors of the particular case. It would be impossible to produce a definitive list of all the matters that would be relevant to a particular determination. The criteria in this section and in *FIT 2.1* to *FIT 2.3* are not intended to be a definitive list of matters to be considered.

(2) The criteria listed in this section and in *FIT 2.1* to *FIT 2.3* are *guidance* and will be applied in general terms when the *FCA* is determining a *person's* fitness and propriety. ~~It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.~~

(3) A *firm* assessing the fitness and propriety of *staff being assessed under FIT* should be guided by substantially the same criteria as the ones in this section and in *FIT 2.1* to *FIT 2.3* (to the extent applicable to the *firm*), recognising that this is not intended to be a definitive list of matters to be considered.

(4) A *firm* should carry out any assessment of fitness and propriety fairly and in accordance with privacy, employment and other relevant law.

...

1.3.5 G ...

#### Breaches of requirements of the regulatory system

1.3.6 G (1) Breaches (or the risk of future breaches) of the requirements of the *regulatory system* are obviously relevant to fitness and propriety

under the *regulatory system* and thus to *FIT* because they are part of the regime under which fitness and propriety under *FIT* is assessed.

- (2) Such breaches will often take place in an individual's work life but, as explained in *FIT* 1.3.11G, such conduct may also occur outside work.

- 1.3.7 G (1) Breaches of the *regulatory system* include:
- (a) breach of *COCON* or *APER*;
  - (b) (where a *firm* is required to try to ensure that someone in the position of the member of the *staff being assessed under FIT* meets a particular standard) failure to meet that standard; and
  - (c) involvement in a breach by the *firm* of the requirements of the *regulatory system*.
- (2) A requirement in (1)(b) might be one relating to the particular position the member of the *staff being assessed under FIT* holds. It may also be one covering a *firm's* workforce generally or a certain section of it to which the member of the *staff being assessed under FIT* belongs, such as the *competent employees rule*.

- 1.3.8 G A breach of *COCON* or of other requirements of the *regulatory system* can be relevant to fitness and propriety under *FIT* 2.1 (Honesty, integrity and reputation) or *FIT* 2.2 (Competence and capability).

- 1.3.9 G (1) One of the purposes of the fitness and propriety requirement is to ensure that *firms* themselves meet the requirements of the *regulatory system*. Ensuring that its staff are fit and proper will help to ensure that the *firm* itself meets the *threshold conditions* and will comply with the standards of the *regulatory system*.
- (2) Thus, conduct by a member of a *firm's staff being assessed under FIT* may show that member to be unfit if:
- (a) it results in the *firm* not meeting the standards in (1); or
  - (b) it is a factor that points towards the *firm* not meeting those standards, even if the position of the member of the *firm's staff being assessed under FIT* in the *firm* is not sufficiently significant for their misconduct to mean that the *firm* does not meet those standards.

- 1.3.10 G A breach of the requirements of the *regulatory system* does not automatically mean that a member of the *staff being assessed under FIT* is not fit and proper. An assessment should be made on a case-by-case basis. In the case of *COCON*, relevant factors include:

- (1) the seriousness of the breach, taking into account matters such as the following (some of the other sub-paragraphs of this paragraph also contain factors relevant to seriousness):
  - (a) whether the breach involved dishonesty, breach of trust or violence;
  - (b) whether the individual knew that their conduct was a breach of COCON or their firm's internal requirements but carried on the conduct anyway;
  - (c) the vulnerability of those affected by the breach;
  - (d) whether the breach was of Individual Conduct Rule 1 (You must act with integrity: see COCON 2.1.1R), although not every breach of that rule means that the individual is unfit;
  - (e) the harm done; and
  - (f) the factors in column (2) of row (A) of the table in SYSC 22.5.11G (Table: Examples of factors to take into account when deciding whether old misconduct is sufficiently serious to disclose);
- (2) how recent the breach was (the fact that the breach happened a long time ago may lessen the weight of that breach);
- (3) steps (including training) taken by the member of staff being assessed under FIT since the breach to address the behaviours involved in the breach or otherwise to address the causes of the misconduct;
- (4) (in the case of a breach caused by lack of competence) whether that lack has been remedied by subsequent training or experience;
- (5) other evidence of rehabilitation;
- (6) remorse and insight into the seriousness of the breach;
- (7) absence of the mitigating factors in (3) to (6);
- (8) the individual's past disciplinary and performance record;
- (9) the individual's record of breaching COCON or other requirements of the regulatory system;
- (10) the individual's health, disability and life events which may have been a factor in the breach;
- (11) whether the breach was repeated or part of a pattern;

- (12) the seniority of the individual (the fact that the individual held a senior position may make the breach more serious than it would be if they held a junior position);
- (13) the likelihood of recurrence of the relevant conduct – for instance, whether the conduct was a one-off lapse; and
- (14) the relevance of the breach to the role for which the member of staff being assessed under FIT is being assessed.

1.3.11    G    Breaches of the requirements of the *regulatory system* are relevant to fitness and propriety even if they take place outside work. Thus, for example, it would be relevant to an individual's fitness if they carried on a *regulated activity* outside work without being *authorised* as required.

- 1.3.12    G    (1)    The *FCA's statutory objectives* are a key factor in deciding whether something is relevant to whether a person is fit and proper. Conduct that is inconsistent with the *FCA's statutory objectives* is likely to show that the person concerned is not fit and proper.
- (2)    Maintaining public confidence in the financial system and financial services industry in the *United Kingdom* is part of the *FCA's statutory objectives*. Therefore, conduct of a type that is likely to damage such public confidence is likely to mean that the person concerned is not fit and proper.
- (3)    However, the *FCA* accepts that it would be reasonable for a *firm* not to apply the factors in *FIT* 1.3.12G as a self-standing criterion when assessing fitness and that the *FCA* is in a better position to make judgements of this kind than a *firm*.

- 1.3.13    G    (1)    Misconduct may mean that a person is not fit and proper even if that misconduct does not have such great effects that it measurably prejudices the *FCA's statutory objectives* by itself.
- (2)    For example, fraud is inconsistent with the *FCA's statutory objectives* and is likely to mean that the person committing it is not fit and proper even if it is small-scale.

#### Conduct connected to work

- 1.3.14    G    (1)    Breaches of the law or of requirements not forming part of the *regulatory system* committed during the course of work carried out by a member of the *staff being assessed under FIT* for their *firm* or a previous employer may mean that the person concerned is not fit and proper.
- (2)    Such requirements may include requirements of other regulatory authorities (including a *previous regulator*), *clearing houses* and exchanges, professional bodies, or government bodies or agencies.

Relevance of behaviour in private or personal life

- 1.3.15    G    (1)    COCON is limited to conduct related to a *firm's* activities (see COCON 1.1.6R to COCON 1.1.7R) and sometimes only to a part of its activities (for example, see COCON 1.1.7AR). An assessment of fitness and propriety should not be limited in that way.
- (2)    That means that conduct is potentially relevant to an assessment of fitness and propriety even though COCON 1.3 (Scope of COCON) says that it is generally outside the scope of COCON because:
- (a)    it relates to the *person's* private or personal life; or
- (b)    it does not have a sufficient connection with SMCR *financial activities* or other activities of the *firm* in question.
- (3)    For example, conduct described in the table in COCON 1.3.7G (Table: Private or personal life and COCON) as generally being outside the scope of COCON may be relevant to fitness and propriety.
- 1.3.16    G    (1)    Conduct that:
- (a)    takes place in the private or personal life or other activities outside the *regulatory system* of a member of *staff being assessed under FIT*; and
- (b)    shows that there is a material risk that the person will breach the standards and requirements of the *regulatory system*).
- may show that the member of the *staff being assessed under FIT* is not fit and proper.
- (2)    Conduct that:
- (a)    takes place in the private or personal life or other activities outside the *regulatory system* of a member of the *staff being assessed under FIT*; and
- (b)    if repeated in the role for which they are being assessed, would breach the standards and requirements of the *regulatory system*.
- may show that they are not fit and proper if there is a material risk it will be repeated in that role.
- (3)    Two examples are dishonesty and lack of integrity. Honesty and integrity are both key qualities that *staff being assessed under FIT* should have. Thus, conduct outside the *regulatory system* that is dishonest or shows a lack of integrity is always relevant to fitness and propriety under *FIT*.
- (4)    Similarly, violence or sexual misconduct by a member of the *staff being assessed under FIT* in their private or personal life or in work



outside the *regulatory system* may show that there is a risk of similar misconduct in relation to:

- (a) customers or counterparties of their *firm*; or
  - (b) people working for their *firm*, which, as explained in *COCON* 4.3 (Specific guidance on harassment), may be a breach of the *rules* in *COCON*.
- (5) Likewise, a breach of standards or requirements that are similar to ones applying under the *regulatory system* is relevant to fitness and propriety under *FIT*.
- (6) Conduct in an individual's personal or private life may be relevant if it demonstrates a willingness to disregard ethical or legal obligations or to do the things in *FIT* 1.3.17G(1)(a)(ii) or *FIT* 1.3.17G(1)(a)(iii).
- (7) However:
- (a) it should not be assumed that simply because a member of the *staff being assessed under FIT* engages in conduct in their private life, there is a material risk that they will repeat such conduct in their regulated role; and
  - (b) a remote or speculative risk that the member of the *staff being assessed under FIT* will breach the standards and requirements of the *regulatory system* is not sufficient for these purposes and instead it is a material risk that should be taken into account.
- (8) Even if a breach of a law or standards and requirements by a member of the *staff being assessed under FIT* would not otherwise be relevant to their fitness and propriety, repeated breaches may raise doubts as to whether they will follow the requirements of the *regulatory system* (see (6)).

1.3.17 G (1) Misconduct in a person's private or personal life or in their working life outside the *regulatory system* may be relevant to their fitness and propriety even if there is little or no risk of it being repeated in their work for their *firm*. Conduct in an individual's personal or private life may be relevant if:

- (a) it demonstrates a willingness to:
  - (i) disregard ethical or legal obligations;
  - (ii) abuse a position of trust;
  - (iii) exploit the vulnerabilities of others; and/or
- (b) it is sufficiently serious such that, were the person permitted to work at a *firm*, it could undermine public confidence in the

regulatory system (or any part thereof) or otherwise impact the FCA's statutory objectives.

- (2) A custodial sentence imposed by the court (even if suspended) is likely to mean that the matter is sufficiently serious, but this is subject to consideration of other relevant matters including how old the offence is and rehabilitation since the date of the offence.
- (3) The reason for (1) and (2) is that the person's working in the role for which they are being assessed may damage public confidence in the financial system and financial services industry in the United Kingdom and consequently be inconsistent with the FCA's statutory objectives.
- (4) One reason for the effect in (3) is that if the regulatory system allows persons to carry on working in those circumstances it would reflect negatively on the rigour and quality of the standards expected of those working in such positions and in turn on the quality of those who work in such positions. The regulatory standards that apply to a person working for one firm are likely to reflect on the regulatory standards applying generally.

- 1.3.18 G (1) In the FCA's view, misconduct of the type in FIT 1.3.17G can mean that the person concerned is not fit and proper even if it cannot be shown that the misconduct will by itself cause direct and discernible damage to public confidence in the financial system and financial services industry in the United Kingdom or to confidence in their firm on the part of customers or those who deal with the firm.
- (2) As with other kinds of misconduct (see FIT 1.3.13G), it is sufficient if the misconduct is of a type that is inconsistent with the FCA's statutory objectives.
- (3) In addition, the fact that a person only works for a small firm and that their misconduct does not significantly damage the confidence of the firm's clients or those who deal with the firm or itself damage confidence in the financial services industry more generally does not prevent the reflection on the standards of the regulatory system described in FIT 1.3.17G(4).

- 1.3.19 G The factors in FIT 1.3.17G(1)(a) may in some cases be relevant to fitness and propriety because they show that there is a material risk that the member of the staff being assessed under FIT will repeat that conduct in a work context or otherwise breach the standards and requirements of the regulatory system.

Relevance of behaviour in private or personal life: No duty to monitor

- 1.3.20 G (1) Generally, a firm need not monitor the private lives of its staff who are subject to the standards in FIT to see whether there is something that is relevant to fitness under FIT. A firm need only look into the private life of a member of the staff being assessed under FIT if there

is a good reason to – for instance, if the *firm* becomes aware of an allegation which, if true, would call into question their fitness under *FIT*, including having regard to *FIT* 1.3.17G(1).

- (2) This means, for example, that the *FCA* would not expect a *firm* to investigate allegations relating to a member of the *staff being assessed under FIT*'s private life if:
  - (a) those allegations are trivial and therefore would not impact the member of the *staff being assessed under FIT*'s fitness and propriety under *FIT*;
  - (b) those allegations, even if true, would not otherwise show a material risk that the person will breach the requirements and standards of the *regulatory system* (subject to *FIT* 1.3.17G); or
  - (c) the *firm* reasonably considers the allegation to be implausible.
- (3) Even if a *firm* is aware of an allegation against a member of the *staff being assessed under FIT* relating to their private life, the *firm* may have a limited ability to investigate. In any case, it is likely that it will be more appropriate for the relevant law enforcement or other authorities to investigate. These points may mean that it will not be appropriate for the *firm* to investigate (subject to (5)).
- (4) Therefore, the *FCA* accepts that it is likely that a *firm* will often rely on:
  - (a) matters of the kind described in *FIT* 2.1.3G (Honesty, integrity and reputation) or *FIT* 2.2.1G(4) (Competence and capability);
  - (b) criminal convictions; or
  - (c) the findings of a court, tribunal, regulator, arbitrator, public enquiry or other body whose responsibility it is to make findings of the relevant kind,

in deciding whether or not a member of the *staff being assessed under FIT* has carried out wrongdoing in their private life of a kind that is relevant to fitness and propriety.
- (5) Nevertheless, a *firm* should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety of a member of the *staff being assessed under FIT* of a matter in (1). For example, the *firm* should, where appropriate, ask for an explanation from the member of the *staff being assessed under FIT* concerned.
- (6) The *FCA* will not necessarily limit its assessments of fitness and propriety in the way described in (4).

- (7) Firms are reminded of their obligations under SUP 10C.14.18R (Notifications about fitness, disciplinary action and breaches of COCON).
- (8) In accordance with FIT 1.3.3G(4) (General matters), a firm should carry out any investigation that it does undertake fairly and in accordance with privacy, employment and other relevant law.

#### Relevance of behaviour in private or personal life: Social media

- 1.3.21 G (1) FIT 1.3.21G deals with the use of social media (including a messaging app) by a member of the staff being assessed under FIT in their private or personal life.
- (2) The factors in this section and the rest of FIT apply to establishing when social media activity is relevant to fitness and propriety under FIT in the same way as they do to establishing the relevance of other kinds of conduct.
- (3) Thus, for example, if a person's social media activity in their private life indicates a material risk that the person will breach the requirements and standards of the regulatory system, FIT 1.3.16G explains that such activity will be relevant to their fitness and propriety. Examples could include threats of violence or clear involvement in criminal activities or conduct that shows a material risk of misconduct that would breach COCON of the kind in COCON 4.3 (Specific guidance on harassment).
- (4) If, on the other hand, a person's social media activity in their private life does not indicate a material risk that the person will breach the requirements and standards of the regulatory system, FIT 1.3.16G means that (subject to FIT 1.3.17G) the social media activity is unlikely to be relevant to their fitness and propriety and so nothing in FIT requires a firm to concern itself with it.
- (5) Subject to the other points in FIT 1.3.21G and the rest of FIT 1.3, a person can lawfully express their views on social media even if they are controversial, without calling into question their fitness under FIT, and even if colleagues at work disagree with or are upset by those views.
- (6) FIT 1.3.20G means that a firm generally need not monitor the social media activity in their private lives of its staff who are subject to the standards in FIT.

#### Offences

- 1.3.22 G When taking into account offences, the FCA will give (and a firm should give) particular consideration to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other

financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, offences of violence, sexual offences and offences related to a person's or a group's demographic characteristics such as racially motivated or aggravated offences, whether or not committed in the United Kingdom.

1.3.23 G The FCA will (and a firm should) take account of the effect of a conviction for a criminal offence on a person's fitness on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

1.3.24 G Offences in FIT 1.3.22G are not just relevant if committed in a work context. As described in this section (particularly FIT 1.3.16G to FIT 1.3.18G), conduct in the private or personal life or in the working life outside the regulatory system of a member of the staff being assessed under FIT may be relevant to their fitness and propriety.

## 2 Main assessment criteria

### 2.1 Honesty, integrity and reputation

2.1.1 G In determining a person's honesty, integrity and reputation, the FCA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. The FCA should be informed of these matters (see SUP 10A.14.17R and SUP 10C.14.18R), but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. For example, under FIT 2.1.3G(1), conviction for a criminal offence will not automatically mean an application will be rejected. The FCA treats each candidate's application on a case-by-case basis, taking into account the ~~seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation~~ matters referred to in FIT 1.3.23G.

2.1.1A G A firm determining the honesty, integrity and reputation of staff being assessed under FIT, should consider all relevant matters, including those set out in FIT 2.1.3G, which may have arisen either in the United Kingdom or elsewhere. Firms should inform themselves of relevant matters, including checking for convictions for criminal offences (where possible) and contacting previous employers who have employed that candidate or person. If any staff being assessed under FIT has a conviction for a criminal offence, the firm should consider the ~~seriousness of and circumstances surrounding the offence, the explanation offered by that person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation~~ matters referred to in FIT 1.3.23G.

...

2.1.3 G The matters referred to in *FIT* 2.1.1G to which the *FCA* will have regard, and to which a *firm* should also have regard, include, but are not limited to:

- (1) whether the *person* has been convicted of any criminal offence; this must include, where provided for by the Rehabilitation Exceptions Orders to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the *United Kingdom* described in *FIT* 1.3.22G;

...

- (3) whether the *person* has been the subject of, or interviewed in the course of, any existing or previous investigation (particularly into a matter of the kind referred to in *FIT* 1.3.22G) or disciplinary proceedings, by the *appropriate regulator*, by other regulatory authorities (including a *previous regulator*), clearing houses and exchanges, professional bodies, or government bodies or agencies;

- (4) whether the *person* is or has been the subject of any proceedings of a ~~disciplinary or~~ criminal nature (particularly of the kind referred to in *FIT* 1.3.22G) or of a disciplinary nature, or has been notified of any potential such proceedings or of any investigation which might lead to those proceedings;

...

- (11) whether the *person* has been dismissed, ~~or asked to resign and resigned,~~ from employment or from a position of trust, fiduciary appointment or similar;

- (11A) whether the *person* has been asked to resign and resigned, from employment or from a position in (11). Whether the *FCA* considers (or a *firm* should consider) a resignation to be relevant will depend on the circumstances – for example, if a *person* is asked to resign in circumstances that cast doubt over their honesty or integrity;

...

- (13) whether, in the past, the *person* has been candid and truthful in all their dealings with any *regulatory body* and whether the *person* demonstrates a readiness and willingness to comply with the requirements and standards of the *regulatory system* and with other legal, regulatory and professional requirements and standards;

(14) whether the *person* has been found by a tribunal or court to have been engaged in harassment, victimisation or discrimination; and

(15) whether the *person* has been found to have carried out harassment, bullying, victimisation or discrimination following an internal disciplinary process.

## 2.2 Competence and capability

2.2.1 G In determining a *person's* competence and capability, the *FCA*, in accordance with *FIT* 1.1.2G, will have regard to all relevant matters including but not limited to:

...

(3) whether the *person* has adequate time to perform the *controlled function* and meet the responsibilities associated with that function; and

(4) any of the matters in *FIT* 2.1.3G (Honesty, integrity and reputation) so far as relevant to competence and capability, such as a finding by a court, disciplinary hearing or enquiry that the *person* has been negligent or demonstrated lack of skill in a relevant respect.

2.2.1A G In determining ~~a *person's* the~~ competence and capability ~~to perform an *FCA* designated senior management function or an *FCA* certification function of staff being assessed under *FIT*~~, a *firm*, in accordance with *FIT* 1.1.2G, should have regard to all relevant matters including but not limited to:

...

(3) whether the *person* has adequate time to perform the function in question and meet the responsibilities associated with that function; and

(4) the matters in *FIT* 2.2.1G(4).

...