

Thomson Reuters Regulatory Intelligence

SHCOG Securities Houses
Compliance Officers Group

Edinburgh Reforms/Diversity/Non-Financial Misconduct

Presented by Michael Cowan

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Introduction

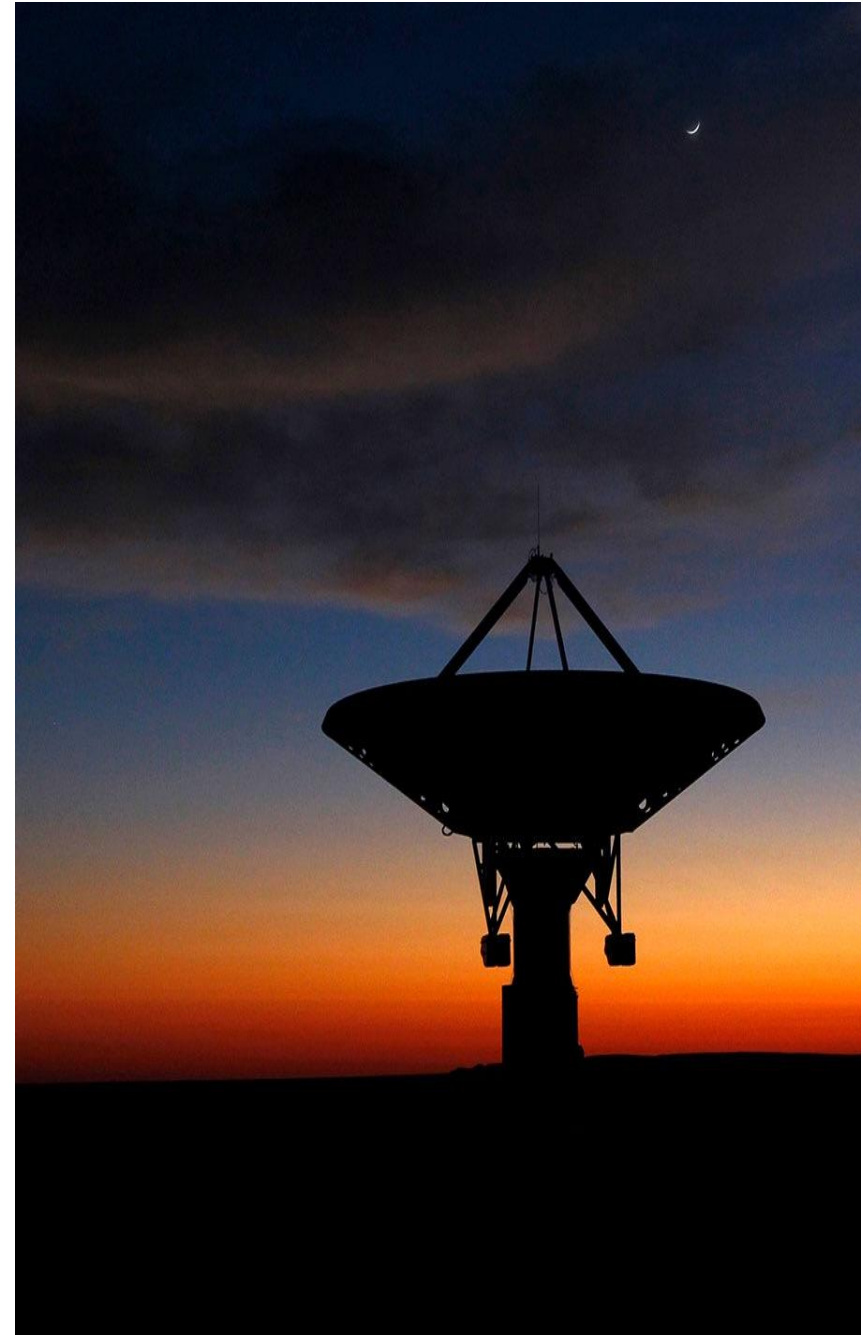


“the government’s vision for an open, sustainable, and technologically advanced financial services sector that is globally competitive and acts in the interests of communities and citizens.”

(Jeremy Hunt, Chancellor of the Exchequer).

Objectives

- A competitive marketplace promoting effective use of capital
- A world leader in sustainable finance
- A sector at the forefront of technology and innovation
- Delivering for consumers & businesses



Edinburgh Reforms – At a glance

A competitive marketplace promoting effective use of capital

PRIPs and UK Retail Disclosure	Consolidated tape
Short selling regime	Remit of FCA and PRA
Improving the ring-fencing regime	Accelerated Settlement
Real Estate Investment Trusts	Secondary Capital Raising
Building a smarter financial services framework for the UK	Investment research
Changing the UK prospectus regime	Securitisation regime
Defined Contribution pension schemes	Building Societies Act 1986
Repeal of legislation relating to the European Long-Term Investment Fund (ELTIF)	
Payment Services and E-money Regulations	
Information requirements in the Payment Accounts Regulations 2015	
Rules for the capital deduction of certain non-performing exposures held by banks	
Implementing Wholesale Markets Review reforms	
Local Government Pension Scheme asset pooling	
VAT treatment of fund management	
Senior Managers & Certification Regime	

A world leader in sustainable finance

Green Finance Strategy
ESG ratings

A sector at the forefront of technology and innovation

UK retail central bank digital currency
Investment Manager Exemption
Financial Market Infrastructure Sandbox
Introducing a new class of wholesale market venue

Delivering for consumers & businesses

Consumer Credit Act Reform
Pensions regulatory charge cap
Boundary between regulated financial advice and financial guidance

A competitive marketplace promoting effective use of capital

PRIIPs and UK Retail Disclosure



Near final SI issued for technical comments.

The government intends to revoke the UK regime for packaged retail and insurance-based investment products (PRIIPs) and replace it with an alternative retail disclosure framework. As a first step, it launched a consultation setting out its vision for a UK retail disclosure regime. In a consultation response, released in July, it confirmed its intention to remove from legislation all firm-facing disclosure requirements derived from the PRIIPs regulation. A near-final draft statutory instrument was published on November 22 together with a policy note. The legislation will enable the FCA to deliver a new retail disclosure regime.

Short selling Regime



Consultation completed. Feedback to be issued. Near final SI issued for technical comments.

The government intends to replace the existing short selling framework established under the Short Selling Regulation and to introduce design a regime tailored to the needs of UK markets, companies and investors. As a first step it launched a call for evidence focused on the existing short selling regime for shares. A consultation response was issued on July 11 indicating its next steps including two key changes to disclosures. The government issued a draft statutory instrument on November 22 together with a policy note. A consultation was also launched on proposals to remove requirements related to sovereign debt and credit default swaps. A consultation response was released on November 22 confirming that the government will remove requirements currently placed on investors when taking out short positions in sovereign debt or sovereign CDS and related reporting requirements.

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Investment research



The Government has delivered this commitment

The government launched an independent review of investment research and its impact on public and private markets on March 9, 2023. The review evaluated the options for improving the UK market for investment research and set out recommendations toward achieving this. The terms of reference include considering the impact of the rules in MiFID II on research unbundling. As part of the review, a call for evidence was launched at the beginning of April. The outcome of the review was published on July 11 and the government accepted all the recommendations made to it. The FCA issued a statement in relation to the recommendations made to it. A consultation is planned with the intention to make rules in the first half of 2024.

Securitisation regime



The Government will lay its first SI by the end of 2023 with a further SI making technical changes in 2024.

Following a review of the "onshored" securitisation framework, the government released draft secondary legislation (The Securitisation Regulations 2023) which would introduce a new securitisation framework. The legislation will be made under powers in the Financial Services and Markets Act 2023. A near-final version of the statutory instrument was released on July 11 together with a policy note. The government has indicated it intends to lay this before Parliament before the end of 2023. A further statutory instrument making technical changes is planned for 2024.

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Changing the UK prospectus regime



The Government intends to lay an SI before parliament by end 2023.

Following a review, the government released draft secondary legislation (the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023) which, once enacted, would replace the UK Prospectus Regulation and introduce a new regulatory framework governing public offers and admissions to trading of securities. The legislation will be made under powers in the Financial Services and Markets Act 2023. A near final version of the statutory instrument was released on July 11 together with a policy note. At the beginning of May, the FCA issued a policy statement on improving equity secondary markets. As part of its work on developing a new regime for public offers and admissions to trading the FCA also released four engagement papers in relation to which it invited stakeholder feedback. Two further engagement papers were issued in July: one on operating a public offer platform and one on future rules for multilateral trading facilities.

Accelerated Settlement



The Government has delivered this commitment

The government has established an accelerated settlement taskforce to explore the potential for faster settlement (such as moving to a 'T+1' standard settlement period) of financial trades in the UK. The taskforce is due to publish its initial findings by December 2023 and issue a report with recommendations by December 2024.

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Consolidated tape



The Government intends to lay an SI by end 2023.

In early July the FCA launched a consultation on its proposed framework for establishing a consolidated tape for bonds. On July 11, the government published a near-final version of a statutory instrument that will facilitate the emergence of a consolidated tape in the UK. It has indicated it intends to lay this before Parliament by the end of 2023.

Implementing Wholesale Markets Review reforms



The Government has delivered this commitment

The government has issued secondary legislation which will make changes to reporting rules and indicated that further legislation implementing reforms from the wholesale markets review will be issued in early 2023. This has so far included adoption of the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 streamlining the process for determining when firms who trade commodities or emission allowances as an ancillary activity need to be authorised as an investment firm.

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Repeal of legislation relating to the European Long-Term Investment Fund (ELTIF)



The Government has delivered this commitment

The government has indicated that it intends to repeal the rules relating to ELTIFs to reflect the fact that the new UK Long-Term Asset Fund (LTAF) provides a better fund structure for the UK market. The LTAF regime took effect on November 15, 2021. Commencement regulations to repeal EU legislation on ELTIFs were made on July 10, 2023.

VAT treatment of fund management



Summary of responses to consultation to be issued idc.

The government has consulted on proposed reform of the VAT rules on fund management. The changes are intended to improve the legislative basis of the VAT treatment of fund management rather than introduce new policy.

Remit of FCA and PRA



The Government published the remit letters on 9 December 2023.

The government has issued new remit letters to the Financial Conduct Authority and Prudential Regulation Authority setting out how it expects them to use their new secondary objective (under the Financial Services and Markets Act 2023) for international competitiveness.

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Rules for the capital deduction of certain non-performing exposures held by banks



PRA policy statement issued in November 2023.

The Prudential Regulation Authority launched a consultation on the non-performing exposures capital deduction in mid-March. The consultation paper proposes the removal of the Common Equity Tier 1 (CET1) deduction requirement in relation to non-performing exposures that are treated as insufficiently covered by firms' accounting provisions. A policy statement setting out the final policy was released on November 13.

Building a smarter financial services framework for the UK



HMT published a Policy Statement and illustrative SI on 3 December

The government has set out its planned approach to repealing and replacing retained EU law on financial services using powers within the Financial Services and Markets Act. Under the new approach, the UK financial services regulators will have general responsibility for setting the direct regulatory requirements which are currently set out in retained EU law, acting within a framework set by government and Parliament. A plan for delivery was released on July 11.

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Improving the ring-fencing regime



The government intends to introduce a SI in early 2024 as well as a response to the call for evidence.

Following a review, the government is proposing to introduce secondary legislation to improve the functionality of the existing ring-fencing regime. It launched a consultation on draft legislation to implement near-term reforms to the regime at the end of September. It is working towards introducing the legislation in Parliament in early 2024 (subject to Parliamentary time). After conducting a call for evidence on the practicalities of aligning the ring-fencing and resolution regimes and long-term options for reform, it issued its response in late September. Coinciding with the release of the draft legislation, the PRA launched a consultation in which it proposed rule and policy updates in respect of the establishment and maintenance of third-country branches and subsidiaries within ring-fenced body sub-consolidation groups.

Building Societies Act 1986



Primary legislation is required to change Building Societies Act 1986 and will be taken forward when time allows.

Information requirements in the Payment Accounts Regulations 2015



The Government laid a commencement order to repeal this in July 2023.

Payment Services and E-money Regulations



Statutory instrument issued.

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Local Government Pension Scheme asset pooling



Response to consultation is awaited.

Defined Contribution pension schemes



Primary legislation to be put in place and consultation on draft rules to be undertaken.

Real Estate Investment Trusts



Legislation came into force April 2023.

Secondary Capital Raising



Remaining recommendations from Austin review will be taken forward when time allows.

A sector at the forefront of technology and innovation

Investment Manager Exemption



The Government has delivered this commitment

The government has published the outcome of its consultation on expanding the investment transactions list for the investment management exemption to include crypto assets. Legislation to define 'designated crypto assets' and include them in the list of investment transactions which qualify for the Investment Manager Exemption was published in December 2022, The Investor Manager (Investment Transactions) (Cryptoassets) Regulations 2022 came into force on January 1, 2023.

Introducing a new class of wholesale market venue



The intermittent trading venue will be up and running by end 2024.

UK retail central bank digital currency



Consultation complete. Responses being analysed. Way forward to be determined idc.

Financial Market Infrastructure Sandbox



The government is analysing responses to consultation but intends to implement the first sandbox by end 2023. Further update idc.

A world leader in sustainable finance

Green Finance Strategy



The Government updated strategy in March 2023.

ESG ratings



Consultation complete. Responses being analysed. Way forward to be determined idc.

Delivering for consumers & businesses

Boundary between regulated financial advice and financial guidance



The FCA has issued DP23/5: Advice Guidance Boundary Review – proposals for closing the advice gap. Deadline 28th February 2024.

A consultation on broadening access to financial advice for mainstream investments closed at the end of February. In an early August update, the FCA indicated “limited support from industry” on its initial proposals and that, accordingly, it had decided to roll the development of its proposals into a broader advice guidance boundary review. The review would be undertaken jointly with the UK government, it said.

Pensions regulatory charge cap



Regulations came into force 6th April 2023.

Consumer Credit Act Reform



Government published response to consultation in July 2023.

Senior Managers Regime

Senior Managers & Certification Regime



Government and regulators assessing responses from call for evidence in March 2023.

The government launched a call for evidence on the performance, effectiveness and scope of the regime at the end of March. Coinciding with the launch of its call for evidence, the Financial Conduct Authority and Prudential Regulation Authority released a joint discussion paper on their review of the regime.

Link to Diversity



SMCR is obvious place to link Edinburgh reforms to Diversity.



Criticisms of SMCR prompted call for evidence.



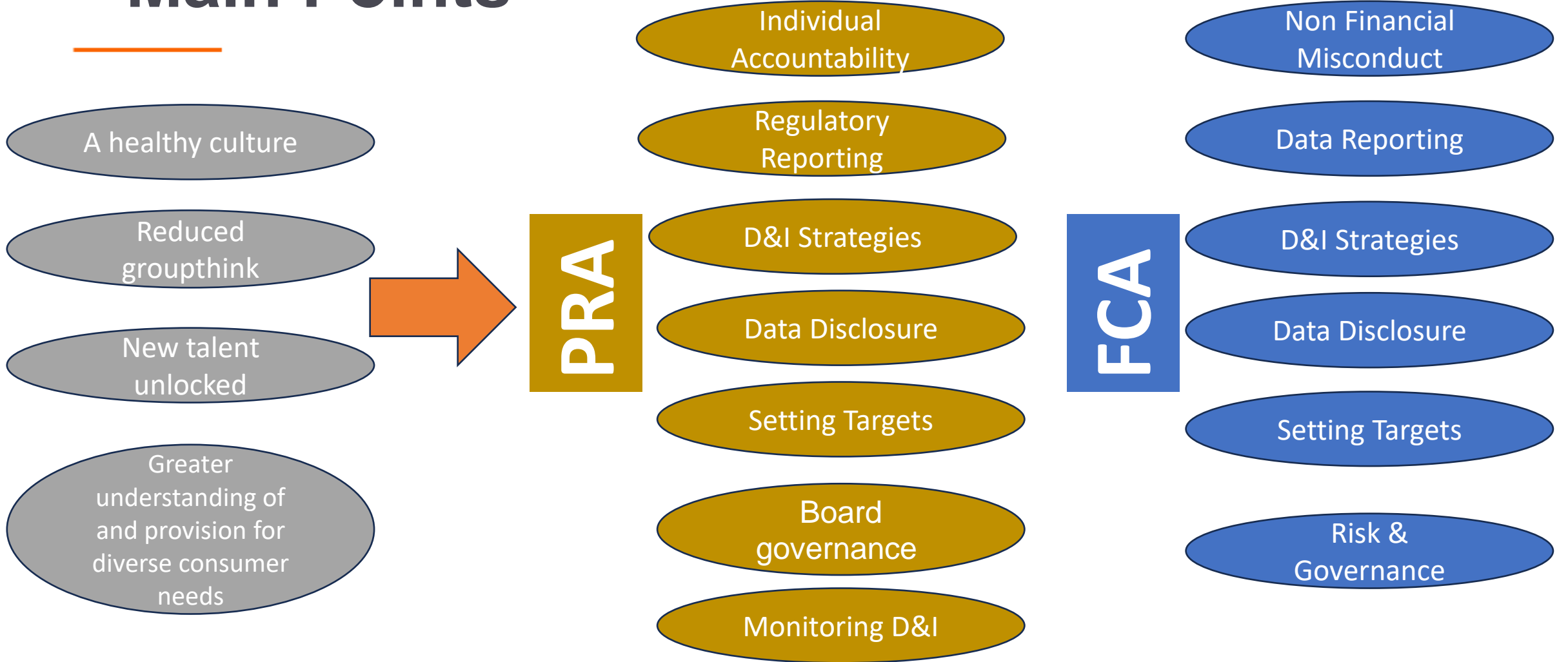
Changes to conduct rules, FIT and individual's responsibilities for diversity proposed by regulators.

Diversity & Inclusion

“Greater diversity and inclusion can create better outcomes for consumers and markets by supporting healthy work cultures, reducing groupthink, unlocking talent and improving understanding of diverse consumer needs.” (Nikhil Rathi, CEO of FCA)



Diversity and inclusion in the financial sector – Main Points



Diversity and inclusion in the financial sector

– Proportional

PRA

FCA

Non Financial Misconduct

N/A

All FSMA firms with a Part 4A permission and where relevant Threshold Conditions and existing chapters of the Handbook apply

Regulatory/Data Reporting

Only those CRR and Solvency II firms (including third country branches) with 251 or more employees who are predominantly carrying out activities from an establishment in the UK.

All FSMA firms with a Part 4A permission need to report their number of employees annually, excluding all Limited Scope SM&CR firms

All FSMA firms with a Part 4A permission with 251 or more employees have additional reporting obligations, excluding all Limited Scope SM&CR firms

D&I Strategies

All CRR and Solvency II firms with respect to their establishment in the UK, including third country branches.

Dual-regulated CRR and Solvency II firms of any size (firms to which the CRR or Solvency II parts of the PRA Rulebook apply)

All other FSMA firms with a Part 4A permission that have 251 or more employees, excluding all Limited Scope SM&CR firms

Data Disclosure

Setting Targets

Risk & Governance

Only those CRR and Solvency II firms (including third country branches) with 251 or more employees who are predominantly carrying out activities from an establishment in the UK.

All FSMA firms with a Part 4A permission with 251 or more employees, excluding all Limited Scope SM&CR firms

Monitoring D&I

Individual Accountability

All CRR and Solvency II firms with respect to their establishment in the UK, including third country branches.

Board Governance

All CRR and Solvency II firms with respect to their establishment in the UK, excluding third country branches.

Diversity and inclusion in the financial sector

– Proposals (dependent on scope)

D&I Strategies

- Firms must develop an evidence-based D&I strategy. Containing:
 - the firm's D&I objectives and goals.
 - a plan for meeting those objectives and goals and measuring progress.
 - a summary of the arrangements in place to identify and manage any obstacles to meeting the objectives and goals.
 - ways to ensure adequate knowledge of the D&I strategy amongst staff.

Setting Targets

- Firms would be required to set targets to address underrepresentation in their firms.

Data Disclosure

- firms disclose publicly, the same information that they report to the regulator.

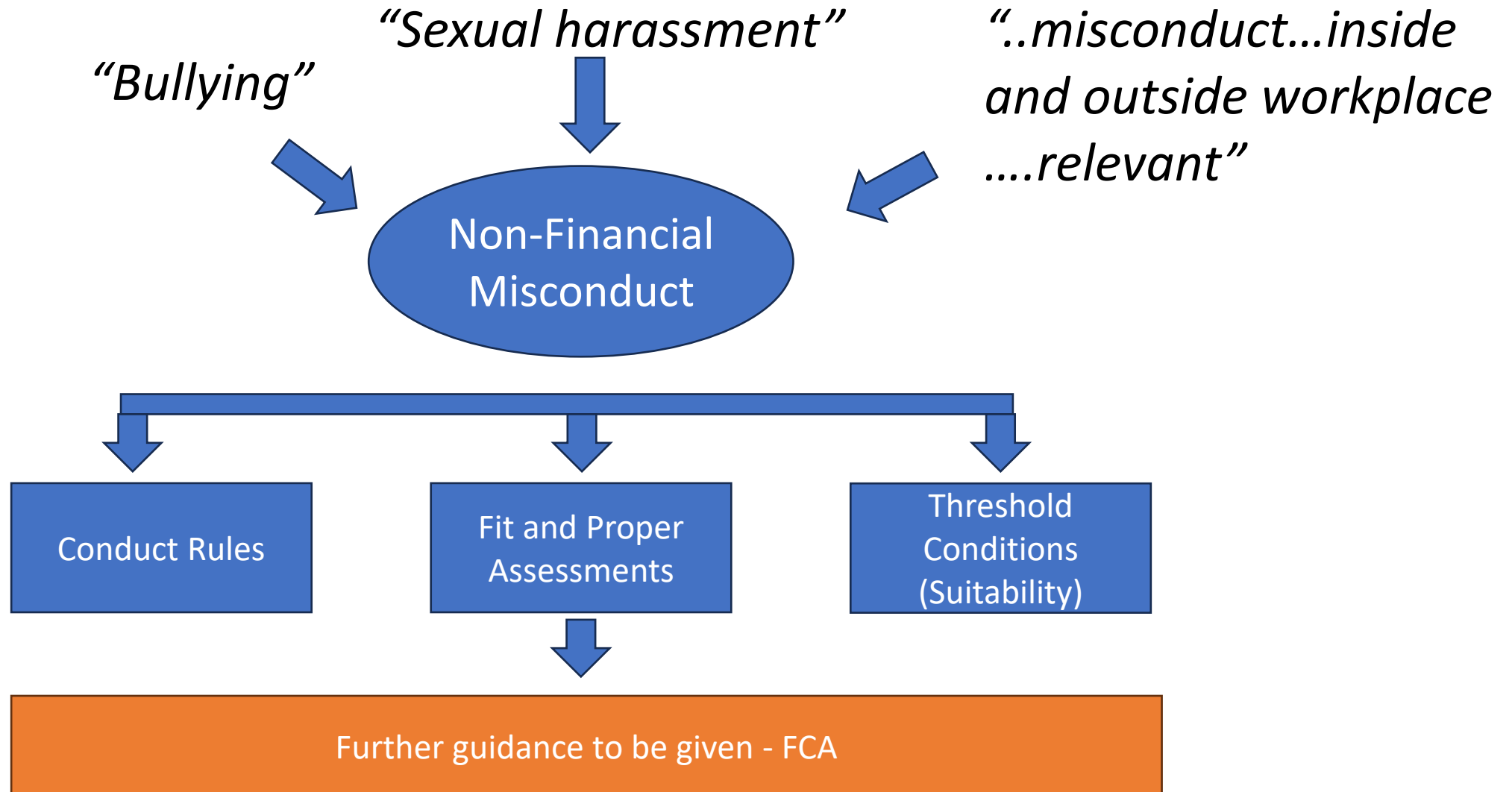
Data Reporting

- Annually collect and report to the regulators in numerical figures, data across a range of demographic characteristics, inclusion metrics and targets via a regulatory return.
- During the first year the requirements are in place, report such data as is reasonably practicable and explain the reasons for any gaps and how they will be closed.
- Report data to the FCA and PRA using a single data return (referred to as REPxxx Diversity and Inclusion for indicative purposes at this stage) on the RegData platform

Risk & Governance

- Introduce new guidance for large firms to make clear that matters relating to D&I are to be considered as a non-financial risk and treated appropriately within the firm's governance structures.

Non-Financial Misconduct



Non-Financial Misconduct - Examples

2022 - Atrium Underwriters - £1.5m fine (£500k costs)

Notice of censure details three non-financial misconduct charges including

- "a systematic campaign of *bullying* against a junior employee over a number of years".
- "an annual "Boys' Night Out",unprofessional and inappropriate conduct, including *initiation games, heavy drinking and making inappropriate and sexualised comments about female colleagues.....* which were both *discriminatory and harassing* to female members of staff.

2014 – Jonathan Burrows – Former MD at Blackrock - Banned

The City *fare dodger* who evaded thousands of pounds worth of train fares, has been banned from working in the financial services sector by the Financial Conduct Authority (FCA).

2020/21 – Jon Frensham – Financial Advisor

FCA had found that Jon Frensham was not a fit and proper person in a decision notice dated October 1, 2020, as a result of his criminal conviction for a serious indictable offence.

The offence related to *child grooming*, and he was subsequently sentenced to 22 months' imprisonment, suspended for 18 months, and placed on the Sex Offenders Register until 2027.

The Upper Tribunal found that the attempts by the FCA to link Frensham's conviction to the consumer protection and integrity objectives were based on "bare assertions" without supporting evidence and could not be made out as a matter of fact.

Non-Financial Misconduct - Examples

2020 - Russell David Jameson – Financial Advisor – Banned

In July 2018, Jameson was convicted of serious criminal offences involving the *making, possession and distribution of indecent images of children*.

2020 - Frank Cochran – Director and shareholder – Banned

In April 2018, Cochran was convicted of sexual assault, engaging in controlling and coercive behaviour and an offence contrary to the Protection from Harassment Act 1997. Cochran was sentenced to seven years' imprisonment and required to sign the sex offenders register.

2020 - Mark Horsey - Sole Director and shareholder - Banned

Convicted of *voyeurism*, contrary to the Sexual Offences Act 2003. Horsey had surreptitiously observed and video recorded his tenant having a shower without their consent.

Bank Relationship Manager – Standard Chartered

A bank relationship manager has left Standard Chartered after press exposure that he has a prominent role in an extreme right-wing organization.

Non-Financial Misconduct - Challenges

- Impact of culture.
- Impact on governance.
- Clarity of responsibilities.
- Difficult interpretations.
- HR responsibilities?
- Recruitment – due diligence
- Skill set of compliance department?
- Overlapping and conflicting legislation and regulation.

Q&A

Regulatory Intelligence Contact Information

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