Code of Conduct (COCON)
COCON Contents

Code of Conduct (COCON)

COCON 1 Application and purpose

1.1 Application
1.2 Investments
1 Annex 1 Guidance on the role and responsibilities of non-executive directors of SMCR firms

COCON 2 Individual conduct rules

2.1 Individual conduct rules
2.2 Senior manager conduct rules
2.3 Firms: training and breaches

COCON 3 General factors for assessing compliance

3.1 General factors for assessing compliance

COCON 4 Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules
4.2 Specific guidance on senior manager conduct rules

Transitional provisions and Schedules

Sch 1 Record keeping requirements
Sch 2 Notification requirements
Sch 3 Fees and required payments
Sch 4 Powers exercised
Sch 5 Rights of action for damages
Sch 6 Rules that can be waived
Chapter 1

Application and purpose
## 1.1 Application

### 1.1.1

Under section 64A of the Act, the FCA may make rules about the conduct of certain persons working in firms.

### To whom does it apply?

**1.1A**

COCON applies to the persons set out in the table in COCON 1.1.2R.

### Table: To whom does COCON apply?

<table>
<thead>
<tr>
<th>Persons to whom COCON applies</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) An SMF manager.</td>
<td></td>
</tr>
<tr>
<td>(2) An employee (“P”) of a SMCR firm who:</td>
<td></td>
</tr>
<tr>
<td>(a) performs the function of an SMF manager;</td>
<td></td>
</tr>
<tr>
<td>(b) is not an approved person to perform the function in question; and</td>
<td></td>
</tr>
<tr>
<td>(c) is required to be an approved person at the time P performs that function.</td>
<td></td>
</tr>
<tr>
<td>(3) An employee of an SMCR firm who would be performing an FCA-designated senior management function but for SUP 10C.3.13R (The 12-week rule).</td>
<td>This applies even if the certification employee has not been notified that COCON applies to them or notified of the rules that apply to them.</td>
</tr>
<tr>
<td>(4) A certification employee of an SMCR firm.</td>
<td></td>
</tr>
<tr>
<td>(5) An employee of an SMCR firm who would be performing an FCA certification function but for SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).</td>
<td></td>
</tr>
<tr>
<td>(6) Any employee of an SMCR firm not coming within another row of this table, except one listed in column (2) of this row (6) of this table.</td>
<td>(A) This row (6) does not apply to an employee of an SMCR firm who only performs functions falling within the scope of the following roles: (a) receptionists; (b) switchboard operators;</td>
</tr>
</tbody>
</table>
Persons to whom COCON applies | Comments
---|---
(c) post room staff; (d) reprographics/print room staff; (e) property/facilities management; (f) events management; (g) security guards; (h) invoice processing; (i) audio visual technicians; (j) vending machine staff; (k) medical staff; (l) archive records management; (m) drivers; (n) corporate social responsibility staff; (o) data controllers or processors under the data protection legislation; (p) cleaners; (q) catering staff; (r) personal assistant or secretary; (s) information technology support (ie, helpdesk); and (t) human resources administrators / processors.

(7) [deleted]

(8) A board director of: a UK SMCR insurance firm.

1.1.2A For Swiss general insurers, references in this sourcebook to parts of the PRA Rulebook for ‘Solvency II firms’ are to be read as references to the corresponding parts of the PRA Rulebook applying to large non-directive insurers.

1.1.3 Rules 1 to 5 in COCON 2.1 apply to all conduct rules staff.

1.1.4 (1) Rules SC1 to SC4 in COCON 2.2 apply to all senior conduct rules staff members (subject to (2)).

(2) SC1 to SC3 in COCON 2.2 do not apply to a senior conduct rules staff member within paragraph (d) of the definition of senior conduct rules staff member (P) unless P also falls into paragraph (a) or (b) of that definition.
1.1.5 G

(1) The guidance in COCON 2.3 applies to SMCR firms.

(2) [deleted]

(3) SYSC 27.6.3R provides that a function performed by a non-executive director of a firm acting as such is not an FCA certification function for that firm.

To what conduct does it apply?

1.1.6 R

For a person (P) who is an approved person, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by the firm (Firm A) on whose application approval was given to P.

[Note: sections 64A(4) and (5)(a) of the Act (Rules of conduct)]

1.1.6A R

For a person (P) who is a board director of a firm (Firm A) but is not an approved person of Firm A, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by Firm A.

[Note: sections 64A(4) and (5)(ab) of the Act (Rules of conduct)]

1.1.7 R

(1) For a person (P) subject to COCON who is not an approved person, COCON applies to the conduct of P in relation to the performance by P of functions relating to the carrying on of activities (whether or not regulated activities) by P’s employer (Firm A).

(2) This rule does not apply where COCON 1.1.6A applies.

[Note: sections 64A(4) and (5)(b) of the Act (Rules of conduct)]

1.1.7A R

(1) Where Firm A in COCON 1.1.6R to COCON 1.1.7R is an SMCR firm other than an SMCR banking firm, the application of COCON is further restricted by this rule.

(2) COCON only applies to conduct that forms part of, or is for the purpose of, any of the following:

(a) the SMCR financial activities of Firm A; or

(b) any activities of Firm A that have, or might reasonably be regarded as likely to have, a negative effect on:

(i) the integrity of the UK financial system; or

(ii) the ability of Firm A to meet the “fit and proper” test in threshold condition 2E and 3D (Suitability); or

(iii) the ability of Firm A to meet the applicable requirements and standards under the regulatory system relating to Firm A’s financial resources.

1.1.8 G

(1) More than one of COCON 1.1.6R to COCON 1.1.7AR may apply to the same individual performing several roles.
(2) For example, say that an individual (A) is an approved person for firm X and is employed by firm Y in a role that does not involve a controlled function or being a director.

(3) COCON 1.1.6R applies to A’s role with firm X and COCON 1.1.7R applies to A’s role with firm Y.

### 1.1.8A

(1) This rule applies to a person (P):
   (a) who is an approved person approved to perform a controlled function under SUP 10A.1.15R to SUP 10A.1.16BR (appointed representatives);
   (b) for whom P’s authorised approved person employer is an SMCR firm (F); and
   (c) to whom COCON also applies in P’s capacity as a member of F’s conduct rules staff.

(2) COCON does not apply to conduct of P to the extent that:
   (a) that conduct relates to the performance by P of functions:
      (i) in (1)(a); or
      (ii) in relation to the carrying on of a regulated activity by the appointed representative concerned; and
   (b) APER applies to that conduct.

### Where does it apply?

#### 1.1.9

(1) COCON applies to the conduct of conduct rules staff set out in (2) wherever it is performed.

(2) This rule applies to:
   (a) a senior conduct rules staff member; and
   (b) a certification employee performing FCA certification function (6) (material risk takers) in the table in SYSC 27.7.3R for a UK SMCR firm.

#### 1.1.9A

(1) This paragraph deals with how COCON 1.1.9R applies to a certification employee (P) who performs the material risk taker FCA certification function and another FCA certification function for the same UK SMCR firm.

(2) If P’s conduct relates to both FCA certification functions (because for example those two functions cover the same activities) COCON applies without territorial limitation to P’s conduct.

(3) If part of P’s conduct relates to the material risk taker FCA certification function and the rest of P’s conduct relates to the other FCA certification function, COCON only applies without territorial limitation to P’s conduct in relation to the material risk taker FCA certification function.
1.1.10 R (1) This rule applies to members of a firm’s conduct rules staff apart from conduct rules staff in ☐ COCON 1.1.9R.

(2) Subject to (3), COCON only applies to the conduct of persons to whom this rule applies (as set out in (1)) if that conduct:

(a) is performed from an establishment maintained in the United Kingdom by the SMCR firm; or

(b) involves dealing with a client of the firm in the United Kingdom from an establishment overseas.

(3) Paragraph (2)(b) only applies to a UK SMCR firm.

1.1.11 G The FCA interprets the phrase ‘dealing with’ in ☐ COCON 1.1.10R as including having contact with customers and extending beyond ‘dealing’ as used in the phrase ‘dealing in investments’. ‘Dealing in’ is used in Schedule 2 to the Act to describe, in general terms, the regulated activities which are specified in Part II of the Regulated Activities Order.

1.1.11A G The FCA interprets the phrase ‘a client of the firm in the United Kingdom’ in ☐ COCON 1.1.10R as referring to:

(1) for a client which is a body corporate, its office or branch in the United Kingdom; or

(2) for a client who is an individual, a client who is in the United Kingdom at the time of the dealing.

1.1.12 R A person will not be subject to COCON to the extent that it would be contrary to the UK’s obligations under a Single Market Directive, the auction regulation or the benchmarks regulation.

Purpose

1.1.13 G The purpose of this chapter is to set out rules for conduct rules staff and to provide guidance about those rules to firms whose staff are subject to them.

1.1.14 G ☐ COCON 1 Annex 1 has guidance on the role and responsibilities of non-executive directors to whom COCON applies.
1.2 Investments

1.2.1 COCON refers in a number of places to ‘investments’. The Glossary meaning of investment is wide and is not just limited to the ordinary dictionary meaning.

1.2.2 Therefore, for example, an approved person performing controlled functions in a Solvency II firm or a small non-directive insurer should note that that term includes rights under a contract of insurance, meaning they should also take into account those parts of COCON which provide guidance on individual conduct rules that refer to ‘investments’.

1.2.3 Where guidance refers to risks associated with investments, that will include risks applicable to rights under a contract of insurance including for example the risk of inadequate cover.
COCON 1 : Application and purpose

Guidance on the role and responsibilities of non-executive directors of SMCR firms

1 Introduction

This annex applies to non-executive directors (NEDs) of an SMCR firm.

1.1 This annex covers the role of a NED in performing the roles in (1) to (4), below:

1.2 (1) the role of chair of the board of directors;

(2) the role of chair of the nomination committee;

(3) the role of chair of any other committee (irrespective of whether performing that role is itself a designated senior management function);

(4) the general NED role.

1.3 The FCA’s view of the role of a NED is consistent with the duties of directors included in UK company law and the description of the role of a NED in the UK Corporate Governance Code.

2 The general role of a NED

The role of a NED performing the general NED role is to:

2.1 (1) provide effective oversight and challenge; and

(2) help develop proposals on strategy.

2.2 To deliver this, their responsibilities include:

(1) attending and contributing to board and committee meetings and discussions;

(2) taking part in collective board and committee decisions, including voting and providing input and challenge; and

(3) ensuring they are sufficiently and appropriately informed of the relevant matters prior to taking part in board or committee discussions and decisions.

2.3 Other key roles of a NED include:

(1) scrutinising the performance of management in meeting agreed goals and objectives;

(2) monitoring the reporting of performance;

(3) satisfying themselves that financial controls and systems of risk management are robust and defensible;

(4) scrutinising the design and implementation of the remuneration policy;

(5) providing objective views on resources, appointments and standards of conduct; and

(7) being involved in succession planning.
COCON 3  
Role of a NED as chair of the board or a committee

Subject to any specific governance arrangements, rules or requirements applicable to the board or particular committees, a NED’s responsibility as chair of the board or a committee includes:

1. ensuring that the board or committee meets with sufficient frequency;
2. fostering an open, inclusive discussion which challenges executives, where appropriate;
3. ensuring that the board or committee devotes sufficient time and attention to the matters within its remit;
4. helping to ensure that the board or committee and its members have the information necessary to its and their tasks;
5. reporting to the main board on the committee’s activities;
6. facilitating the running of the board or committee to assist it in providing independent oversight of executive decisions; and
7. in relation to the nomination committee, safeguarding the independence and overseeing the performance of the nomination committee.

COCON 3.2  
The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:

1. the requirements in SYSC 4.3A about the nomination committee (if that part of SYSC applies to the firm); and
2. any specific and relevant requirements relating to the committee or to the matters within the committee’s responsibilities.

Paragraph 3.2 of this annex is still relevant to a firm:

1. that is not required by the FCA Handbook to have a nomination committee; or
2. for which being the chair of such a committee is not a controlled function; if it has such a committee.

COCON 4  
General approach to the role of a NED

The FCA recognises that NEDs individually do not manage a firm’s business in the same way as executive directors. Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.

A NED is neither required nor expected to assume executive responsibilities.

Although NEDs who are subject to the senior management regime for SMF managers have individual duties under that regime, the FCA views the regime and its application as consistent with the principle of collective decision-making.

The standard of care, skill and diligence that the FCA would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:

1. the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the NED in relation to the firm, taking into account the standards in the Handbook (especially COCON and DEPP); and
2. the general knowledge, skill and experience that the NED has.
Chapter 2

Individual conduct rules
## 2.1 Individual conduct rules

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1</td>
<td>Rule 1: You must act with integrity.</td>
</tr>
<tr>
<td>2.1.2</td>
<td>Rule 2: You must act with due skill, care and diligence.</td>
</tr>
<tr>
<td>2.1.3</td>
<td>Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.</td>
</tr>
<tr>
<td>2.1.4</td>
<td>Rule 4: You must pay due regard to the interests of customers and treat them fairly.</td>
</tr>
<tr>
<td>2.1.5</td>
<td>Rule 5: You must observe proper standards of market conduct.</td>
</tr>
</tbody>
</table>
### 2.2 Senior manager conduct rules

#### 2.2.1 SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

#### 2.2.2 SC2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

#### 2.2.3 SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

#### 2.2.4 SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.
2.3 Firms: training and breaches

2.3.1 Under section 64B of the Act, an SMCR firm must:

(1) ensure that all persons subject to the rules in COCON are notified of the rules that apply to them; and

(2) take all reasonable steps to ensure that those persons understand how the rules in COCON apply to them.

2.3.2 The steps that an SMCR firm must take to ensure that its conduct rules staff understand how the rules in COCON apply to them include the provision of suitable training.

(1) Suitable training should always ensure that those who are subject to the rules in COCON have an awareness and broad understanding of all of the rules in COCON, and that they also have a deeper understanding of the practical application of the specific rules which are relevant to their work.

(2) For example:

(a) for individuals who trade in the markets, rule 5 in COCON 2.1.5R may apply in various circumstances arising in the individual’s day-to-day activities and additional training may be appropriate to ensure that the individual knows how that rule applies to those activities in those various circumstances; or

(b) for individuals who deal directly with customers, rule 4 in COCON 2.1.4R may apply in various circumstances which makes additional training appropriate for such individuals.

2.3.3 There are rules and guidance in SUP 15.3 (General notification requirements) and SUP 15.11 (Notification of COCON breaches and disciplinary action) that deal with reporting by an SMCR firm of COCON breaches to the FCA.
Chapter 3

General factors for assessing compliance
3.1 General factors for assessing compliance

3.1.1 Where descriptions of conduct are provided in this chapter which exemplify breaches of the rules in COCON, they are not intended to be an exhaustive list of the kind of conduct that may contravene the relevant rule.

3.1.2 In assessing compliance with, or a breach of, a rule in COCON, the FCA will have regard to the context in which a course of conduct was undertaken, including:

1. the precise circumstances of the individual case;
2. the characteristics of the particular function performed by the individual in question; and
3. the behaviour expected in that function.

3.1.3 Without prejudice to section 66A of the Act, a person will only be in breach of any of the rules in COCON where they are personally culpable. Personal culpability arises where:

1. a person's conduct was deliberate; or
2. the person's standard of conduct was below that which would be reasonable in all the circumstances.

3.1.4 In determining whether or not the particular conduct of a person complies with the rules in COCON, factors the FCA would expect to take into account include:

1. whether that conduct relates to activities that are subject to other provisions of the Handbook;
2. whether that conduct is consistent with the requirements and standards of the regulatory system relevant to the person's firm.

3.1.5 In determining whether or not the conduct of a senior conduct rules staff member complies with rules SC1 to SC4 in COCON, factors the FCA would expect to take into account include:

1. whether they exercised reasonable care when considering the information available to them;
(2) whether they reached a reasonable conclusion upon which to act;

(3) the nature, scale and complexity of the firm’s business;

(4) their role and responsibility as determined by reference to the relevant statement of responsibility;

(5) the knowledge they had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities.

3.1.6 In assessing whether a senior conduct rules staff member may have breached a rule in COCON, the nature, scale and complexity of the business and the role and responsibility of the individual undertaking the activity in question within the firm will be relevant in assessing whether that person’s conduct was reasonable. For example, the smaller and less complex the business, the less detailed and extensive the systems of control need to be.

3.1.7 UK domestic firms listed on the London Stock Exchange are subject to the UK Corporate Governance Code, whose internal control provisions are explained in the publication entitled ‘Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)’ issued by the Financial Reporting Council. Therefore, firms in this category will be subject to that code, as well as to the rules in COCON. In forming an opinion as to whether a senior conduct rules staff member has complied with the rules in COCON, the FCA will give due credit if they followed corresponding provisions in the UK Corporate Governance Code and related guidance.
Chapter 4

Specific guidance on individual conduct rules
Rule 1: You must act with integrity

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

1. Misleading (or attempting to mislead) by act or omission:
   (a) a client; or
   (b) the firm for whom the person works (or its auditors); or
   (c) the FCA or;
   (d) the PRA.

2. Falsifying documents.

3. Misleading a client about:
   (a) the risks of an investment;
   (b) the charges or surrender penalties of products;
   (c) the likely performance of products by providing inappropriate projections of future returns.

4. Misleading a client by informing the client that products, require only a single payment when that is not the case.

5. Mismarking the value of investments or trading positions.

6. Procuring the unjustified alteration of prices on illiquid or off-exchange contracts, or both.

7. Misleading others within the firm about the credit-worthiness of a borrower.

8. Providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience.

9. Providing false or inaccurate information to:
   (a) the firm (or to the firm’s auditors); or
   (b) the FCA or the PRA.

10. Destroying, or causing the destruction of, documents (including falsified documentation), or tapes or their contents, relevant to
misleading (or attempting to mislead) a client, the firm for whom the person works, or the FCA or the PRA.

(11) Failing to disclose dealings where disclosure is required by the firm's personal account dealing rules.

(12) Misleading others in the firm about the nature of risks being accepted.

(13) Recommending an investment to a customer, or carrying out a discretionary transaction for a customer where the person knows that they are unable to justify its suitability for that customer.

(14) Failing to inform, without reasonable cause:
   (a) a customer; or
   (b) the firm for whom the person works (or its auditors); or
   (c) the FCA; or
   (d) the PRA.

   of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, including, but not limited to, deliberately failing to:
   (i) disclose the existence of falsified documents; and
   (ii) rectify mismarked positions immediately.

(15) Preparing inaccurate or inappropriate records or returns, including, but not limited to preparing:
   (a) performance reports for transmission to customers which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
   (b) inaccurate training records or inaccurate details of qualifications, past employment record or experience; and
   (c) inaccurate trading confirmations, contract notes or other records of transactions or holdings of securities for a customer, whether or not the customer is aware of these inaccuracies or has requested such records.

(16) Misusing the assets or confidential information of a client or of their firm including, but not limited to, deliberately:
   (a) front running client orders;
   (b) carrying out unjustified trading on client accounts to generate a benefit (whether direct or indirect) to the person (that is, churning);
   (c) misappropriating a client's assets, including wrongly transferring to personal accounts cash or securities belonging to clients;
   (d) wrongly using one client's funds to settle margin calls or to cover trading losses on another client's account or on firm accounts;
   (e) using a client's funds for purposes other than those for which they were provided;
   (f) retaining a client's funds wrongly; and
(g) pledging the assets of a client as security or margin in circumstances where the firm is not permitted to do so.

(17) Designing transactions to disguise breaches of requirements and standards of the regulatory system.

(18) Not paying due regard to the interests of a customer.

(19) Acts, omissions or business practices that could be reasonably expected to cause customer detriment.

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

Due skill, care and diligence are required, especially where activities might affect customers or the integrity of the financial system.

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

(1) Failing to inform:
   (a) a customer; or
   (b) their firm (or its auditors);

   of material information in circumstances where the member of conduct rules staff was aware, or ought to have been aware, of such information, and of the fact that they should provide it, including the following:

   (i) failing to explain the risks of an investment to a customer;
   (ii) failing to disclose to a customer details of the charges or surrender penalties of investment products;
   (iii) mismarking trading positions;
   (iv) providing inaccurate or inadequate information to a firm or its auditors;
   (v) failing to disclose dealings where disclosure is required by the firm’s personal account dealing rules.

() Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where they do not have reasonable grounds to believe that it is suitable for that customer.

() Undertaking, recommending or providing advice on transactions without a reasonable understanding of the risk exposure of the transaction to a customer, including recommending transactions in investments to a customer without a reasonable understanding of the liability (either potential or actual) of that transaction.

() Undertaking transactions without a reasonable understanding of the risk exposure of the transaction to the firm, including trading on the firm’s own account without a reasonable understanding of the liability (either potential or actual) of the transaction.

() Failing to provide adequate control over a client’s assets, including:

() failing to segregate a client’s assets; and
() failing to process a client’s payments in a timely manner.

() Continuing to perform a function having failed to meet the standards of knowledge and skill in the Training and Competence sourcebook (TC) for that function.

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

### 4.1.4

It is important for a manager to understand the business for which they are responsible. A manager is unlikely to be an expert in all aspects of a complex financial services business. However, they should understand and inform themselves about the business sufficiently to understand the risks of its trading, credit or other business activities.

### 4.1.5

It is important for a manager to understand the risks of expanding the business into new areas and, before approving the expansion, they should investigate and satisfy themselves, on reasonable grounds, about the risks, if any, to the business.

### 4.1.6

Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the firm beyond those reasonably anticipated, a manager should require explanations from those who report to them. Where those explanations are implausible or unsatisfactory, they should take steps to test the veracity of those explanations.

### 4.1.7

Where a manager is not an expert in a business area, they should consider whether they (or those with whom they work) have the necessary expertise to provide an adequate explanation of issues within that business area. If not, they should seek an independent opinion from elsewhere, within or outside the firm.

### 4.1.8

The following is a non-exhaustive list of examples of conduct by a manager that would be in breach of rule 2.

1. Failing to take reasonable steps to ensure that the business of the firm for which the manager has responsibility:
   a. is controlled effectively;
   b. complies with the relevant requirements and standards of the regulatory system applicable to that area of the business; and
   c. is conducted in such a way to ensure that any delegation of responsibilities is to an appropriate person and is overseen effectively.

2. Failing to take reasonable steps to adequately inform themselves about the affairs of the business for which they are responsible, including:
   a. permitting transactions without a sufficient understanding of the risks involved;
   b. permitting expansion of the business without reasonably assessing the potential risks of that expansion;
(c) inadequately monitoring highly profitable transactions or business practices, or unusual transactions or business practices;
(d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and
(e) failing to obtain independent, expert opinion where appropriate.

(3) Failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that the manager has delegated to an individual or individuals (whether in-house or outside contractors).

Acting with due skill, etc as a member of the Board (rule 2)

4.1.8A G
Rule 2 in ■ COCON 2.1.3R applies to a director (whether executive or non-executive) when taking part in the activities of the Board, other governing body or of its committees. This includes, for example, participating in meetings, preparing papers or other submissions for meetings and reporting to the body or committee.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators

4.1.9 G For the purpose of rule 3 in ■ COCON 2.1.3R, regulators other than the FCA and the PRA are those which have recognised jurisdiction in relation to activities to which COCON applies and have a power to call for information from the firm or from individuals performing certain functions in connection with those regulated activities. This may include an exchange or an overseas regulator.

4.1.10 G There is no duty on a person to report information directly to the regulator concerned unless they are one of the persons responsible within the firm for reporting matters to the regulator concerned. However, if a person takes steps to influence the decision not to report to the regulator concerned or acts in a way that is intended to obstruct the reporting of the information to the regulator concerned, then the appropriate regulator will, in respect of that information, view them as being one of those within the firm who has taken on responsibility for deciding whether to report that matter to the regulator concerned.

4.1.11 G The following is a non-exhaustive list of examples of conduct that would be in breach of rule 3.

(1) Failing to report promptly in accordance with their firm’s internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the FCA, the PRA, or both the PRA and the FCA.

(2) Failing without good reason to:
   (a) inform a regulator of information of which the approved person was aware in response to questions from that regulator;
   (b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and
(c) supply a regulator with appropriate documents or information when requested or required to do so and within the time limits attaching to that request or requirement.

4.1.12 G For the purposes of COCON 4.1.11G(2), good reasons could include, where applicable, a right to preserve legal professional privilege, a right to avoid self-incrimination, complying with an order of a court or complying with an obligation imposed by law or by a regulator.

Rule 4: You must pay due regard to the interests of customers and treat them fairly.

4.1.13 G Rule 4 in COCON 2.1.4R applies to all conduct rules staff, regardless of whether that person has direct contact or dealings with customers of the firm. Persons subject to the rules in COCON should consider how their actions (or their failure to act) can affect the interests of customers or result in customers being treated unfairly.

4.1.14 G The following is a non-exhaustive list of examples of conduct that would be in breach of rule 4.

1. Failing to inform a customer of material information in circumstances where they were aware, or ought to have been aware, of such information and of the fact that they should provide it, including the following:
   a. failing to explain the risks of an investment to a customer;
   b. failing to disclose to a customer details of the charges or surrender penalties of investment products; and
   c. providing inaccurate or inadequate information to a customer about a product or service.

2. Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where they do not have reasonable grounds to believe that it is suitable for that customer.

3. Undertaking, recommending or providing advice on transactions without a reasonable understanding of the risk exposure of the transaction to a customer, including recommending transactions in investments to a customer without a reasonable understanding of the liability (either potential or actual) of that transaction.

4. Failing to provide adequate control over a client's assets, including:
   a. failing to segregate a client's assets; and
   b. failing to process a client's payments in a timely manner.

5. Providing a customer with a product which is different to the one applied for by that customer, unless the customer understands the differences and understands the product they have purchased.

6. Failing to acknowledge, or seek to resolve, mistakes in dealing with customers.
(7) Failing to provide terms and conditions to which a product or service is subject in a way which is clear and easy for the customer to understand.

Rule 5: You must observe proper standards of market conduct.

4.1.15 A general consideration about whether or not a person’s conduct complies with the relevant requirements and standards of the market, is whether they, or the firm, comply with relevant market codes and exchange rules. Compliance with relevant market codes and exchange rules will tend to show compliance with rule 5 in COCON 2.1.5R.

4.1.16 Manipulating or attempting to manipulate a benchmark or a market, such as a foreign exchange market, or a benchmark is an example of failing to observe proper standards of market conduct.

4.1.17 (1) Markets include relevant markets as defined in section 1F of the Act (Meaning of “relevant markets” in strategic objective).

(2) Markets are not limited to regulated markets or formal markets such as one on a stock exchange.

(3) Nor are markets limited to markets for professionals (such as the wholesale foreign exchange markets) or ones that involve tradeable and transferable assets.

(4) Therefore markets include consumer markets (whether for products, services, credit or otherwise).
4.2 Specific guidance on senior manager conduct rules

SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

4.2.1 An SMF manager’s role and responsibilities are set out in the statement of responsibilities.

4.2.2

(1) Strategy and plans will often dictate the risk which the business is prepared to take on and high-level controls will dictate how the business is to be run. If the strategy of the business is to enter high-risk areas, then the degree of control and strength of monitoring reasonably required within the business will be high. In organising the business for which they are responsible, senior conduct rules staff members should bear this in mind.

(2) (a) Strategy and plans for the branch in the United Kingdom of an overseas firm will often be set by those parts of the firm which are based outside the United Kingdom.

(b) If an overseas firm proposes a significant strategy or change in strategy (‘the proposal’) for its branch in the United Kingdom, particularly to enter higher risk areas, the senior conduct rules staff member responsible for the matters likely to be affected by the strategy should assess its impact on the branch in the United Kingdom.

(c) The senior conduct rules staff member should ensure that they take reasonable steps to implement the proposal in a way that complies with the regulatory system.

(d) If the firm proposes to implement the proposal and the senior conduct rules staff member considers that it is likely to be non-compliant with the regulatory system, the senior conduct rules staff member should promptly inform the appropriate regulator.

4.2.3 To comply with the obligations of rule SC1 in COCON 2.2.1R, senior conduct rules staff members may find it helpful to review whether each area of the business for which they are responsible has been clearly assigned to a particular individual or individuals.

4.2.4 The organisation of the business and the responsibilities of those within it should be clearly defined. Reporting lines should be clear to staff.
Where members of staff have particular levels of authorisation, these should be clearly set out and communicated to staff. It may be appropriate for each member of staff to have a job description of which they are aware.

Senior conduct rules staff members should take reasonable steps to satisfy themselves, on reasonable grounds, that each area of the business for which they are responsible has appropriate policies and procedures for reviewing the competence, knowledge, skills and performance of each individual member of staff.

If an individual's performance is unsatisfactory, the relevant senior conduct rules staff member should review carefully whether to allow that individual to continue in their position. In particular:

1. If the senior conduct rules staff member is aware of concerns relating to the compliance with requirements and standards of the regulatory system (or internal controls) of the individual concerned, or of staff reporting to that individual, the senior conduct rules staff member should take care not to give undue weight to the financial performance of the individual or group concerned when considering whether any action should be taken.

2. An adequate investigation of the concerns should be undertaken (including, where appropriate, adherence to internal controls). The senior conduct rules staff member should be satisfied, on reasonable grounds, that the investigation is appropriate, the results are accurate and that the concerns do not pose an unacceptable risk to compliance with the requirements and standards of the regulatory system.

As part of organising the business, a senior conduct rules staff member should ensure that there is an orderly transition when another senior conduct rules staff member under their oversight or responsibility ceases to perform that function and someone else takes up that function. It would be appropriate for the individual vacating such a position to prepare a comprehensive set of handover notes for their successor. Those notes should, at a minimum, specify any matter that is ongoing which the successor would reasonably expect to be aware of to:

1. perform their function effectively;

2. ensure compliance with the requirements and standards of the regulatory system; and

3. ensure that the individual with overall responsibility for that part of the business of the firm maintains effective control.
4.2.9 In organising the business, a senior conduct rules staff member should pay attention to any temporary vacancies which exist. They should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The senior conduct rules staff member should assess the risk to compliance with the requirements and standards of the regulatory system as a result of the vacancy, and the higher the risk the greater the steps they should take to fill the vacancy. It may be appropriate to limit or suspend the activity if adequate cover for responsibilities cannot be arranged. To the extent that those vacancies are for controlled functions, they may only be filled by persons approved for that function.

4.2.10 The following is a non-exhaustive list of examples of conduct that would be in breach of rule SC1.

(1) Failing to take reasonable steps to apportion responsibilities for all areas of the business under the approved person’s control.

(2) Failing to take reasonable steps to apportion responsibilities clearly among those to whom responsibilities have been delegated, which includes establishing confusing or uncertain:
   (a) reporting lines; or
   (b) authorisation levels; or
   (c) job descriptions and responsibilities.

(3) In the case of a manager who is responsible for dealing with the apportionment of responsibilities, failing to take reasonable care to maintain a clear and appropriate apportionment of responsibilities including:
   (a) failing to review regularly the responsibilities which have been apportioned; and
   (i) failing to act where that review shows that those responsibilities have not been clearly apportioned.

(4) Failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of senior conduct rules staff member, including the following:
   (a) failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable;
   (b) giving undue weight to financial performance when considering the suitability or continuing suitability of an individual for a particular role; and
   (c) allowing managerial vacancies which put compliance with the requirements and standards of the regulatory system at risk to remain, without arranging suitable cover for the responsibilities.
SC2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.

4.2.11 A senior conduct rules staff member must take reasonable steps to ensure their firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

4.2.12 Senior conduct rules staff members do not themselves need to put in place the systems of control for the business, unless it is within their role and responsibilities. However, they should take reasonable steps to ensure that the business for which they are responsible has operating procedures and systems with well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business.

4.2.13 Where a senior conduct rules staff member becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system within their area of responsibility, they should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner. This may involve an adequate investigation to find out whether any systems or procedures have failed and why. They may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

4.2.14 If an issue raises questions of law or interpretation, senior conduct rules staff members may need to take legal advice. If appropriate legal expertise is not available in-house, they may need to consider appointing an appropriate external adviser.

4.2.15 Where independent reviews of systems and procedures have been undertaken and result in recommendations for improvement, the senior conduct rules staff member responsible for that business area should ensure that, unless there are good reasons not to, any reasonable recommendations are implemented in a timely manner. What is reasonable will depend on the nature of the issue to be addressed and the cost of the improvement. It will be reasonable for a senior conduct rules staff member to carry out a cost benefit analysis when assessing whether the recommendations are reasonable.

4.2.16 The following is a non-exhaustive list of examples of conduct that would be in breach of rule SC2.

(1) Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system for the activities of the firm.
(2) Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system for the activities of the firm in question.

(3) Failing to take reasonable steps to inform themselves adequately about the reason why significant breaches (suspected or actual) of the relevant requirements and standards of the regulatory system for the activities of the firm may have arisen (taking account of the systems and procedures in place). This would include failing to investigate whether systems or procedures may have failed and failing to obtain expert opinion on the adequacy of the systems and procedures where appropriate.

(4) Failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (suspected or actual) of the relevant requirements and standards of the regulatory system relating to the activities of the firm, including:

(a) unreasonably failing to implement recommendations for improvements in systems and procedures; and

(b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner.

(5) For a manager with responsibility for overseeing the establishment and maintenance of appropriate systems and controls or the apportionment of responsibilities, any failure to take reasonable care to ensure that those obligations are discharged effectively.

(6) For a proprietary trader, failing to maintain and comply with appropriate systems and controls in relation to that activity.

(7) For a money laundering reporting officer, failing to discharge the responsibilities imposed on them by the firm for oversight of its compliance with the FCA’s rules on systems and controls against money laundering.

(8) For a senior conduct rules staff member who is responsible for the compliance function, failing to ensure that:

(a) the compliance function has the necessary authority, resources, expertise and access to all relevant information; or

(b) a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance; or

(c) the persons involved in the compliance functions are not involved in the performance of services or activities they monitor; or

(d) the method of determining the remuneration of the persons involved in the compliance function does not compromise their objectivity; or

(e) the method of determining the remuneration complies, where applicable, with the Remuneration Code or, for a Solvency II firm or a small non-directive insurer, other relevant requirements in relation to remuneration.
SC3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

4.2.17  An SMF manager may delegate the investigation, resolution or management of an issue or authority for dealing with a part of the business to individuals who report to them or to others.

4.2.18  A senior conduct rules staff member should have reasonable grounds for believing that the delegate has the competence, knowledge, skill and time to deal with the issue. For instance, if the compliance department only has sufficient resources to deal with day-to-day issues, it would be unreasonable to delegate to it the resolution of a complex or unusual issue without ensuring it had sufficient capacity to deal with the matter adequately.

4.2.19  The FCA recognises that a senior conduct rules staff member will have to exercise their own judgement in deciding how issues are dealt with and sometimes that judgement will, with the benefit of hindsight, be shown to have been wrong. The senior conduct rules staff member will not be in breach of rule SC3 in COCON 2.2.3R unless they fail to exercise due and reasonable consideration before they delegate the resolution of an issue or authority for dealing with a part of the business and fail to reach a reasonable conclusion. If they are in doubt about how to deal with an issue or the seriousness of a particular compliance problem then, although they cannot delegate to the FCA the responsibility for dealing with the problem or issue, they can speak to the FCA to discuss his approach.

4.2.20  Senior conduct rules staff members will not always manage the business on a day-to-day basis themselves. The extent to which they do so will depend on a number of factors, including the nature, scale and complexity of the business and their position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines, which may involve documenting the scope of that delegation and the reporting lines in writing. The FCA will look to the senior conduct rules staff member to take reasonable steps to ensure that systems are in place to ensure that issues are being addressed at the appropriate level. When issues come to their attention, they should deal with them in an appropriate way.

4.2.21  Delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate has the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business indicates a failure to comply with rule SC3 in COCON 2.2.3R.

4.2.22  Although a senior conduct rules staff member may delegate the resolution of an issue, or authority for dealing with a part of the business, they cannot delegate responsibility for it. It is that person’s responsibility to ensure that they receive reports on progress and question those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, the senior conduct rules staff member may need to challenge the explanations they receive and, if necessary, take action.
personally to resolve the problem. This may include increasing the resource
applied to it, reassigning the resolution internally or obtaining external
advice or assistance. Where an issue raises significant concerns, senior
conduct rules staff members should act clearly and decisively. If appropriate,
this may be by suspending members of staff or relieving them of all or part
of their responsibilities.

4.2.23 The following is a non-exhaustive list of examples of conduct that would be
in breach of rule SC3.

(1) Failing to take reasonable steps to maintain an appropriate level of
understanding about an issue or part of the business that the senior
conduct rules staff member has delegated to an individual(s)
(whether in-house or outside contractors) including:
(a) disregarding an issue or part of the business once it has been
delegated;
(b) failing to require adequate reports once the resolution of an
issue or management of part of the business has been delegated;
and
(c) accepting implausible or unsatisfactory explanations from
delegates without testing their accuracy.

(2) Failing to supervise and monitor adequately the individual(s)
(whether in-house or outside contractors) to whom responsibility for
dealing with an issue or authority for dealing with a part of the
business has been delegated including any failure to:
(a) take personal action where progress is unreasonably slow, or
where implausible or unsatisfactory explanations are provided; or
(b) review the performance of an outside contractor in connection
with the delegated issue or business.

4.2.24 In determining whether or not the conduct of a senior conduct rules staff
member complies with rule SC3 in COCON 2.2.3R, the factors which the FCA
would expect to take into account include:

(1) the competence, knowledge or seniority of the delegate; and

(2) the past performance and record of the delegate.

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

4.2.25 For the purpose of rule SC4 in COCON 2.2.4R, regulators in addition to the
FCA and the PRA are those which have recognised jurisdiction in relation to
activities to which COCON applies and have a power to call for information
from the relevant person in connection with their function or the business
for which they are responsible. This may include an exchange or an overseas
regulator.

4.2.26 SC4 applies to senior conduct rules staff members in addition to rule 3 in
COCON 2.1.3R. Although, the rules have some overlap, they are different.
Rule 3 normally relates to responses from individuals to requests from the
regulator, whereas rule SC4 imposes a duty on a senior conduct rules staff member to disclose appropriately any information of which the appropriate regulator would reasonably expect, including making a disclosure in the absence of any request or enquiry from the appropriate regulator. A senior conduct rules staff member is likely to have access to greater amounts of information of potential regulatory importance and to have the expertise to recognise when this may be something of which the appropriate regulator would reasonably expect notice.

4.2.27 Where a senior conduct rules staff member is responsible within the firm (individually or with other senior conduct rules staff members) for reporting matters to the regulator, failing promptly to inform the regulator concerned of information of which they are aware and which it would be reasonable to assume would be of material significance to the regulator concerned, whether in response to questions or otherwise, constitutes a breach of rule SC4 in COCON 2.2.4R.

4.2.28 (1) If a senior conduct rules staff member comes across a piece of information that is something of which they think the FCA or PRA could reasonably expect notice, they should determine whether that information falls within the scope of their responsibilities. For an SMF manager those responsibilities will be set out in that person's statement of responsibilities.

(2) If it does, then they should ensure that, if it is otherwise appropriate to do so, it is disclosed to the appropriate regulator. If it does not fall within the scope of their responsibilities then, in the absence of any reason to the contrary, they might reasonably assume that its disclosure to the appropriate regulator was being dealt with by the senior conduct rules staff member with responsibility for dealing with information of that nature. If a senior conduct rules staff member was not sure that the matter was being dealt with by another senior conduct rules staff member, or if they were not sure whether this was in their area or not, the FCA would expect them to make enquiries to inform themselves, rather than disregard the matter.

4.2.29 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;

(2) whether the information related to the individual themselves or to their firm; and

(3) whether any decision not to report the matter was taken after reasonable enquiry and analysis of the situation.
Code of Conduct (COCON)

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in COCON.
Code of Conduct (COCON)

Schedule 2
Notification requirements

Sch 2.1 G
The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

Sch 2.2 G
It is not a complete statement of those requirements and should not be relied on as if it were.

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>COCON 2.2.4R</td>
<td>Any information of which the FCA or PRA would reasonably expect notice.</td>
<td>Appropriate disclosure</td>
<td>Any information of which the FCA or PRA would reasonably expect notice.</td>
<td>Appropriate</td>
</tr>
</tbody>
</table>
Code of Conduct (COCON)

Schedule 3
Fees and required payments

Sch 3.1 G
There are no requirements for fees or other payments in COCON.
Code of Conduct (COCON)

Schedule 4
Powers exercised

Sch 4.1 G
Section 64A (Rules of conduct)
Section 139A (Power of the FCA to give guidance)
Code of Conduct (COCON)

Schedule 5
Rights of action for damages

Sch 5.1 G
There is no right of action under section 138D of the Act (Actions for damages) for breach of the rules in COCON.
Code of Conduct (COCON)

Schedule 6
Rules that can be waived

Sch 6.1 G
Section 138A (Modification or waiver of rules) does not apply to COCON.
Schedule 6
Rules that can be waived