

Code of Conduct (COCON)

Chapter 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*.

To whom does it apply?

1.1.1A **R** COCON applies to the *persons* set out in the table in ■ COCON 1.1.2R.

1.1.2 **R** Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
<p>(1) An <i>SMF manager</i>.</p> <p>(2) An <i>employee</i> (“P”) of an <i>SMCR firm</i> who:</p> <p>(a) performs the function of an <i>SMF manager</i>;</p> <p>(b) is not an <i>approved person</i> to perform the function in question; and</p> <p>(c) is required to be an <i>approved person</i> at the time P performs that function.</p> <p>(3) An <i>employee</i> of an <i>SMCR firm</i> who would be performing an <i>FCA-designated senior management function</i> but for SUP 10C.3.13R (The 12-week rule).</p> <p>(4) A <i>certification employee</i> of an <i>SMCR firm</i>.</p> <p>(5) An <i>employee</i> of an <i>SMCR firm</i> who would be performing an <i>FCA certification function</i> but for SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).</p> <p>(6) Any <i>employee</i> of an <i>SMCR firm</i> not coming within another row of this table, except one listed in column (2) of this row (6) of this table.</p>	<p>This applies even if the <i>certification employee</i> has not been notified that COCON applies to them or notified of the <i>rules</i> that apply to them.</p> <p>(A) This row (6) does not apply to an <i>employee</i> of an <i>SMCR firm</i> who only performs functions falling within the scope of the following roles:</p> <p>(a) receptionists;</p> <p>(b) switchboard operators;</p>

Persons to whom COCON applies	Comments
	<p>(c)post room staff;</p> <p>(d)reprographics/print room staff;</p> <p>(e)property/facilities management;</p> <p>(f)events management;</p> <p>(g)security guards;</p> <p>(h)invoice processing;</p> <p>(i)audio visual technicians;</p> <p>(j)vending machine staff;</p> <p>(k)medical staff;</p> <p>(l)archive records management;</p> <p>(m)drivers;</p> <p>(n)corporate social responsibility staff;</p> <p>(o) taking part in following activities of the <i>firm</i>:</p> <p>(i) the <i>firm's</i> activities as a data controller; or</p> <p>(ii) the <i>firm's</i> activities of data processing;</p> <p>as defined in the <i>data protection legislation</i>, but subject to Note (1) of this table;<i>data protection legislation</i>;</p> <p>(p)cleaners;</p> <p>(q)catering staff;</p> <p>(r)personal assistant or secretary;</p> <p>(s)information technology support (ie, helpdesk); and</p> <p>(t)human resources administrators / processors.</p>
<p>(7) [deleted]</p> <p>(8)A <i>board director</i> of: a <i>UK SMCR firm</i>.</p> <p>Note (1): A function is only within paragraph (o) of column (2) (Comments) of row (6) of this table if the function does not require the <i>employee</i> concerned to exercise a significant amount of discretion or judgment.</p>	

1.1.2A **R** 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 **R** Rules 1 to 6 in ■ COCON 2.1 apply to all *conduct rules staff*.

- 1.1.4** **R** (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.*
- 1.1.5A** **R** *The conduct of a member of the conduct rules staff of a firm is not within the scope of Rule 6 in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers):*
- (1) *unless the corresponding COCON firm activities of the firm are within the scope of ■ PRIN 3.1 (Who?) so far as it applies to Principle 12; and*
- (2) *except to the extent that Principle 12 applies to that firm under ■ PRIN 3.1.*
- To what conduct does it apply?**
- 1.1.5B** **R** (1) *The restrictions of the scope of COCON in ■ COCON 1.1.7AR to ■ COCON 1.1.7ER (when they apply) are in addition to those in ■ COCON 1.1.6R to ■ COCON 1.1.7R.*
- (2) *The restrictions of the scope of COCON in ■ COCON 1.1.7AR to ■ COCON 1.1.7ER (when they apply) are cumulative.*
- 1.1.5C** **G** (1) *The effect of ■ COCON 1.1.5BR(1) is that conduct that is within the scope of ■ COCON 1.1.7AR to ■ COCON 1.1.7ER but outside the scope of ■ COCON 1.1.6R to ■ COCON 1.1.7R is outside the scope of COCON and vice versa.*
- (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.*

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)]

1.1.7-A **R** (1) The term "*COCON firm activities*" means (in relation to conduct of P in relation to Firm A) the corresponding activities of Firm A as referred to in ■ COCON 1.1.6R to ■ COCON 1.1.7R (To what conduct does it apply?).

(2) A *person* is a member of the *conduct rules staff* of Firm A if they meet the description of P in relation to that *firm* in ■ COCON 1.1.6R to ■ COCON 1.1.7R.

(3) The terms "P" and "Firm A" have the same meaning as they do in ■ COCON 1.1.6R to ■ COCON 1.1.7R.

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.

(3) This *rule* does not apply where ■ COCON 1.1.7BR applies.

1.1.7B

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- (4) This *rule* does not apply to *Rule 6* in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers).
- (1) Where a member (M) of the *conduct rules staff* of Firm A as described in ■ COCON 1.1.6R to ■ COCON 1.1.7R meets the condition in (c) and Firm A meets the conditions in (a) and (b), the application of COCON to the conduct of M in relation to Firm A is further restricted by this *rule*:
- (a) the *firm* is a *pure benchmark SMCR firm*;
 - (b) the *firm* is an *Annex II benchmark administrator* (whether or not it also administers other benchmarks); and
 - (c) M does not perform any functions described in ■ COCON 1.1.6R to ■ COCON 1.1.7R in relation to Firm A with respect to any *benchmark* that the *firm* administers except a *benchmark* that is subject to Annex II to the *benchmarks regulation*.
- (2) (a) The only conduct to which the following *rules* apply is the conduct described in (2)(b):
- (i) the *rules* in ■ COCON 2.1 (Individual conduct rules); and
 - (ii) *rule SC4* in ■ COCON 2.2 (You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice).
- (b) The *rules* in (2)(a) apply only to any of the following:
- (i) the performance of a function by M in relation to the carrying on of a *regulated activity* by Firm A;
 - (ii) (if M is an *SMF manager*) the performance by M of a *controlled function* in relation to Firm A (whether or not approval has been sought and granted).
- (3) *Rules SC1 to SC3* in ■ COCON 2.2 (Senior manager conduct rules) apply only to conduct:
- (a) that comes within (2)(b); or
 - (b) that comes within ■ COCON 1.1.7AR, but this paragraph (3)(b) only applies in a *prudential context*.

1.1.7C

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The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding COCON *firm activities* of the *firm* are within the scope of ■ PRIN 3.2 (What?) so far as it applies to *Principle 12*.

1.1.7D

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The effect of ■ COCON 1.1.7C is that a *person's* conduct is not within the scope of *Rule 6* in ■ COCON 2.1 if the related activities of the *firm* fall outside the scope of *Principle 12*. If *Principle 12* applies, *Rule 6* in ■ COCON 2.1 only applies if the conduct is also within the scope of the other relevant COCON application *rules* (although one of the COCON application rules (■ COCON 1.1.7AR) does not apply to *Rule 6*).

1.1.7E **R** To the extent that *Rule 6* in ■ COCON 2.1 (You must act to deliver good outcomes for retail customers) applies to the conduct of a *person*, *Rule 4* in ■ COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) does not apply to that conduct of that *person*.

1.1.8 **G**

- (1) More than one of ■ COCON 1.1.6R to ■ COCON 1.1.7ER 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 **R**

- (1) This *rule* applies to a *person* (P):
 - (a) who is an *approved person* approved to perform a *controlled function* under ■ SUP 10A (FCA Approved Persons in 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?

1.1.8B **R** The restrictions of the scope of *COCON* in ■ COCON 1.1.9R to ■ COCON 1.1.10R on the one hand and ■ COCON 1.1.11C on the other are cumulative.

1.1.9 **R**

- (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 **G**

- (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.
- 1.1.11B** **G** (1) The *Regulated Activities Order* has an effect on the territorial scope of *COCON*.
- (2) This is because whether or not conduct involves *regulated activities* may affect how and whether *COCON* applies. Therefore where overseas activities are excluded from being *regulated activities* by the *Regulated Activities Order*, that will have an effect on *COCON*.
- (3) An example of (1) is the territorial restriction relating to *regulated claims management activities*.
- (4) As explained in ■ **PERG 2.4A** (Link between regulated claims management activities and Great Britain), a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.

(5) The result is that a claims management activity specified in the *Regulated Activities Order* carried on outside *Great Britain* is an *unregulated activity* for the purposes of *COCON*.

(6) This restriction:

- (a) applies to *conduct rules staff* coming within ■ *COCON 1.1.9R* as well as to other *conduct rules staff*; and
- (b) applies in addition to the restriction in ■ *COCON 1.1.10R*.

1.1.11C **R** The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in ■ *COCON 2.1* (You must act to deliver good outcomes for retail customers) unless the corresponding *COCON firm activities* of the *firm* are within the scope of ■ *PRIN 3.3* (Where?) so far as it applies to *Principle 12*.

1.1.11D **G** The effect of ■ *COCON 1.1.8BR* and ■ *COCON 1.1.11CR* is that conduct of a member of a *firm's conduct rules staff* is only within the territorial scope of *Rule 6* in ■ *COCON 2.1* if it is within the scope of ■ *COCON 1.1.9R* to ■ *COCON 1.1.10R* and the corresponding activity of their *firm* is within the territorial scope of *Principle 12* as set out in ■ *PRIN 3.3*.

1.1.12 **R** A *person* will not be subject to *COCON* to the extent that this would be contrary to the requirements of an *EU* measure passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.

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 **G** 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 **G** 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 **G** 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.

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

COCON Introduction 1

COCON 1.1 This annex applies to *non-executive directors* (NEDs) of an *SMCR firm*.

COCON 1.2 This annex covers the role of a NED in performing the roles in (1) to (4), below:

- (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.

COCON 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*.

COCON The general role of a NED 2

COCON 2.1 The role of a NED performing the general NED role is to:

- (1) provide effective oversight and challenge; and
- (2) help develop proposals on strategy.

COCON 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.

COCON 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 on the integrity of financial information;
- (4) satisfying themselves that financial controls and systems of risk management are robust and defensible;
- (5) scrutinising the design and implementation of the remuneration policy;
- (6) 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
COCON 3.1	<p>Subject to any specific governance arrangements, <i>rules</i> or requirements applicable to the board or particular committees, a NED’s responsibility as chair of the board or a committee includes:</p> <ol style="list-style-type: none"> (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	<p>The chair of the nomination committee should take reasonable steps to ensure that the nomination committee complies with:</p> <ol style="list-style-type: none"> (1) the requirements in <i>SYSC 4.3A</i> about the nomination committee (if that part of <i>SYSC</i> applies to the <i>firm</i>); and (2) any specific and relevant requirements relating to the committee or to the matters within the committee’s responsibilities.
COCON 3.3	<p>Paragraph 3.2 of this annex is still relevant to a <i>firm</i>:</p> <ol style="list-style-type: none"> (1) that is not required by the <i>FCA Handbook</i> to have a nomination committee; or (2) for which being the chair of such a committee is not a <i>controlled function</i>; <p>if it has such a committee.</p>
COCON 4	General approach to the role of a NED
COCON 4.1	The <i>FCA</i> recognises that NEDs individually do not manage a <i>firm</i> 's business in the same way as executive <i>directors</i> . Therefore, the responsibilities for which NEDs are accountable are likely to be more limited.
COCON 4.2	A NED is neither required nor expected to assume executive responsibilities.
COCON 4.3	Although NEDs who are subject to the senior management regime for <i>SMF managers</i> have individual duties under that regime, the <i>FCA</i> views the regime and its application as consistent with the principle of collective decision-making.
COCON 4.4	<p>The standard of care, skill and diligence that the <i>FCA</i> would expect from a NED is the care, skill and diligence that would be exercised by a reasonably diligent person with:</p> <ol style="list-style-type: none"> (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 <i>Handbook</i> (especially <i>COCON</i> and <i>DEPP</i>); and (2) the general knowledge, skill and experience that the NED has.