

Chapter 3

General factors for assessing compliance



3.1 General factors for assessing compliance

- 3.1.1

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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

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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

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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.

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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

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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;

COCON 3/2

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■ Release 35 ● Apr 2024

- (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 G 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 G *UK domestic firms* with a *premium listing* are subject to the *UK Corporate Governance Code*, whose internal control Provisions are explained in the publication entitled 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)' 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.

