

Chapter 4

Specific guidance on conduct rules

4.1 Specific guidance on individual conduct rules

Rule 1: You must act with integrity

4.1.1

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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

4.1.2

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

4.1.3

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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

- (i) failing to process a *client's* payments in a timely manner.
- (j) 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 G 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 G 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 G 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 G 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 G 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;

		<div><div>(c) inadequately monitoring highly profitable transactions or business practices, or unusual <i>transactions</i> or business practices;</div><div>(d) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations; and</div><div>(e) failing to obtain independent, expert opinion where appropriate.</div></div> <div>(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).</div>
4.1.8A	<div>G</div>	<div>Acting with due skill, etc as a member of the Board (rule 2).....</div> <div>Rule 2 in ■ COCON 2.1.3R applies to a <i>director</i> (whether executive or non-executive) when taking part in the activities of the Board, other <i>governing body</i> 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.</div>
4.1.9	<div>G</div>	<div>Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.....</div> <div>For the purpose of <i>rule 3</i> in ■ COCON 2.1.3R, regulators other than the <i>FCA</i> and the <i>PRA</i> are those which have recognised jurisdiction in relation to activities to which <i>COCON</i> applies and have a power to call for information from the <i>firm</i> or from individuals performing certain functions in connection with those <i>regulated activities</i>. This may include an exchange or an <i>overseas regulator</i>.</div>
4.1.10	<div>G</div>	<div>There is no duty on a <i>person</i> to report information directly to the regulator concerned unless they are one of the <i>persons</i> responsible within the <i>firm</i> for reporting matters to the regulator concerned. However, if a <i>person</i> 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 <i>appropriate regulator</i> will, in respect of that information, view them as being one of those within the <i>firm</i> who has taken on responsibility for deciding whether to report that matter to the regulator concerned.</div>
4.1.11	<div>G</div>	<div>The following is a non-exhaustive list of examples of conduct that would be in breach of <i>rule 3</i>.</div> <div><div>(1) Failing to report promptly in accordance with their <i>firm's</i> internal procedures (or, if none exist, direct to the regulator concerned), information in response to questions from the <i>FCA</i>, the <i>PRA</i>, or both the <i>PRA</i> and the <i>FCA</i>.</div><div>(2) Failing without good reason to:<div><div>(a) inform a regulator of information of which the <i>approved person</i> was aware in response to questions from that regulator;</div><div>(b) attend an interview or answer questions put by a regulator, despite a request or demand having been made; and</div></div></div></div>

(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.

4.1.12A G The FCA only expects a member of the *conduct rules staff* of an *Annex II benchmark administrator* when the *firm* is acting as such to disclose information under *rule 3* which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

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.
- 4.1.14A** G In general, the *customers* of a *benchmark administrator* are the users of the *benchmark* (as defined in the *benchmarks regulation*). A user of a *benchmark* will not however be a *customer* if the user does not have a licence to use it and the user has not made an agreement with the *benchmark administrator* about the way the *benchmark administrator* carries on the activities included in the *regulated activity of administering a benchmark*.
- 4.1.15** G **Rule 5: You must observe proper standards of market conduct.**
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** G 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** G
- (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).
- 4.1.18** G For the purposes of *rule 5* and the *regulated activity of administering a benchmark*, proper standards of market conduct means compliance with the *benchmarks regulation* and other requirements of the *regulatory system* or of legislation applicable to *administering a benchmark*. In the case of *administering a benchmark* there are no additional standards of market conduct for the purposes of *rule 5*.

Rule 6: You must act to deliver good outcomes for retail customers: Relevance of rules and guidance in PRIN

- 4.1.19

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The *guidance* in ■ PRIN 2A.2 (Cross-cutting obligations) will also be helpful in interpreting ■ COCON 2.4.6R to ■ COCON 2.4.8R and thus *Rule 6*.
- 4.1.20

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(1) The *rules* in ■ PRIN 2A.2, insofar as not mirrored in *COCON*, will also be helpful in interpreting ■ COCON 2.4.6R to ■ COCON 2.4.8R and thus *Rule 6*.

(2) So for example, in line with ■ PRIN 2A.2.9R, in ■ COCON 2.4.7R:

(a) foreseeable harm may be caused by both act and omission;

(b) if the relationship of the *firm* for which the relevant member of its *conduct rules staff* works with a *retail customer* is through its role in a distribution chain, foreseeable harm may be caused even where another *firm* in that chain also contributes to the harm; and

(c) foreseeable harm may be caused even where another *person* working for the *firm* is also responsible for or contributes to the harm.
- 4.1.21

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The outcomes *rules* in ■ PRIN 2A.3 to ■ PRIN 2A.6 are also useful in defining what is required by *Rule 6*. However, the outcomes *rules* do not exhaust *Principle 12* and ■ PRIN 2A.2 and so those *rules* are not a comprehensive guide to *Rule 6*.
- 4.1.22

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A reasonableness requirement applies to *Rule 6* (see ■ COCON 2.4.9R). The *guidance* in ■ PRIN 2A.7 (General) on the corresponding *PRIN rule* will also be helpful in interpreting ■ COCON 2.4.9R.
- 4.1.23

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■ PRIN 2A applies to the whole of the *firm*. Particularly for junior staff, this may mean that it sometimes imposes requirements or sets out expectations that are beyond the scope of the job of a member of a *firm's conduct rules staff*, thereby limiting its use as a guide to what is required under *Rule 6*. However, even when that is the case, it may still be useful as a guide to what a member of a *firm's conduct rules staff* should try to help their *firm* achieve within the scope of their job.

Rule 6: You must act to deliver good outcomes for retail customers: Relationship with Rule 4

- 4.1.24

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In general terms, *Rule 6* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Rule 4* in ■ COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) would have otherwise required. *Rule 6* also has a broader application in relation to a *firm's retail market business* relative to *Rule 4*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.

- 4.1.25

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While the *guidance* on *Rule 4* in ■ COCON 2.1 will remain relevant to someone in considering their obligations under *Rule 6*, a *person* should also take due account of the inherent limits of *guidance* on *Rule 4* in light of the factors in ■ COCON 4.1.24G.
- 4.1.26

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To the extent that the *guidance* on *Rule 4* in ■ COCON 2.1 says that behaviour would amount to a breach of *Rule 4* in the event that *Rule 4* had applied, that behaviour is likely to amount to a breach of *Rule 6*.
- 4.1.27

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Where a *person* is acting in accordance with *guidance* on *Rule 4*, that should not be relied on alone in considering how to comply with *Rule 6*. A *person* also needs to consider all their obligations not only under COCON, but under any other applicable law.

Rule 6: You must act to deliver good outcomes for retail customers: Scope

- 4.1.28

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Rule 6 applies to all *conduct rules staff*, regardless of whether the *person* has direct contact or dealings with *retail customers*. *Persons* subject to the *rules* in COCON should consider how their actions (or their failure to act) can affect the interests of *retail customers* or result in *retail customers* not obtaining a good outcome.

Rule 6: You must act to deliver good outcomes for retail customers: Reasonable application

- 4.1.29

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■ COCON 2.4.9R says that *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent member of a *firm's conduct rules staff*. Factors relevant to this standard (in addition to the factors referred to in the material referred to in ■ COCON 4.1.22G) include:

(1) their seniority;

(2) the scope of their job and in particular the degree to which the responsibilities of the job are able to affect the outcomes experienced by *retail customers*;

(3) their level of expertise and experience;

(4) the expertise and experience that their *firm* reasonably expects them to have;

(5) the expertise and experience that their *firm* should (under the *regulatory system*) ensure they have; and

(6) the degree of discretion and judgment the *person* has in their job, including, for example, whether they are bound to a script or process when dealing with *retail customers* and how much discretion and judgment any such script or process leaves to them.

4.1.30

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Someone in a management position is likely to have a greater ability to influence the outcomes experienced by *retail customers* than someone who is not. As described in■ COCON 4.1.4G to ■ COCON 4.1.8G (Acting with due skill, etc as a manager (rule 2)) and, in the case of an *SMF manager*, ■ COCON 4.2

- (Specific guidance on senior manager conduct rules), someone in a management position has a wide duty to understand, manage, control and oversee the business for which they are responsible. A manager should perform those duties with a view to ensuring that *retail customers* receive good outcomes.
- 4.1.31** **G** The ability of a manager of a business area to achieve good outcomes for *retail customers* is likely to reflect the ability of their business area to do so. So for example the head of a business area dealing with *retail customers* will have a correspondingly significant responsibility to ensure that those *retail customers* get good outcomes.
- 4.1.32** **G** Seniority may be relevant to the extent to which it is reasonable for a member of a *firm's conduct rules staff* to be expected to:
- (1) analyse how their area of responsibilities fits into the overall systems and processes of the *firm* for ensuring good outcomes for *retail customers*;
 - (2) analyse the policies and procedures about *retail customers* the *firm* imposes on the *person* and on the part of the business in which they work; and
 - (3) make suggestions for changes to those things.
- 4.1.33** **G** Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to be concerned with policies and procedures about *retail customers* on a *firm-wide* basis and not just for their area of direct responsibility. This is particularly the case for *SMF managers* who are members of their *firm's governing body* or other senior management forums and for other members of a *firm's governing body*.
- 4.1.34** **G** On the other hand, the scope of the job of a junior staff member carrying out a back office function may not give much of an opportunity to take steps to ensure good outcomes for a *retail customer* on the sale of a *product*.
- 4.1.35** **G** A salesperson or a member of the customer support staff is likely to have a significant influence on the outcomes that a *retail customer* receives. This is the case even if they are junior or subject to a detailed set of procedures.