

FCA and PRA unveil D&I proposals for FS firms

AT A GLANCE

September 2023

What's new?

- On 25 September 2023, the FCA and the PRA issued consultation papers (CPs) proposing a new regulatory framework for Diversity & Inclusion (D&I) in financial services (FS): [CP23/20](#) and [CP18/23](#), respectively.
- The wide-ranging proposals cover: data monitoring, reporting and public disclosure; target setting; D&I strategies; governance and accountability; risk management; and non-financial misconduct.
- The CPs follow a joint discussion paper ([DP21/2](#)) in July 2021, and findings from an FCA [thematic review](#) into firms' D&I approaches in December 2022.

What does this mean?

- The proposals apply differently to firms according to their number of employees, type of firm, categorisation under the Senior Managers and Certification Regime (SM&CR), and whether they are dual-regulated.
- **Regulatory reporting:** To monitor which firms are in scope of requirements, the FCA proposes that all FSMA firms (excluding Limited Scope SM&CR firms) report their average number of employees annually. The PRA proposes the same for all CRR and Solvency II firms (including third country branches).
- Firms with 251 employees or more ('larger firms') would have to annually report to the regulators data on demographic characteristics, inclusion metrics and targets. The proposed mandatory characteristics for reporting are: age, sex or gender, ethnicity, religion, disability and sexual orientation.
- The regulators propose the data is reported for board, senior leadership, and all employees. The regulators propose creating an aggregated benchmarking report with this data.
- **Data disclosures:** Larger firms would have to publicly disclose all metrics required for regulatory reporting (in percentages).
- **Targets:** Larger firms would be required to set their own diversity targets where they identify underrepresentation (for at least women and ethnicity under PRA rules, and for at least one group under FCA rules).
- **Non-financial misconduct:** The FCA proposes to explicitly include non-financial misconduct within: the Conduct Rules, fit and proper assessments, and suitability guidance on the Threshold Conditions.
- The PRA proposes to clarify that it may take into account established patterns of behaviour such as bullying, discrimination and harassment as part of fit and proper assessments.
- **Governance and accountability:** The PRA proposes that for firms already required to allocate a Prescribed Responsibility (PR) for culture, this should include responsibility for D&I. For firms not in scope of culture PRs, the PRA proposes at least one SMF should

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have responsibility for implementing the firm's D&I strategy. The FCA does not propose to require an individual in each firm to be assigned responsibility for D&I.

- Both the FCA and PRA require the Board to have ultimate accountability for D&I. The PRA proposes a number of enhancements and clarifications to the Board's D&I responsibilities.
- **Risk management:** The FCA intends to introduce guidance for larger firms to make clear that D&I matters are to be considered as a non-financial risk and treated appropriately within governance structures. The PRA would expect appropriate risk and control functions to support the development and review of a firm's D&I strategy, and to play a role in ensuring the risks involved in having poor D&I are managed alongside other business risks.
- **D&I strategies:** The regulators propose for certain firms to create and publish a firm-wide D&I strategy, which meets certain minimum requirements.
- **Scope of the proposals:** The FCA proposes that all authorised FSMA firms be subject to its proposals on non-financial misconduct. Additional reporting, disclosure, targets, risk and governance, and D&I strategy requirements would apply to larger firms (excluding Limited Scope SM&CR firms). D&I strategy requirements would also apply to dual-regulated Capital Requirements Regulation (CRR) and Solvency II firms.

- FCA proposals would apply on a solo entity basis. Apart from non-financial misconduct and the application of Threshold Conditions, proposals apply only to employees that carry out their activities predominantly from the UK. For overseas firms, proposals apply only to activities carried out from the UK.
- The PRA's proposals apply to CRR and Solvency II firms with respect to their establishment in the UK. Proposals on targets, reporting and disclosures apply to larger firms only.
- The PRA's proposals do not apply to non-CRR and non-Solvency II firms (credit unions and friendly societies).

What do firms need to do?

- Firms should assess what D&I work they have progressed to date, and carry out a gap analysis against the proposals. If firms do not have a D&I strategy, they should create one, and consider the processes and resources needed to execute it. Firms should consider steps towards setting data-driven targets.
- Firms should assess what data they collect against the D&I metrics proposed for reporting and disclosure. Firms should consider the system and process changes required to report on this information. Firms might consider collecting some data now (e.g. inclusion metrics) to understand their current position, priorities and goals ahead of reporting and public disclosure.
- Firms will need to ensure that non-financial misconduct considerations are appropriately included within current processes.

Next steps

The consultations close on 18 December 2023. The regulators intend to issue policy statements in 2024, with the rules coming into force 12 months after. The first regulatory reporting would be due in a three-month window following the rules coming into effect. The first year of reporting would be on a 'comply or explain' basis (and on a voluntary basis for disclosures), and mandatory thereafter. Disclosures would be made at the same time as annual reports and accounts, or (for firms that do not publish annual reports and accounts) within six months of their financial year end.



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