

Culture at Risk: Navigating Regulatory Crackdowns on Non-Financial Misconduct

How financial firms can mitigate reputational, legal, and financial risks in an era of encrypted communications

Non-financial misconduct (NFM) — including bullying, harassment, discrimination, and toxic leadership — is no longer considered a “soft” risk. Regulators now treat it as a core indicator of compliance and cultural health.

This brief explores how firms can proactively address reputational, legal, and financial risks tied to NFM, especially in an era where new and encrypted applications like WhatsApp and Signal are complicating oversight.

Why NFM is now a mission-critical compliance concern

In 2023, the UK’s Financial Conduct Authority (FCA) reported a 60% rise in misconduct reports, totaling 2,347 cases. Yet just 1% of those cases resulted in pay cuts or clawbacks, and only 8% impacted unvested compensation.¹

This gap between reporting and accountability creates significant risk. Left unchecked, NFM can erode employee well-being, consumer trust and organizational integrity. For regulators, non-financial misconduct is not an isolated HR issue but rather a red flag that signals deeper governance weaknesses and potential financial misconduct. Tolerance of bullying or harassment may indicate a broader culture of disregarding rules.

”**Misconduct like bullying, harassment, or toxic leadership may not involve theft or fraud, but they can erode morale, increase turnover, and reduce productivity. These behaviors create long-term cultural damage that can be just as costly as financial crimes.**”

ROSE KAUFMAN, DIRECTOR, FINANCIAL SERVICES COMPLIANCE AND REGULATION AT KROLL

Regional focus: How the UK and US differ in addressing NFM

While NFM is a global concern, regulatory and cultural responses vary between regions.

UK regulators: Regulators have taken an increasingly public and policy-driven stance. The FCA has positioned NFM as a direct indicator of a firm’s culture and overall governance, tying it to fitness and propriety assessments under the Senior Managers & Certification Regime (SM&CR).

¹Ridley, K., & Cohn, C. (2024, October 24). Reports of bullying, discrimination surge in British financial services. Reuters <https://www.reuters.com/world/uk/reports-bullying-discrimination-surge-british-financial-services-2024-10-24/>

US regulators: While the SEC has made statements about tone at the top and cultural accountability, US enforcement tends to come through recordkeeping and supervisory failures, particularly around off-channel communications, rather than direct behavioral penalties. For global firms, the challenge is how to balance local regulatory nuances with enterprise-wide standards. Best practice may be to establish a global baseline policy while tailoring processes to meet regional regulatory expectations.

Ownership and organizational response

Larger and global firms are beginning to broaden accountability. In some organizations, compliance teams already report culture and conduct risk to boards or audit committees, reflecting a more integrated approach. While silos remain common, there is a clear regulatory and market push toward cross-functional collaboration.

In the US, ownership of NFM-related oversight often sits with HR. Panelists in a recent Smarsh webinar expressed surprise that **only 8% of firms** take a cross-functional approach. Compliance teams that already conduct communications surveillance may be well-positioned to expand their scope to detect NFM, but cultural silos often limit collaboration between HR, legal, and compliance.

In the UK, there's greater emphasis on embedding NFM monitoring into broader conduct risk frameworks, partly due to stricter expectations around firm culture and personal accountability.

Cultural and market drivers

North American firms often respond to reputational risk and financial impact such as lawsuits, employee turnover, or Glassdoor reviews. As one expert noted, harassment or bullying may not directly involve fraud or theft but can still result in significant costs from lost talent and public backlash.

The UK is increasingly influenced by societal movements and stakeholder pressure, including investor expectations around ESG, or Environmental, Social, and Governance. Regulators are treating NFM not only as a workplace issue but also as a market integrity concern.

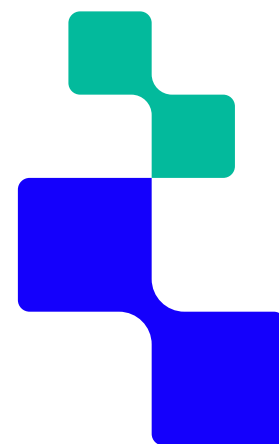
Why banning platforms isn't enough

Prohibiting specific communication channels doesn't stop misconduct, but it may drive behavior to unmonitored, off-channel platforms. The FCA found that most NFM incidents occurred across multiple communications channels, many outside official surveillance.

Of course, restrictions still have an important role to play. Firms remain obligated to prohibit certain unsanctioned platforms where business communications cannot be properly captured or archived. The key is to view prohibitions as one part of a layered strategy — complemented by education, monitoring, and cultural reinforcement — rather than a standalone fix. A combined approach ensures that restrictions reduce exposure without creating blind spots or inadvertently pushing behavior underground.

The FCA also found that many NFM incidents went undetected by existing surveillance tools.² This blind spot has proven costly: in the US, the SEC and CFTC have jointly issued over \$3.5 billion in fines against firms for failures in communications monitoring. Regulators now expect firms to proactively supervise all communication channels, whether sanctioned or not.³

A more effective approach involves deploying comprehensive monitoring systems, reinforcing accountability, and ensuring consistent oversight across all channels employees use.



The blurred lines of modern business communications

The shift to remote and hybrid work and the increasing use of diverse communication methods have blurred the lines between professional and personal interactions. Employees and clients often default to whatever communication method is most convenient, challenging traditional oversight.

Informal language, frequently used in these channels, presents a challenge for legacy lexicon-based monitoring tools. Emojis, for instance, add emotional context, but they can also introduce ambiguity. A thumbs-up may signal approval, sarcasm, or dismissal depending on the sender, receiver, and culture. Misinterpretations like this highlight the need for systems that understand context, not just keywords.

The link between NFM and market abuse

NFM often correlates with more serious violations. Research shows that individuals who tolerate or engage in toxic behavior are more likely to ignore or enable ethical breaches, including insider trading, data mishandling, and discrimination.

In high-pressure environments like trading floors and dealing desks, informal language can mask bullying, harassment, or discriminatory behavior. Firms must strike a careful balance by identifying outlier behavior, training teams to recognize red flags, and fostering a speak-up culture where employees feel safe reporting concerns. Ignoring these issues has serious consequences, both cultural and financial.

Balancing oversight with privacy

While privacy remains a valid consideration, most employees accept that business communications are subject to oversight. For those affected by misconduct, surveillance can even offer reassurance. Yet traditional tools detect only a small portion of grievances.

Effective oversight requires transparent policies, strong leadership commitment, and the thoughtful application of technology to detect misconduct without compromising employee trust.⁴

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“I certainly think that this responsibility should be shared across teams... HR should be partners with the legal and compliance teams as well, including supervisors.”

ANNA PETROVIC, DIRECTOR AT KROLL

²Financial Conduct Authority. (2024, October 25). Culture and non-financial misconduct survey – findings. <https://www.fca.org.uk/data/culture-non-financial-misconduct-survey-findings>

³Shapiro, J. (2024, August 15). Wall Street firms fined \$390M in over text, WhatsApp messages. New York Post. <https://nypost.com/2024/08/15/business/wall-street-firms-fined-390m-in-over-text-whatsapp-messages/>

⁴Reuters. (2024, February 20). SEC's focus on document retention continues into 2024. <https://www.reuters.com/legal/transactional/save-your-messages-secs-focus-document-retention-continues-into-2024-2024-02-20/>

The path forward: What financial firms must do now

A proactive, tech-enabled strategy is essential to address NFM in financial services. This approach includes training, policy development, communications monitoring, AI integration, reporting mechanisms, and leadership accountability.

Key components include:



Comprehensive training and awareness programs

Clearly define acceptable and unacceptable behavior and highlight potential consequences. Refresh training regularly to align with evolving standards.



Robust, regularly updated policies and procedures

Go beyond banning behaviors or tools. Regularly update policies to reflect regulatory changes and organizational growth.



Complete communications capture and monitoring

Include email, messaging apps, social media and more to reduce the risk of communication blind spots.



AI detection and insights

Use AI to analyze sentiment, behavior patterns, and context to identify misconduct in real-time. This significantly improves the efficiency of compliance teams by enabling proactive detection and response.



Actionable reporting frameworks

Enable confidential, easy-to-use channels for employees to report misconduct, coupled with clear processes for investigation and follow-up. Firms should pair technical reporting systems with a strong speak-up culture that ensures psychological safety. This requires clear anti-retaliation policies, leadership messaging that encourages reporting, and regular reviews of how concerns are handled and escalated.



Senior leadership accountability

Culture starts at the top. Leaders must act swiftly and visibly when misconduct arises. Boards and audit committees should also receive regular reporting on NFM incidents and cultural indicators. Regulators increasingly expect governance bodies — not just management — to demonstrate proactive oversight of misconduct risk.



Measurement and metrics

Establish quantifiable indicators of culture and conduct risk (e.g., heatmaps of incident trends, cross-referenced HR and compliance reports, and sentiment analysis from communication surveillance) to help boards and regulators assess whether interventions are effective.

AI technologies can significantly reshape how work gets done. Research indicates that a significant portion of financial services employees are open to using AI to identify and mitigate NFM in their organizations.⁵ This openness underscores the importance of integrating AI technologies into compliance strategies.

⁵Innovation Open Lab. (2024). New Smarsh Research Finds Two-Thirds of Financial Services Employees Are Open to AI Being Used to Identify and Mitigate Non-Financial Misconduct in their Organisation. <https://www.innovationopenlab.com/news-biz/34850/new-smarsh-research-finds-two-thirds-of-financial-services-employees-are-open-to-ai-being-used-to-identify-and-mitigate-non-financial-misconduct-in-their-organisation.html>

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“You can either do it upfront and spend the money to train everyone – or you can wait until something happens and pay legal fees, turnover costs, and reputational damage.”

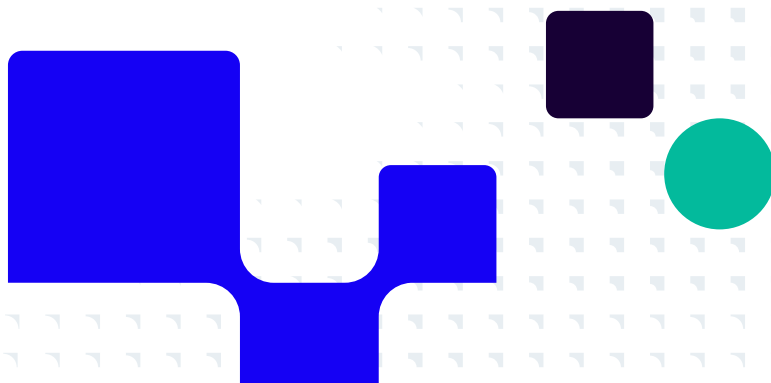
ROSE KAUFMAN, DIRECTOR, FINANCIAL SERVICES COMPLIANCE AND REGULATION AT KROLL

Don't wait for the next fine: Take action now

Global regulators have made their position clear: if you don't capture, archive, and monitor all business communications, you're exposing your firm to serious risk.

Now is the time to audit your communication landscape, close compliance gaps, and integrate smarter oversight tools. In today's regulatory climate, the next enforcement action might not be a question of if, but when.

See how **Smarsh Capture** can help your firm stay ahead of financial and non-financial misconduct.



Smarsh® enables companies to transform oversight into foresight by surfacing business-critical signals from the most in-demand communications channels. Regulated organizations of all sizes rely upon the Smarsh portfolio of cloud-native digital communications capture, retention and oversight solutions to help them identify regulatory and reputational risks within their communications data before those risks become fines or headlines.

Smarsh serves a global client base spanning the top banks in North America, Europe and Asia, along with leading brokerage firms, insurers, and registered investment advisers and U.S. state and local government agencies. To discover more about the future of communications capture, archiving and oversight, visit www.smarsh.com

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