A response to

FCA's CP 23/20 and PRA's CP 18/23 - Diversity and inclusion in the financial sector

18 December 2023

Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms, we act to enhance competitiveness, support customers, and facilitate innovation.

We are pleased to respond jointly to the FCA's CP 23/20 and the PRA's CP18/23 on diversity and inclusion in the financial sector and in PRA-regulated firms.

Executive summary

UK Finance and our members recognise the benefits of a diverse and inclusive sector to the industry and the customers and communities it serves.

Financial services firms are committed to recruiting, retaining, and promoting from the widest pool of skills and talent and ensuring they have workplaces that are fair and inclusive for all. Having greater diversity within the industry is important in terms of reducing group think and delivering better outcomes for customers as well as being a driver for economic success.

We believe the regulatory approach in terms of transparency and accountability should incorporate an appropriate degree of flexibility, for instance in strategy and targets, recognising that individual firms have different operating models and serve their customers in different contexts.

Our members can report on progress to the authorities where there is clarity on definitions and thresholds and the ability to give context to outcomes. Consistency in definitions and alignment to exiting initiatives is imperative to avoid duplicative efforts. Members are also content with a requirement to publish certain information where that is helpful in informing wider stakeholders.

Any data collection that involves disclosure should have credible rationale as to the purpose and usage of the data. Due to the significant extension of data collection, firms need sufficient time to position and implement before meaningful data-led strategies and targets can be created. There is the potential for unintended consequences from such a quantitative, target focussed approach to D&I and some firms question if the data proposals from the regulators are the most appropriate way to deliver progress in diversity and inclusion. We strongly support a holistic strategy, in recognition that this is an evolving practice particularly for smaller firms.

Proportionality, both in requirements and supervision, is important to ensure that the process is one that achieves positive outcomes and avoids a purely procedural approach or one where the costs outweigh the benefits.

UK Finance members support actions to prevent bad actors from undermining progress in achieving a diverse and inclusive environment. Investigation and reporting of backgrounds and behaviour needs to ensure that individuals are treated fairly, consistent with employment law and other legal and regulatory requirements.

We are very open to continued discussion on our response with the PRA and FCA following the consultation period as they look to finalise these changes.

We set out below what we believe are the key areas that need to be addressed to make this workable, effective and consistent across firms.

Key Recommendations

Personal v private life – we recommend that regulators clearly set out how and to what extent they expect firms to examine employees' personal and private lives, how this would be undertaken consistently across firms in a way that is fair for all impacted employees, including what evidence firms would be expected to collect and hold on record. The regulators should also outline how sensitive information will be protected in line with GDPR in justifying legitimate use and retention.

Demographic data – we recommend that both regulators accept 'prefer not to say' as a valid personal choice, not indicative of a bad culture and that religion should be removed as a mandatory characteristic for collection and instead moved to voluntary.

Inclusion data - we recommend that flexibility be given to firms allowing them to use their own inclusion questions where they can be adequately mapped to the revised inclusion questions, provided they are able to demonstrate that their in-house questions meet the same aims as the FCA's.

Proportionality – we recommend that the threshold for large firm should be set at 751 employees for data collection, disclosure, target setting and firm-wide strategies.

Scope - we recommend that instead of reporting on a solo entity basis, that firms are given discretion as to which is the most appropriate group for them to report against, for instance, UK-based permanent employees of a group.

External disclosure – we recommend that regulators confirm how the diversity and inclusion data will be published and the format envisaged to ensure the anonymity of individuals is protected and differences between profiles of firms are contextualised.

1. Non-financial misconduct

Changes to conduct rules

Recommendation (1.1): Regulators should clearly define "bullying" as well as examples of the conduct that would constitute "serious instances" of bullying, harassment, and similar

behaviour in an employee's work life. Regulators must also lay out in detail their plans for firms to retrospectively challenge employees where there have been serious instances of bullying, harassment, and similar behaviour in an employee's work life. Examples of what may constitute this type of behaviour, as well as behaviour which may not meet the threshold would be helpful in this regard.

> Rationale: It is appropriate to limit reporting to "serious instances" when referring to bullying, harassment, and other similar behaviour in an employee's work life, but this is likely to be interpreted in a variety of different ways from one firm to another. Without a regulatory benchmark it is therefore likely that standards will be applied differently between firms and individuals.

Recommendation (1.2): The FCA should provide further clarification on the factors that it will consider when deciding whether misconduct in relation to an individual colleague in the workforce is serious, and therefore would amount to a breach of COCON (4.1.1DG). In particular, members would like to understand how the FCA will measure/ assess the impact of (i) misconduct on those who witness, heard about or may hear about the conduct, and (ii) the likelihood of damage to the firm's work culture of the possible size of such damage.

> Rationale: Providing further guidance on the underlying measurement criteria would enable firms to calibrate their own internal assessment of individual cases of misconduct, in turn leading to a more consistent approach for individual firms, and by proxy the wider industry.

Recommendation (1.3): The FCA should provide further clarity on when conduct excluded from Conduct Rule 1 may fall under Conduct Rule 2 (CR2) instead, pursuant to COCON 4.1.3A G.

> Rationale: Firms would appreciate guidance on when a firm should consider an individual under rule 2 of the provision set out in COCON 4.1.3A G is used. Is there a threshold which should be applied?

Recommendation (1.4): The FCA should provide clearer guidance under COCON 4.1.8-A G (1) on what "reasonable steps" would look like for managers looking to protect staff against the treatment of conduct that will breach rule 1 under COCON 4.1.1F G. Under CR2 a manager may be in breach of CR2 if they fail '*to take reasonable steps to protect staff against treatment of the kind described in COCON 4.1.1FG'*.

> Rationale: It is currently unclear what this would look like in practice and what the regulatory expectation of a manager is. Firms would appreciate more guidance or best practice case studies to demonstrate what taking reasonable steps looks like.

Changes to Fit and Proper rules, guidance and assessment

Recommendation (1.5): Regulators should clearly define the meaning of "disgraceful or morally reprehensible" or otherwise sufficiently serious misconduct such as set out in FIT 1.3.15 G (1) in relation to what misconduct may be relevant in an employees' personal and private life and their fitness and propriety. Regulators must also lay out in detail their plans for firms retrospectively to challenge employees where there have been serious instances of bullying, harassment, and similar behaviour in an employee's personal and private life. Examples of what may constitute this type of behaviour, as well as behaviour which may not meet the threshold would be helpful in this regard.

> Rationale: Some of the concepts will require firms to apply subjective judgement rather than legal or regulatory examination; FIT 1.3.12 G (5) states that "it may show that a

person lacks moral soundness, rectitude and steady adherence to an ethical code". This is open to subjective judgement and is likely to be interpreted in a variety of different ways from one firm to another. Without a regulatory benchmark it is therefore possible that standards will be applied differently between firms and individuals.

Without further guidance as to the level and/or type of behaviour which would be considered "disgraceful or morally reprehensible" this is likely to be interpreted in a variety of different ways from one firm to another, creating the potential for unfair treatment and potential legal risk to firms where there is no regulatory benchmark to reference. Also, the absence of clear indicators/examples of non-financial misconduct is likely to result in firms making subjective and inconsistent judgements as to what constitutes a non- financial misconduct. This will in turn result in inconsistent and, at times, unfair treatment of employees, especially as they move between firms and have their non-financial misconduct disclosed in Regulatory References.

It would also be helpful if the FCA could include a table setting out examples of conduct at work and outside of work that is likely to be relevant to person's fitness & propriety, similar to the one in COCON 1.3.6 G. These examples could be drawn from the FCA's enforcement cases or instances where the regulator has previously declined/withdrawn persons approval due to lack of fitness and propriety. Having such examples would promote consistency across firms and minimise legal and regulatory risk to firms and individuals.

Recommendation (1.6): Regulators should set out clearly how and to what extent they expect firms to examine employees' personal and private lives, how this would be undertaken consistently across firms in a way that is fair for all impacted employees including what evidence firms would be expected to collect and hold on record. Regulators should also outline how sensitive information will be protected in line with GDPR in justifying legitimate use and retention.

Rationale: Some firms believe that the regulators' distinction between workplace and personal conduct is unclear within the consultation papers. It is critical that regulators offer clear parameters and examples to help guide firms within this space to avoid inconsistent application.

Recommendation (1.7): Regulators should lay out firms' specific obligations in assessing serious instances of bullying, harassment, and similar behaviour in an employee's personal or private life.

Rationale: It is important that regulators map out individual firms' specific obligations. This includes explaining the requirements placed on firms to examine employees' personal and private lives where a person does not give permission for certain checks to be carried out by employers. In doing so, it will be necessary to provide clear and consistent guidance around an appropriate threshold for determining "serious misconduct".

Recommendation (1.8): Regulators should be clear on the historical timescales in which employers are expected to examine employees retrospectively.

Rationale: Firms are concerned over the regulators' lack of clarity around mandating them to retrospectively examine employee's behaviour without setting out clear timescales in the guidance.

The new draft guidance in FIT would benefit from being more concise and easier to understand and interpret by Compliance and HR practitioners.

For example, FIT 1.3.13 G (2) states that "Maintaining public confidence in the financial system and financial services industry in the United Kingdom is part of the FCA's statutory objectives. Therefore, conduct of a type that can damage such public confidence is likely to mean that the person concerned is not fit and proper." What the FCA deems to be a behaviour that can damage "public confidence" may be different to what a firm or a reasonable bystander may consider as "damaging public confidence".

Changes to threshold conditions

Recommendation (1.9): Regulators should limit proposed changes to Guidance on the Suitability Threshold Conditions to those employed by firms and not simply those "connected to the firm" as set out in the Consultation Papers.

Rationale: It is appropriate for the regulators to limit the proposed changes to Guidance on the Sustainability Threshold Conditions to employees, given the uncertainty and legal implications around bringing those defined as "connected to the firm" into the scope of the Conditions.

Scope

Recommendation (1.10): The FCA must be clear on the expanded scope of COCON covering serious instances of bullying, harassment and similar behaviour in employees work lives.

Rationale: It is right that the FCA outline the expanded scope of COCON covering serious instances of bullying, harassment and similar behaviour in employees work lives. Some firms suggested employees could argue they had been historically mistreated because non-financial misconduct is not currently in the scope of COCON.

Legal and employment implications

Recommendation (1.11): Further consideration should be given to the employment law implications of the proposals and appropriate guidance should be provided to firms by the regulators.

Rationale**:** The proposals could potentially cause several issues from an employment law perspective. For example, the extent to which a firm can investigate an individual's conduct outside of the workplace. In addition, what level of investigation should be carried out especially where a result finding that an individual is not fit and proper will probably mean they can no longer work in the sector. Appropriate guidance to firms by Regulators will be essential.

Firms want to ensure that they do not break any laws, including employment and equality laws, when carrying out the regulators proposed changes. This will require, but is not limited to, ensuring that fair and objective policies and procedures are in place for investigating such matters, and determining how to share information about serious instances of bullying, harassment, and similar behaviour with others, such as when an employee seeks employment elsewhere or otherwise. Some firms are rightly concerned

that sharing sensitive information with third parties other than regulators could result in legal action being taken against them. Regulators need to explain the specific obligation that will be placed on firms to share information on serious instances of bullying, harassment, or similar behaviour with third parties, like prospective employers or otherwise.

Recommendation (1.12): Regulators should provide guidance on how the proposed changes will need to interact with firms' existing policies and processes.

Rationale: Firms will need to review current processes and demonstrate that they have taken sufficient steps to embed the proposed new rules. This will likely include adjustments to annual compliance training, reviews of misconduct reporting and "speak up" processes, and revisiting core HR processes such as disciplinary investigations to ensure that relevant issues are properly and consistently identified.

2. Governance, accountability, and risk management

Board and Senior Management Function (SMF)

Firms are supportive of boards being held responsible for diversity and inclusion in terms of setting the strategy and being held accountable for this; indeed, many firms are already doing this. Firms do however have some comments to further clarify the role of the board in this context.

Recommendation (2.1): Firms would like clearer guidance on what "reasonable steps" by those holding SMF responsibility looks like. Firms request guidance or best practice case studies to demonstrate what taking reasonable steps (or not) looks like if they have failed to meet their targets.

Rationale: It is currently unclear what reasonable steps by those holding SMF responsibilities would look like, and firms would appreciate more granular guidance on this. It is unclear how firms are able to show that they have taken reasonable steps in the case that firms fail to meet the targets they have set. Firms would also like guidance on if the FCA expect the steps taken to be detailed in the statements of responsibility.

Recommendation (2.2): Firms would like clarity from the PRA that the board can mean the local leadership team in the context of branches of international firms headquartered outside of the UK.

Rationale: Branches of international firms operating in the UK typically do not have UK 'boards'. They are instead governed and managed by a local leadership team or executive committee. As such firms believe that it would be more appropriate for this team to have responsibility for diversity and inclusion as they do with other Senior Management Functions, thereby creating consistency. From a practicality perspective this will also mean that those responsible are more embedded in the operation rather than being in another jurisdiction and having very little engagement with day-to-day operations in the branch as is often the case with the boards of larger entities who have branches in the UK. This would ensure that those responsible for diversity and inclusion strategies and policies are likely to be more familiar with the branch itself and the UK context on this issue. This would mean that the PRA should create a specific carve out

for the responsibility for UK diversity and inclusion strategy to be held by appropriate senior management in the branch. We note that Annex 5 describes a board as "*A firm's 'management body' or 'governing body' as these terms are defined in the glossary of the PRA Rulebook and FCA Handbook*." It would also be helpful if the definition of 'board' could be amended to include the term 'local leadership team'.

Recommendation (2.3): Firms believe that the PRA needs to provide clearer guidance for what efforts are considered in remuneration performance objectives.

Rationale: It is currently unclear what efforts in relation diversity and inclusion improvement should be considered when assessing performance against objectives for remuneration purposes. Should assessment be against the targets that firms have set and be contingent on firms achieving those targets or making progress towards them? Firms believe that greater emphasis should be placed on progress towards targets rather than achieving the targets themselves as there can be good reasons as to why targets are not met. If remuneration is linked to achieving goals rather than progress towards them this will likely have a disproportionate effect on smaller firms who by their nature will have less staff turnover and therefore less opportunity to improve diversity in their firms. If boards are judged against the results of their targets, they are also likely to set less ambitious targets as to not negatively impact their reputation and remuneration or alternatively it may drive the wrong behaviour in incentivising a movement beyond positive action into positive discrimination.

Non-financial Risk

Recommendation (2.4): Firms believe that the PRA and FCA should provide more guidance on the level of importance they would like firms to place on diversity and inclusion as a non-financial risk. Firms would also like best practice cases studies for measuring and mitigating against lack of diversity and inclusion as a non-financial risk.

Rationale: Firms are broadly supportive of treating lack of diversity and inclusion as a non-financial risk as this reflects the complex nature of this topic. However, firms do not feel that it is currently clear what relative level of risk a lack of diversity and inclusion as a non-financial risk should be given (noting that diversity of thought is driven by all types of diversity, not just demographic diversity). Firms need to understand where this sits within the risk framework compared to other risks that can impact financial and operational resilience to ensure that it is properly managed and given adequate attention.

Firms would also appreciate further clarity on specific risks and examples of how to mitigate against them through best practice case studies. This will help improve the risk function's ability to support the firm in identifying, assessing, measuring mitigating, and monitoring the D&I risk and likewise, the audit function may be better placed to assess the adequacy and effectiveness of the design and operation of controls to mitigate the D&I risk with further clarity on the specific risks. This will be particularly helpful for smaller firms to assist them in developing their capabilities in this space.

When looking at the risk structure firms appreciate that it is currently up to firms where this should sit within an organisation and where it best fits within the governance structure as this allows firms to manage this risk in a way that best accounts for their business models and existing risk structures. As such firms would appreciate that any

further guidance that is provided be principles based rather than being overly prescriptive to preserve this flexibility.

3. **Data and disclosures**

There is significant debate over data collection and disclosure. The recommendations below do not reflect the views of all our members, but the rationale aims to highlight the challenges and concerns amongst all. The key focus in advancing D&I for most firms is culture and creating an environment where individuals feel comfortable to volunteer such information. We note that some firms do not agree with mandating the collection of any diversity data characteristics and believe that efforts are better spent focussing on culture and initiatives that deliver sustainable long-term progress.

Diversity data collection

Recommendation (3.1): The regulators should not infer that high numbers of non-disclosure or "prefer not to say" is indicative of a lack of inclusiveness and should allow firms to provide a statement that gives the context to explain their disclosure rates.

Rationale: Firms understand the importance of data collection and appreciate the sentiments in sections 5.45 and 5.46 of CP23/20 with the regulator understanding that some employees may not want to share this data. However, some firms argue that high numbers of non-disclosure or 'prefer not to say' should not necessarily be seen as indicative of a lack of trust within the organisation or a lack of inclusiveness as suggested in the section 7.20 of CP18/23. In many instances, employees may choose not to disclosure demographic information based on personal views on privacy, or a simple preference to separate their personal and professional lives.

Firms will be relying on explicit consent in many instances as the lawful basis for data collection and it is vital that employees truly feel they have a genuine choice as to whether or not to disclose. "Prefer not to say" must be a legitimate option so as not to jeopardise consent being seen as 'freely given'. Firms and the regulators must respect an individual's choice to not disclose this information.

Low disclosure rates can also have potential risks. Relying on limited data sets can be problematic as firms run the risk of using such data to draw conclusions about the employee base, or indeed the industry as a whole. Taking any inferences from limited data could lead to misleading conclusions and poor D&I outcomes.

For firms with head offices overseas and/or who have high employee numbers of non-UK citizens, cultural differences and different expectations around data disclosure could also drive lower rates. Additionally, for some international firms, the head office location will have laws in place to prohibit the collection of demographic characteristics such as ethnicity, race, and sexual orientation. For example, the French Constitutional Council prohibits "the processing of data of a personal nature indicating directly or indirectly the racial or ethnic origins of persons, and the introduction of variables of race or religion in

administrative record."[1] These firms expect pushback or low disclosure rates and even sensitivity in some cases when even asking such a question.

Some firms predict that religion will be a particularly challenging data set to collect. For example, employees may not want to disclose religious characteristics in light of recent political events and a rise in antisemitism and islamophobia across the UK. Further examples have been given from firms who operate in different regions within the UK such as Northern Ireland, again echoing potential sensitivity and unwillingness from employees to disclose religious characteristics.

Another reason for a low level of disclosure could be due to concern over the protection of personal sensitive data. The data being held by firms is not anonymised, and there is a risk associated with the potential for data breaches or cyber-attacks, where employee's personal and often very private data may be leaked. The recent case of the Police Service of Northern Ireland demonstrates that the existence of this data within firms creates a vector for what many feel is very private to be released to the public. There may also be potential sensitivities around the protection of the data that is being used externally and by the regulators. Firms will have to update data privacy wording to account for external reporting which may act counter to regulators intention with employees withdrawing disclosure previously given that consented to the data being used internally only. Where reporting is mandatory, is the FCA (and ultimately the ICO) comfortable that processing of personal data to capture and anonymise data, before sharing with the FCA, is performed based on it being "necessary for compliance with a legal obligation to which the controller is subject"?

Where reporting is voluntary, firms will need to determine a legal basis other than compliance with a legal obligation for processing where they capture these special category personal data for the purposes of anonymising the data and sharing with the FCA. If the legal basis proposed is one of legitimate interests, firms may struggle with this legal basis where the impact on individuals' interests and rights and freedoms (particularly given the processing of special category data) may override firms' legitimate interests. Does the FCA (and ultimately the ICO) have any view on the legal basis or bases for the processing of optional data where this capture is not required for any other business purpose other than reporting to the FCA?

Recommendation (3.2): Firms would like clarity from the regulators as to why some characteristics are mandatory and others voluntary. In addition, firms seek guidance as to how firms could encourage greater engagement in data collection.

Rationale: Creating a positive communications plan and a culture of trust around data disclosure will be a key part of this work. Clarity on the rationale behind certain characteristics being collected and further guidance would help firms in this. This would enable firms to provide more transparent communications with staff which would help to foster a more positive and open culture.

Diversity demographics

[1] https://www.insee.fr/en/information/2388586

Recommendation (3.3): Religion should be removed as a mandatory characteristic for collection and instead moved to voluntary.

> Rationale: Many firms are already attempting to collect this data for internal and inclusion purposes. However, religious data is particularly sensitive for employees from certain cultures, and firms will have difficulties in collecting sufficient data on this characteristic in sufficient volumes for it to be meaningful. Examples of sensitivities and pushback for disclosing such data are provided above. As mentioned, there are also risks in taking inferences from limited data sets. Many firms have strong opposition to the external disclosure of this data believing it will negatively impact the psychological safety of their employees.
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> Firms also challenge the rationale for collecting this data characteristic as it is not information that will be used to create action plans or targets. Without a cogent reason as to why this 'non-actionable' data is required firms will also struggle to create a narrative as to why they are asking employees to disclose such sensitive data.

Recommendation (3.4): Gender identity, parental responsibilities, carer responsibilities (and religion) should remain voluntary, without the intention of adopting as mandatory in the future.

> Rationale: While extremely important characteristics and helpful data for firms to have for internal purposes, the collection of these should not be mandated or externally disclosed. Many firms collect these characteristics already but use them for inclusion purposes. Seeing higher numbers of employees with these characteristics is good and will likely lead to greater diversity of thought. However, firms do not intend to create action plans and/ or targets off the back of these characteristics and so they should not be mandated. Furthermore, similar concerns on disclosure rates apply to these characteristics. If firms are likely to have low disclosure rates for these characteristics, our members question the value of collecting and reporting on them. As already mentioned, the number of mandated characteristics should remain realistic.

Recommendation (3.5): Should the regulators, in the future, consider making any currently voluntary fields mandatory, this should only be done following a formal consultation with industry, and with appropriate timelines and clear rationale to support good employee communication.

> Rationale: Each additional characteristic for which firms are required to collect data, report, disclose and, for some, set targets against creates additional costs and administrative burdens for firms. Should the regulators decide to widen the scope of mandatory disclosure firms must be allowed a suitable time after which characteristics collection will become mandatory so that firms can factor new requirements into their funding and budget cycles and plan accordingly. Firms will need more than 12 months. For firms not already collecting the mandated data characteristics, it will take time to build a narrative and culture where their employees will feel comfortable in sharing so much additional personal data. Additionally, significant system & process changes will have to be made to ensure that the data is collected, stored and processed safely and in the correct manner.

For many firms, socio-economic background is a current focus. Progress Together[2], a membership body many of our members also belong to, highlights the many benefits that diversity in socio-economic backgrounds can bring to a firm and the financial services sector. Aligned to other research, Progress Together's *Shaping Our Economy* report[3] suggests that socio-economic background and cultural heritage bring more diversity of thought and mitigate against groupthink more than other demographic characteristics. Firms recognise these benefits. Some firms are already collecting such data. It would therefore be reasonable for the regulators to provide timescales of when this will be mandated so that firms can prepare and begin to work towards collecting that now. If the collection of socio-economic data is to be mandated in the future, firms would wish to see alignment with the work of Progress Together so that a consistent set of questions are used to collect this data.

Inclusion data

Recommendation (3.6): Firms ask that the FCA review and revise its inclusion questions and provide assurance that these statements have been developed using expert opinions on language and inclusion survey questions. In our view no more than six questions should be used.

Rationale: Firms welcome the concept of inclusion data being collected and recognise the need for consistency across firms. Members challenge whether these are the appropriate set of questions to measure inclusion. Many firms have use specialist teams to design their inclusion questions to ensure questions and their responses are appropriate and informative. Firms also raised concern on the perceived negativity in the language and framing of the proposed questions. Some of the proposed questions in CP 23/20, particularly the 4th and 5th appear measures of psychological safety and employees may misinterpret as information to be acted on by the employer rather than going through a whistleblowing or similar process. Firms would like further assurance that these statements have been developed using expert opinions on language and inclusion survey questions.

Firms have provided examples in the annex, of inclusion questions already being used within their firms and ask that the regulators revise their set of six and give firms flexibility to map to their own.

Recommendation (3.7): The regulator should give firms flexibility to allow them to use their own inclusion questions where they can be adequately mapped to the revised inclusion questions, provided they are able to demonstrate that their in-house questions meet the same aims as the FCA's.

Rationale: Firms raised the concern of survey fatigue and resultant lower disclosure rates if firms continue to ask their own existing inclusion questions as well as the regulator's proposed inclusion questions. To avoid survey fatigue, firms often include inclusion questions in existing staff opinion surveys. If there are a number of detailed inclusion questions, colleagues can become concerned that they will lose anonymity and be easily identified by their inclusion responses. Furthermore, providing the flexibility to

[2] https://www.progresstogether.co.uk/

[3] https://www.progresstogether.co.uk/wp-content/uploads/2023/09/Shaping-the-Economy-Public-FINAL-Compressed.pdf

map the proposed inclusion questions to the firms existing questions enables firms to ask questions that are more aligned to the firms' culture and its aspirations for it.

Firms raised concern over reporting and tracking if both sets are used. Our members do not want to lose historical and tracking data from inclusion questions already being used which would be the result of using the FCA's new inclusion questions. Existing questions are carefully crafted to align with the specific language they use in their dialogue about D&I. Using new questions will mean firms are unable to benchmark historic inclusion data against the present to track changes to their culture and new questions may be confusing for employees. Some firms use a platform that allows them to benchmark their data to other Financial Services firms based on set questions in their system. Equally this is all built into one dashboard to allow easy data analysis and line manager accountability with local insight. Asking additional questions through an alternative mechanism will be hard to track and drive complexity into the process.

For firms operating in different jurisdictions, the proposed inclusion questions will most likely have to be adopted in addition to existing inclusion questions required by and set at head office level. There is the same risk of survey fatigue resulting in low levels of disclosures, inconsistent tracking of 'inclusion' and unwanted duplication of efforts and time.

For many firms, it will not be viable to use the regulator's proposed inclusion questions instead of their existing questions meaning they will have to collect two sets of data.

While the ability to map to firms' existing inclusion questions would alleviate some of these challenges, many firms felt the overall proposed approach to measuring inclusion is too data-led. Firms welcome the focus on inclusion as well as diversity, however some firms challenge the method proposed for measuring this. These firms would prefer to use more qualitative data, soliciting feedback through dialogue and conversation, to allow for open debate and challenge, to enhance understanding and truly explore the issues. Using surveys as a standard approach can present challenges and be reductionist. Numbers without narrative are prone to misinterpretation and potentially could promote counterproductive or generalised action with limited impact. An approach which allows firms to use a range of data, through listening posts, engagement reports, feedback from employee networks, focus groups and temperature checks, will allow firms to better understand levels of inclusion and importantly create targeted and meaningful actions as a result. With a high-level survey that is anonymous, firms will be limited in terms of being able to take tailored actions to rectify any issues. In addition, response rates to surveys can be low, and therefore lead to distortion, and not be reflective of overall employee sentiment. In relation to belonging, inclusion and diversity, it is important that employers build trust and safe spaces, and dialogue enables firms to better understand what is going on at a deeper level, and explore possible ways forward, helping to build trust.

Recommendation (3.8): The regulator should allow firms flexibility to collect inclusion data on an appropriately confidential basis.

Rationale: The collection of inclusion measures on an anonymous basis as referenced in 5.65 of CP 23/20, restricts the opportunity for firms to make better use of the results as they strive to make greater progress in D&I. If firms are allowed to collect this data on an appropriately confidential basis (perhaps at least as a voluntary option) it gives

them the ability to cross-analyse the data with other diversity demographics and other work factors (e.g. progression, development, etc.), which can provide greater insight on where focussed work is required.

4. **Strategies**

Firms welcome the concept of diversity and inclusion strategies and recognise the importance of implementing these. However, for many of the firms existing D&I strategies are already embedded within their organisations. Setting these strategies at the entity level as proposed is problematic for many firms.

Recommendation (4.1): In line with our comments in the sections on Targets and Scope, firms should be given the flexibility to set their strategies at a UK-based level or at a level which best reflects a firm's organisational structure.

> Rationale: Many of our members with overseas head offices, have one global strategy which is set for implementation at regional level. The proposal for setting diversity and inclusion strategies at solo entity level does not consider the additional complexities for these firms where their day-to-day activities are so intertwined with their other overseas entities and their head offices and could lead to the wrong behaviours being incentivised. Nuances such as the movement of staff across entities and line management across entities make this more challenging. Many of these firms have D&I strategies set at the Group-level or by the head office so that such nuances can be factored in. Consequently, the proposal for firms to have a D&I strategy for each solo entity will result in some firms having multiple D&I strategies and it would make more sense to have one strategy across the UK. While, the PRA has acknowledged that for these firms 'it may not be practical for their UK-specific strategy to cover… [all the minimum requirements]', International firms including third country branches would like further guidance on what should, therefore, be included when a global strategy already exists.
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> Furthermore, for larger international firms operating in the UK where a UK specific strategy may be appropriate, firms should have the flexibility to structure this to align to their existing governance framework, strategic implementation approaches and hiring practices. This may involve a single consolidated UK strategy, business-line specific strategies, or individual entities strategies.

Recommendation (4.2): Firms require more guidance on the level of detail required within their D&I strategies for different sized firms.

> Rationale: For our smaller members with less than 250 employees there was concern over the level of detail needed within their D&I strategy. The PRA has acknowledged that they would expect for smaller firms, their strategy to be 'proportionately simpler'. However, many firms expressed that including 'clear objectives and goals' and 'ways of measuring progress against objectives and goals' allude to collecting and disclosing D&I data; a proposed requirement that does not currently apply to firms with less than 250 employees. Smaller firms regulated by the PRA, therefore, believe more guidance is needed on what should be included within their D&I strategy.

Recommendation (4.3): Firms require more detail on the purpose and breadth of a separate board strategy on D&I.

Rationale: Further examples or data/case studies would be helpful. Having case studies for organisations of different sizes would help firms to explain why they are doing this separately for the board and it would help to ensure that firms get this correct this first time.

5. **Targets**

Recommendation (5.1): Firms should be allowed to use their own terminology when setting goals for representation.

Rationale: This would help minimise friction between different jurisdictions' legal requirements and constraints around positive discrimination. Many firms would prefer to use the term "aspirational goals" rather than "targets". This ensures that the focus remains on implementing the D&I strategy, and the positive impact of a diverse workforce, as opposed to only meeting targets. Some firms worry that the term "targets" can incentivise the wrong type of behaviours.

Recommendation (5.2): The regulators should provide further clarity, guidance and examples of what publicly disclosed targets should look like and the level of detail that should be provided.

Rationale: Firms need more clarity on the level of detail that they must go into in their public disclosures. Firms would find it helpful to see examples of what best practice would be for different sizes of organisation. Most firms welcome the concept of D&I targets but need clarity and further guidance to ensure this proposed requirement does not become a 'tick-box' exercise or give rise to positive discrimination. Additionally, the regulators should provide more examples on how targets can vary depending on the level of data apparent and size of the organisation e.g. scenario examples of appropriate targets for firms with 250 employees, 1000 employees or more. Some firms challenge the value of board targets (beyond Gender and Ethnicity already agreed in 2022). This is a very small group, and some firms have group appointees over which they have no input.

Recommendation (5.3): In line with our comments in the sections on Strategies (4) and Scope (8), firms should be given the flexibility to set their targets at the level in the UK which most appropriately aligns with their diversity strategies, hiring practices and governance, including UK-wide targets, business line targets or entity targets as appropriate.

Recommendation (5.4): Firms would like assurances that supervisors will not place undue pressure on targets for firms as this may lead to positive discrimination, we would like to be able to include initiatives and actions in targets as this will act as a risk mitigant.

Rationale: Firms highlight the risk of positive discrimination in the hiring process (even subconsciously) where a lack of diverse representation against publicly disclosed targets could be interpreted by supervisors as a non-financial risk. Firms need assurance from the regulators that pressure will not be put on firms who are not meeting targets as this could unintentionally lead to unlawful positive discrimination and diversity being treated like a 'tick-box' exercise. Unlike 'positive action', positive discrimination is not permitted under the Equality Act 2010. Our members firmly believe that encouraging people from as diverse a background as possible to enter financial services will result in the selection of the best candidates for roles at all levels and this is important due to the current skills gap the industry has seen. This consultation places an emphasis on

quantitative metrics to deliver diversity and inclusion and whilst this plays an important role, this will not be a true reflection of a firm's efforts to promote diversity and inclusion. Firms are concerned that an over emphasis on numbers as the only metric of diversity may drive the wrong behaviours from supervisors and within firms. As such firms believe that initiatives and actions should be considered as part of a firms target setting to allow for efforts that are not reflected in the data to be recognised as moving the agenda forward and mitigating risk. The ultimate aim of this consultation is to ensure that firms are able to select candidates from the widest possible pool. If these rules and expectations around targets are not properly calibrated this may result in the opposite effect.

6. **Sequencing**

Recommendation (6.1): The regulators should review the timeframes for the proposals and phase the approach with strategies and targets to be mandated a year after the data requirements.

Rationale: Firms agree with the sentiment and direction of travel but challenge the proposed timescale being the same for all requirements. In order to create meaningful evidence-based strategies and targets, firms must be given more time to implement. For firms who are not already collecting certain data sets, more time needs to be provided to allow firms to create a communications plan and to foster a culture in which employees feel comfortable sharing their personal data. A firm may already have a safe and inclusive culture but if new data characteristics are mandated firms will be required to explain why these are now being requested. Additionally, system change time will also need to be factored in. If firms are to be required to do this all at the same time, there is a risk of detail being lost.

Recommendation (6.2): Similarly, the proposed timing of the initial reporting / disclosure should be determined to avoid clashing with other reporting obligations (e.g. year end, gender pay gap, women in finance charter reporting). This should not be strictly tied to the publication date of the Policy Statement but set pragmatically to avoid overburdening firms with reporting at a given point of the year.

7. **Proportionality**

Recommendation (7.1): Many firms believe that the threshold for large firm should be set to 751 employees for data collection, disclosure, target setting and firm-wide strategies.

Rationale: The regulators' D&I expectations will be particularly difficult for smaller firms to comply with as some may not be collecting the volumes of data required already. It will be very onerous for firms without a large number of employees to build capabilities from the ground up, so such firms indicated a preference for a higher proportionality threshold within these specific areas of the regulatory framework, or less strenuous requirements, for example, collecting and reporting on a more limited set of diversity characteristics.

Smaller firms expressed a particular issue around the disclosure section as firms with employee numbers near the lower end of the large firm threshold disclosing characteristics may lead to employees becoming identifiable. This becomes more of an issue when you begin considering senior managers and boards as it will become very

easy to identify individual employees based upon the diversity data that is disclosed in these smaller sub populations. We also believe that the data collected by firms at this lower end of the proposed 250 threshold will be of limited usefulness due to the small sample size, so any diversity conclusions drawn from this on a firm basis may be meaningless. These smaller firms will also have lower staff turnover meaning they have less opportunities to improve their diversity and action issues. Furthermore, turnover will disproportionately skew the data in these firms where they are required to report across the three levels.

This would also mean that firms whose clients and business operations are heavily localised and may be in areas that lack diversity but have more than 250 employees, are not penalised for recruiting from a non-diverse local area and being perceived as lacking a diverse workforce. This further applies to foreign firms who may have a language requirement to carry out certain functions within the business which will negatively impact diversity. An increase to 750 would largely exclude these heavily localised firms and many foreign firms. Another reason for choosing 750 as the threshold limit is it brings this legislation in line with the corporate governance and audit reform secondary legislation on corporate reporting published in July 2023[4] and this creates greater consistency.

8. **Scope**

Solo Entity Basis

Recommendation (8.1): We recommend that instead of reporting on a solo entity basis, that firms are given discretion as to which is the most appropriate group for them to report against, for instance, UK-based permanent employees of a group. However, for other aspects, such as firm strategies and targets, we would welcome flexibility to agree an approach which reflects a firm's organisational structure.

Rationale: For firms with multiple entities in the UK, strategies, targets, and data collection generally happens across the UK jurisdiction and not at solo entity level. Reporting on a solo entity basis would also skew statistics more to how a firm commercially organises itself and not be reflective of the wider UK group. Additionally, many firms' hiring practices are conducted at a UK-wide, or business-line level rather than at an entity level. Changing the application from entity level to UK-based permanent employees of a group would solve some of the challenges for business models where colleagues work across legal entities in groups and international firms. This should apply across all elements of the proposals, including strategy, monitoring, target setting, data collection, reporting, and disclosure.

Considerations for international firms[5]

Recommendation (8.2): International firms should be allowed to use targets and strategies at a global or regional level.

[4] Whilst this was temporarily shelved recently it was based on feedback on increasing burdens not due to scope.

[5] For the purpose of this response, "international firms" is used to represent our firms with a UK presence but with headquarters overseas.

Rationale: For our members with a foreign presence, many set targets and strategies on a global, divisional, or regional (e.g. EMEA-wide) basis. For firms who set strategies on a global and group basis, the proposed regulation would mean they need a separate strategy for the UK. There is potential for this to conflict with strategies set at global and group level. In addition, if an individual strategy is required for a UK entity, the UK entity will be an outlier and it is likely that firms will consequently have the issue of entities in other jurisdictions then requesting their own bespoke strategies. Similarly, target setting for UK entities where leadership and roles operate on an EMEA, or global level would be very difficult. UK targets would be difficult to align existing regional targets and/or fail to "make sense" within regional leadership approaches. For some of our international firms, decisions in, for example promotion processes, are largely made at global level rather than locally particularly for senior leadership and a lot of the hiring power remains at the global head office and not locally.

9. **Definitions**

Recommendation (9.1): Firms ask the regulators to publish a consistent definition of "employee" for the purpose of the final rules that does not include contractors, individuals seconded to the firm, offshore staff servicing UK-based entities or non-exec members of the board.

Rationale: The proposed definition of "employee" in the CPs is unclear and still open to interpretation and therefore a lack of consistency. Firms would like more guidance around what constitutes as "predominantly carry out activities…" as laid out in section 3.20 of CP23/20. Offshore employees are covered by policies local to the territories in which they are based and therefore the PRA definition should not capture offshored staff.

There is ambiguity in whether contractors and individuals seconded to the firm fall under the current definition of employee. Firms argue these individuals should not be included under the definition due to the lack of data held on these individuals and the huge difficulties in collecting such data from such individuals. It is also very difficult to track this, particularly in a group context where people may be moving between the branch and other offices on secondment, for example, making it difficult to track and gather data on those individuals from time to time. In addition to the data collection considerations, firms have little influence over the hiring practices and demographic makeup of the third parties with which they contract. This would lead to a proportion of a firm's "employees" for which the firm had no direct ability to tackle lack of diversity and coupled with disclosure and reporting requirements could amount to penalisation of those firms which make use of contractors.

Recommendation (9.2): Firms would like flexibility around the definition of senior leadership as used for reporting.

Rationale: The definition of "senior leadership" in Annex A of CP 23/20 could leave ambiguity and inflexibility, particularly for international firms where the 'management body' may be overseas or across jurisdictions. Firms would like flexibility around the definition of senior leadership. This would align with related initiatives such as the Women in Finance Charter, and facilitate a consistent approach across other codes and requirements

Recommendation (9.3): Align the FCA's definition of discriminatory practices with the Equality Act 2010.

Rationale: The FCA's definition of discriminatory practices extends further than that of its equivalent in the Equality Act. The FCA's definition includes '*discrimination against, or the harassment or victimisation of, a person or group due to their demographic characteristics, where these behaviours would be a breach of the Equality Act 2010 if they related to protected characteristics*'. The FCA have not defined 'demographic characteristics', in their proposals. Rather they state that this term has a commonly understood meaning (describing characteristics across a population) which includes the protected characteristics defined in the Equality Act 2010 alongside other factors, for example socio-economic background. This is likely to cause conflict with employment law and create confusion.

10. **External disclosure**

Recommendation (10.1): Firms request that the regulators confirm how the diversity and inclusion data will be published and what format this will be in to ensure the anonymity of individuals is protected. Firms would like to see the proposed reporting the regulators wish to use, even in aggregate.

Rationale: Providing examples of how firms' disclosure rates would be presented would help with the narrative that firms use internally. Firms are at different stages of progress and development and would also want to avoid a league-like table where the regulators are highlighting the best and worst in class.

Beyond this, the regulators seem to recognise that firms will have different contexts behind their firms' demographics, and that in some circumstances, both their baseline representation and their targets may differ from the demographic makeup of the UK or the region in which they operate. For international firms in particular, this can be driven by employing large numbers of international staff. Given the nature of disclosures, there is a real concern that this could ultimately create an unlevel playing field between domestic and international firms operating in the UK. Even where context is to be provided alongside the disclosure, it is unlikely that this will be sufficiently considered by prospective employees or clients, and beyond this the publicly disclosed data is likely to be used to create public rankings of firms by third parties, based purely on the metrics disclosed, without consideration of the context of the individual firms.

As detailed in section 3, some employees will not want to provide data if it is to go outside of the firm and disclosed externally. Not only could this lead to low-disclosure rates for new data collection but also the withdrawal of consent for data previously given to the employer for internal purposes only.

There is also a concern amongst our membership that there may be different approaches taken across the sector regarding the risk of identifiability. To support consistency, it would be helpful if the regulators could provide guidance as to a minimum response rate below which identifiability could be considered a risk, while allowing firms to apply judgement as to other factors which may influence this. Aggregating data could also help to protect data particularly the anonymity of smaller groups e.g. Board and senior management.

Additionally, we believe that public disclosure of inclusion metrics may not be helpful to employees, firms, or the sector as a whole. This would be exacerbated by the likely low response rates should firms need to conduct supplementary or bespoke surveys for the regulators' specific questions.

Questions from the FCA's CP 23/20

Question 1: To what extent do you agree that our proposals should apply on a solo entity basis?

We recommend that for reporting the regulation be set at the discretion of the firm to cover the most appropriate group, for instance, UK based employees of a group. For other aspects, such as firm strategies and targets, we would welcome flexibility to agree an approach which reflects a firm's organisational structure.

Rationale for our recommendation can be found in section 8.

Question 2: To what extent do you agree with our proposed proportionality framework?

We recommend that the threshold for large firm should be set to 751 employees for data collection, disclosure, target setting and firm-wide strategies.

Rationale for our recommendation can be found in section 7.

Question 3: Are there any divergences between our proposed regulatory framework and that of the PRA that would create practical challenges in implementation?

No material differences. Firms welcome the similarities in the requirements and would like to see the same degree of alignment in the final rules and in supervision.

Question 4: To what extent do you agree with our definitions of the terms specified?

We would like further clarity on the definition of employee and for the definition of "discriminatory practices" to be aligned with that in the Equality Act 2010.

Rationale for our recommendation can be found in section 9.

Question 5: To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?

Agree in part. Firms disagree that extending the guidance on the Sustainability Threshold in COND should extend to those 'connected to the firm'. It is suitable for the regulators to limit the proposed changes to Guidance on the Sustainability Threshold Conditions to employees, given the uncertainty and legal implications around bringing those defined as 'connected to the firm' under conditions.

Overall, UK Finance members require both clarification and additional guidance on a range of topics laid out in this consultation response.

Rationale for our recommendations can be seen in section 1.

Question 6: To what extent do you agree with our proposals on data reporting for firms with 250 or fewer employees, excluding Limited Scope SM&CR firms?

Disagree. We believe that these proposals should be applied to firms who have 750 or fewer employees.

Rationale for our recommendation can be found in section 7.

Question 7: To what extent do you agree with our proposals on D&I strategies?

Agree in part. Our members are very supportive of having evidence-based strategies to drive progress.

Firms would like the flexibility to set their strategies at a UK-based level or at a level which best reflects a firm's organisational structure and further guidance on the level of detail required within these strategies particularly for smaller firms would be appreciated.

Rationale for our recommendation can be found in section 4.

Question 8: To what extent do you agree with our proposals on targets?

Agree in part. In line with our comments in the sections on Strategies and Scope, firms should be given the flexibility to set their targets at the level in the UK which most appropriately aligns with their diversity strategies, hiring practices and governance, including UK-wide targets, business line targets or entity targets as appropriate. Firms would also like the flexibility to use their own terminology such as "aspirational goals"

Rationale for our recommendation can be found in section 5.

Q9: To what extent do you agree with the date of first submission and reporting frequency?

Agree in part. Firms agree with annual reporting but ask that the proposals for strategies and targets be brought in a year later. Firms also ask that the proposed timing of the initial reporting / disclosure should be determined to avoid clashing with other reporting obligations (e.g. year end, gender pay gap, Women in Finance charter reporting).

Rationale for our recommendation can be found in section 6.

Question 10: To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?

Agree in part. Most firms are happy with the mandatory demographic characteristics with the exception of religion.

Rationale for our recommendation can be found in section 3.

Question 11: To what extent do you agree that reporting should be mandatory for some demographic characteristics and voluntary for others?

Agree. Firms agree that some demographic characteristics should remain voluntary for now and for some characteristics firms believe these should stay voluntary. Most firms are happy with the mandatory demographic characteristics with the exception of religion.

Rationale for our recommendation can be found in section 3.

Question 12: Do you think reporting should instead be mandatory for all demographic characteristics?

Disagree. While firms see much benefit in the collection of such characteristics, collecting too many data points is likely to cause survey fatigue and concerns around data security. This could lead to low disclosure rates and to risks to psychological safety.

Rationale for our recommendation can be found in section 3.

Question 13: To what extent do you agree with the list of inclusion questions we propose to include in our regulatory return?

Disagree. Firms ask that regulators review and revise their inclusion questions and provide assurance that these statements have been developed using expert opinions on language and inclusion survey questions. Firms would also appreciate flexibility for them to use their own where these can be appropriately mapped.

Rationale for our recommendation can be found in section 3.

Question 14: To what extent do you agree with our proposals on disclosure?

Agree in part. Firms request that the regulators confirm how the diversity and inclusion data will be published and what format this will be in to ensure the anonymity of individuals is protected. Firms would like to see the proposed reporting the regulators wish to use, even in aggregate.

Rationale for our recommendation can be found in section 10.

Question 15: To what extent do you agree that disclosure should be mandatory for some demographic characteristics and voluntary for others?

Agree. Data disclosure should not be mandatory for all of the mentioned data characteristics.

Some firms do not think that any data characteristics should be mandatory for collection or disclosure. Generally, firms have concerns over whether data disclosure as proposed is the most effective way to drive forward the D&I agenda within firms and the industry.

Rationale can be found in section 8.

Question 16: Do you think disclosure should instead be mandatory for all demographic characteristics?

Disagree. Similar to our point on collection, disclosing too many data points is likely to cause survey fatigue and concerns around data security. This could lead to low disclosure rates and to risks to psychological safety.

Rationale for our recommendation can be found in section 3.

Question 17: To what extent do you agree that a lack of D&I should be treated as a non-financial risk and addressed accordingly through a firm's governance structures?

Agree. We are in favour of lack of D&I being treated as a non-financial risk however have some asks for clarification on this topic on what level of importance the regulators place on this compared to other risks.

Rationale for this recommendation can be found in section 2.

PRA Cost Benefit Analysis & FCA Cost Benefit Analysis

Estimates differ across firms. Some firms believe the analysis provided to significantly underestimate the costs required. For system changes alone we have estimations from firms in the millions (GBP). Similarly, the changes would require a higher headcount than firms have working on this at present.
Not only are the proposed requirements an uplift for smaller firms not already collecting data in this way, for firms who are already collecting data and quite far advanced in this space, the system changes are significantly costly.

Recommendation: We suggest the FCA and PRA give a common estimation of costs associated with D&I Strategies creation and execution, including costs associated with labour and software, as well as any additional costs. We also recommend that the regulators provide examples of D&I initiatives, the cost of their realisation, including training, leadership development programs, hiring programs, employee branding, and Employee Resource Group ('ERG') initiatives. Based estimations from some firms, the cost of labour of people directly involved in D&I projects currently at firms supersedes these projections.

Rationale: It is suggested that the costs for small firms will constitute a one-off cost of £5,800 and an annual cost of £3,200, while for the large firms it would be £173,600 and £102,500 respectively, according to the FCA's cost benefit analysis. It is also stated that proposals requiring D&I training were excluded, and the cost of training is estimated at 70-30% of the proposal. The current cost estimate is said to include the communication of the D&I strategy to employees, while no specific provisions are made for other costs associated with the design and implementation of the strategy. The papers note that the additional survey results of January 2022 where the firms were asked about the implementation costs were disregarded in the cost estimations.

The range of benefits is not provided, and it is suggested they are measured over time.

PRA lists additional costs, that differs from FCA ones:

Table 4: Average cost to an individual firm, by firm size

Policy area	Small firms		Large firms	
	One-off costs	Ongoing costs (annual)	One-off costs	Ongoing costs (annual)
Non-Financial Misconduct	£2,600	£1,400	£24,600	£20,400
Threshold Conditions	£3,200	£1,800	£7,900	£6,700
Risk & Governance	N/A	N/A	£36,400	£17,400
D&I Strategies	£23,600*	£8,400*	£23,600	£8,400
Setting Targets	N/A	N/A	£18,200	£15,100
Data Disclosure	N/A	N/A	£29,800	£15,100
Data Reporting	N/A	N/A	£33,200	£19,500
Regulatory return	N/A	£24**	N/A	N/A

*These costs only apply to small dual-regulated CRR and Solvency II firms only.

**These costs only apply to small solo- and dual-regulated firms that are not Limited Scope SM&CR firms.

The figures are rounded to the nearest £100.

Table 4: PRA average costs, per firm(a)

Policy Area	Large firms (>251 employees)		Small firms (<250 employees)		Overlap with FCA costs
	One-off costs	Ongoing costs (annual)	One-off costs	Ongoing (annual) costs	

ps://www.bankofengland.co.uk/prudential-regulation/publication/2023/september/diversity-and-inclusion-in-pra-regulated-firms 55/63

10/2023, 15:35 CP18/23 – Diversity and inclusion in PRA-regulated firms | Bank of England

Firm-wide strategies(b)	£23,000	£11,000	£23,000	£11,000	Costs from PRA and FCA are one and the same.
Risk and controls / internal monitoring	£19,000	£9,000	£4,000	£2,000	The PRA is applying this to all dual-regulated firms, while the FCA only to large firms.
Targets	£21,000	£21,000	N/A	N/A	Costs from PRA and FCA are one and the same.
Board governance(c)	£18,000	£29,000	£4,000	£6,000	PRA cost only.
Individual accountability	£39,000	£25,000	£8,000	£6,000	PRA cost only.
Fitness & Propriety	£4,000	£2,000	£200	£200	Costs overlap but PRA costs are 80% lower than FCA's.(d)
Regulatory reporting	£48,000	£29,000	N/A	£25(e)	Costs from PRA and FCA are one and the same.
Disclosure	£23,000	£34,000	N/A	N/A	Costs from PRA and FCA are one and the same.
Total	**£195,000**	**£160,000**	**£39,200**	**£25,225**	

Annex 1 – Table of Recommendations

Chapter	Reference	Recommendations

1	Non-financial misconduct	
1.1	Definition of Bullying	Bullying should be clearly defined by the regulators as well as how they expect firms to retrospectively challenge this type of behaviour in an employee's work life.
1.2	Factors of serious misconduct	We would like further clarity on what factors the FCA will be considering when determining if misconduct is serious.
1.3	Conduct rules	We would like more guidance on when conduct excluded from Conduct Rule 1 may full under Conduct Rule 2.
1.4	Reasonable Steps under COCON 4.1 8-A g (1)	Clearer guidance is needed under COCON 4.1.8-A G (1) on what 'reasonable steps' would look like for managers looking to protect staff against the treatment of conduct that will breach rule 1 under COCON 4.1.1F G.
1.5	Definition of disgraceful and morally reprehensible	Regulators should clearly define the meaning of "disgraceful or morally reprehensible" or otherwise sufficiently serious misconduct.
1.6	Misconduct in private life	We would like clear guidance on how and to what extent firms are expected to examine employees' personal and private lives, how this would be undertaken consistently across firms that is fair for all impacted employees.
1.7	Obligations of firms in employee private life	Regulators should lay out firms' specific obligations in assessing serious instances of bullying, harassment, and similar behaviour in an employee's personal or private life.
1.8	Historic timescales of breaches	Regulators should be clear on the historical timescales in which employers are expected to examine employees retrospectively.
1.9	Changes to Guidance on the Suitability Threshold Conditions	Regulators should limit proposed changes to Guidance on the Suitability Threshold Conditions to those employed by firms and not simply those 'connected to the firm' as set out in the Consultation Papers.
1.10	Scope of COCON	The FCA must be clear on the expanded scope of COCON covering serious instances of bullying, harassment and similar behaviour in employees work lives.
1.11	Employment law implications	Further consideration should be given to the employment law implications of the proposals and appropriate guidance should be provided to firms by the Regulators.
1.12	Firms existing policies and processes	Regulators should provide guidance on how the proposed changes will need to interact with firms' existing policies and processes.
2	**Governance, accountability, and risk management**	
2.1	Reasonable steps for SMF	Firms would like clearer guidance on what 'reasonable steps' by those holding SMF responsibility looks like
2.2	Boards of international firm branches	Firms would like clarity from the PRA that the board can mean the local leadership team in the context of branches of international firms headquartered outside of the UK.

2.3	Remuneration performance objectives	Firms believe that the PRA needs to provide clearer guidance for what efforts are considered in remuneration performance objectives.
2.4	Risk management practices	Firms would like guidance on the level of importance the PRA and FCA place on lack of diversity and inclusion as a non-financial risk.
3	**Data and disclosures**	
3.1	Non-disclosure rates	The regulators should not infer that high numbers of non-disclosure or 'prefer not to say' is indicative of a lack of inclusiveness and should allow firms to provide a statement that gives the context to explain their disclosure rates.
3.2	Voluntary vs mandatory characteristics	Firms would like clarity from the regulators as to why some characteristics are mandatory and others voluntary.
3.3	Religion as a mandatory characteristic.	Religion should be removed as a mandatory characteristic for collection and instead moved to voluntary.
3.4	Voluntary characteristics	Gender identity, parental responsibilities, carer responsibilities (and religion) should remain as voluntary, without the intention of adopting as mandatory in the future.
3.5	Making voluntary characteristics mandatory	We would like the regulators to formally consult should they consider making any currently voluntary fields mandatory.
3.6	Review of inclusion questions	Firms ask that the FCA review and revise its inclusion questions and provide assurance that these statements have been developed using expert opinions on language and inclusion survey questions.
3.7	Ability to use in-house inclusion questions	The regulator should give firms flexibility to allow them to use their own inclusion questions where they can be adequately mapped to the revised inclusion questions, provided they are able to demonstrate that their in-house questions meet the same aims as the FCA'.
3.8	Inclusion confidentiality	The regulator should allow firms flexibility to collect inclusion data on an appropriately confidential basis.
4	**Strategies**	
4.1	Strategy application level	Firms should be given the flexibility to set their strategies at a UK-based level or at a level which best reflects a firm's organisational structure.
4.2	Detail of strategies	Firms require more guidance on the level of detail required within their D&I strategies for different sized firms.
4.3	Purpose of board strategy	Firms require more detail on the purpose and breadth of a separate board strategy on D&I.
5	**Targets**	
5.1	Terminology	Firms should be allowed to use their own terminology when setting goals for representation.
5.2	Public disclosure of targets	The regulators should provide further clarity, guidance and examples of what publicly disclosed targets should look like and the level of detail that should be provided.

5.3	Application of targets	Firms should be given the flexibility to set their targets at the level in the UK which most appropriately aligns with their diversity strategies, hiring practices and governance, including UK-wide targets, business line targets or entity targets as appropriate.
5.4	Positive discrimination	Firms would like assurances that supervisors will not place undue pressure on targets for firms as this may lead to positive discrimination, we would like to be able to include initiatives and actions in targets as this will act as a risk mitigant.
6	**Sequencing**	
6.1	Timeframes for strategies and targets	The regulators should review the timeframes for the proposals and phase the approach with strategies and targets to be mandated a year after the data requirements.
6.2	Timing on reporting.	Proposed timing of the initial reporting / disclosure should be determined to avoid clashing with other reporting obligations (e.g. year end, gender pay gap, women in finance charter reporting). This should not be strictly tied to the publication date of the Policy Statement but set pragmatically to avoid overburdening firms with reporting at a given point of the year.
7	**Proportionality**	
7.1	Larger firm threshold	The threshold for large firm should be set to 751 employees for data collection, disclosure, target setting and firm-wide strategies.
8	**Scope**	
8.1	Solo entity basis	We recommend that instead of reporting on a solo entity basis, that the regulation be set at the discretion of the firm to cover the most appropriate group, for instance, UK based employees of a group.
8.2	Targets and strategies for international firms	International firms should be allowed to use targets and strategies at a global or regional level.
9	**Definitions**	
9.1	Definition of Employee	Firms ask the regulators to publish a consistent shared definition of “employee” for the purpose of the final rules that does not include contractors, individuals seconded to the firm, offshore staff servicing UK-based entities or non-exec members of the board.
9.2	Definitions of senior leadership	Firms would like to see flexibility around the definition of senior leadership.
9.3	Definition of discriminatory practice	Align the FCA’s definition of discriminatory practices with the Equality Act 2010.
10	**External disclosures**	
10.1	Data publication	Firms request that the regulators confirm how the diversity and inclusion data will be published and what format this will be in to ensure the anonymity of individuals is protected

Annex 2 - Examples of Inclusion Questions Currently Used by firms

- speak up - yes (I am able to speak up and raise concerns if I see things I consider to be wrong)
- challenge - yes (Where I work, people seek and respect different opinions when making decisions)
- empowerment - yes (I'm empowered to make appropriate decisions in my job)
- respectful work environment - yes (In my business division or function, we provide a professional and respectful work environment) AND (I am able to balance my work and home life in a way that works for me)
- psychological safety - yes (Where I work, mistakes are treated as an opportunity to learn)
- inclusion - yes (my line manager creates an inclusive environment by encouraging diverse thinking and perspectives)
- I can be who I want to be at work, I don't have to hide anything.
- Individuals' values and differences are respected.
- My manager works effectively with people with different views and from different backgrounds.
- People feel included and valued where I work.
- "my manager creates a sense of belonging"
- My line manager fosters and inclusive environment at work
- I'm confident I won't be discriminated against at X
- At work, my opinions are valued or the colleagues I work with welcome opinions different from their own.
- I think there is the opportunity to safely speak up and challenge the way things are done in the Society.
- People from all backgrounds are treated fairly at X
- I am in an environment where the opportunity to innovate overrides the fear of failure.
- There is opportunity to progress in the company regardless of personal characteristics
- Safe to be myself openly in the workplace
- Cultivates an Inclusive Environment
  - 'My manager makes everyone in the team feel welcome'
  - 'My Manager makes time to listen and respond to any concerns or ideas'
- Psychological Safety
  - 'My manager is great at creating a positive and supportive culture'
  - "'What makes you feel safety at your workplace is taken seriously'
- Speak Up
  - 'I feel confident speaking up if I see breaches of our policies, Code of Business Conduct or the law'
  - 'What would make you feel more listened to as a colleague'

Responsible executives

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