

Conduct Rules Scenarios

Breach of Lockdown Restrictions

Scenario

You are Tom Smith, a Certification Employee working for Best Wealth Management Ltd, a Core Firm with offices in London.

Your wife informs you that she is feeling ill and is showing symptoms associated with Covid-19. You believe that it is only a matter of time before you too catch Covid-19. Your wife's condition is deteriorating rapidly and you are worried that you will both become too ill to look after your four-year-old son.

Your parents can assist with childcare and you decide to drive 260 miles from your home in Islington to Bishop Auckland in the north-east of England, where you can stay in their 'Granny Annex'.

You wake up the morning after your arrival in Bishop Auckland with COVID-19-like symptoms. Over the next few days, your symptoms worsen with the result that you cannot get out of bed.

After approximately one week, you are feeling well enough to contemplate a return to London. You drive to Castle Eden (approximately 20 miles away) in order to test whether you are well enough to drive the 260 miles back to London. You decide that you are well enough and, the following day, you return to London.

During the whole episode government guidance has been that nobody should leave their home unless it is an emergency.

On your return to work, you let slip to your line manager, Fred Black (a Senior Manager) that you had spent a week in Bishop Auckland. Unbeknownst to you, Fred Black – worried about possible reputational damage to the firm – escalates the matter to Human Resources for its view as to how Fred should respond (if at all).

What conduct rules may have been breached?

- None

Points to consider

General

In order to be considered in-scope for the purposes of the Conduct Rules, the conduct in question must relate to the regulated or unregulated “financial activities” of the firm.

Under COCON 3.1.3G, a person will only be in breach of a Conduct Rule where they are personally culpable. In other words, the person’s conduct must have been:

1. Deliberate, or
2. Below the standard of conduct that would be reasonable in all of the circumstances.

Pursuant to COCON 3.1.2G, in assessing whether a breach of the Conduct Rules has occurred, the FCA will have regard to the context in which a course of conduct was undertaken, including:

1. The precise circumstances of the individual case,
2. The characteristics of the particular function performed by the individual in question, and
3. The behaviour expected of that function.

The FCA will also take into account whether the conduct in question (a) relates to activities that are subject to other provisions of the FCA Handbook, or (b) is consistent with the requirements and standards of the regulatory system (as far as it applies to the firm).

Pursuant to COCON 3.1.5G and 3.1.6G, in determining whether a breach of the Senior Manager Conduct Rules has occurred, the FCA will take into account:

1. Whether the Senior Manager exercised reasonable care when considering the information available to them,
2. Whether the Senior Manager reached a reasonable conclusion upon which to act,
3. The nature, scale and complexity of the firm’s business (the smaller and less complex the business, the less detailed and extensive the systems of control in place need to be – and vice versa),
4. The role and responsibility of the Senior Manager as determined by reference to his/her Statement of Responsibilities, and
5. The knowledge which the Senior Manager had, or should have had, of regulatory concerns (if any) relating to their role and responsibilities.

In terms of the territorial application of the Conduct Rules, in general the Conduct Rules only apply to ‘UK activity’. More specifically, the Conduct Rules apply to:

1. Conduct performed from an establishment maintained in the UK by a firm which is subject to the SM&CR, or

2. Conduct which involves dealing with a UK-based client of a UK firm which is subject to the SM&CR from an establishment overseas.

However, the Conduct Rules apply to the conduct of the following individuals wherever it is performed:

1. A Senior Manager, or
2. An employee of an SM&CR firm who performs the function of a Senior Manager, or
3. A non-executive director, or
4. A Certification Employee who performs Certification Function (6) (“Material Risk Taker”).

Ultimately, the firm will have to notify the FCA of any breach of the Conduct Rules. Normally, breaches of the Conduct Rules by non-Senior Managers must be notified to the FCA annually in October using Form H (also known as “REP008 – Notification of Disciplinary Action”). However, the following types of breaches must be reported to the FCA “immediately”:

1. Any “significant” breach of a Conduct Rule (SUP 15.1.7G(1) and SUP 15.3.11R(1)(a)), or
2. Any matter that could have a significant adverse effect on the firm’s reputation (SUP 15.3.1R(3)), or
3. The occurrence of any fraud with respect to any member of staff (SUP 15.2.17R).

The FCA must be notified of any breach of the Conduct Rules by a Senior Manager within 7 days, pursuant to SUP 10C Annex 2G.

Tom

Whilst it is theoretically possible (although on balance, unlikely) that Tom’s behaviour could be regarded as involving a lack of “integrity” as required by **Individual Conduct Rule 1**, the Conduct Rules only relate to the regulated and unregulated financial services activities of the firm.

As such, Tom’s actions are not subject to the Conduct Rules and cannot result in a breach of the Conduct Rules.

However, there are other aspects of Tom’s behaviour that should be considered. For example, it may be that it could call into question his fitness and propriety. There are three ‘pillars’ to assessing fitness and propriety:

1. honesty, integrity and reputation,
2. competence and capability, and
3. financial soundness.

The only ‘pillar’ that would seem to be potentially relevant in the present case would be

'honesty, integrity and reputation'. Whilst there is not sufficient detail provided in order to reach a definite conclusion, on balance, it would seem unlikely that Tom's behaviour would lead to a finding that he was no longer fit and proper to perform his role.

HR should consider whether Tom's behaviour merits the triggering of a disciplinary process. However, that is beyond the scope of this scenario and there is not sufficient detail to reach a definitive finding on this aspect.