



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 4

CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Amendments of FSMA 2000

32 Definition of “misconduct”

(1) In section 66 of FSMA 2000 (disciplinary powers)—

(a) after subsection (1) insert—

“(1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator—

(a) see section 66A, in the case of action by the FCA, and

(b) see section 66B, in the case of action by the PRA.”;

(b) omit subsections (2), (2A), (6) and (7).

(2) After that section insert—

“66A Misconduct: action by the FCA

(1) For the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that—

(a) the person has at any time failed to comply with rules made by the FCA under section 64A, and

(b) at that time the person was—

(i) an approved person, or

(ii) an employee of a relevant authorised person.

Status: This is the original version (as it was originally enacted).

- (3) Condition B is that—
- (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and
 - (b) at that time the person was—
 - (i) an approved person in relation to the authorised person, or
 - (ii) in the case of a relevant authorised person, an employee of the authorised person.
- (4) In this section “relevant requirement” means a requirement—
- (a) imposed by or under this Act, or
 - (b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
- (a) the person has at any time been a senior manager in relation to a relevant authorised person,
 - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and
 - (c) the senior manager was at that time responsible for the management of any of the authorised person’s activities in relation to which the contravention occurred.
- (6) But a person (“P”) is not guilty of misconduct by virtue of subsection (5) if P satisfies the FCA that P had taken such steps as a person in P’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- (7) For the purposes of subsection (5)—
- “senior manager”, in relation to a relevant authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;
- “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).
- (8) In this section—
- “approved person”—
- (a) means a person in relation to whom an approval is given under section 59, and
 - (b) in relation to an authorised person, means a person in relation to whom such approval is given on the application of the authorised person;
- “employee”, in relation to a person, has the same meaning as in section 64A.
- (9) For the meaning of “relevant authorised person”, see section 71A.

Status: This is the original version (as it was originally enacted).

66B Misconduct: action by the PRA

- (1) For the purposes of action by the PRA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.
- (2) Condition A is that—
 - (a) the person has at any time failed to comply with rules made by the PRA under section 64A, and
 - (b) at that time the person was—
 - (i) an approved person, or
 - (ii) an employee of a relevant PRA-authorised person.
- (3) Condition B is that—
 - (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by a PRA-authorised person, and
 - (b) at that time the person was—
 - (i) an approved person in respect of the performance of a relevant senior management function in relation to the carrying on by the PRA-authorised person of a regulated activity, or
 - (ii) in the case of a relevant PRA-authorised person, an employee of the authorised person.
- (4) In this section “relevant requirement” means a requirement—
 - (a) imposed by or under this Act, or
 - (b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
 - (a) the person has at any time been a senior manager in relation to a relevant PRA-authorised person,
 - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, and
 - (c) the senior manager was at that time responsible for the management of any of the authorised person’s activities in relation to which the contravention occurred.
- (6) But a person (“P”) is not guilty of misconduct by virtue of subsection (5) if P satisfies the PRA that P had taken such steps as a person in P’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- (7) For the purposes of subsection (5)—

“senior manager”, in relation to a relevant PRA-authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;

“designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).

Status: This is the original version (as it was originally enacted).

(8) In this section—

“approved person”—

(a) means a person in relation to whom—

- (i) the PRA has given its approval under section 59, or
- (ii) the FCA has given its approval under section 59 in respect of the performance by the person of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity, and

(b) in relation to an authorised person, means a person in relation to whom approval under section 59 is given on the application of the authorised person;

“employee”, in relation to a person, has the same meaning as in section 64A;

“relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person;

“relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(9) For the meaning of “relevant authorised person”, see section 71A.”