

Governance and Cross-Cutting  
Standards Policy Team  
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By email: [CP23-20@fca.org.uk](mailto:CP23-20@fca.org.uk)

20 December 2023

Dear Standards Policy Team

**Re: CP23/20: Diversity and inclusion in the financial sector – working together to drive change**

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of around 620 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and a large base of UK and global investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized businesses.

An integral part of our mission is to promote diversity, equity and inclusion (DEI) within our industry and support firms to build inclusive environments in which everyone can thrive. We promote diversity through our internal governance, engagement with industry and government initiatives and events and networking. As part of this commitment, we ensure good representation of women and people of different backgrounds on our Council, Committees and in our senior leadership team. A member of our senior executive team is responsible for gender diversity and inclusion, we sit on the Rose Review Board and are a signatory of the Women in Finance Charter.

The BVCA also has a [Code of Conduct](#) which all members must sign up to. This includes the following requirement:

*All members shall conduct their business in a professional way and will not engage in practices which would be damaging to the image of the private equity industry. Within their own firms (and portfolio companies), members will promote the principles of equality and diversity, equal opportunities, anti-discrimination and anti-harassment. The BVCA also endorses Level 20's guidelines for private equity firms.*

[Level 20](#) is a not-for-profit organisation dedicated to improving gender diversity in our industry. The [guidelines](#) make clear that firms should “*Create avenues for minority voices to be heard and acted upon in a psychologically safe environment*” and “*Challenge behaviour that acts against the firm’s commitment to diversity, equity and inclusion, with role modelling of behaviours starting at the top*”.

The BVCA is committed to doing our own research (see below), sharing, and signposting best practice and enabling knowledge share on DEI. A key way we do this is via our member communications and DEI related events. These events encourage greater participation and representation in our industry and provide a forum to exchange experiences, share best practice, debate the issues and showcase what our members are doing to improve diversity and inclusion.

As an industry that invests in people and in businesses, we recognise the importance of a diverse, equitable and inclusive workforce. We also see its value in helping to create better-performing and more productive organisations more able to attract and retain top talent. We are confident that we as an industry and as an organisation have made progress in the last few years (as shown below). However, it is also clear that there is still significant room for improvement within the industry. We therefore welcome the FCA’s consultation and its aims to help drive greater diversity and inclusion across the financial sector.

To help contextualise our response, we have provided some detail below on the work our industry is doing to improve diversity and inclusion.

#### Progress on diversity and inclusion in private capital

We recognise that much needs to be done to improve gender, ethnicity, and socio-economic representation across private capital. This is why we have partnered with Level 20 to publish regular Diversity and Inclusion reports for UK private equity and venture capital. Our reports present data and analysis on the gender and ethnicity of individuals working in UK private capital firms and make recommendations to improve retention & progression, recruitment (including outreach), culture and the gathering of data to measure progress.

Our [2023 report](#) shows that some continued progress is being made in our industry. For example, our report in 2018 found that just 6% of senior investment roles in the UK were held by women in private equity. This has doubled to 12% in 2023 and we are seeing higher levels of women in mid and junior-level investment roles (at 24% and 38% respectively in 2023). Our data also shows that gender balance is better in non-investment roles, where representation in senior roles is 39%. While progress at a senior level is slower than we would like, this reflects the apprenticeship nature of our industry and the proportion of women now in mid and junior-level roles bodes well for greater

representation at a senior level in the future. Nonetheless, we continue to work with the industry to improve diversity at all levels.

Businesses take better decisions when a variety of voices are heard – representing a wide diversity of experience and thought. And our focus groups conducted as part of the research showed that many firms are alive to the challenges and are working hard to find ways to attract a wider range of people to the industry. This is reflected in the growing number of women at junior levels.

The BVCA supports and partners with industry groups, including the Rose Review Board, and the Council for Investing in Female Entrepreneurs. This Council has now formed the Invest in Women Hub which was created to support women starting businesses. It is seen as the “go-to destination for women seeking to raise capital”, which some of our members have registered to join as finance providers.

The BVCA also engages with and supports Level 20, Diversity VC, the British Business Bank (BBB) and the UK Business Angels Association (UKBAA) to champion and deliver policies and initiatives to improve diversity in the private capital industry, which in turn helps improve diversity in funding of founders.

The private capital industry is involved in relevant government initiatives, most recently the Investing in Women Code (IWC). The IWC commits all financial institutions to the principles of gender equality and transparent reporting of gender funding data. The BBB, BVCA and UKBAA are also working on a pilot to expand the IWC data collection to cover investment into founders from different ethnicities.

The BVCA and private capital firms were involved in the creation of the Diversity and Inclusion for Investors Guidance, which resulted from the work of the Rose Review. The report provides resources for institutional and other investors who wish to maximise access to diverse deal-flow and manage their companies and portfolios to optimise return.

Please see Annex 1 for our responses to the consultation questions in CP23/20. Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail. Please contact Harriet Assem ([hassem@bvca.co.uk](mailto:hassem@bvca.co.uk)) or Nick Chipperfield ([nchipperfield@bvca.co.uk](mailto:nchipperfield@bvca.co.uk)).

Yours faithfully,



Tim Lewis

**Chair, BVCA Regulatory Committee**

## Annex 1: CP23/20 Consultation Questions

We have only responded to the consultation questions on which our members have specific views. All FCA Handbook references are to the draft Handbook text in Appendix 1 of CP23/20, unless stated otherwise.

### **Q1: To what extent do you agree that our proposals should apply on a solo entity basis?**

In our view, it is appropriate for the FCA's proposals to apply on a solo entity basis. Applying the proposals at the level of the firm will help ensure that the approach is targeted at, and embedded by, individual regulated firms. We agree that the application of the disclosure and reporting requirements at group level would provide aggregated data that could lack sufficient granularity.

### **Q2: To what extent do you agree with our proposed proportionality framework?**

We agree with the proposed proportionality framework of applying a minimum standard to all firms in relation to non-financial misconduct and then applying additional requirements, such as in relation to disclosure, target setting and reporting obligations, to firms with more than 250 employees who predominantly carry out their activities from a UK establishment.

### **Q4: To what extent do you agree with our definitions of the terms specified?**

We do not have any comments in relation to the definitions of "discriminatory practices". However, we would like to propose an amendment to the definition of "senior leadership" and for "diversity and inclusion employee number".

#### Senior leadership

The new rules will require large firms to report and disclose data and set targets in respect of their "senior leadership". The third limb of the definition ("all direct reports" excluding administrative staff) makes it potentially extremely broad, as well as being likely to result in capturing a varying population of staff across different firms. Firms vary in their management structure and reporting lines, so the third limb may inadvertently capture staff who would not otherwise be treated as part of the senior leadership of a firm. It could also distort results and make progress on diversity and inclusion look significantly better than is the reality in senior leadership teams.

Given that the definition already captures the two most senior layers of management, we suggest that the third limb of the definition should be removed altogether. We note that this would be consistent with the approach taken in the April 2022 FCA Policy Statement "Diversity and inclusion on company boards and executive management" (PS22/3) in respect of requirements for the numerical disclosure of gender and ethnic diversity for boards and the most senior level of executive management of certain listed

companies. In that Policy Statement, the FCA notes that a suggestion made in some of the consultation responses of including “direct reports” of executive management was not implemented, as the FCA did “not think it is appropriate for us to set requirements on this at this time” (paragraph 2.25 of PS22/3).

#### Diversity and inclusion employee number

We support the use of the 251 or more employee metric as a “long-standing, widely used and simple threshold”. We agree it is helpful that this employee threshold is already used to define a large firm in the Companies Act 2006 (CA06) and for employee data reporting requirements under the Government’s Gender Pay Gap (GPG) Regulations.

However, the draft rules rely on an existing FCA Handbook Glossary definition of an employee which differs from that used in CA06 and the GPG Regulations. This will result in inconsistencies in firms identifying as large and in scope of the FCA, CA06 and GPG reporting requirements.

This is because the FCA’s Handbook Glossary definition includes individuals employed or appointed under a “contract of service or for services or otherwise”, so likely including contractors and secondees. The CA06 definition is restricted to the “number of persons employed under contracts of service by the company” only and the GPG Regulations simply refer to employees “under a contract of employment”.

For simplicity and consistency, we recommend the FCA align its definition of an employee for diversity and inclusion data reporting purposes with the existing definition in CA06.

#### **Q5: To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON, and COND?**

We agree in principle with the proposals to expand the coverage of non-financial misconduct in FIT, COCON, and COND. We set out below our observations on the draft guidance and have identified several areas where we would welcome further clarification.

#### COCON 1.3.14G

The draft guidance says that misconduct by one staff member in relation to another can still be within the scope of COCON even when it is outside the scope of COCON 1.1.7FR. It would be helpful to clarify the scope of this guidance, in particular, whether the guidance is concerned with conduct in relation to individuals not falling within COCON 1.1.7FR(3); and/or conduct not falling within COCON 1.1.7FR(4) or COCON 1.1.7FR(5).

In relation to COCON 1.1.7FR(4), we note that the conduct must be “serious”, but that this is only specifically expressed in relation to COCON 1.1.7FR (COCON 1.1.7GG) and

Individual Conduct Rule 1 (COCON 4.1.1CG) and therefore if the conduct is also captured under other provisions, it would be helpful to clarify the need for the conduct to be “serious”.

In addition, COCON 1.1.7FR(5) states that if a firm carries on businesses some of which involve SMCR financial activities and the others of which do not, conduct is not within the scope of COCON 1.1.7FR if it “only” relates to a business that does not involve SMCR financial activities. COCON 1.3.13G(5) gives a related example, being where both the employee committing the misconduct and the subject of the misconduct work in the part of an HR function that does not deal with the financial services business of the firm. It would be helpful to clarify whether the rules would apply in circumstances where the employee committing the misconduct does not work in a part of the firm dealing with financial services business, but the subject of their misconduct does. While such conduct is clearly of general concern, and not to be accepted, we question whether the employee committing the misconduct should be treated as in scope of the Conduct Rules, given they are not in the regulated part of the firm. If they were to be considered in scope, this could have significant implications for such firms, as it has the potential to significantly widen the scope of the firm’s employee population potentially subject to the Conduct Rules, and therefore obligations in relation to notification and training in respect of the same, as well as reporting.

(a) Individual Conduct Rule 1 (You must act with integrity)

We agree that fostering a good working environment is essential to a firm’s culture, and that this will help discourage misconduct. However, the draft guidance introducing the high-level principle that conduct inconsistent with a “good working environment” may be in breach of Rule 1 could have unintended consequences. For the reasons set out below, we recommend the FCA maintain the existing approach in COCON 4.1.1G by focussing on a non-exhaustive list of examples of misconduct that would be in breach of Rule 1.

From the draft guidance, it is not clear how the obligation to act in a way that is consistent with a good working environment is necessarily linked to integrity. The broad wording of this obligation would potentially include behaviour where an individual has acted with integrity (that is, honestly and in good faith) but has nevertheless behaved in a way that is inconsistent with a good working environment. We recognise that this behaviour may be excluded by the defence in COCON 4.1.1IG or may instead be treated as a breach of Rule 2, but this will not apply in all cases and may not be the correct starting point. For example, the broad wording could capture an individual who has acted in good faith but as a weak manager has inadvertently created a poor working environment. We note that this individual would not necessarily be able to rely on the defence in COCON 4.1.1IG which relates only to the non-exhaustive examples of misconduct listed in COCON 4.1.1FG and COCON 4.1.1HG but does not provide a

general defence in relation to COCON 4.1.1BG/CG/DG. Although the individual's behaviour is regrettable, we do not believe that it should amount to misconduct that is a breach of integrity under Rule 1 and would more appropriately be dealt with by existing internal processes and procedures within firms.

Further, while the obligation to act consistently with a good working environment in which "each employee feels respected, valued and able to give their best" is a valuable objective, the reality of working life means that it is unlikely that every employee of any regulated firm will feel respected, valued and able to give their best at all times. We would also note that this is a subjective standard which may not take into account wider circumstances or context.

The obligation is qualified such that only a "serious" departure from acting consistently with an environment in which "each employee feels respected, valued and able to give their best" is likely to be a breach. However, it is not clear what is meant by a "serious" departure for these purposes. This lack of clarity may make it difficult for regulated firms to assess whether or not conduct should be treated as misconduct within the scope of COCON.

Consequently, we would suggest either removing COCON 4.1.1BG and COCON 4.1.1CG, while ensuring that the proviso is maintained that only "serious" misconduct is within the scope of the relevant provisions of COCON or further clarifying the interaction between COCON 4.1.1BG and COCON 4.1.1CG and Rule 1 and Rule 2. As we have noted, our preferred approach would be a revised and updated non-exhaustive list of examples of misconduct that would amount to a breach of Rule 1 or Rule 2. If COCON 4.1.1BG is to be retained, we recommend that it is converted to an objective standard.

Additionally, the draft guidance contains a non-exhaustive list of examples of misconduct amounting to a breach of Rule 1 in COCON 4.1.1FG. Some of the examples mirror those of COCON 1.1.7FR(4), for which seriousness is a relevant consideration. To ensure consistency in the application of the rules, the examples in COCON 4.1.1FG should also state there "is only a breach of COCON if it is serious."

The proposal states that an individual alleged to have committed a breach may have a defence if they reasonably thought there was a "good and proper reason" for their behaviour; or they did not intend to have a negative impact, did not know that they were doing so, and were not reckless about the effect of their misconduct (COCON 4.1.1IG).

This defence appears to be an attempt to exclude conduct where the conduct, or the consequences of the conduct, were unintentional or that the individual has not behaved without integrity, although the defence does not state this explicitly. The inclusion of a standard of reasonableness and exclusion of recklessness provides helpful explanation, but the test is otherwise subjective in being based on the individual's thoughts,

intentions, and knowledge. We would suggest that breaches of Rule 1 in respect of non-financial misconduct should be more explicitly linked to the notion of an individual's integrity (i.e., intention), as opposed to dealing with this solely through a defence, and that this defence is available for all relevant misconduct. As currently drafted, it is only available in respect of the non-exhaustive examples of misconduct listed in COCON 4.1.1FG and COCON 4.1.1HG, and therefore it is not available in respect of other breaches not foreseen in the non-exhaustive lists – which could lead to inconsistent outcomes. The COCON standards should be drafted as objective standards of behaviour.

(b) Individual Conduct Rule 2 (You must act with due skill, care and diligence)

It would be helpful if the FCA can confirm and clarify the relevance of “seriousness”, as it is not clear from draft guidance that it is applied for Rule 2.

(c) Threshold Conditions sourcebook (COND)

We agree with the proposed changes.

**Q6: 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?**

We welcome this proposal subject to our recommendation on defining an employee for the purposes of the “diversity and inclusion employee number”. Please see our response to Q4.

**Q7: To what extent do you agree with our proposals on D&I strategies?**

We agree with the proposal in relation to diversity and inclusion strategies. The requirement for large firms to create a diversity and inclusion strategy will help ensure that this is properly embedded within such firms, while the high-level nature of the requirements will afford firms sufficient flexibility to be able to determine how they go about achieving their objectives.

**Q8: To what extent do you agree with our proposals on targets?**

The BVCA is a supporter of Level 20 which has set an industry-wide target that women should hold at least 20% of senior positions in private equity, particularly in investment roles. Many BVCA members are also Level 20 members, aiming to achieve this industry-wide target.

We see the value of targets and believe that firms should be encouraged to set targets and agree that firms should decide what these are and which demographic characteristic(s) to cover or focus on. Although the setting of targets helps to focus attention on underrepresentation and highlights the need for change, targets can be seen as a blunt instrument in achieving this goal if they are set or applied incorrectly. Therefore we do not think large firms should be subject to mandatory targets - but



should be encouraged to set targets that are appropriate and relevant to them. This would help to ensure targets are meaningful and impactful to their organisation and would reduce the risk of 'box ticking'.

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

Subject to the caveat below, we agree with the date of first submission and annual reporting frequency (SYSC 29.4.9R). However, this may depend on the volume of data that firms are expected to collect. The 12-month timeline from the rules coming into force for first submissions will be easier for firms to achieve if they can collect a more limited range of mandatory data (as proposed in our comments below) or are able to report with data gaps. However, this may present significant challenges if firms are required to collect more extensive data sets.

**Q10: To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?**

We are concerned that certain of the proposed mandatory demographic characteristics – notably religion and sexual orientation – could be seen as intrusive for employees who may prefer not to answer, leading to lower response rates. This is especially the case in relation to related reporting at board and senior leadership level, where it may be easier to identify employees because of the smaller number of individuals concerned (even if combining the management body and senior leadership categories, or, through inference, if all categories are combined).

Information gathered as part of focus group sessions conducted as part of our 2023 Diversity and Inclusion report with Level 20 highlighted that firms are thinking about how to sensitively monitor a wide range of characteristics, such as ethnicity, socio-economic background and the sexual orientation of their employees. However, they have not yet identified how to capture all data points from their workforce and may experience some challenges in having to add a large number of new data points quickly. Particularly at senior levels, where there may be sensitivity due to low numbers and the potential to for respondents to be identified.

A potential solution would be to focus on a smaller set of mandatory core data points, which are often already collected by firms, that is, age, sex or gender, and ethnicity. If the demographic characteristics included in the regulatory return were to extend beyond this, firms would need more time to identify suitable methods of data capture for more sensitive or complex characteristics and allow any internal sensitivities regarding disclosure to be dealt with.

**Q11: To what extent do you agree that reporting should be mandatory for some demographic characteristics and voluntary for others?**

We agree that reporting should be split into mandatory and voluntary reporting requirements. Some firms may find additional reporting requirements challenging and disproportionate, particularly in the early days of implementation. As noted above, we would suggest that the mandatory demographic characteristics for reporting are narrowed to age, sex or gender, and ethnicity. Should the mandatory characteristics extend beyond these, we would suggest a staged approach. Guidance on complex areas, or where there are multiple ways of assessing a characteristic (e.g. socio-economic background, carers, etc.), would be welcome to ensure consistency across the market.

**Q12: Do you think reporting should instead be mandatory for all demographic characteristics?**

We consider that it would be disproportionate to require mandatory reporting for all demographic characteristics.

**Q13: To what extent do you agree with the list of inclusion questions we propose to include in our regulatory return?**

We agree with the list of inclusion questions proposed for the regulatory return. We believe that the reporting of inclusion metrics can be a helpful tool both for the individual firm and the regulator.

**Q14: To what extent do you agree with our proposals on disclosure?**

Mandatory disclosures on diversity and inclusion data may present challenges for firms and for the industry. There are benefits to public disclosure, notably as a means to encourage positive change in the industry and to publicise success over time. However, by making this data public, there may be the unintended consequence that firms may be incentivised to engage in short-term behaviour intended to “improve” their statistics rather than focusing on effective and lasting change.

To the extent that the FCA decides to proceed with mandatory disclosures, we believe that firms should be required only to disclose data on core demographic characteristics, namely, sex or gender and ethnicity. We note that this was the approach taken by the FCA in PS22/3 (as referred to above). Mandatory public disclosures in relation to other characteristics may be misleading or could be misinterpreted in a way that undermines the efforts of a firm to improve diversity and inclusion. We do not necessarily see the advantages of publishing data on employees' religion. We also refer to our comments above in relation to the issues of under-reporting and the implementation of data collection, especially in respect of religion and sexual orientation.

**Q15: To what extent do you agree that disclosure should be mandatory for some demographic characteristics and voluntary for others?**

As set out in our response to Q14, we consider that disclosure should be mandatory for only sex or gender and ethnicity, and voluntary for other demographic characteristics.

**Q16: Do you think disclosure should instead be mandatory for all demographic characteristics?**

We do not consider that disclosure should be mandatory for all characteristics.

**Q17: 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?**

We do not agree that a lack of diversity and inclusion in and of itself should be treated as a non-financial risk but rather as a relevant factor in its overall risk management framework. To this end it would be helpful to see any examples of what best practice can look like, that could inform ways to tackle a lack of diversity and inclusion through a risk framework.

In principle a lack of diversity and inclusion may increase the risk of groupthink and poor decision-making. However, we note that groupthink and poor decision-making is equally likely to arise owing to other factors related to the nature of a firm's culture, employee engagement and retention (particularly of key people), and its senior management.

We believe that the risks arising from a lack of diversity and inclusion are already addressed in the rules and guidance put forward by the FCA in relation to diversity and inclusion strategies. The management body will be responsible for maintaining and overseeing the diversity and inclusion strategy, and for regularly reviewing the quality and effectiveness of the strategy and updating it. This will help ensure that large firms incorporate diversity and inclusion at board level.