

It is well known that the financial services sector is not representative of the general population.

With this in mind, in late September last year, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) each published a consultation paper entitled, respectively, "[Diversity and inclusion in PRA-regulated firms](#)" and "[Diversity and Inclusion in the financial sector – working together to drive change](#)". The proposals within the papers are largely aligned, but they do diverge in some respects. Their aim is to "drive change" by linking diversity and inclusion (D&I) to a firm's overall strategy, ensuring that strategy is embedded in the firm's day-to-day operations and culture, requiring firms to gather D&I data to inform improvement, and developing an understanding of "what good looks like" across the sector.

We wanted to ensure that the proposals are on your radar. Although they are just proposals at this stage, there is a clear direction of travel towards encouraging diversity in financial services. The likelihood of these proposals being amended substantively before implementation is perhaps limited. That being said, following the House of Commons Treasury Committee Report on "[Sexism in the City](#)" published on 5 March 2024, which pushed back on the extensive data gathering and reporting requirements under the regulators' proposals, there may be some amendments in terms of the detail of the reporting, but this is unlikely to fall away in its entirety. Firms that are in scope would be well advised to assume that the proposals will come into force in broadly the terms outlined in the consultations – it is more of a "when" than an "if".

Next Steps

In terms of timeline, while there will be a 12-month period between confirmation of the final rules (likely to be in **2024**) and those rules coming into force (probably **2025**), we anticipate that firms will not wish to wait until then to start preparing.

For firms to have their strategy in place and be in a position to report their data on a comply-or-explain basis in 2025, they will need to have determined who within the organisation will be responsible for managing these projects and to have identified any related resource and staffing needs- any budget approvals for extra people or training may need to come as early in 2024 as possible, i.e. now.

To assist with your planning, we have created a Roadmap which sets out an overview of the key steps firms may need to consider (with suggested timings) to ensure that they are ready to meet the requirements once the new rules come into force.



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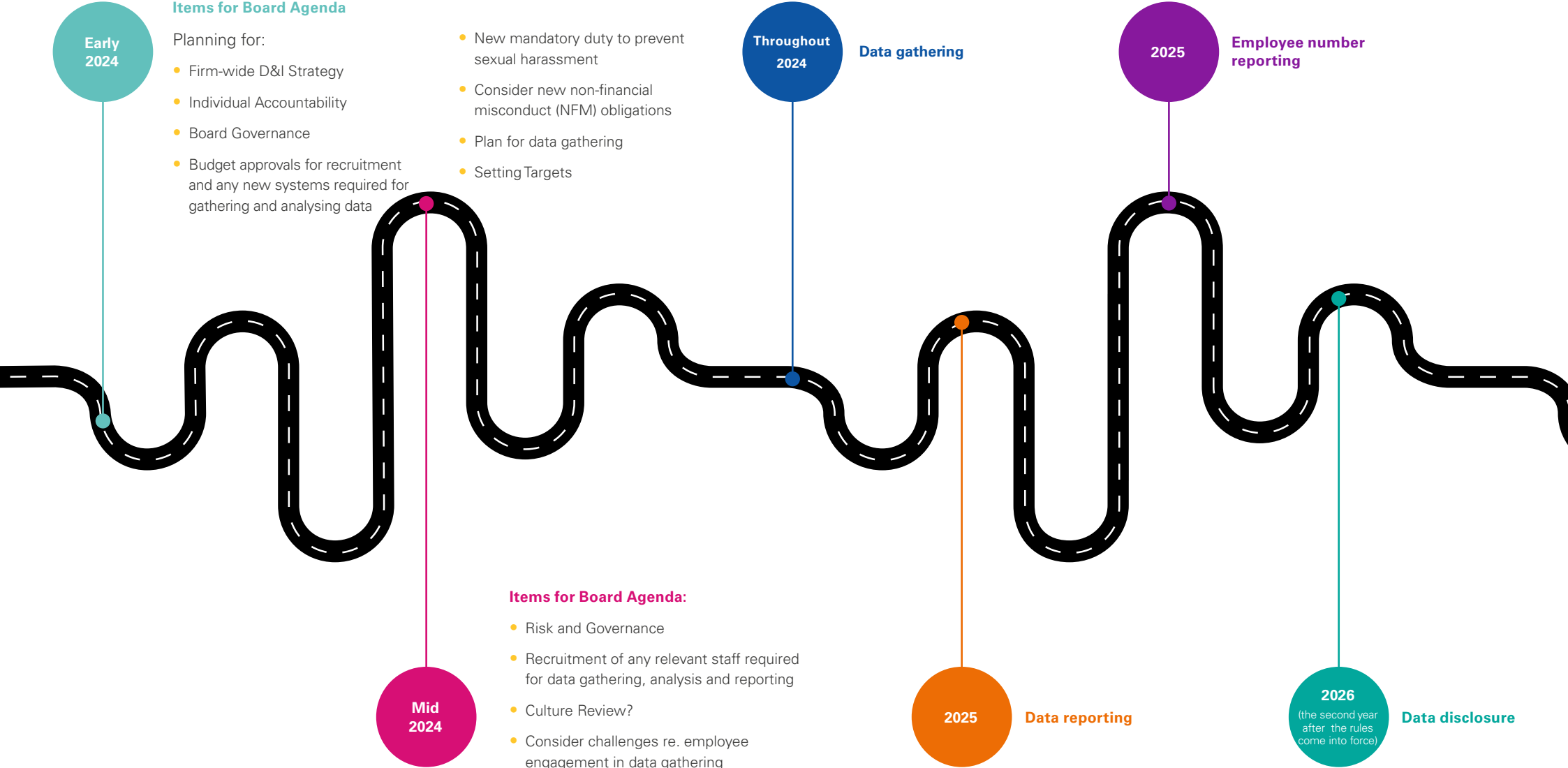
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Roadmap

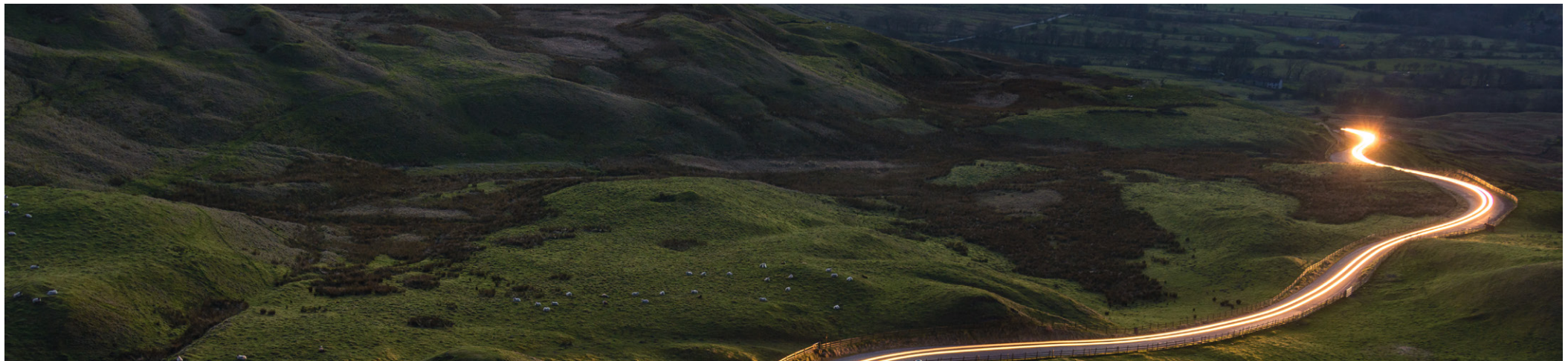
Please note, not all of the steps in this roadmap will be relevant to all firms. The regulators intend to apply the rules proportionately, meaning that less will be expected from smaller firms and the most burdensome requirements will apply to "large firms" only (as marked on the more detailed information that sits behind this roadmap).

However, the direction of travel is clear, and we anticipate that many smaller firms not caught by all of these obligations may choose to comply to a greater or lesser extent on a voluntary basis, particularly those seeking investment, intending expansion into new product areas where regulatory consent will be required and/or as part of their attempts to attract the best staff.

Please click on the headings for more information on the steps to be taken.



Applicability	Timing	Title	Detail
<p>For large firms (but excluding any Limited Scope SM&CR firms) and all firms to which CRR and Solvency II parts of the PRA Rulebook apply (including third-country branches)</p>	<p>Early 2024</p>	<p>Item for Board Agenda:</p> <ul style="list-style-type: none"> • Firm-wide D&I Strategy 	<p>Requirement to have a firm-wide D&I Strategy</p> <p>Both FCA and PRA consultations include this proposal.</p> <p>The strategy would need to:</p> <ul style="list-style-type: none"> • Set out the firm’s D&I objectives/goals • Outline a plan for meeting them and explain how progress will be measured • Explain how any obstacles will be identified and managed • Explain how staff will be made aware of the firm’s strategy and their role in fostering an open and inclusive environment <p>The board will have “ownership” of the strategy and it will need to be seen to be reviewed and updated regularly.</p> <p>Whilst the obligation to have a D&I Strategy will not take effect until some point in 2025, we recommend that consideration is given to this as early as possible in 2024 to allow time for planning and implementation.</p> <p>Keep in mind that these measures may make D&I specialists harder to find, and that notice periods are likely to be enforced by the current employer. There may or may not then be relevant restrictive covenants and then a period of familiarisation with your business. From recognising the need to having someone up and running could easily be 9-12 months.</p>



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<p>All firms to which the CRR and Solvency II parts of the PRA Rulebook apply (including third-country branches)</p>	<p>Early 2024</p>	<p>Item for Board Agenda:</p> <ul style="list-style-type: none"> • Individual Accountability • Board Governance 	<p>Senior managers to take responsibility for setting and approving the D&I strategy and for ensuring its implementation under the proposals made by the PRA</p> <p>Certain PRA-regulated firms will already have Senior Managers holding Prescribed Responsibility I (PR I) – responsibility for leading the development of the firm’s culture – and Prescribed Responsibility H (PR H) – responsibility for overseeing the adoption of the firm’s culture in the day-to-day management of the firm. Most usually, these are the Chair and the CEO respectively. For these firms, it is proposed that the same Senior Managers take responsibility for: (i) ensuring that the board sets, approves and adopts an appropriate D&I strategy; and (ii) ensuring that the strategy set by the board is implemented across the firm.</p> <p>Firms not in scope of PR I and PR H should, it is proposed, have at least one Senior Manager who is responsible for implementation of the firm’s D&I strategy.</p> <p>These new responsibilities would need to be reflected in those Senior Managers’ Statements of Responsibility.</p> <p>Executive Senior Managers holding these responsibilities will be expected to have them appropriately reflected in their performance objectives and, perhaps most controversially, their remuneration scorecard. However, to ensure that does not drive the wrong behaviours, the PRA has stated clearly that a failure to meet quantitative D&I targets does not necessarily amount to a failure by the Senior Manager to meet their responsibilities, if there is clear evidence of “reasonable steps” having been taken. Nothing in these principles or responsibilities should be taken as encouraging or legitimising positive discrimination.</p> <p>Under the PRA proposals, there would also be a requirement to publish a board diversity strategy alongside the firm-wide strategy on the website.</p> <p>This builds upon the existing requirement for CRR and Solvency II firms to have a policy to promote board diversity and to explain on their website how they meet board diversity requirements.</p> <p>The PRA has also said that it will clarify its expectations on succession planning and upcoming appointments and how firms should consider these things in the context of diversity. It also proposes to be explicit that the board, with support from relevant sub-committees, has responsibility for setting and overseeing the firm’s D&I strategy.</p> <p>Whilst these obligations will not apply until 2025, we recommend that consideration is given to this as early as possible in 2024 to allow time for planning and implementation.</p>

Applicability	Timing	Title	Detail
	Early 2024	Budget approvals for recruitment and any new systems required for gathering and analysing data	<p>Depending on whether the firm already has a D&I strategy and is already gathering data, investment may be required into staff with the skills and capacity to plan and carry out the data gathering, analyse that data and report upon it.</p> <p>Similarly, firms may need to invest in suitable systems to allow for the gathering and analysing of that data (in accordance with GDPR).</p> <p>Although the Treasury Committee’s recent report “Sexism in the City” called on the FCA and PRA to “drop their prescriptive plans for extensive data reporting and target setting”, the FCA’s response to the report affirms its view that “what gets measured gets done and transparent, comparable data would benefit firms, employees and the wider economy” - so it is likely that the data gathering and reporting proposals will remain, to a degree.</p>
All UK employers	Early 2024	Item for Board Agenda: <ul style="list-style-type: none"> • New mandatory duty to prevent sexual harassment 	<p>New duty to prevent sexual harassment</p> <p>Although not part of the proposals from the Regulators, the board should be aware that The Worker Protection (Amendment of Equality Act 2010) Act 2023 has received Royal Assent and will come into force in the Autumn of 2024. That means that the countdown is on for employers to ensure they can show the taking of reasonable steps to prevent sexual harassment in their workplace.</p> <p>It will be crucial for this to form part of any wider D&I strategy.</p> <p>For more information on the changes, please see our alert and also our DEI Training Solutions Menu which includes training modules to help get you up to speed.</p> <p>Whilst this new duty is not likely to come into force until Autumn 2024, we recommend that consideration is given to this as early as possible in 2024 to allow time for planning and implementation.</p> <p>In rejecting calls for a definitive list of steps to be taken by employers to satisfy that legislation, the Government made clear that it was an issue to which employers had to apply their own minds, and be able to show that they had done so in good time prior to the new burden coming into force.</p>

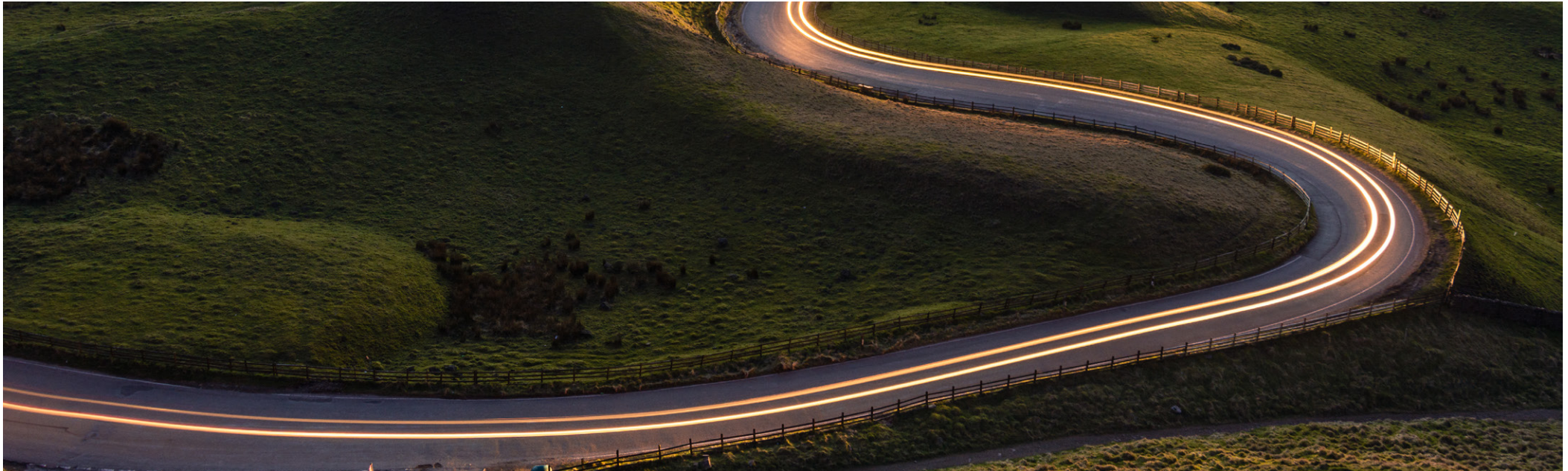
Applicability	Timing	Title	Detail
<p>All firms with part 4A permission and where relevant threshold conditions and existing chapters of the FCA handbook apply</p>	<p>Early in 2024</p>	<p>Item for Board Agenda:</p> <ul style="list-style-type: none"> • Consider new non-financial misconduct (NFM) obligations 	<p>Under the FCA proposals, the FCA would:</p> <ul style="list-style-type: none"> • Explicitly include NFM within (i) the Conduct Rules, (ii) Fitness and Propriety assessments, and (iii) suitability guidance on threshold conditions (i.e. the guidance that is used to determine whether a firm is suitable for authorisation) • Provide guidance on how NFM should be incorporated into regulatory references <p>In recent years, the FCA has come under criticism from the firms it regulates and from professional advisers for its stance on NFM. The issue has not been the FCA's concern about NFM as such, but rather that its rhetoric on bullying and discrimination was at odds with the types of NFM about which it took enforcement action (this was largely confined to instances of serious criminal activity and dishonesty). That mismatch, combined with a lack of a clear definition or guidance, has made it difficult for firms to know the relevance of NFM to their fitness and propriety assessments and when giving regulatory references.</p> <p>However, the FCA is now proposing to fix this issue with a very lengthy explanation of what NFM is and when it will be relevant (see Appendix 1 to its consultation paper). In very broad terms, NFM will (if these proposals proceed) include conduct commonly considered to amount to harassment (but regardless of whether it relates to a protected characteristic) or bullying.</p> <p>For the purpose of the Conduct Rules, NFM in someone's personal or private life will not be relevant. The same is true of NFM that is not connected to the firm's financial services activities.</p> <p>However, relevant NFM that is seriously incompatible with a good working environment could lead to a finding that the guilty individual has breached Rule 1 (acting with integrity). Managers who fail to take steps to protect staff against conduct by others that would breach Rule 1, or to properly deal with complaints about that type of conduct, might find themselves in breach of Rule 2 (acting with due care, skill and diligence).</p> <p>The same would be true if they themselves abused their position to undermine or otherwise injure others (whether that result is intended or not and whether or not they considered there to be a good reason for their conduct).</p>

Applicability	Timing	Title	Detail
			<p>Unlike under the Conduct Rules, NFM can be relevant to fitness and propriety assessments even if it relates to a person's private or personal life or is not connected to the firm's financial services activities. The types of NFM that will be relevant to fitness and propriety assessments will include conduct that:</p> <ul style="list-style-type: none"> • Is relevant to the assessment of the fitness/propriety of the firm as a whole under the threshold conditions • Might be repeated at work • Involves dishonesty • Shows that the employee lacks moral soundness, rectitude and steady adherence to an ethical code • Undermines the FCA's statutory objectives by damaging public confidence • Is "disgraceful or morally reprehensible" or otherwise sufficiently serious (since it would reflect badly on the rigour and quality of the standards expected if the individual were allowed to carry on working) <p>Whilst these new provisions will not come into force until 2025, recommend that consideration is given to this as early as possible in 2024 to allow time for planning and implementation.</p>



Applicability	Timing	Title	Detail
<p>Large firms (excluding any Limited Scope SM&CR firms).</p>	<p>Early in 2024</p>	<p>Item for Board Agenda:</p> <ul style="list-style-type: none"> • Plan for data gathering 	<p>Plan for data gathering</p> <p>In order to comply with the requirements (below) to set targets and report on data, firms will need to gather that data in the first place. Given the direction of travel, we anticipate that other firms not caught by this new obligation (particularly those seeking investment) may choose to do this on a voluntary basis.</p> <p>Boards should consider carefully:</p> <ul style="list-style-type: none"> • What data the business is currently collecting in relation to its workforce (and whether there are additional categories of data it ought to be collecting) • What is being done with it • What, if anything, the business is doing to address any disparities in treatment between employees of different characteristics that may be highlighted in it <p>Collecting, collating and making use of this potentially sensitive information is not always straightforward. The business will need to have a clear strategy for collection which supports its wider D&I strategy and is mindful of data privacy and discrimination laws.</p> <p>NOTE: The PRA consultation also included proposals for all firms to which the CRR and Solvency II parts of its Rulebook apply (including third-country branches), i.e. smaller firms not within the scope of the requirements, to internally monitor D&I for the purposes of taking appropriate actions, and to improve D&I where necessary, so smaller firms are likely to need a plan for data gathering too.</p> <p>In any event, given the focus on D&I in the sector, smaller firms are likely to choose to take this step (if they haven't already done so) on a voluntary basis.</p> <p>While the reporting obligations will not come into force until 2025, we recommend that consideration is given to this as early as possible in 2024 to allow time for planning and implementation of this.</p> <p>This is a complex area and we would be very happy to provide you with more detailed advice on your specific circumstances. Please contact your usual firm contact or one of the partners included at the end of this briefing if you would like further information.</p>

Applicability	Timing	Title	Detail
<p>Large firms only (but excluding any Limited Scope SM&CR firms)</p>	<p>Early 2024</p>	<p>Item for Board Agenda:</p> <ul style="list-style-type: none"> • Setting Targets 	<p>Setting Targets</p> <p>The current proposals require firms to set targets for the board, senior leadership and the employee population as a whole for demographic characteristics identified by the firm as appropriate for its circumstances. The PRA consultation paper suggests that the firms it regulates will be expected to set targets for women and ethnicity as a minimum (assuming there is under-representation in these areas). However, firms will otherwise be free to determine for themselves the demographics against which they set targets perhaps going beyond the main Equality Act protected characteristics into areas such as social mobility.</p> <p>Targets should be evidence-based, should have a defined time frame and be regularly reviewed. However, the regulators do not propose to be prescriptive about the timing for either of these things.</p> <p>The requirement is (more vaguely) that targets are “stretching but realistic”. Judging that may not be easy to begin with but a consistency in approach between similar firms will inevitably develop an accumulation of accepted wisdom in what is feasible and what is not as the new rules bed in.</p>



Applicability	Timing	Title	Detail
Large firms only (but excluding any Limited Scope SM&CR firms)	Mid 2024	Item for Board Agenda: <ul style="list-style-type: none"> • Risk and Governance 	<p>Firms should consider matters relating to D&I as non-financial risk and treat them appropriately within the firm’s governance structure.</p> <p>Of all of the proposals, this one is the most lacking in detail on the actual steps a firm will be expected to take in order to comply. However, that is deliberately so – the FCA wants firms to implement this proposal in a way that is aligned with their own internal governance-structure. We can only hope for more information when the final rules are published. Without it, this is a gift for whistleblowers everywhere.</p>
	Mid 2024	Recruitment of any relevant staff required for data gathering, analysis and reporting	
All firms, but particularly large (as they are in-scope for the new data reporting requirements – see below)	Mid 2024	Culture Review?	<p>Although this is not a regulatory requirement, firms may wish to consider carrying out a culture review and putting in place a strategy to address any issues raised.</p> <p>As part of the data reporting requirements (see below), in scope firms will be required to conduct surveys of staff on certain specified questions e.g. “To what extent do you feel safe to speak up if you observe inappropriate behaviour or misconduct?”</p> <p>Unfortunately there is only one true answer to this in any organisation which is that “it all depends”- on my seniority in both absolute terms and relative to the person whose misconduct I am reporting, on my own career aspirations, on the nature of the misconduct, on whether it can be reported and investigated anonymously, on what I have to gain by my reporting, on the identity of the wrongdoer, on how many of my colleagues might be drawn into the matter , on my upbringing and sense of duty, and so on. It is wildly unlikely that any organisation would get a clean bill of health back from this question.</p> <p>Nonetheless, it would be wise to have taken pro-active/visible steps to create a workplace culture in which individuals have at least no objective grounds on which not to feel safe, in advance of this questionnaire being rolled out in 2025.</p>
	Mid 2024	Consider challenges re. employee engagement in data gathering	<p>Even though the requests to gather data in this context are likely to be lawful (assuming the firm does so in accordance with its obligations under GDPR), employees may be reluctant to provide sensitive personal data. Firms will need to take steps to obtain employees’ trust and engagement in order to persuade as many of them as possible to provide this information.</p>

Applicability	Timing	Title	Detail
	Throughout 2024	Data Gathering	Compliance with the proposals (once implemented), will involve a lot of work, particularly for larger firms – not least in terms of gathering the relevant data. Have you got the manpower and IT resource required?
Application – large firms only (but excluding any Limited Scope SM&CR firms)	2025	Data Reporting	<p>In accordance with the current proposals, firms will be required to report on:</p> <ul style="list-style-type: none"> • The number of employees within (i) their board, (ii) their senior leadership team and (iii) their total employee populations by reference to the following mandatory demographic characteristics – age, sexual orientation, sex or gender, disability or long-term health condition, ethnicity and religion • Their level of workplace inclusion • Achievement against the targets that they have set for themselves (see above under the heading “Setting Targets”) <p>The Treasury Committee’s report on “Sexism in the City” has pushed back on the extensive data gathering and reporting proposals, so the detail of these obligations may be amended, but the FCA seems unlikely to change the requirements significantly so firms would be well-advised to prepare on this basis until we have more clarity.</p> <p>Firms will be required to report this information to the regulators in a three-month window following a reporting reference date each year.</p> <p>The first reporting period is proposed to take place in the year following publication of the final rules (so likely to be 2025). However, the first report will be on a “comply or explain” basis.</p> <p>The intention is that a single report could be made to both regulators by completing a template reporting return and submitting it via the FCA’s RegData system. A sample template regulatory return is currently available on the FCA’s website.</p> <p>In addition to the mandatory demographic criteria outlined above, the regulators propose to collect data from firms, on a voluntary basis, relating to the following additional characteristics – gender identity, parental responsibility, carer responsibility and socio-economic background. However, it is possible that as a result of the consultation some of these demographic characteristics (particularly socio-economic background) may also be made mandatory in due course.</p>

Applicability	Timing	Title	Detail
			<p>Workplace inclusion will be measured by conducting a survey of staff in which they are asked certain specified questions, including, “To what extent do you feel safe to speak up if you observe inappropriate behaviour or misconduct?” (see above), “To what extent do you feel as though your contributions are valued and meaningfully considered?” (an open door to pitches for a pay increase) and “To what extent do you feel safe to admit an honest mistake?”</p> <p>The regulators will use the data they gather to produce and publish an aggregated benchmarking report. The intention is to develop an understanding of “what good looks like” across the sector</p>
All firms (except Limited Scope SM&CR firms)	2025	Employee Number Reporting	<p>Under the current proposals, firms must report annually on their total UK employee numbers.</p> <p>The intention here is to enable the regulators to keep an eye on whether and when firms with less than 250 employees cross that threshold and so become subject to the more onerous requirements outlined above.</p> <p>The reports will be made by filing a return via the FCA’s RegData system.</p>
Large firms only (but excluding any Limited Scope SM&CR firms)	2026 (the second year after the rules come into force)	Data Disclosure	<p>In accordance with the current proposals, firms will be required to disclose:</p> <ul style="list-style-type: none"> • As percentages (rather than actual numbers), the same diversity and inclusion data that they report to the regulators (see under the heading “Data Reporting”) • Their D&I strategies (see under the heading “Firm-Wide D&I Strategies”) • The targets that they have set for themselves (see under the heading “Setting Targets”) and, over time, their progress against those targets. <p>Each of these things will need to be accessible from a single point on a firm’s website. The same demographic characteristics that are mandatory for reporting purposes are mandatory for disclosure purposes. The list of voluntary demographic characteristics is also the same. If there is a risk that individuals will be identifiable from the information disclosure, then a certain degree of aggregation of the different groups (i.e. the board, senior leadership and whole employee population) will be permissible.</p> <p>Disclosure will not be mandatory until the second year after the rules come into force.</p>