Browne Jacobson

Good insurance business # 2 - 'Unhealthy roots' of London market culture

On 6 January 2020 the Financial Conduct Authority ("FCA") published a 'Dear CEO' letter directed in particular at "insurers … and … insurance intermediaries" about "the issue of non-financial misconduct, [which] continues to be prevalent …"

27 January 2020

On 6 January 2020 the Financial Conduct Authority **("FCA")** published a 'Dear CEO' letter directed in particular at "*insurers…and… insurance intermediaries"* about *"the issue of non-financial misconduct, [which] continues to be prevalent…*"

The letter refers to "*recent, publicised incidents of non-financial misconduct in the wholesale general insurance sector*" without specifying what these are. From other references in the letter, it seems inevitable that the FCA is including Lloyd's of London's publication in September 2019 of findings from a survey where:

- "*one in five* [respondents]*…do not believe people have equal opportunities regardless of gender*"
- "*8%…had witnessed sexual harassment over the previous* [year]*, however just 45% said they would feel comfortable raising a concern*"
- "*24% had observed excessive consumption of alcohol during the past [year]*"
- "*22%…have seen people in their organisation turn a blind eye to inappropriate behaviour.*"

These findings were followed by a 'Dear CEO' letter from the Prudential Regulation Authority **("PRA")** in November 2019, which stated:

> "*Recent public reports* [of] *sexual harassment and bullying…*
>
> - [show] *that* ["London market"] f*irms have…to improve aspects of corporate culture and individual behaviour…*[and]…
> - *raise broader questions about whether firms are promoting a culture where staff feel able to speak up about poor practices or unidentified risks within their organisations…*"

In December 2019 the PRA imposed "*special requirements*" on Lloyd's as to its systems and controls for whistleblowing following Lloyd's' failure to maintain a particular whistleblowing *"helpline".*

It is assumed that the FCA's letter is not referring to any media reports of ongoing legal proceedings that include (as yet undetermined) allegations of harassment, discrimination and victimization as to a whistleblower of sexual harassment/assault following excessive alcohol consumption at one or more corporate social events.

Instead it seems more likely the FCA has in mind two reported cases in the last two years that have raised questions about insurance market culture and senior manager behaviour:

In **Alesco –v- Bishopsgate Insurance Brokers** [2019] EWHC 2839 (QB) the judge described:

- the nature of competition between insurance market participants, and how their employees are regarded and treated, as: "*Either you play for the team, or you are part of the enemy*"; and
- a culture in which an individual who was "*hard-nosed*", and "*not…sensitive*" "*was more likely to thrive*".

Brown & ors –v- Neon [2018] EWHC 2137 held that a firm's management had taken an *"unwarranted"* decision to report to a regulator alleged "misconduct" by certain employees who had resigned, when management's investigations and evidence were inadequate, such that the allegation and report was "*without justification*".

In any event, the upshot of the FCA's letter is a call for "*a fundamental change in culture*", including the way firms "*handle…discrimination, harassment, victimisation and bullying...*"

As the PRA did in its letter, the FCA links "*lack of diversity and inclusion*" with:

- ineffective handling of "*non-financial misconduct*", and
- firms' failure to create "*an environment in which it is safe to speak up, the best talent is retained, the best business choices are made, and the best risk decisions are taken.*"

As things stand, the FCA's view is that the industry risks fostering a "*Poor culture* [that]…*can lead directly to harm to consumers, market participants, employees and markets.*"

The letter puts the insurance industry on notice of the FCA's "*focus on 4 key drivers*…[for] *healthy cultures….:*

- *leadership;*
- *purpose;*
- *approach to rewarding and managing people; and*
- *governance, systems and controls.*"

In relation to each of the above, the FCA emphasizes the importance of the Senior Managers & Certification Regime **("SMCR"):**

> "*As part of our approval of senior managers, an assessment of fitness and propriety will be completed. This looks at factors including competence and capability, honesty, integrity and reputation, and we will consider any known relevant issues of non-financial misconduct. In particular, a senior manager's failure to take reasonable steps to address non-financial misconduct could lead us to determine that they are not fit and proper. We expect firms and* [their] *Boards … to take this into account when considering the suitability and performance of (potential) senior managers and other senior leaders.*"

The FCA does acknowledge "*the widespread commitment to culture change being shown across the market, including the initiative being taken by…Lloyd's and several leading firms.*" The letter however makes it clear that such efforts are plainly not, from the FCA's perspective, making sufficient improvements across the industry as a whole.

In order to accelerate the improvement of the culture within the insurance industry and individual firms the FCA states it is going to "*convene a CultureSprint* [i.e., as per the FCA's website, "*an event bringing together a range of experts from multi-disciplinary perspectives to work together in teams, exploring ideas and developing solutions to problems…*"]

- *specifically for the insurance sector in Q2 2020*
- *looking at psychological safety* [i.e., as per the FCA's website, quoting "*Harvard academic Amy Edmondson…the willingness to express an opinion in the workplace...*'"]"

The FCA also expects "*all firms to review* [the] *letter and share it with* [their] *senior executive committee and Board (or equivalent). If* [firms] *identify gaps or shortcomings between our expectations and your current arrangements, we expect* [firms] *to act promptly to address them.*"

The current expansions in both generalized and detailed/verified reports of psychological (and other) ill health seem set to have huge ramifications for the standards by which insurance market business will come to be judged. Practical questions for firms include:

- do they recognize the symptoms of unhealthy culture; will firms be willing to go beyond treating the symptoms so as to eliminate or prevent the causes (eg software might exclude abusive language from emails, and calls can be recorded and reviewed for corrective action, but what about direct conversations)?
- must policies as to personal behaviour/inter-personal dealings, and/or effecting or responding to whistleblowing, be stricter in their substance, application and enforcement?
- where previous policies were not strictly, or perhaps inadequately, applied or enforced, must retrospective steps be taken if only to put individuals more clearly on notice that, say, further misconduct will result in a more robust response?; on this point firms might wish to consider the FCA's longstanding approach to the re-opening of inadequately handled matters, such as complaints about 'payment protection insurance')

- are firms willing to risk losing 'stars' who might be good at their jobs but bad for the performance of less vaunted colleagues?
- can firms conceive of and foster a corporate culture, and management structures and mechanisms (eg reporting lines, remuneration and promotion incentives) in which more junior personnel can speak up to and about senior personnel without fear of any adverse consequence; could such changes:
  - create a new 'power dynamic' in firms, and what could the risks of this be; and
  - improve or damage commercial performance; could there be a shorter-term sacrifice for longer term market advantage?

Above all, will the changes sought by regulators disadvantage the London and UK insurance markets vis-a-vis international competitors, customers and investors, or will - as regulators suggest - improving psychological health increase the 'bottom line' sustainably over the longer term?

This article was originally published by Thomson Reuters Regulatory Intelligence on 23 January 2020.

Contact

Jeremy Irving

Partner

jeremy.irving@brownejacobson.com

+44 (0)20 7337 1010

Related expertise