



Financial Accountability Regime Lessons from UK enforcement cases

April 2025

Introduction

The Financial Accountability Regime (FAR) came into effect for Registrable Superannuation Entity (RSE) Licensees on 15 March 2025. The purpose of FAR is to improve operating culture, increase transparency and accountability within superannuation funds and replaces the previous Banking Executive Accountability Regime (BEAR) which was closely modelled on the UK Senior Managers and Certification Regime (SMCR).

This paper provides a comparison between the obligations that FAR and SMCR place on individual executives and to highlight the lessons that funds can learn from enforcement action taken under SMCR by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA).

The table below compares the obligations that both accountability regimes place on individuals, however it should be noted that the scope of SMCR is broader than FAR. The UK regime includes the concept of 'Certification Functions' that covers individuals who could have a significant impact on customers and/or the organisation as well as 'Senior Managers' who perform one or more of the roles prescribed by SMCR. The FAR concept of 'Accountable Persons' (AP) is similar to Senior Managers, and it is those roles that are the focus of this paper. An important difference between the two regimes is that all Directors of accountable entities are caught by FAR whereas SMCR only covers the Senior Independent Director (i.e. the Board Chair) as a Senior Management Function (SMF).

Both regimes reinforce the importance of individual accountability for senior executives and introduce the concept of 'reasonableness' into how the actions of individuals will be assessed by regulators when things go wrong.

The notion of taking reasonable steps gives individuals and organisations the flexibility to operate within an accountability framework in a way that is proportionate and appropriate for the nature and complexity of their business and the risks it faces. However, this also introduces a degree of subjectivity which, combined with the regulators' benefitting from viewing events with the benefit of hindsight, can cause concern for executives and directors. APs should consider how the outcomes of UK enforcement actions can inform the frameworks they establish, the actions they take and the decisions they make as well as how they demonstrate taking reasonable steps.

Table 1. Behavioural obligations under SMCR and FAR

SMCR	FAR
<p><i>Certification Functions and Senior Managers:</i></p> <ul style="list-style-type: none">• Act with integrity.• Act with due skill, care and diligence.• Be open and cooperative with regulators.• Pay due regard to the treatment of customers and treat them fairly.• Observe proper standards of market conduct. <p><i>Senior Managers only:</i></p> <ul style="list-style-type: none">• Take reasonable steps to ensure that:<ul style="list-style-type: none">○ The business of the firm for which they are responsible is controlled effectively;○ The business of the firm complies with relevant requirements and standards of the regulatory system; and○ Any delegation of responsibility is to an appropriate person and that there is effective oversight of the delegation.• Disclose appropriately any information of which the FCA and PRA would reasonably expect notice.	<p><i>Accountable Persons:</i></p> <ul style="list-style-type: none">• Act with honesty and integrity, and due skill, care and diligence.• Deal with APRA and ASIC in an open, constructive and co-operative way.• Take reasonable steps to prevent matters from arising that would:<ul style="list-style-type: none">○ Adversely impact the prudential standing or reputation of the organisation; and○ Result in a material contravention of laws specified in the FAR Act 2023.

SMCR Case Studies

Since SMCR came into effect in 2016, there have been three enforcement cases by the PRA and FCA that have resulted from contraventions of the Senior Manager Conduct Rules as well as a fourth that is currently subject to appeal. Enforcement action has also been taken against individuals who are subject to the Certification aspect of the regime but are not Senior Managers.

The relatively low level of enforcement of the regime is an indicator of how high the bar for failing to meet reasonable steps obligations is (the FCA has opened a total of 52 cases between 2016 and September 2024¹) as well as possibly highlighting the effectiveness of regulators viewing the regime as bring primarily designed to act in a preventative manner².

The case studies below summarise the three finalised enforcement cases to date and provide insight on what APs under FAR can learn and should consider as they come into the regime.

Case Study 1. Carlos Abarca (TSB Bank Plc) – April 2023³

SMCR Conduct Rule Breach:	Equivalent FAR Obligation:
Take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system.	Take reasonable steps to prevent matters from arising that would (or would be likely to) result in a material contravention of legislation listed in the FAR Act 2023.

Context

Carlos Abarca was the Chief Information Officer (CIO) of TSB Bank Plc (TSB) which had been sold by Lloyds Banking Group to Sabadell Group (Sabadell). As part of the transition to Sabadell, TSB implemented an updated technology system and migrated corporate and customer services data onto that new platform.

TSB engaged another of Sabadell’s subsidiaries to design, build and test the new platform which in turn outsourced some of the work to a fourth party.

Upon implementation of the platform, the data was migrated successfully but the platform immediately experienced technical failures that impacted all of TSB’s branches and a significant number of the bank’s customers.

Senior Manager’s Actions

As TSB’s CIO, Mr. Abarca was accountable for the bank’s information technology and IT business continuity planning, including being accountable for the migration program. In its Final Notice, the PRA found that Mr Abarca had not taken reasonable steps because he had failed to:

¹ Financial Conduct Authority, December 2024, Information on Enforcement Investigations – December 2024, <https://www.fca.org.uk/freedom-information/information-enforcement-investigations-december-2024>
² Bank of England, March 2023, DP1/23 – Review of the Senior Managers and Certification Regime (SMCR), <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/march/review-of-the-senior-managers-and-certification-regime>
³ Prudential Regulation Authority, 13 April 2023, Final Notice, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/regulatory-action/final-notice-from-pra-to-former-tsb-bank-plc-cio.pdf>

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- Ensure that the ability and capacity of its third-party provider was adequately reassessed on an ongoing basis;
 - Ensured that TSB obtained sufficient assurance from the third party in relation to its readiness to operate the new IT platform.
 - Given sufficient consideration to whether further investigation was required before giving assurance to the TSB Board as to migration readiness, based on information received from the third party. Mr Abarca also failed to include a number of details and caveats in his reporting to the Board.

Our Take

- **Reasonable steps is more than just frameworks:** The PRA did not find that the issues were caused by a failure of Mr Abarca to implement an appropriate change management framework. Instead, the failure to take reasonable steps was driven by the decisions and actions he took throughout the migration.
 - **Intra-group outsourcing is still relevant:** The same standards of conduct will apply to executives regardless of whether services are provided by a related party or third party and executive APs should have appropriate oversight of all outsourcing arrangements, including where fourth parties are involved.
 - **Executives should critically challenge information:** Regulators expect APs to challenge and assess the information they receive, rather than accepting it at face value. This includes ensuring information received is sufficiently detailed to identify potential risks and issues to inform good decision-making.
 - **Boards should be provided with clear and balanced updates:** The information provided to Boards must be an accurate representation of the status of a program and the potential risks being faced. Executive APs must not skew reporting or hide pertinent information from Directors.
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Case Study 2. Iain Hunter (Wyelands Bank Plc) – January 2024⁴

SMCR Conduct Rule Breaches:	Equivalent FAR Obligations:
Act with due skill, care and diligence.	Act with honesty and integrity, and with due skill, care and diligence.
Take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.	Take reasonable steps to prevent matters from arising that would (or would be likely to) adversely affect the prudential standing or prudential reputation of the accountable entity.
Take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system.	Take reasonable steps to prevent matters from arising that would (or would be likely to) result in a material contravention of legislation listed in the FAR Act 2023.

Context

Wyelands Bank Plc (Wyelands) was a UK deposit taker offering short-term trade, receivables and supply chain financing options for small and medium-sized businesses. The bank's strategy was heavily reliant on originating business from its parent, who it was also reliant on for the supply of capital.

The UK's large exposures regime seeks to avoid risks to a firm's financial stability by preventing concentration of a firm's exposures to an individual party or group of connected parties. As part of the regime, Wyelands was required to monitor and controls its large exposures and report such exposures to the PRA.

Between May 2017 and December 2018, Wyelands entered into four structured finance transaction, with the value of each representing a material portion of its loan book and a significant proportion of its capital as well as material exposure to counterparties connected to its parent. As a result of policy and procedure deficiencies, Wyelands failed to identify that the transactions were in excess of its large exposure limits, resulting in an unacceptable concentration of risk.

Senior Manager's Actions

Iain Hunter was the CEO of Wyelands and at times during the period covered by the PRA's enforcement activity was also the bank's CFO and CRO. He had responsibility for the overall management of the risks and controls of Wyelands, including the setting and management of its risk exposures in accordance with the PRA Rulebook.

The PRA found that Mr Hunter failed to ensure that responsibility for conducting analysis of connected parties was clearly apportioned, as well as failing to take reasonable steps to ensure that Wyelands:

- Had adequate systems and controls to identify, assess and manage connected party risks in relation to large exposures and related party risk;
- Submitted large exposure returns which aggregated its exposures across multiple transactions correctly; and

⁴ Prudential Regulation Authority, 10 January 2024, Final Notice, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/regulatory-action/final-notice-from-pra-to-iain-mark-hunter.pdf>

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- Had a formal and appropriate document retention policy in accordance with record keeping obligations in the PRA Rulebook.

Our Take

- **Individual accountability is key:** Prior to FAR, issues arising from the design and implementation of frameworks would have resulted in sanctions against the organisation rather than individuals. However, the action against Mr Hunter reinforces that regulators will now consider both whether the accountable entity has taken reasonable steps and whether individual APs have fulfilled their obligations, both in terms of the frameworks they establish and their behaviour in the moments that matter when things go wrong.
 - **CEO's are held to a higher standard:** The PRA emphasised the importance of the CEO in ensuring their firm meets the standard expected of them. CEO's are likely to be held to a higher standard than other executive APs, regardless of the responsibilities in their Accountability Statements and should be clear in the reasonable steps they take to manage the organisation's business activities.
 - **Continuing behaviours lead to enforcement:** Regulators are likely to be harsher on organisations and individual APs who continue to breach their obligations compared to one-off incidents that are reported and resolved quickly.
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Case Study 3. Kristo Käärmonn (Wise Assets UK Ltd) – October 2024⁵

SMCR Conduct Rule Breach: Disclose appropriately any information of which the FCA or PRA would reasonably expect notice.	Equivalent FAR Obligation: Deal with the Regulator in an open, constructive and cooperative way.
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Context

In February 2021, Kristo Käärmonn paid a significant fine to HM Revenue & Customs (HMRC) for deliberately failing to notify HMRC of a capital gains tax liability arising from the sale of shares. Mr Käärmonn was also added to HMRC’s publicly available tax defaulters list.

At the time, Mr Käärmonn was the CEO of Wise Assets Uk Ltd (WAUK) and a Senior Manager under SMCR.

Senior Manager’s Actions

Mr Käärmonn failed to notify the FCA or WAUK of his HMRC fine for over 7 months. The FCA only became aware of the fine when the tax defaulters list was updated, and they were approached by a journalist for comment on his inclusion.

The FCA found that the tax fine was relevant to his obligations under the UK’s Fit and Proper regime as well as a failure to disclose information to the regulator because of the following:

- There had been an adverse finding against Mr Käärmonn by another statutory body; and
- The events had the potential to have a significant adverse impact on the reputation of WAUK.

Our Take

- **Accountability regimes are about more than documented responsibilities:** APs should be mindful of all of their obligations under FAR rather than solely focusing on the contents of their Accountability Statements, particularly where issues arise that are not as a direct result of their documented responsibilities.
- **Carelessness is not an excuse:** The FCA held the view that Mr Käärmonn’s failure to notify was careless rather than deliberate or reckless, however this was still a breach of his SMCR obligations. APs should seek advice and consider how regulators will view their actions in hindsight.

⁵ Financial Conduct Authority, 27 October 2024, Final Notice, <https://www.fca.org.uk/publication/final-notices/kristo-kaarmann-2024.pdf>

Embedding Accountability

The similarities between FAR and SMCR give funds and APs the opportunity to learn from the experience of UK firms as well as Australian banks under BEAR and FAR. Deloitte's experience working with UK firms highlights a number of key considerations for funds as their emphasis shifts from implementing to embedding FAR:

- **Continue to refine your approach:** Funds should acknowledge that their FAR approaches are unlikely to be perfect from the start and continue to refine and improve their approach to compliance. Potential issues to resolve could include differences in how decisions are made in practice compared to how they have been envisioned when preparing Accountability Statements and the extent to which APs need to evolve their approach to taking reasonable steps.
- **Have explicit discussions about accountability:** APs will need to become used to explicitly considering who is accountable and what for in their discussions and when making decisions, and how evidence is being captured to support reasonable steps. Several UK firms established informal meetings for their Senior Managers to share their experiences under SMCR and how they were approaching their obligations as a way of embedding accountability into how they undertook their roles.
- **Take direct reports on the journey:** The teams directly supporting APs should understand what responsibilities have been delegated to them and their role in supporting compliance with FAR. This should include calibrating the type of information received by APs and how and when issues are escalated to them. It is important that this is driven by APs and that the approach reflects their individual management style and expectations of their teams.
- **Executives need to collaborate:** Although FAR is primarily an individual accountability regime, APs will continue to need to collaborate to run the fund effectively. It is important that allocated responsibilities do not cause APs to work in silos or make decisions without the right inputs and perspectives from others.

Ultimately, successful implementation of FAR relies on cultural change coming from the right attitude to accountability and decision-making rather than a fear of regulatory enforcement action. Reviews of the SMCR have highlighted that the value from accountability regimes comes from their focus on improving individual conduct, governance and accountability which will enable funds to run their businesses more efficiently⁶.

⁶ Bank of England, March 2023, DP1/23 – Review of the Senior Managers and Certification Regime (SMCR), <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/march/review-of-the-senior-managers-and-certification-regime>

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