Bank of England

Prudential Regulation Authority

Appendix to DP1/23 Review of the Senior Managers and Certification Regime (SM&CR)

Discussion Paper | DP1/23

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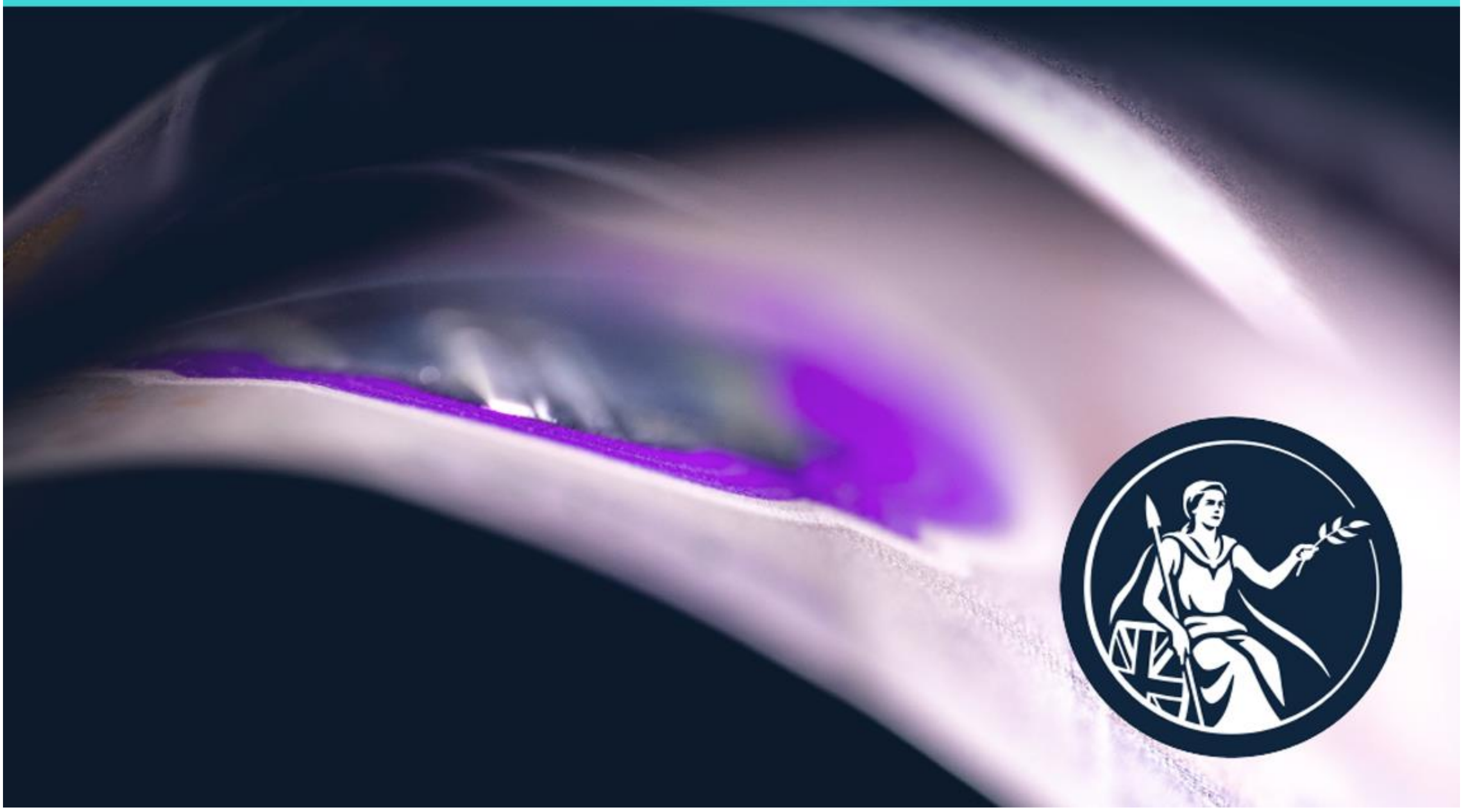

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1: Individual accountability- International developments

The introduction of the SM&CR established the UK as a global leader in regulatory practice on individual accountability. At the time the International Monetary Fund (IMF) greeted the SM&CR as a 'major and welcome improvement' and commented that the new individual accountability regime was 'an important step towards bolstering public confidence in the banking system'.

The question of individual accountability has since engaged a number of international bodies and standard setters. The Financial Stability Institute recently published a report considering in detail the development of different individual accountability regimes globally. Notably, Australia, Singapore, Ireland and Malaysia have introduced or started to develop individual accountability regimes with similar characteristics to SM&CR. Other major jurisdictions operate regimes that include some similar features to the SM&CR, including Hong Kong, and EU member states. Authorities in the United States are also able to take action against individuals for misconduct.

This appendix summarises the work of international bodies and a summary of the key features of some of these other accountability regimes that have been developed since the introduction of the SM&CR. Looking at these helps the regulators assess the UK's position in comparison to other jurisdictions, and can support our assessment of the potential impact of change on international competitiveness and growth.

As these examples show, several accountability regimes have been implemented internationally and others are being developed. While there are differences in how these regimes operate, they all put emphasis on strengthening governance and conduct and on accountability of senior individuals.

International work on individual accountability

In 2018, the Financial Stability Board, for example, published a 'toolkit' for firms and supervisors which looked at the use of individual accountability requirements as one of a number of tools for addressing misconduct risk[1]. It noted that one consequence of the growth in fines and settlements incurred by firms was a heightened interest in addressing misconduct by holding individuals accountable for their actions, which could be reinforced by clearly identifying key responsibilities and assigning them to individuals. It was noted that such an approach could support cultural change at firms by dispelling notions that fines were the cost of doing business.

[1] https://www.fsb.org/2018/04/fsb-publishes-toolkit-to-mitigate-misconduct-risk/.

The Basel Committee on Banking Supervision (BCBS) addresses the role of senior management in its 'Corporate governance principles for banks'[2]. The document notes that the organisation, procedures, and decision-making should be clear, transparent, and designed to promote effective management of the bank, including clarity on the role, authority, and responsibility of the various positions within senior management. The 'Insurance Core Principles' adopted by the International Association of Insurance Supervisors (IAIS) note that governance frameworks should define the roles and responsibilities of persons accountable for the management and oversight of the insurer, clarifying who possesses legal duties and powers to act on behalf of the insurer and in what circumstances.

Individual accountability regimes developed since the SM&CR

	UK	Australia	Singapore	Malaysia	Ireland
Regime name	Senior Managers & Certification Regime	Banking Executive Accountability Regime*	Guidelines on individual accountability and conduct	Exposure draft on responsibility mapping	Senior Executive Accountability Regime
Year of implementation	2016	2018	2021	Yet to be implemented	Yet to be implemented
Operating regulator	PRA & FCA	Australian Prudential Regulation Authority (APRA)	Monetary Authority of Singapore (MAS)	Bank Negara Malaysia (BNM)	Central Bank of Ireland (CBoI)
Firms in scope	Includes all financial services firms under FSMA. Applies differently to firms depending on their business and size	Authorised Deposit-taking Institutions (ADIs) (domestic banks, branches and subsidiaries of foreign banks, building societies, credit unions)[3]	Financial Intermediaries regulated by MAS (some exceptions apply[4])	Financial institutions regulated by BNM including banks and insurers	Credit institutions, insurance undertakings, certain investment firms, and third country branches[5]
Roles in scope - Chief Executive and key senior executives	Yes	Yes	Yes	No explicit designation of roles in scope	Yes

2 https://www.bis.org/bcbs/publ/d328.htm.

3 Authorities in Australia are in the process of establishing the Financial Accountability Regime to extend the accountability regime to a wider set of entities.

4 See exceptions in MAS publication https://www.mas.gov.sg/regulation/guidelines/guidelines-on-individual-accountability-and-conduct.

5 The scope of the regime is set out in the CBoI's consultation and draft guidance https://www.centralbank.ie/publication/consultation-papers/consultation-paper-detail/cp153-enhanced-governance-performance-and-accountability-in-financial-services-regulation-and-guidance-under-the-central-bank.

Roles in scope - non-executive directors (including Chairs of board and key committees)	Yes	Yes	No	No explicit designation of roles in scope	Yes
Pre approval required	Yes	No (ADIs must instead register "accountable persons" with APRA prior to commencing duties)	No	No	Yes
Statements of Responsibilities (or similar)	Yes	Yes	Yes	Yes	Yes
Firm wide mapping of responsibilities	Yes	Yes	Yes	Yes	Yes
Requirements for other relevant individuals to be fit and proper (including risk taking individuals)	Yes	No	Yes	No	Yes
Conduct Rules set by the regulator(s)	Yes	Yes	No	No	Yes

Other approaches to individual accountability

EU

EU Member States are also required to implement fitness and propriety requirements for members of the 'management body'.[6] Members of the management body of banks must be assessed as fit and proper with reference to the criteria set out in the Capital Requirements Directive which are: experience; reputation; conflicts of interest and independence of mind; time commitment; and collective suitability.

Insurance and reinsurance undertakings in EU Member states are required to ensure that all persons who effectively run the undertaking or have other key functions have professional

[6] EU materials refer to the "management body" and in particular the "management body in its supervisory function" (non-executive) and "management body in its management function" (executive). This reflects the practice in Europe of a dual-board system of governance.

qualifications, knowledge and experience that are adequate to enable sound and prudent management; and are of good repute and integrity.

Hong Kong

In December 2016 the Hong Kong Securities and Futures Commission (SFC) published a circular on "Measures for Augmenting the Accountability of Senior Management". It introduced the Manager in Charge (MIC) regime. The regime came into force in October 2017 and applied to all licenced corporations such as brokers, dealers, and asset managers. The regime seeks to enhance accountability of the senior management at licensed corporations and promote awareness of where responsibility lies within the organisation.

United States

The United States does not operate a dedicated individual accountability regime. Instead, the different banking authorities in the United States are able to ensure individual accountability through the use of on-site examinations and its existing regulatory framework. A broad range of individuals (including executives, non-executive directors can be held accountable for misconduct if the individual has violated a law or regulation, engaged in ‘unsafe and unsound’ practices, or breached a fiduciary duty (where applicable).