BCLP. Client Intelligent

Insights

FROM INCENTIVES TO IMPLICATIONS - NAVIGATING EARLY ACCOUNT SCHEMES IN A MULTI-REGULATOR WORLD

Jan 26, 2026

SUMMARY

The UK regulatory landscape is evolving towards more subject-led enforcement models designed to accelerate investigations and deliver swifter outcomes. Early Account Schemes (EAS), implemented by the Prudential Regulation Authority (PRA) and now contemplated by the Office for Financial Sanctions Implementation (OFSI), allow firms to self-investigate and report misconduct in exchange for the opportunity of enhanced settlement discounts, quicker resolution, and greater visibility and control over the process. While an EAS scheme offers clear benefits, it also raises complex legal and strategic considerations – particularly for financial sector firms facing overlapping regulatory regimes, where a single issue may trigger scrutiny from multiple regulators. Navigating overlapping regulatory regimes requires careful consideration and planning. Choosing to cooperate through an EAS scheme may present additional challenges and risks, particularly where an alleged sanctions breach could expose the firm to potential criminal liability.

INTRODUCTION TO THE EARLY ACCOUNT SCHEME (EAS)

EAS incentivises proactive cooperation by requiring firms to prepare and disclose a complete factual account of the alleged misconduct to regulators. Typically, this will be done before the regulator itself has conducted its own formal investigation. In return, participating firms may benefit from an expedited outcome and enhanced settlement discounts.

REGULATORY ADOPTION AND EVOLUTION

The PRA was the first regulator to formally adopt an EAS, through its Policy Statement 1/24 (PS1/24). We have discussed the potential impact of the EAS on individuals in our article 'Caught in the Crosshairs: How the PRA's new Early Account Scheme impacts individuals'. Building on the PRA's adoption of EAS, OFSI is now consulting on a similar resolution mechanism to strengthen its civil enforcement process. Under the proposed scheme, companies would be required to provide a

thorough account of the circumstances surrounding the suspected sanctions breach. If accepted, the company will receive a 40% cooperation discount, significantly higher than the standard 20% available under OFSI's existing settlement process (subject to the settlement scheme being implemented as consulted on). In introducing its own version of the scheme, OFSI hopes to create a transparent and predictable enforcement framework, which will reduce the time and resources required to investigate and resolve sanctions breaches.

BENEFITS OF PARTICIPATING IN EAS

Participating in an EAS offers benefits beyond securing an enhanced discount on any resulting financial penalty. Increased engagement provides firms with more control and visibility of the process, specifically the scope of the investigation, which OFSI agrees with participating subjects at the outset of the process. In conducting the investigative steps that generate the factual account, companies can also influence the timeline for resolution. Conversely, a comprehensive self-investigation requires significant financial investment—often including independent third-party investigators—and staff engagement.

RISKS AND CHALLENGES OF EAS PARTICIPATION

While the EAS enables firms to take greater control over the investigation process and work proactively with regulators to remediate issues, admissions made through an EAS can create increase enforcement risk from other agencies. They can also create collateral legal liability from private litigants, amid growing appetite for group litigation. Ancillary enforcement risk is particularly acute to regulated financial services firms.

In practice, the FCA would expect a regulated firm to disclose any inquiry by OFSI that relates to a potential sanctions breach. A firm's reporting obligation in connection with the matter may well have been triggered before OFSI's interest. However, the financial regulator will inevitably want to see the firm's factual account, as produced to OFSI through the EAS. The report may indicate defects in the firm's systems and controls or the broader risk management framework relating to sanctions and / or wider financial crime risks. Preparing an appropriate and complete factual account without making admissions to that effect may be difficult, enabling the financial regulator to reap the benefit of a ready baked enforcement case. OFSI has already indicated that it would engage with the regulated entity's supervisory bodies to discuss the appropriateness of an EAS where it intends to investigate.

There are other notable risks. The expectation of enhanced transparency and proactivity can make it harder for the firm to assert privilege over relevant contemporaneous material if withholding them leaves gaps or unaddressed issues in the written factual account. Sharing these materials with the regulator could result in the loss of privilege against the wider world. If privilege is considered waived, the documents may need to be disclosed to third parties in related civil litigation. To maintain privilege against third parties, the disclosure to OFSI should be made for a

limited purpose and on strict terms of confidentiality. Strategically, firms will need to consider the issue of privilege early in the process, establishing what privileged material may be relevant, understanding how significant it may ultimately be to the investigation and formulating what approach it intends to take to such material. If considering whether to waive privilege over some material, firms should ensure that their disclosures do not risk presenting an inaccurate version of the events, which could lead to accusations of not being open and cooperative. How privileged material is to be treated may have implications throughout the process by which the factual account is prepared. If ultimately the company will want to maintain a privilege claim, it may approach the investigation differently by avoiding the discussion of protected information or documents during fact-finding interviews.

A related consideration is who should conduct the investigation. The PRA's statement of policy raises questions regarding the instruction of law firms on a standard attorney-client privilege basis, due to issues of transparency and potential conflicts of interest ("The Bank of England's approach to enforcement: statements of policy and procedure", para. Chapter 2, footnote 12). Should OFSI adopt a similar approach, any arrangement to have a third-party law firm produce the factual account may be constrained by the regulator requiring greater control or oversight of the privileged relationship.

Furthermore, in-depth internal investigations conducted to support an EAS submission may uncover evidence that exposes individuals—or the firm itself—to potential criminal prosecution. This risk is especially acute in the context of financial sanctions, where the mental requirement is comparatively low ('reasonable cause to suspect'). This may have several implications for companies considering whether to enter into an EAS. As a result, the reputational benefits of an EAS and any associated procedural efficiencies may be diluted if parallel proceedings are brought against individuals connected with the company, and some individuals may be reluctant to participate in interviews. Although criminal prosecutions for sanction breaches have been rare, the possibility of a criminal sanction does not automatically make the EAS unavailable in OFSI investigations — unlike the PRA's approach.

REGULATORY COORDINATION AND ENGAGEMENT STRATEGY

Firms should identify all regulators with potential jurisdiction early and develop a coordinated engagement strategy to manage disclosure, timing, and consistency—minimising reputational and enforcement risk. Where appropriate, firms should proactively seek synchronised investigations and aligned outcomes to reduce duplication and reputational impact.

FINAL THOUGHTS

By encouraging firms to self-investigate and cooperate early, regulators aim to deliver faster, more efficient resolutions. While the EAS process is still developing, it seems very likely that it will achieve that objective. OFSI's shift toward a proactive, intelligence-led enforcement model,

combined with greater engagement with businesses, suggests there will be growing opportunities to use EAS to swiftly resolve suspected sanctions breaches.

For financial services firms, the key challenge lies in navigating multi-regulator scrutiny that can be triggered by a single incident. Firms should anticipate this complexity and design integrated cooperation strategies that maximise the benefits of EAS while minimising the risk of unintended regulatory exposure.

EMERGING THEMES

We anticipate a pivotal year for investigations and enforcement

Stay up to date with our latest Financial Regulation and Disputes insights

RELATED CAPABILITIES

- Litigation & Dispute Resolution
- Financial Regulation Compliance & Investigations

MEET THE TEAM

David Rundle

Partner, London

david.rundle@bclplaw.com
+44 (0) 20 3400 4027

Joanna Munro

Senior Associate, London

joanna.munro@bclplaw.com
+44 (0) 20 3400 4912
