



Ethical Business Practice & Ethical Business Regulation

A Revolution in Regulation, Delivery, Enforcement and Compliance

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Models of Regulation and Compliance



Annual FCA fines 2011/12–2015/16 £million (FCA, 2016)

	2009/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Number of Fines								
Individuals				40	19	22	24	15
Firms				23	26	27	27	17
Total				63	45	49	51	32
Aggregate Fines (£m)								
Individuals				19.9	5.0	3.9	7.1	16.2
Firms				58.9	422.2	416.9	1,403.1	874.0
Total	27.6	33.5	98.7	78.8	427.2	420.8	1,410.3	890.2

“Culture in financial services is widely accepted as a key root cause of the major conduct failings that have occurred within the industry in recent history, causing harm to both consumers and markets.

The financial services industry, in particular, has demonstrated instances of rate-rigging, rogue trading and mis-selling in the last 10 years since the global financial crisis. Despite record fines, increasing investigations and an expanding compliance industry, misconduct remains. Why? What have we not learned?”

Transforming culture in financial services (Financial Conduct Authority, 2018)

Supportive

Effective inspection and enforcement: implementing the Hampton vision in the Office of Fair Trading. A review supported by the Better Regulation Executive and National Audit Office (Better Regulation Executive, Department for Business Enterprise & Regulatory Reform and National Audit Office, 2008).

Toward Effective Governance of Financial Institutions (Group of 30, 2012).

Civil Aviation Authority Regulatory Enforcement Policy (Civil Aviation Authority, 2012).

Statement of consumer protection enforcement principles (OFT, February 2012). *National Local Authority Enforcement Code. Health and Safety at Work. England, Scotland & Wales* (Health and Safety Executive, 2013).

P Lunn, *Regulatory Policy and Behavioural Economics* (OECD, 2014).

Standards of Conduct. Treating Customers Fairly. Findings from the 2014 Challenge Panel (Ofgem, March 2015).

Corporate Plan June 2015-March 2018 (Revenue Scotland, 2015).

Competition Policy: A better deal: boosting competition to bring down bills for families and firms (HM Treasury, December 2015).

Corporate Governance and Business Integrity. A Stocktaking of Corporate Practices (OECD, 2015).

Better Business for All and Growth (Better Regulation Delivery Office, 2015).

Statement of principles for licensing and regulation (Gambling Commission, 2015).

Food We Can Trust: Regulating the Future (Food Standards Authority, 2016).

Consultation on Ofwat's approach to enforcement (OFWAT, March 2016).

Farm Regulators' Charter (DEFRA and Others, 2016).

Scottish Government Response to the Working Group on Consumer and Competition Policy for Scotland (March 2016).

Monetary penalties for breaches of financial sanctions-guidance (Office of Financial Sanctions Implementation, HM Treasury, 2017).

Enforcement Policy (Regulatory Delivery, 2017).

Mixed – moving left

The Bribery Act 2010. Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010) (Ministry of Justice, 2011).

The Prudential Regulation Authority's Approach to Banking Supervision (PRA, April 2013).

Enforcement and Sanctions – Guidance. Operational Instruction 1356_10, version 2 (Environment Agency, 2014).

Enforcement Guidelines on Complaints and Investigations (OFGEM, June 2012).

Economic enforcement policy and penalties statement (ORR, 2012).

Enhancing consumer protection, reducing regulatory restrictions: Summary of responses to the discussion paper and decision document (Legal Services Board, April 2012).

The future of retail market regulation (Ofgem, December 2015).

Enforcement policy (Care Quality Commission, 2015).

Our Approach to Supervision (Financial Conduct Authority, 2018); *Our Approach to Enforcement* (Financial Conduct Authority, 2018)

The Financial Conduct Authority: Approach to Regulation (Financial Services Authority, June 2011).

The FCA's approach to advancing its objectives (FCA, July 2013).

FCA's Decision Procedure and Penalties (DEPP) Manual ("credible deterrence").

Prioritisation principles for the CMA. Consultation document (Competition & Markets Authority, 2014).

Serious Fraud Office.

Deterrence

OFT's Guidance as to the appropriate amount of a penalty (Office of Fair Trading, 2012), OFT423.

Changing Banking for Good: Report of the Parliamentary Commission on Banking Standards: Volume I: Summary, and Conclusions and Recommendations HC Paper No.27-I, II Parliamentary Commission on Banking Standards, 2013.

U.S. Department of Justice Memorandum, "Individual Accountability for Corporate Wrongdoing," September 9, 2015.

Penalty guidelines. s.392 Communications Act 2003 (Ofcom, December 2015).

To achieve data flow, you need a no blame culture

Aviation safety case study

- *Open culture* of *questioning* decisions and sharing knowledge of mishaps – extensive free sharing of information
- *Just culture* of *accountability* without *blame* provided ethical intention
- Maintain *accountability* by constantly, visibly *contributing*
- Aims
 - constant monitoring of *performance*
 - constant learning and improving the *system* and its human operation.
- ‘No blame’ must operate in every context: system regulation, professional regulation, employment discipline, liability for harm, social

FAA NMAC introduced an offer of immunity from prosecution: pilot reporting increased dramatically (from 559 in 1965 to 2,230 in 1968); when retracted immunity in 1972, reporting dropped (to 231 in 1987) and remained low.

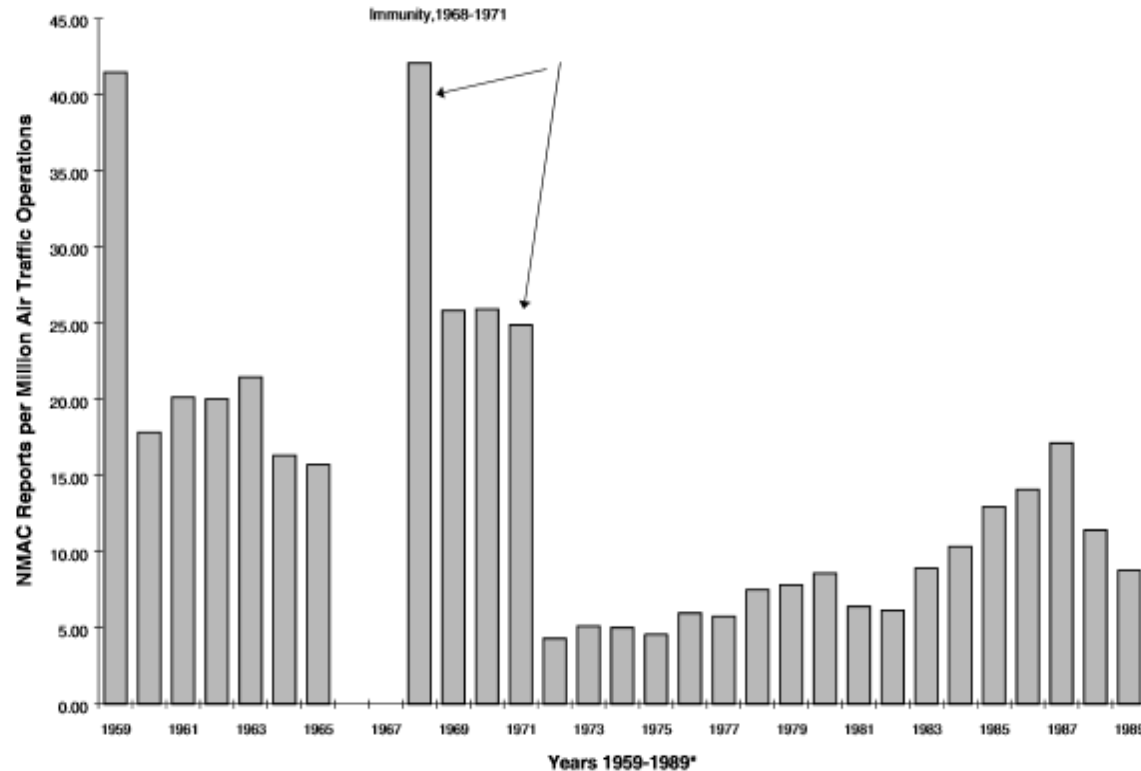


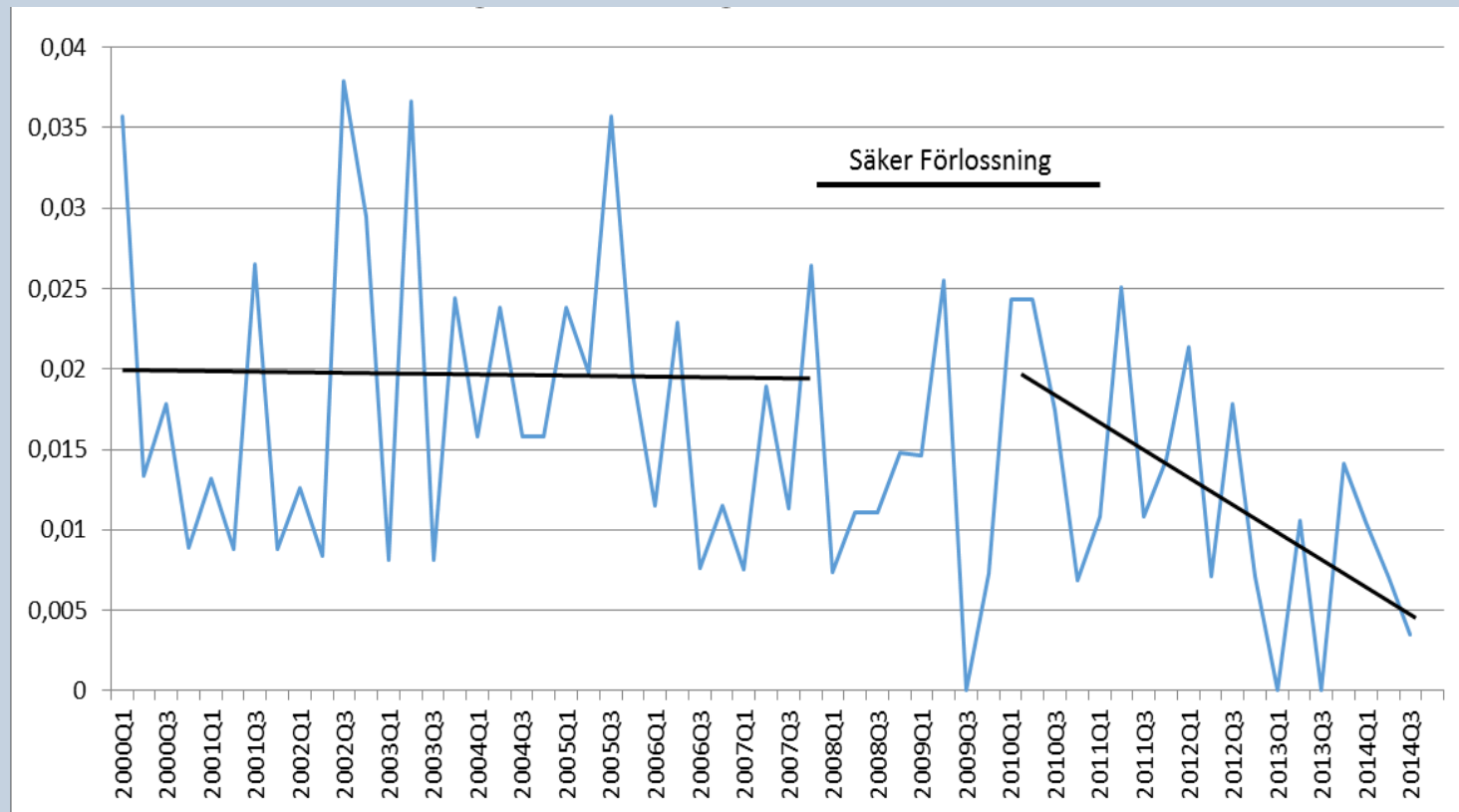
Figure 2: Pilot Reports of Near Midair Collisions (NMACs) (1959 to 1989) and Under Federal Aviation Administration Grant of Immunity (1968-1971)

SOURCE: Adapted from U.S. Federal Aviation Administration, Office of Aviation Policy and Planning (1999), and U.S. Federal Aviation Administration, Office of Aviation Safety (1987).

NOTE: Data missing for 1966 to 1967.

Using feedback data to drive improvements in practice and reduce cost

Swedish Patient Insurance: settled claims involving serious birth injuries 2000-2014, per quarter



Examples of approaches based on Relationships

- **Civil Aviation safety**
 - a culture of checking and asking questions/challenge
 - a comprehensive no blame culture (*open culture*) is essential for feedback of information, and hence data collection, learning, and improving performance;
- **Health & Safety Executive**
 - shifted from inspection and fining → support; “it’s your problem, we’re here to help”;
 - compare the approaches of France, UK & Germany
- **Food Standards Authority; Equality & Human Rights Commission**
 - reliance on business systems – as part of the regulatory system
- **The Primary Authority scheme**
 - A matrix approach built on: partnership, distributed roles, transparency, asking questions
- **Water Industry Commission for Scotland**
 - Pricing – but generating far wider outcomes!

HSE: making people own the risk

‘to leverage influence within the industry supply chain in high risk areas, engaging and forming partnerships with parties able to effect widespread change (such as company directors or strategic bodies focused on particular interest groups or sectors). HSE’s role was as a catalyst, utilising its unique overview from official data of the harm being caused industry-wide and expertise in understanding reasonably practical controls (but explicitly relying on those who created the risk ultimately to control it).

.... The new approach centred on influencing or triggering changes, reliant on the action of others. For the theory to work in practice it was crucial that the risks to be addressed could be recognised by industry as being significant (what), and that the parties engaged with (who) were relevant and influential.’

This was based on earlier successful pioneering projects in the 1990s, such as the engagement with parties in charge of steelwork erection, which led to recognition of the safety benefits of using nets and the elimination of deaths and serious injuries from related falls.’

M Webster and H Bolt (Frontline Consultants), *The effectiveness of HSE’s regulatory approach: The construction example* (HSE, 2016), RR1082.

Assessing H&S outcomes – work of Dr Florentin Blanc

Eurostat data Standardized incidence rates, fatal occupational injuries – excluding traffic- and transport-related	2008	2009	2010	2011	2012	2013	1998-2007	2008-2013	1998-2013
Great Britain	0.59	0.59	0.69	0.73	0.58	0.51	1.4	0.62	1.11
Germany	1.11	0.66	0.81	0.94	0.9	0.81	2.1	0.87	1.66
France	0.5	2.07	2.59	4.99	2.64	2.94	2.97	2.62	2.79
EU 15	1.83	1.64	1.58	1.43	1.3	1.19	2.4	1.5	2.04
EU 28 (EU 27 until 2008 included)	2.31	1.94	1.87	1.59	1.46	1.3	2.6	1.63	2.26
Eurostat data Standardized incidence rates, fatal occupational injuries – including traffic- and transport-related	2008	2009	2010	2011	2012	2013		2008-2013	
Great Britain	1.02	1.55	1.61	1.8	1.52	2.05		1.59	
Germany	2.67	1.4	1.58	1.59	1.54	1.29		1.68	
France	1.84	2.9	2.91	8.11	3.51	3.71		3.83	
EU 15	2.68	2.31	2.35	2.42	2.33	2.17		2.38	
EU 28 (EU 27 for 2008)	3.1	2.52	2.61	2.65	2.44	2.22		2.59	

[\[1\]](#) Due to change in methodology in 2008, this average is only for informational purposes. Last line is for EU 27.

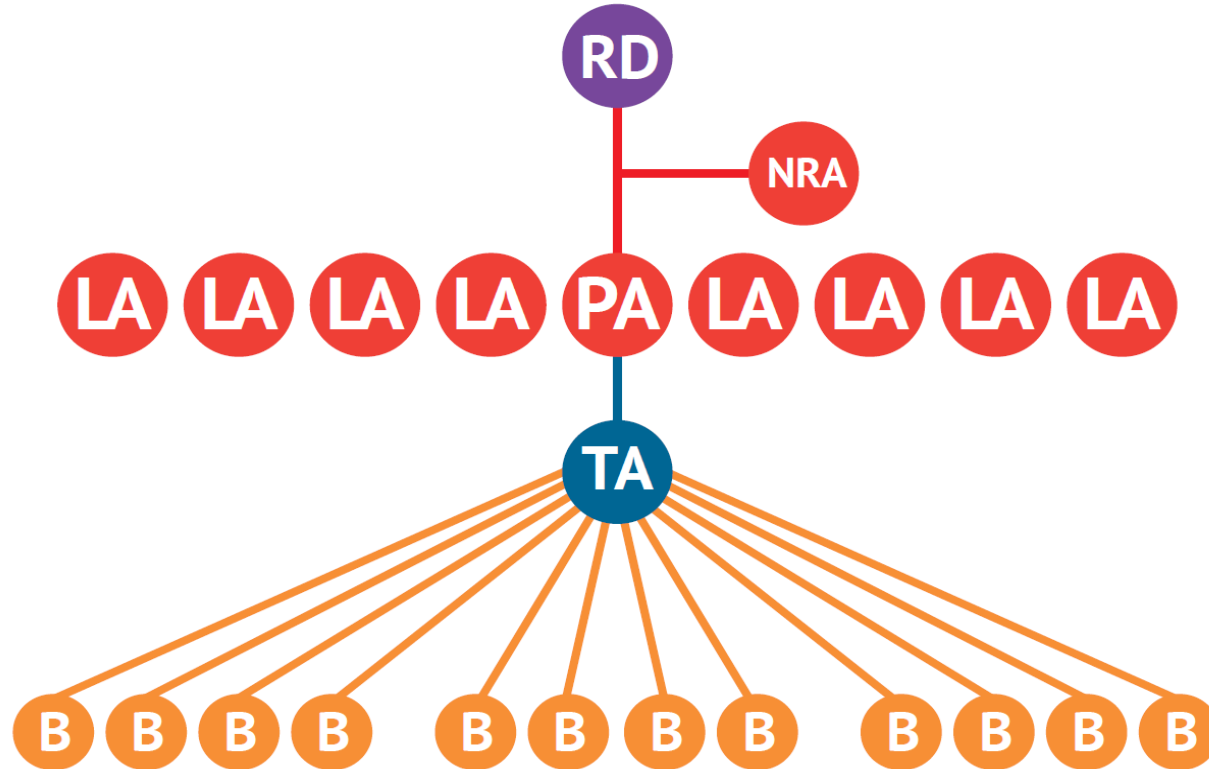
Equality & Human Rights Commission

‘Rather than taking expensive and confrontational enforcement action, we decided to work with, and support, the industry to improve their recruitment and employment practices. We began by writing to processing firms setting out the main findings of the inquiry, relevant recommendations and encouraging them to draw up an action plan to tackle the challenges the industry faced. We also set up a representative industry taskforce chaired by the Ethical Trading Initiative. The aim of the taskforce was for the industry to take the lead and work together to tackle the challenges it faced, supported by the Commission. The solutions for business came from business.

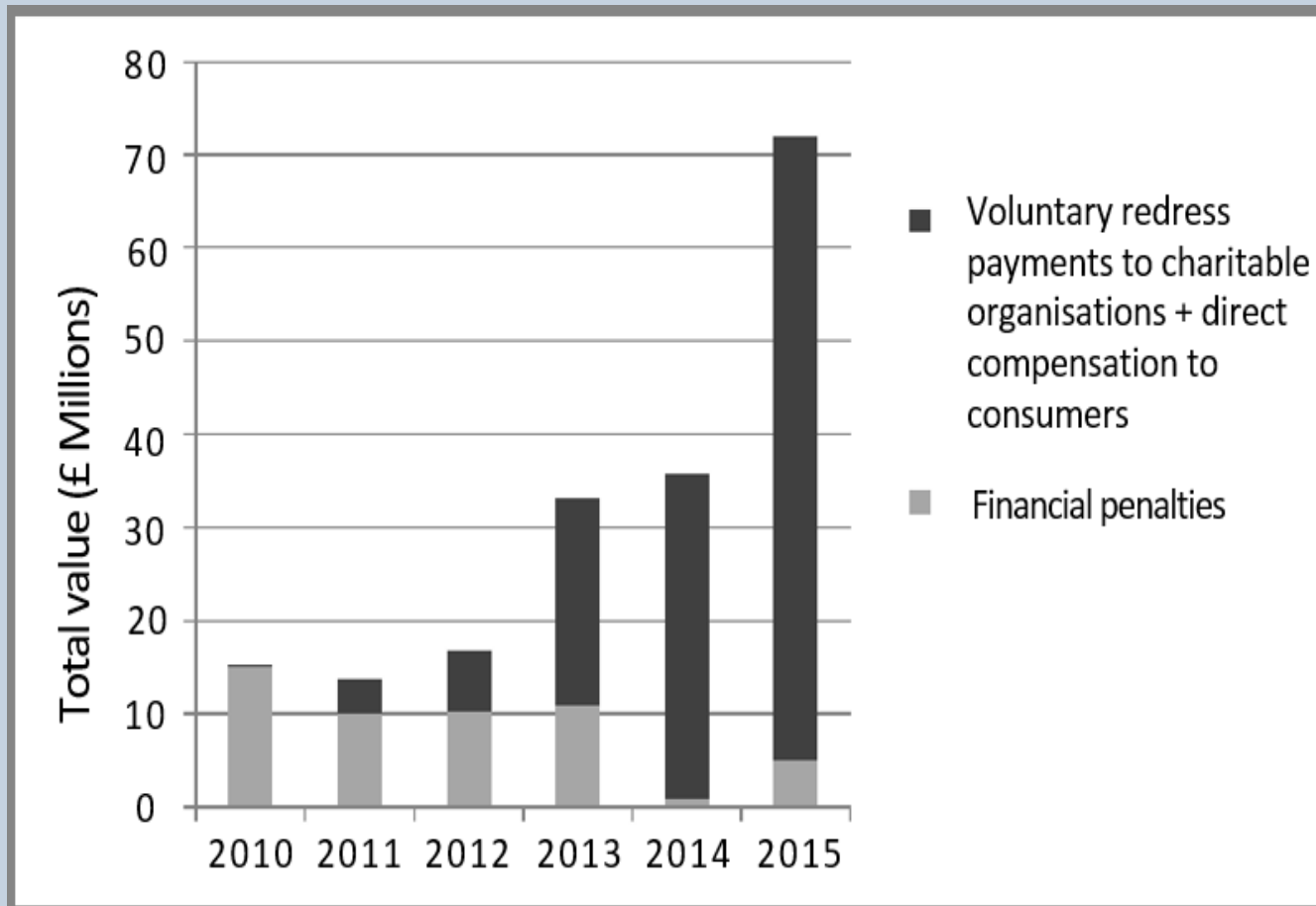
The supermarkets and industry bodies identified and agreed management practices and key performance indicators (KPIs) to deal with many of the problems identified in our inquiry. These have already been adopted by meat and poultry processing firms supplying most of the major supermarkets.’

Meat and poultry processing inquiry review. Report of the findings and recommendations (Equality and Human Rights Commission, 2012).

THE PRIMARY AUTHORITY SCHEME - DEVELOPED



Ofgem: shift from fines to redress



Enforcement Responses: Scottish Environmental Protection Agency



CIVIL JUSTICE SYSTEMS

ETHICAL BUSINESS PRACTICE AND REGULATION

A Behavioural and Values-Based Approach
to Compliance and Enforcement

Christopher Hodges & Ruth Steinholtz



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