

CIVIL JUSTICE SYSTEMS

Law and Corporate Behaviour

*Integrating Theories of Regulation,
Enforcement, Compliance and Ethics*

Christopher Hodges

Hart · CH Beck · Nomos

LAW AND CORPORATE BEHAVIOUR

This book examines the theories and practice of how to control corporate behaviour through legal techniques. The principal theories examined are deterrence, economic rational acting, responsive regulation, and the findings of behavioural psychology. Leading examples of the various approaches are given in order to illustrate the models: private enforcement of law through litigation in the USA, public enforcement of competition law by the European Commission, and the recent reform of policies on public enforcement of regulatory law in the United Kingdom. Noting that behavioural psychology has as yet had only limited application in legal and regulatory theory, the book then analyses various European regulatory structures where behavioural techniques can be seen or could be applied. Sectors examined include financial services, civil aviation, pharmaceuticals, and workplace health and safety. Key findings are that 'enforcement' has to focus on identifying the causes of non-compliance, so as to be able to support improved performance, rather than be based on fear motivating complete compliance. Systems in which reporting is essential for safety only function with a no-blame culture. The book concludes by proposing an holistic model for maximising compliance within large organisations, combining public regulatory and criminal controls with internal corporate systems and external influences by stakeholders, held together by a unified core of ethical principles. Hence, the book proposes a new theory of ethical regulation.

Volume 3 in the series Civil Justice Systems

Civil Justice Systems

Series General Editor, Christopher Hodges, Head, Swiss Re/CMS Research Programme, Centre for Socio-Legal Studies, University of Oxford

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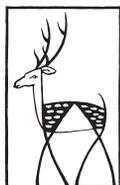
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Law and Corporate Behaviour

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Compliance and Ethics

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TABLE OF CONTENTS

<i>Acknowledgements</i>	v
<i>Detailed Table of Contents</i>	ix
<i>List of Tables, Figures and Boxes</i>	xix
<i>List of Abbreviations</i>	xxiii
Introduction	1
Part A: Psychology	
1. The Findings of Social Psychology	15
Part B: Deterrence	
2. Deterrence Theory	47
3. Private Enforcement in USA.....	67
4. Enforcement of Competition Law.....	87
5. Criticisms of Deterrence	107
6. Empirical Evidence.....	139
7. Conclusions	153
Part C: Regulation	
8. Public Regulation	161
9. The Structure of Regulation and Self-Regulation in the UK	173
10. Developments in Criminal Enforcement in the United Kingdom	213
11. Responsive, Meta and Compliance Theories	241
12. OECD Policy on Regulation and Enforcement	257
13. The Enforcement Policies of Individual Agencies	269
14. Consumer Trading and Protection.....	351
15. Competition	419
16. Conclusions on Current Enforcement Policy	447
Part D: Regulation and Compliance by Business	
17. Standards, Accreditation, Self-Regulation and Co-Regulation.....	463
18. Compliance within Business Organisations	503
Part E: Regulatory Architectures	
19. Regulating Safety	531
20. Financial Services	611

Part F: Conclusions

21. Business Values: Culture, Commitment, Trust and Ethics.....669
22. Conclusions: Ethical Regulation.....695

*Appendix 1: A Consumer Redress Scheme Under the Financial Services
and Markets Act 2000 as Amended*.....707

Appendix 2: Guidance for Enforcers of Consumer Law715

Index745

DETAILED TABLE OF CONTENTS

<i>Acknowledgements</i>	v
<i>Table of Contents</i>	vii
<i>List of Tables, Figures and Boxes</i>	xix
<i>List of Abbreviations</i>	xxiii

Introduction	1
I. Regulation and Enforcement	1
II. Affecting Behaviour	4
III. The Thesis	5
IV. Structure of the Book	7
V. Illustrations	9

Part A: Psychology

1. The Findings of Social Psychology.....	15
I. Individuals Learning the Law.....	16
II. Making Decisions	18
A. Inertia and Procrastination	19
B. Framing and Presentation	19
C. Social Influences.....	20
D. Difficulties in Assessing Probability	22
III. Risk Taking.....	23
IV. Conditions for Maximising Compliance.....	25
V. Application of Internalised Moral Values.....	26
VI. Legitimacy and Fairness	27
VII. Individuality.....	30
VIII. Culture: The Behaviour and Support of Others.....	32
IX. Managers' Decisions: Protecting Firms' Multiple Licences.....	35
X. Conclusions.....	41

Part B: Deterrence

2. Deterrence Theory	47
I. Deterrence in Criminal Enforcement Theory	47
II. Deterrence in Liability Law Theory	49
A. Articulation of Law	52
B. Incremental Deterrence	55
C. The Economic Argument: Rational Choice, Rational Actors and Cost Internalisation.....	56
III. Dilution of Liability Deterrence by Insurance	61

3.	Private Enforcement in the USA	67
I.	Private Enforcement: The US Model.....	67
II.	Empirical Evidence on How US Private Enforcement Operates.....	70
A.	Securities Actions.....	71
B.	<i>Qui Tam</i> Actions.....	77
C.	The Effect of High Economic Costs.....	78
D.	Merits and Outcomes of Class Litigation	81
E.	Relationship Between Private and Public Enforcement.....	83
4.	Enforcement of Competition Law	87
I.	Public Enforcement: Deterrence and Fines	87
II.	Private Enforcement	94
A.	Antitrust Enforcement in the USA.....	94
B.	Private Enforcement in the EU.....	95
III.	Public Sanctioning and Leniency.....	97
IV.	The Creation and Discovery of Cartels	102
A.	How are Cartels Created?.....	103
B.	How are Cartels Discovered?	105
5.	Criticisms of Deterrence.....	107
I.	Criticisms of Economic Analysis of Liability Law.....	107
II.	Criticisms of Competition Enforcement.....	110
A.	The Determination of Fines is not Transparent or Fair.....	112
B.	Encouraging Perverse Behaviour	115
C.	Current Policy does not Encourage Rectification of Unbalanced Markets.....	115
D.	Problems of Coordinating Public and Private Enforcement, and Achieving Deterrence	118
E.	Confusions of the Objectives of Fines: Deterrence or Restoration?	121
F.	The Enforcement Policy Imposes a Significant Amount of Unjustified Damage on the Wrong Targets	122
G.	Constitutionalism and Fairness.....	124
H.	The Current Enforcement Policy is Ineffective.....	125
i.	How Many Cartels are Detected?	126
ii.	Extent of Recidivism.....	129
iii.	What is the Risk of being Caught?	129
iv.	British Business Survey Evidence.....	130
III.	Conclusions on the Current Enforcement Policy	131
A.	Problems with Deterrence	132
B.	Limitations with Public Sanctioning Ex Post	133
C.	Limitations with Focusing only on Firms: The Internalisation Fallacy	134

6. Empirical Evidence	139
I. Empirical Evidence on Individual Deterrence	139
II. Empirical Evidence on Corporate Regulatory Deterrence	142
III. Studies on Liability Deterrence	145
A. Meta Studies	146
B. Individual Studies	147
C. Medical Malpractice	148
7. Conclusions	153

Part C: Regulation

8. Public Regulation	161
I. The Purposes of Regulation	161
II. Enforcement of Regulation	163
A. The ‘Command and Control’ Approach	166
III. The Institutional and Political Dominance of Regulation in Europe	167
9. The Structure of Regulation and Self-Regulation in the UK	173
I. Public Authorities, Self-Regulation and Co-Regulation	173
II. The Landscape of Public Regulatory Bodies	174
III. The Development of Policy on Regulation and Enforcement	178
A. Better Regulation and the Hampton Review	179
B. The Macrory Penalty Principles	182
C. Implementation of Hampton and Macrory: The RESA and Regulators’ Compliance Code	185
D. The Relationship Between Criminal and Regulatory Enforcement	192
E. Regulation Supporting Growth	193
F. National Enforcement Priorities	202
IV. Civil Sanctions and the Purposes of Enforcement	204
V. The 2014 Regulators’ Code	207
10. Developments in Criminal Enforcement in the United Kingdom	213
I. The Purposes of Criminal Sanctions	214
A. The Relationship Between Regulatory and Criminal Law	216
II. Restorative Justice in Criminal Law	217
A. Restorative Justice: Theory and Application in Dispute Resolution	217
B. Reparation: Payment of Compensation Through the Criminal Enforcement System	220
i. Proceeds of Crime	220
ii. Compensation for Victims of Violent Crime	222
iii. Compensation Orders in Criminal Courts	223
C. Reparative Justice for Victims of Crime	223
III. Sentencing Guidelines	226

IV.	Deferred Prosecution Agreements.....	231
A.	Development of Policy.....	231
B.	DPA Rules.....	234
V.	Conclusions.....	238
11.	Responsive, Meta and Compliance Theories.....	241
I.	Responsive Regulation.....	241
II.	Examples of Regulatory Practice	243
A.	Water Pollution Enforcement.....	244
B.	Railways Health and Safety.....	247
C.	Fisheries Protection	249
D.	Food.....	250
E.	Danish Farmers.....	251
F.	Low Risks.....	251
III.	Evolving Responsive Regulation	252
IV.	Smart and Meta Regulation	253
12.	OECD Policy on Regulation and Enforcement.....	257
I.	OECD’s Recommendations of Regulatory Policy and Risk Management.....	257
II.	OECD’s Best Practice Principles for Improving on Enforcement and Inspections	259
III.	The OECD Studies.....	263
IV.	OECD Recommendations on Redress.....	267
V.	Conclusions.....	267
13.	The Enforcement Policies of Individual Agencies.....	269
I.	Environment	270
A.	Restorative Powers	270
B.	Enforcement Policy.....	271
II.	Financial Services.....	274
A.	The Financial Ombudsman Service.....	276
B.	Complaints Handling and Transparency.....	277
C.	New and Emerging Issues.....	278
D.	Development of Consumer Redress Policy and Powers	279
E.	The Consumer Redress Scheme Powers	282
F.	Powers on Pro-Active Review by Traders.....	283
G.	Examples of Redress Cases	284
H.	Enforcement Policies of the Agencies	286
i.	Enforcement Policy of the Bank of England	287
ii.	Enforcement Policy of the PRA	287
iii.	Enforcement Policy of the FCA	290
iv.	Enforcement by the Financial Reporting Council	297
v.	2014 Review of Enforcement	298
III.	Communications	301
A.	Enforcement and Consumer Redress.....	305

IV.	Electricity and Gas Services.....	307
A.	Enforcement Policy	311
B.	Consumer Outcomes	316
C.	Redress in Wholesale Transactions (REMIT)	318
V.	Water and Sewerage Services.....	319
A.	Enforcement Policy	321
VI.	Railways.....	322
VII.	Civil Aviation.....	326
VIII.	Legal Services	329
IX.	Health and Safety in the Workplace.....	331
A.	Historical Enforcement Policy.....	333
B.	Current Enforcement Policy	337
X.	Serious Fraud	339
XI.	Bribery.....	341
XII.	The Care Quality Commission.....	343
XIII.	Conclusions.....	348
14.	Consumer Trading and Protection	351
I.	Evidence of Need	351
II.	The Consumer Enforcement Landscape	357
III.	Codified Enforcement Powers.....	362
IV.	Research on Compliance with Consumer Trading Law.....	364
A.	London Economics' Study of Six Enforcement Interventions.....	365
B.	Ipsos MORI's Interviews with Businesses on Drivers of Compliance	369
C.	IFF Research's Study of Compliance with Codes.....	373
D.	OFT's 2010 Policy on Compliance with Consumer Law	375
E.	The Anderson Review	378
F.	NAO Surveys	380
G.	BRE Survey of Micro-Businesses.....	380
H.	OFT Study of Consumers with Contract Problems	381
I.	IFF Research Business Perceptions Survey 2012.....	382
J.	ORC Interviews with Mid-sized Businesses.....	383
K.	IFF Research on Consumer Business Practices.....	384
V.	Enforcement Policy.....	386
A.	Development of Hampton Compliance by the OFT.....	386
B.	OFT Enforcement Policy	390
C.	The CMA's 2014 Consumer Enforcement Powers Guidance	395
D.	Enforcers and Consumer Redress.....	401
E.	A Combined Approach: Compliance, Redress and Empowerment	403
i.	Increased Business Compliance with the Law.....	404
ii.	Improved Redress for Consumers Affected by the Breach.....	406
iii.	More Confident Consumers who are Empowered to Exercise Greater Consumer Choice	408
F.	Coordinating Local Enforcement: Primary Authority.....	409

VI.	Conclusions.....	413
A.	Enforcement Policy.....	413
B.	The Implications of the Research.....	414
15.	Competition.....	419
I.	Evidence of Need.....	419
II.	Background to Competition Enforcement.....	419
A.	Sanctions on Individuals.....	422
B.	Guidance on Financial Penalties.....	423
C.	The Effect of ‘Private Enforcement’.....	428
III.	Research on Enforcement and Compliance.....	430
A.	OFT’s Understanding on Compliance with Competition Law.....	432
B.	Further Research.....	434
C.	Comments.....	435
IV.	CMA’s 2014 Enforcement Policy.....	436
V.	Criticisms of a Lack of Effectiveness of Competition Enforcement.....	439
VI.	Conclusions.....	442
16.	Conclusions on Current Enforcement Policy.....	447
I.	General Description.....	447
II.	Regulatory Policy.....	448
III.	Enforcement Policy.....	449
IV.	A Comparison of Sectoral Approaches.....	453
V.	Redress.....	455
VI.	Governance and Capture.....	457
VII.	Review.....	458

Part D: Regulation and Compliance by Business

17.	Standards, Accreditation, Self-Regulation and Co-Regulation.....	463
I.	Introduction.....	463
II.	Government Policy.....	465
III.	Typology.....	467
A.	Standards and Accreditation.....	467
B.	Earned Recognition.....	467
C.	Self-Regulation.....	468
D.	Co-Regulation.....	468
IV.	The Consumer Codes Approval Scheme.....	470
A.	Development of the CCAS.....	470
B.	Operation of the CCAS.....	475
V.	ABTA: The Travel Association.....	479
VI.	British Franchise Association.....	480
VII.	Lending Standards Board.....	481

VIII.	Advertising	482
A.	The ASA	482
i.	Overview.....	482
ii.	Organisation of the ASA.....	483
iii.	The Codes and the Bodies that Write them.....	485
iv.	Complaints Procedures.....	488
B.	Medicines.....	489
i.	The Prescription Medicines Code of Practice Authority (PMCPA).....	490
ii.	OTC Medicines: The PAGB	492
IX.	Some International Comparisons	493
X.	Theoretical Analysis of Self-Regulation	496
A.	Enhancing Compliance Through Reputation and Transparency	497
B.	Enhancing Constitutionality Through Governance.....	500
XI.	Conclusions.....	502
18.	Compliance within Business Organisations.....	503
I.	Looking Inside: Why Internal Compliance is Relevant.....	503
II.	Multiple Modes of Corporate Organisation.....	503
III.	The Multiplicity of Cultures.....	506
IV.	The Ideal of Unified Core Values	508
V.	Management Systems	509
VI.	Modes of Internal Compliance	510
A.	Contractual and Disciplinary Systems	510
B.	Compliance Systems.....	510
C.	External Information and Advice.....	515
VII.	Corporate Social Responsibility	516
VIII.	Corporate Responsibility	519
IX.	Whistleblowing	520
A.	Reporting, Barriers and Inertia	520
B.	The Relevance of Culture.....	523
C.	Official Statements on Whistleblowing.....	523
D.	Theoretical Insights.....	526
X.	Conclusions.....	527

Part E: Regulatory Architectures

19.	Regulating Safety.....	531
I.	The Need for Product Safety Regulation	532
II.	Quality Systems.....	536
III.	Medicinal Products.....	537
A.	The Need for Regulation.....	537
B.	Pre-Marketing Authorisations.....	538
C.	Pharmacovigilance	540
i.	Obligations on Authorisation Holders	542
ii.	Obligations on Authorities	542
iii.	Supervision.....	544

D.	Discussion.....	544
i.	Involvement of Expert Personnel.....	544
ii.	Evidence of Safe Operation	547
E.	Balancing Safety and Market Access.....	548
F.	Adaptive Licensing	548
IV.	Engineered Products.....	549
A.	Pre-Marketing Controls.....	549
B.	Post-Marketing Controls	552
C.	Discussion.....	553
V.	General Consumer Products	555
A.	The GPS Regime.....	555
B.	The Market Surveillance Regime.....	557
VI.	Health and Safety in the Workplace.....	560
A.	The Need for Safety.....	560
B.	The Regulatory System.....	562
C.	Critical Reviews	566
D.	Evidence on How Regulation and Enforcement Works	568
i.	Compliance in SMEs	569
ii.	Larger Businesses	571
iii.	Debate on Corporate Homicide.....	575
E.	Conclusions	576
VII.	Air Safety	576
A.	The Need for Safety.....	576
B.	Evolution of Regulation	577
C.	Accident Investigation.....	580
D.	Licensing.....	581
E.	Occurrence Reporting.....	582
F.	The Introduction of a Safety Management System Approach.....	583
G.	The Basis of a Safety Management System	585
H.	The Need to Share Information	587
I.	Enhancement of Performance	588
J.	The Concept of Just Culture	588
K.	Research Basis for Just Culture	591
L.	Just Culture in EU Legislation	594
M.	An Open Culture.....	596
N.	Conclusions on Aviation Safety.....	597
VIII.	Health and Social Care	598
A.	Basic Structure and Size.....	598
B.	Background: A Huge Operation but a Series of Serious Failures.....	599
C.	Reforms.....	604
IX.	General Conclusions.....	607

20. Financial Services.....	611
I. The Need for Control.....	611
A. Significance of the Sector.....	611
B. Multiple Serious Failures.....	612
C. Multiple Reforms.....	615
II. Development of the Regulatory System.....	615
A. A Corpus of International Actors.....	617
III. The Structure of Reform.....	618
A. Regulation, Supervision and Enforcement.....	620
i. European Union Reforms.....	620
ii. United Kingdom Reforms.....	623
iii. Sanctions on Individuals.....	625
B. Structural Stability and Recovery.....	628
C. Corporate Governance.....	631
D. Transparency.....	634
E. Consumer Focus and Facilitating Redress.....	636
F. Controls on Remuneration.....	638
i. Executive Remuneration.....	641
ii. Sales Incentives.....	646
G. Culture and Values.....	648
IV. Conclusions.....	654

Part F: Conclusions

21. Business Values: Culture, Commitment, Trust and Ethics.....	669
I. Selfishness.....	669
II. The Business Objectives of Profit and Shareholder Value.....	673
III. Commitment and Trust.....	677
IV. Ethics.....	683
V. Mechanisms for Supporting Ethical Behaviour.....	688
VI. Conclusions.....	693
22. Conclusions: Ethical Regulation.....	695
I. The Basis of Decisions.....	695
II. Culture.....	697
III. Regulation and Compliance.....	699
IV. Responses or Enforcement.....	702

<i>Appendix 1: A Consumer Redress Scheme Under the Financial Services and Markets Act 2000 as Amended.....</i>	<i>707</i>
<i>Appendix 2: Guidance for Enforcers of Consumer Law.....</i>	<i>715</i>
<i>Index.....</i>	<i>745</i>

LIST OF TABLES, FIGURES AND BOXES

Figure 5.1	The Effect of a Cartel on the Market
Figure 5.2	The Consequence of Public Enforcement
Figure 5.3	The Effect of Lack of Coordination Between Fines and Damages: Widely Differing Possible Results on Both Sides
Figure 5.4	EU Competition Case Investigations 2004–2013
Figure 8.1	Sanctions Hierarchy
Table 9.1	List of UK National Regulators
Box 9.1	Regulatory Compliance Code 2007
Box 9.2	Extracts from <i>Transforming Regulatory Enforcement: Discussion Paper</i> 2011
Figure 9.1	The Rogers Review’s Map of National Enforcement Priorities
Table 9.2	Local Authority Enforcement Data 2007–08 to 2011–12
Box 9.3	The Regulators’ Code 2014
Box 10.1	Sentencing Ranges: Coroners and Justice Act 2009, s 121
Figure 11.1	Enforcement Pyramid
Figure 11.2	Health and Safety Enforcement Powers
Box 12.1	OECD <i>International Best Practice Principles: Improving Regulatory Enforcement and Inspections</i>
Figure 12.1	Vectors of Ability and Willingness to Comply
Table 13.1	Outcomes and Tools of the Environment Agency
Table 13.2	Ofcom: Characteristics of Information Provision
Table 13.3	Legal Services Board Proposals on Best Regulatory Practice in Relation to Quality Assurance
Box 13.1	BBA Anti-Bribery and Corruption Guidance: Meeting the Standard
Table 13.4	Relationship between the CQC’s Ratings and the Regulations
Table 14.1	Estimate of Total Number of Problems Experienced by Consumers per Sector in Previous 12 Months

Figure 14.1	Goods and Services-sectors (Second Tier Categories) with the Highest Proportion of Problems
Table 14.2	Types of Consumer Problem
Table 14.3	Total Consumer Detriment by Sector
Table 14.4	OFT Case Study on Interventions: Summary of the Six Cases
Table 14.5	OFT Case Study on Interventions: Quantification of Impacts
Figure 14.2	Typology of Cases: Effectiveness
Table 14.6	Estimated Consumer Savings and OFT costs for 2007–10
Figure 14.3	OFT's 2010 Enforcement Pyramid
Table 14.7	OFT's Strategic Enforcement Objectives 2012–2013
Figure 15.1	Extracts from OFT's Guidance as to the Appropriate Amount of a Penalty (OFT, September 2012) OFT423
Table 15.1	Ranking of Sanctions by Businesses and Lawyers
Figure 15.2	The CMA's 2014 Vision
Table 15.2	Aggregate Figures on Antitrust Cases for Selected Member States 1 May 2004–1 September 2010
Table 15.3	OFT Decisions by Type of Offence, 2001–2012
Figure 17.1	Examples of Alternatives to 'Command and Control' Regulation
Table 17.1	CCAS: Overview of the Core Criteria 2008
Table 17.2	The CAP Code
Table 17.3	BCAP Code Chapter Headings
Figure 19.1	Number of Notifications by Product Category (Absolute Values)
Figure 19.2	Number of Notifications by Type of Risk (Absolute Values)
Figure 19.3	Notifications of Dangerous Products through the EU RAPEX System 2003–2013
Table 19.1	Injuries in RAPEX for EU-28 in 2013
Figure 19.4	Fatal Injuries by Causes of Death in RAPEX EU-28 States in 2013
Figure 19.5	Overall RAPEX Alerts per Country in 2013
Figure 19.6	Number of RAPEX Notifications in 2013 by Country of Origin of the Notified Product
Figure 19.7	The Cycle of Action for Injury Prevention
Table 19.2	New Framework Sectors that are subject to collective alignment with the NLF Decision

- Figure 19.8 Number and Rate of Fatal Injury to Workers 1993/94–2012/13 (provisional)
- Figure 19.9 Employer-reported Non-fatal Injuries to Employees 1996/97–2012/13 (provisional)
- Figure 19.10 A Successful Health and Safety Management System
- Table 19.3 Overview of the Number of Commercial Air Transport Accidents, Fatal Accidents and Fatalities for EASA MS Operated Aircraft above 2,250 kg MTOM, 2001–2013
- Table 19.4 Overview of the Number of Accidents, Fatal Accidents and Fatalities by Aircraft Category and Operation Type: All EASA MS Registered General Aviation Aircraft below 2,250 kg MTOM, 2007–2013
- Table 19.5 Components of ICAO’s Safety Management System
- Figure 19.11 The Significant 7 Aviation Safety
- Figure 19.12 CAA Depiction of how Root Causes may Lead to High-risk Outcomes
- Figure 19.13 Pilot Reports of Near Midair Collisions (NMACs) 1959 to 1989 and under Federal Aviation Administration Grant of Immunity (1968–1971)
- Figure 19.14 Pilot Reports of Computer-detected Events to the Aviation Safety Reporting System (1982–1985)
- Table 20.1 FCA Conduct Rules
- Box 20.1 G30: Supervision and Regulation are Different, and High-Quality Supervision Matters to Financial Stability
- Table 20.2 Basel Core Principles for Effective Banking Supervision

LIST OF ABBREVIATIONS

ABPI	Association of the British Pharmaceutical Industry
ABTA	Association of British Travel Agents (now the Travel Association)
ACCC	Australian Competition and Consumer Commission
ACD	assumed consumer detriment
ADR	alternative dispute resolution
AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
ARROW	Advanced Risk-Responsive Operating framework
ASA	Advertising Standards Authority
ASAP	as soon as possible
ASRS	Aviation Safety Reporting System
ATM	automatic teller machine <i>or</i> air traffic management
ATVOD	Authority for Television on Demand
AVMS	Audio Visual Media Service
B2B	business-to-business
BBA	British Bankers Association
BCAP	British Code of Advertising Practice
BCSB	Basel Committee on Banking Supervision
BFA	British Franchise Association
BIS	Department for Business, Innovation & Skills
BRI	Bristol Royal Infirmary
BRRD	Banking Recovery and Resolution Directive (2014/59/EU)
BS	British Standard
BSI	British Standards Institute
CAA	Civil Aviation Authority
CAP	Code of Advertising Practice

CAT	Competition Appeal Tribunal
CCAB	Consumer Codes Approval Board
CCEB	Competition and Consumer Enforcement Bulletin (of Ofcom)
CCP	central counterparty
CDO	Competition Disqualification Order under the Company Directors Disqualification Act 1986, s 9A
CDR	Consumer Dispute Resolution
CE (marking)	The marking 'CE' applied to products certified under EU Directives of the NLF type
CEBS	Committee of European Banking Supervisors
CEO	Chief Executive Officer
CHIRP	Confidential Human Factors Incident Reporting Programme
CHMP	Committee on Human Medicinal Products
CHP	complaint handling procedure
CMA	Competition and Markets Authority
CMAR	Control of Misleading Advertising Regulations 1988/915
CMCB	Compensation Monitoring Contact Group
CMO	Chief Medical Officer
COMAH	Control of Major Accident Hazards Regulations 1999/743 as amended
COSHH	Control of Substances Hazardous to Health Regulations
CP	communications provider
CPP	Consumer Protection Partnership
CQC	Care Quality Commission
CR	corporate responsibility
CRD3	Third Capital Requirements Directive (2010/76/EU)
CRO	Civil Recovery Order
CSR	corporate social responsibility
D&O	Directors and Officers
DEPP	Decision Procedure and Penalties Manual of the FCA
DG COMP	The European Commission's Directorate General on Competition
DHPC	direct healthcare professional communications

DIY	do-it-yourself
DOJ	Department of Justice (USA)
DPA	Deferred Prosecution Agreement
DSIB	domestically systemically important bank
EASA	European Aviation Safety Agency
EASP	European Aviation Safety Plan
EBA	European Banking Authority
ECR	European Central Repository
EEA	European Economic Area
EFPIA	European Federation of Pharmaceutical Industry Associations
EIOPA	European Insurance and Occupational Pensions Authority
EMA	European Medicines Agency
EMM	Enforcement Manual Model
EN	European Standards
ERR	Enterprise and Regulatory Reform Act 2013
ESA	European Supervisory Authority
ESARR	Eurocontrol Safety and Regulatory Requirement
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	The European Union
FAA	Federal Aviation Authority (USA)
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCPA	Foreign Corrupt Practices Act (USA)
FOS	Financial Ombudsman Service
FPC	Financial Policy Committee
FSA	Financial Services Authority <i>and</i> Food Standards Agency
FSB	Financial Stability Board
FSMA	Financial Services and Markets Act 2000
FTSE 100	London Stock Exchange index of share prices of the top 100 listed companies

FX	foreign exchange
G20	Group of 20 major economies
G30	Group of 30 major economies
GDP	Gross Domestic Product
GEMA	Gas and Electricity Markets Authority
GHS	globally harmonised system
GMC	General Medical Council
GPS	general product safety
G-SIB	globally systematically important bank
GSIE	Global Safety Information Exchange
GVA	gross value added
HACCP	Hazard Analysis Critical Control Point
H&S	health and safety
HSE	Health and Safety Executive
IAIS	International Association of Insurance Supervisors
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
ICASS	International Confidential Aviation Safety System
IEC	International Electrical Commission
IMF	International Monetary Fund
IOSA	IATA Operational Safety Audit
IOSCO	International Organisation of Securities Commissions
IRHP	interest rate hedging product
ISO	International Standards Organisation
IVDMD	in vitro diagnostic medical device
LA	Local Authority
LAATSN	Local Authority Assured Trader Scheme Network
LACORS	Local Authority Coordinators of Regulatory Services
LAPFF	Local Authority Pension Fund Forum
LATTS	Local Authority Trading Standards Service

LBRO	Local Better Regulation Office
LIBOR	London Inter-Bank Offered Rate
MAPP	major accident prevention policy
MBA	Master of Business Administration
MHRA	Medicines and Healthcare products Agency
MiFID	Markets in Financial Instruments Directive (2004/39/EC)
MSA	market surveillance authority
NAA	National Aviation Authority
NAO	National Audit Office
NCA	National Competent Authority (EU) <i>or</i> National Crime Agency (UK)
NHS	National Health Service
NICE	National Institute for Health and Care Excellence
NLF	New Legislative Framework
NMAC	near mid-air collision
NMC	Nursing and Midwifery Council
NPA	Non-Prosecution Agreement
NTLS	National Reporting and Learning System
NTSB	National Trading Standards Board
OCB	organisational citizenship behaviour
ODA	Olympic Delivery Authority
OECD	Organisation for Economic Cooperation and Development
Ofcom	Office of Communications
Ofgem	Office of Gas and Electricity Markets
Ofwat	Water Services Regulatory Authority
OFT	Office of Fair Trading
OJ	Official Journal of the European Union
ORR	Office of Rail Regulation
OTC	over-the-counter
PAGB	Proprietary Association of Great Britain
PAS	Publicly Available Specification

PBR	performance based regulation
PCT	Primary Care Trust
PMCPA	Prescription Medicines Code of Practice Authority
PoCA	Proceeds of Crime Act 2002
PPI	Payment protection insurance
PRA	Prudential Regulatory Authority
PSLRA	Private Securities Litigation Reform Act (USA)
PSUR	periodic safety update report
QMS	quality management system
QOCS	qualified one way cost shift
RAPEX	Rapid Alert System for non-food dangerous products (EU)
REMIT	Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency
RESA	Regulatory Enforcement and Sanctions Act 2008
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013
RIPA	Regulation of Investigatory Powers Act 2000
RIU	Regulated Industries Unit
SAFA	Safety of Foreign Aircraft Programme
SARP	standards and recommended practice
SEC	Securities and Exchange Commission (USA)
SFAIRP	so far as is reasonably practicable
SFO	Serious Fraud Office
SIPEP	Strategic Intelligence, Prevention and Enforcement Partnership
SLC	standard licence condition
SME	Small and Medium Sized Entities
SmPC	Summary of Product Characteristics
SMS	safety management system
SOP	standard operating procedure
SRB	single resolution board
SRF	single resolution fund

SSM	Single Supervisory Mechanism
SSP	State Safety Programme
TCF	treating customers fairly
TSPB	Trading Standards Policy Board
TSI	Trading Standards Institute
TSS	Trading Standards Service
TV	television
UK	United Kingdom
UKAS	United Kingdom Accreditation Service
UN	United Nations
USA	United States of America
UTCCR	Unfair Terms in Consumer Contracts Regulations 1999/2083
UWG	Gesetz gegen den unlauteren Wettbewerb (Germany)
VZBV	Verbraucherzentrale Bundesverband e. V. (Germany)
WBZ	Wettbewerbszentrale
WHO	World Health Organisation
WYSIATI	what you see is all there is

