
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>