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Trends in Regulatory Enforcement in UK Financial Markets

2018/19 Year-End Update

By **Erin B. McHugh**

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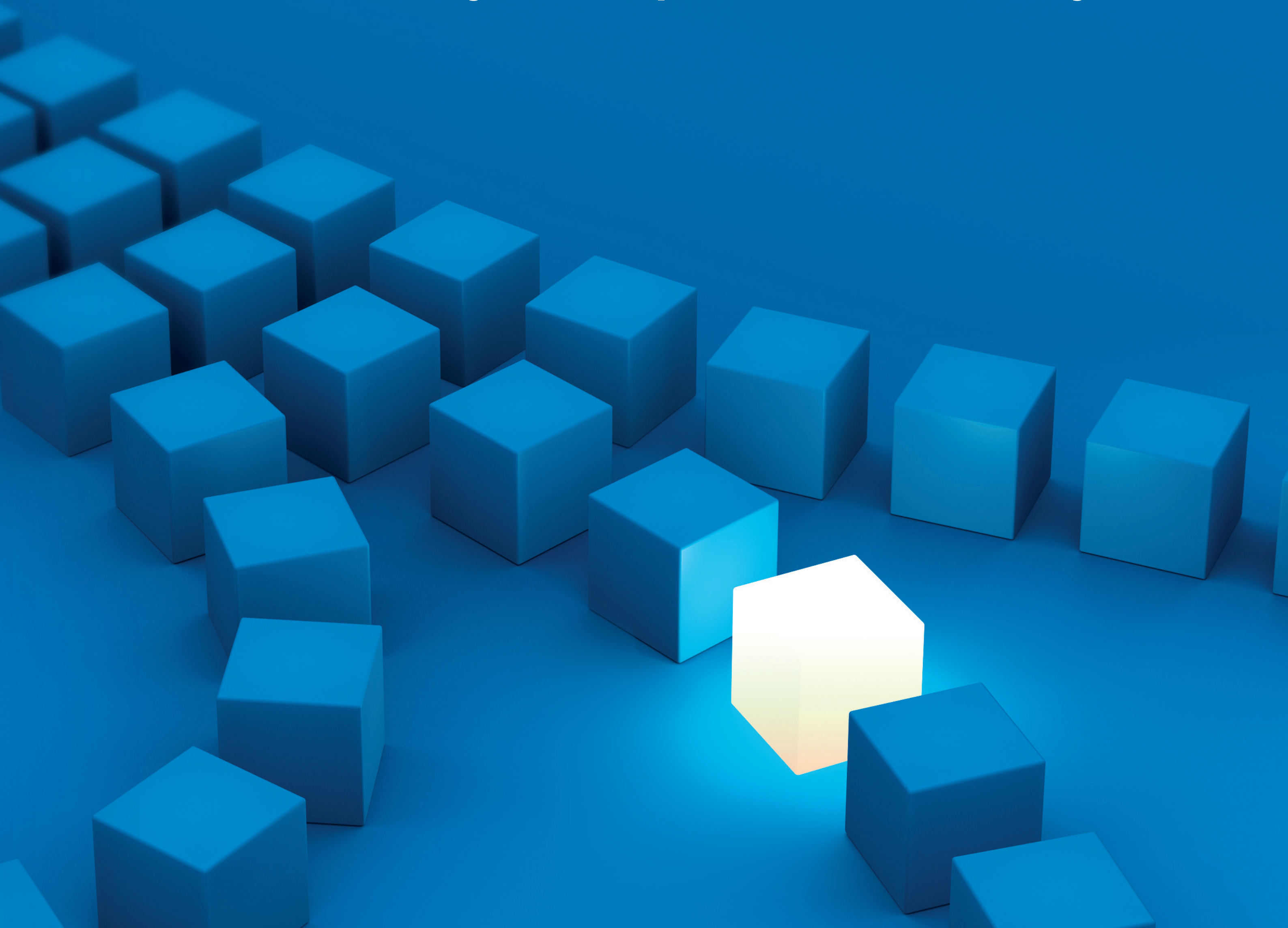

Trends in Regulatory Enforcement in UK Financial Markets 2018/19 Year-End Update

Erin B. McHugh[1]

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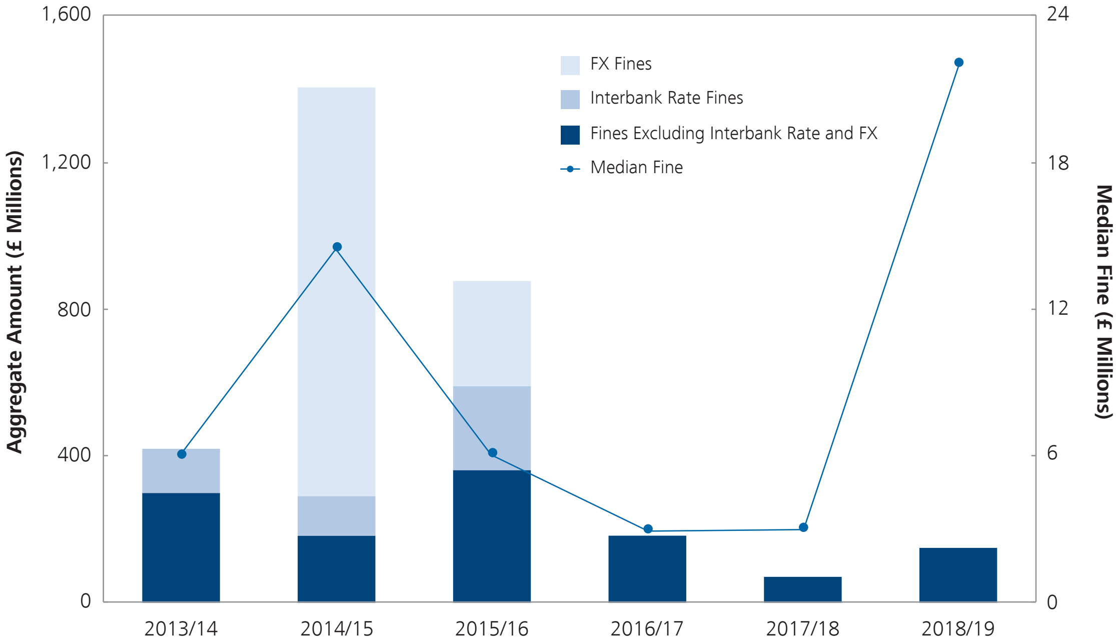
NERA Economic Consulting maintains a proprietary database (the NERA FCA database) of fines and non-pecuniary enforcement by the Financial Conduct Authority (FCA).[2] Here we present a brief update on FCA enforcement in the second half of the 2018/19 financial year (i.e., the six months ending 30 March 2019). Additional data on the number and amount of fines by period through 30 June 2019 (including by category of alleged misconduct) are available on NERA's website.[3]

FCA fine activity increased sharply in the second half of 2018/19 relative to the first half, bringing aggregate fines imposed on firms and individuals to £227.3 million for the full financial year. This total was more than three times the aggregate amount of fines in the prior financial year (2017/18).

Update on Fines Issued Against Firms

FCA fines issued against firms totalled £147.1 million in the 2018/19 financial year—more than double the aggregate firm fine amount in 2017/18. Moreover, the median fine imposed on firms in 2018/19—which can be interpreted as reflecting the "typical" fine—was £22.0 million. This is substantially higher than the median firm fine in any of the prior five financial years. See Figure 1.

Figure 1. **Aggregate and Median Annual FCA Fine Amounts Against Firms**
2013/14–2018/19



Consistent with the pattern observed in 2017/18, the vast majority of firm fines in 2018/19 (£145.6 million out of £147.1 million) were imposed in the second half of the financial year. This pattern likely reflects efforts by the regulator (and perhaps also the firms under investigation) to resolve matters before year-end.

Of the six fines imposed on firms in the second half of 2018/19 (totalling £145.6 million), four fell under the Customer Protection Failures category.[4] These include, for example:

- a fine of £32.8 million imposed on Santander UK plc for failings in its systems and controls in relation to funds belonging to deceased customers; and
- a fine of £29.1 million imposed on Carphone Warehouse Limited for insurance mis-selling.

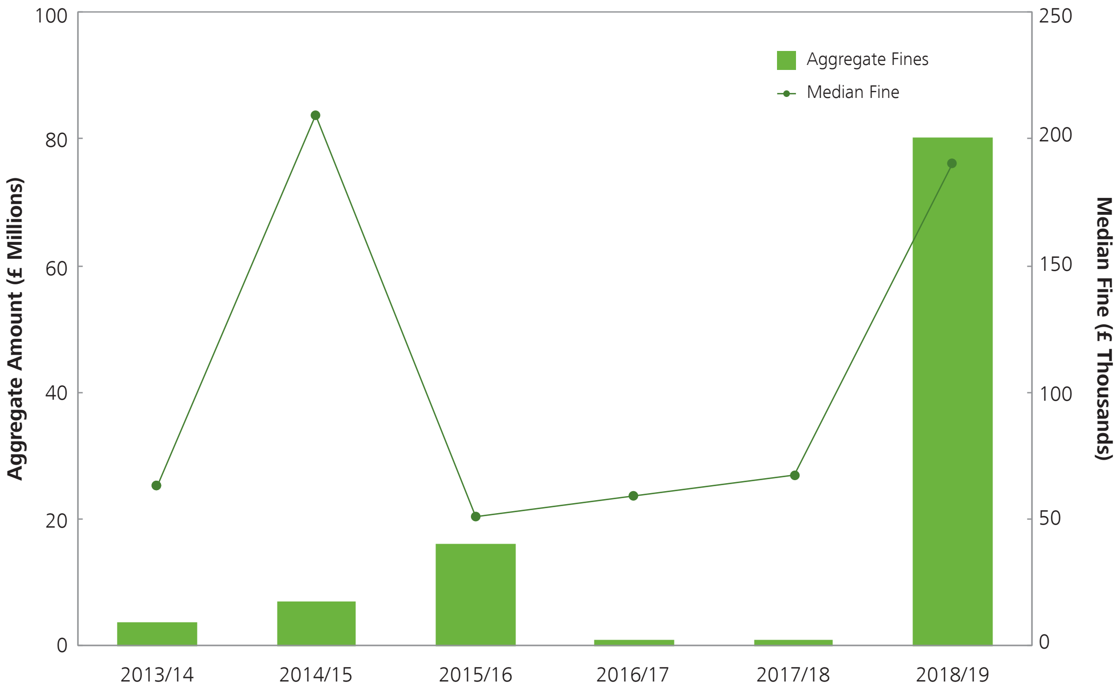
The remaining two fines imposed on firms in the second half of 2018/19 (£34.3 million and £27.6 million for Goldman Sachs International and UBS AG, respectively) fell under the Compliance Failures category and involved MiFID transaction reporting breaches. Because transaction reports help the FCA identify potential instances of market abuse and financial crime, ensuring accurate reporting is a priority for the regulator.

In the first three months of 2019/20, fines against firms totalled £46.7 million, much higher than the £0.9 million in firm fines during the first three months of 2018/19. If we again observe a (further) upswing in firm fines in the second half of the financial year, we may be on track for aggregate firm fines in 2019/20 to substantially exceed those in the two prior financial years.

Update on Fines Issued Against Individuals

While the number of fines imposed on individuals in 2018/19 is similar to that in the two prior financial years, the aggregate amount of fines far exceeds prior levels. See Figure 2.

Figure 2. **Aggregate and Median Annual FCA Fine Amounts Against Individuals**
2013/14–2018/19



This increase is, however, driven by one very large fine of £76.0 million, by far the highest ever imposed by the FCA—and in fact more than five times the previous record.[5] See Table 1 for a ranking of the 10 largest FCA fines imposed on individuals.

Table 1. **Top 10 Fines Against Individuals**
1 April 2002 to Present

Fine Rank	Individuals	Financial Year	Penalty (£)	Disgorgement/ Removal of Benefit (£)	Total Fine (£)	Category of Misconduct
1	Stewart Owen Ford	2018/19	2,641	73,359	76,000	Approved Person Regulation Failures
2	Shay Jacob Reches	2015/16	1,050	13,130	14,180	Mishandling Client Assets
3	Rameshkumar Goenka	2011/12	4,138	1,971	6,109	Market Manipulation
4	David Einhorn	2011/12	3,000	638	3,638	Insider Dealing
5	Mark John Owen	2018/19	700	2,541	3,241	Approved Person Regulation Failures
6	Ravi Sinha	2011/12	1,500	1,367	2,867	Fraud or Other Deliberate Misconduct
7	Simon Eagle	2010/11	1,500	1,300	2,800	Market Manipulation
8	Alberto Micalizzi	2014/15	2,700	-	2,700	Fraud or Other Deliberate Misconduct
9	Michiel Wieger Visser	2011/12	2,000	-	2,000	Market Manipulation
10	Stefan Chaligne	2012/13	900	363	1,263	Market Manipulation

Notes and Sources:
Amounts are in thousands.
NERA classifies fines on sole proprietorships as fines on individuals.
Financial years start on 1 April and end on 31 March.

Following a victory at the Upper Tribunal, the FCA imposed this fine of £76.0 million on Stewart Owen Ford, the former CEO of Keydata Investment Services Ltd, for failing to act with integrity and failing to deal with the regulator in an open and cooperative way. Keydata sold structured products to retail investors that were backed by life settlements (i.e., life insurance policies purchased from the insured persons). The FCA concluded that these structured products were sold without adequate due diligence and using misleading brochures. The FCA further found that Mr Ford had made false statements in a compelled interview with the regulator. The fine issued against Mr Ford reflected in large part the substantial fees that Mr Ford is alleged to have extracted from the structure. The FCA also imposed a fine of £3.2 million on Mark John Owen, Keydata's former sales director—another new entrant to the list of the top 10 fines issued against individuals (see Table 1).

In our previous edition of this report,[6] we noted that the FCA is opening more investigations than ever before. While it may take the FCA longer to close investigations, in particular given preparations for Brexit, the regulator's enforcement activity in 2018/19 has emphasised its willingness to impose substantial fines against both firms and individuals where misconduct is identified.

NERA will continue to monitor and analyse these developments as they unfold.

Notes

1 Ms McHugh is an Associate Director at NERA Economic Consulting. The author would like to thank Robert Patton for valuable feedback on earlier drafts, and George Moschopoulos and Nick Shin for research assistance.

2 The NERA FCA database includes data from all final notices issued by the FCA (and, before April 2013, the Financial Services Authority) going back to 2002. The annual number and aggregate amount of fines derived from this database may differ from statistics published by the FCA in its annual reports. This is for several reasons. First, beginning with its 2009/10 Annual Report, the FCA assigns each fine to a financial year based on the publication date of the press release announcing the fine, whereas NERA uses the date of the final notice. Second, the FCA does not include in its count of fines those reduced to zero owing to financial hardship, whereas NERA does. NERA also includes in its count of fines (though they sum to a total fine amount of zero) instances where the final notice indicates that the FCA decided not to fine an individual or firm for reasons including a penalty from another regulator for the same or similar conduct. Finally, NERA treats fines on sole proprietorships (i.e., businesses consisting of a single individual) as having been imposed on individuals, whereas the FCA classifies these as fines on firms.

3 https://www.nera.com/uk-enforcement-trends.html.

4 For a more detailed discussion of these four categories, please refer to the appendix in our earlier publications (e.g. Erin B. McHugh and Robert Patton, "Trends in Regulatory Enforcement in UK Financial Markets 2016/17 Mid-Year Report", 8 December 2016, available at https://www.nera.com/uk-enforcement-trends.html.

5 Prior to the fine on Mr Ford, the highest FCA fine on an individual was the fine of £14.2 million issued in 2015/16 against Shay Jacob Reches for setting up insurance schemes that left more than 900 solicitors' firms without proper professional indemnity cover. The fine against Mr Reches comprised a financial penalty of £1.05 million plus an additional penalty of £13.13 million, which according to the FCA would deprive Mr Reches of the indirect benefit he received from the conduct and which would be paid directly to affected insurers.

6 See Erin B. McHugh and Kanchan Pathak, "Trends in Regulatory Enforcement in UK Financial Markets: 2018/19 Mid-Year Report", 16 January 2019, available at https://www.nera.com/uk-enforcement-trends.html.

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