

A New Normal



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Smaller fines disguise the increased individual liabilities that are likely to define the FCA's enforcement approach going forward.

At first glance, total fines imposed by the FCA in 2016 show a massive fall from previous years. Over £900 million in 2015¹ and £1.5 billion the year before that,² the total in 2016 was much more modest: £22,216,446.³

With the resolution of the Libor and FX rate-rigging scandals, there were no mega fines bumping up the figures this year. The largest was just £8.2 million for failures in the oversight of outsourced providers.⁴

For the FCA, this appears to be the new normal. During the scandals of 2014 and 2015, the cost of its cases increased first to £246 million and then £325 million. In the year ending March 2017, enforcement action cost the FCA just £8.3 million, and that figure is forecast to remain roughly the same (£8.6 million, predicted) in the current

financial year. That suggests we are not about to see any significant ramping up of activity.

Despite this, there's little evidence there will not still be real consequences for those that don't follow the rules.

A Personal Journey

First, there is little evidence the FCA's willingness to impose big fines has declined. In January 2017 it imposed a penalty of £163 million for breaches of AML controls.⁵ The discovery of another industry-wide scandal would quickly see penalty totals increase again.

The FCA also has a new chief executive from April 2016, Andrew Bailey, whose influence will be increasingly felt in the direction the FCA takes. And we have seen the introduction of requirements to file an Annual Financial Crime Report, with a promise from the regulator to impose business restrictions on firms with poor AML controls. That could be significantly more damaging to firms than fines ever were.

1 <https://www.fca.org.uk/news/news-stories/2015-fines>

2 <https://www.fca.org.uk/news/news-stories/2014-fines>

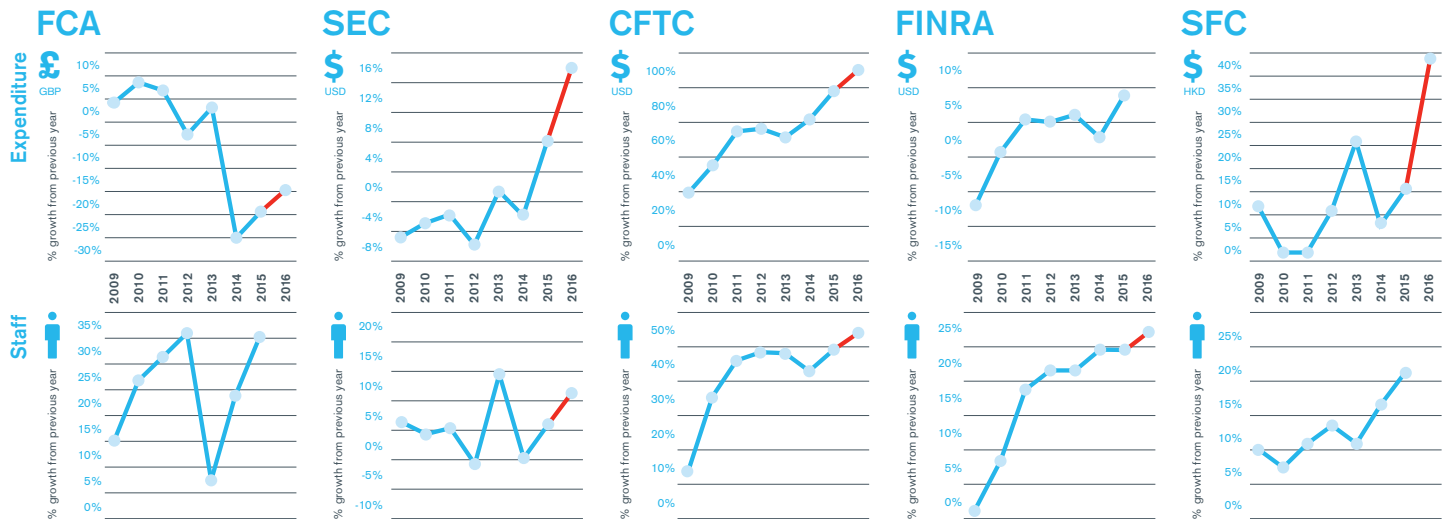
3 <https://www.fca.org.uk/news/news-stories/2016-fines>

4 <https://www.fca.org.uk/news/press-releases/fca-fines-aviva-pension-trustees-uk-limited-and-aviva-wrap-uk-limited-8-2m>

5 <https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure>



Figure B – Annual Expenditure and Staff Growth Rates by Regulator



2016 FINRA expenditures and staff figures for FCA and SFC were not available at the time this report was published.

Perhaps most importantly, though, the commitment of the regulator to target individuals persists. It sees this as central to changing culture. It is worth noting, the £22.2 million fines total for 2016 excludes an additional penalty on one individual of more than £13 million (money repaid to clients, rather than the regulator).

It is true that, in the past, the FCA's efforts to increase individual accountability have been met with mixed success. While fines against firms

soared during the Libor and FX scandals, the total fines imposed on individuals remained fairly modest.

That is at least partly what the Senior Managers and Certification Regime is designed to address, however. As the regime continues to bed in, the pressure and penalties on individuals are likely to increase. If that is the case, the new normal could be even more uncomfortable for those who find themselves on the receiving end of the regulator's attention than the old regime.