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Enlisting Commitment to Internal Compliance via Reframing and Delegation

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Enlisting Commitment to Internal Compliance via Reframing and Delegation[1]

Sharon Gilad

Abstract

Regulators in different countries and domains experiment with regulatory strategies that allow firms to adapt regulation to their individual circumstances, while holding them to account for the adequacy and efficacy of their self-regulation systems. In this article, I use the term 'process-oriented regulation,' to denote this family of similar, albeit not identical, regulatory institutions, which include management-based regulation and new forms of principles-based regulation. Notwithstanding the diversity of labels and configurations of process-oriented regulatory institutions, a key question regards the extent to which they are likely to enlist firms' commitment to regulatory goals. To contribute to the emerging empirical research on this question, the article analyzes financial firms' responses to a process-oriented regulatory initiative, which sought to transform the widespread culture of product 'mis-selling' in this industry. The article's main focus is on the strategies sought by internal supporters of this initiative to overcome their organizations' resistance and to attain managers' commitment to its implementation. It is suggested that under conditions of substantial discrepancy between regulatory expectations and firms' organizational and individual identities, commitment to process-oriented regulation entails its reframing into alternative business discourses and a leading role to non-compliance professionals and other managers in this process. These strategies, while neutralizing resistance and enhancing commitment, run the risk of altering regulatory goals.

[1] I am extremely grateful for the research participants for their time and insights. I also thank Julia Black, Bridget Hutter, Martin Lodge and Mike Power for their feedback on earlier versions of this article, and to three anonymous referees for their valuable comments.

Introduction

Regulators in different countries and domains experiment with regulatory strategies that allow firms to adapt regulation to their individual circumstances, while holding them to account for the adequacy and efficacy of their self-regulation systems. Similar trends have been observed in state regulation of health and safety (e.g. Gunningham 1999 and 2007; Gunningham and Sinclair 2009; Hutter 2001), food safety (e.g. Coglianese and Lazer 2003; Fairman and Yapp 2005), financial markets (Black *et al.* 2007; Black 2008; Ford 2008; Power 2007), environmental protection (Bennear 2006, 2007; Coglianese and Nash 2006; Eisner 2004; Fiorino 2001), and even airport security (Haines 2009).

Different labels have been coined to categorize the above changes to regulatory form, including: systems-based regulation (Kagan and Schultz 1984; Gunningham and Johnstone 1999), enforced self-regulation (Ayres and Braithwaite 1992), management-based regulation (Coglianese and Lazer 2003; Coglianese and Nash 2006; May 2007), process regulation (Gunningham 2007), new forms of principles-based regulation (Black 2008; Ford 2008) and meta-regulation (Parker 2002). In this article, I use the term 'process-oriented regulation,' to denote this family of similar, albeit not identical, regulatory institutions that mandate and monitor firms' self-evaluation, design and management of their operations, governance and controls.

Notwithstanding the diversity of labels and configurations of process-oriented regulation, a key question regards the extent to which it is likely to enlist firms' commitment to regulatory goals. To contribute to the emerging empirical research on this question, this article analyzes financial firms' responses to a process-oriented regulatory initiative, which sought to challenge and transform the widespread culture of customer abuse and 'mis-selling' scandals in this industry. However, before moving to the case study material, I define process-oriented regulation, and set out what is currently expected and known about its association with firms' commitment to regulation, and about the strategies via which firms' commitment might be gained.

Varieties of Process-Oriented Regulation

As elaborated elsewhere (Gilad, under review), 'process-oriented-regulation' requires firms to engage in a process of comprehensive self-evaluation, design and management of their operations and their internal governance and controls. Process-oriented regulation varies in two respects: (a) the degree to which regulators prescribe the process of firms' self-evaluation and its intended outcomes or goals, and (b) the extent to which process-oriented stipulations supplement additional layers of more particular regulation, which directly shape firms' operations and internal controls.

I use the concept process-oriented regulation over Coglianese and Lazer's (2003) more restricted management-based regulation since the latter depicts one pure archetype. Equally, I have chosen not to employ Parker's (2002) comprehensive notion of meta-regulation, because it comprises any form of 'regulation of self-regulation.' Having said that, my conceptualization and analysis borrows from and builds on both of these key concepts.

New forms of principles-based regulation (Ford 2008; Black *et al.* 2007; Black 2008), of which the case study of this article is an exemplar, are process-oriented regimes insofar as they require firms to systematically analyze, design, manage and evaluate their performance. Yet, they further require firms to deliver against general principles and/or more specific outcomes. Moreover, as the case study will show, these regimes can overlie existing regulatory stipulations.

Process-Oriented Regulation and Firms' Commitment to Regulation

The theoretical literature on process-oriented regulatory forms expects their flexibility and method of self-evaluation to ameliorate firms' resistance to regulation and nurture firms' and individuals' commitment to regulatory goals (most notably: Ayres and Braithwaite 1992).

Nonetheless, qualitative studies suggest that process-oriented regulation often fails to overcome regulatees' resistance or unresponsiveness to regulatory goals. These empirical studies suggest two interrelated barriers to firms' internalization of process-oriented regulation: organizational cultures that construct regulatory goals and tasks as tangential to business goals (e.g. Gunningham and Sinclair 2009; Hutter 2001; Haines 2009), and lack of trust between different levels of management and employees (Hutter 2001; Gunningham and Sinclair 2009). In the absence of trust, irrespective of managers' actual commitment to the firm's compliance programme, employees tend to be cynical about managers' commitment to regulatory goals, and doubt that they will be rewarded for compliance if they consequently fail to fulfill the firms' competing production targets.

The same literature predicts, although there is very little empirical research to back up these expectations, that the above barriers can be transcended if supplemented by two key strategies. First, regulators need to enlist the cooperation of firms' executives by drawing their attention to the risks and changing their assessment of the costs of non-compliance (Parker 2002, Ch. 3). Regulators may succeed in doing so by employing a forceful, albeit responsive (Ayres and Braithwaite 1992), enforcement strategy, particularly if this would be reinforced by stakeholder pressure and adverse publicity (Gunningham *et al.* 2003 and 2004). In addition, the broader literature regarding organizations' responses to external threats to their identity (Albert and Whetten 1985; Dutton and Dukerich 1991; Gilad 2008) would imply that *steady* regulatory pressure and adverse publicity can eventually challenge executives' and employees' perception of regulation as tangential to business goals.

Second, executive support for regulatory goals and for internal compliance programmes, once attained, has to be communicated to lower-level management and employees. Parker (2002) and others (Haines 2009; Hutter 2001) emphasize that successful internalization of regulation depends on managers' capacity to engage in dialogue with employees regarding the content and merit of firms' compliance programmes. Moreover, the findings of Gunningham and Sinclair (2009) suggest that, at least under conditions of high internal tension and mistrust, attaining employee commitment to firms' internal compliance programmes entails not just communication, but actual delegation and wide participation in the shaping of firms' compliance programmes. To be sure, even if executives and employees are committed, corporations may fail to adequately self-regulate due to problems of internal capacity, which are beyond the particular focus of this article.

The Role of Professionals in Enlisting Firms' Commitment

Alongside regulatory enforcement and managerial communication strategies, the literature indicates that professionals are likely to play a key role in strategically shaping organizations' commitment to process-oriented regulation. Parker (2002) proposes that a committed group of internal compliance professionals is fundamental for infusing firms and their internal compliance programmes with external regulatory values. She perceives compliance professionals as interpreters and translators of regulatory goals into language that businesses can value and understand and as an internal force advocating and fighting for these goals. She and others (Braithwaite 1984; Rees 1988) suggest that the likely success of compliance professionals depends on the extent to which they enjoy authority and internal clout, based on a combination of professional autonomy, executive backing and external regulatory support.

Empirical studies, although not in the context of process-oriented regulation, indicate three strategies that professionals tend to employ in pursuit of firms' cooperation with, and commitment to, regulation. First, a number of studies have suggested that professionals tend to amplify the threat of regulatory enforcement in order to raise managers' awareness and cooperation, as well as to serve the own narrow self-interest in the expansion of internal compliance programmes (Krawiec 2003). Rees (1988) has observed how internal safety managers sought and attained managers' cooperation by amplifying the risks posed by the newly created Occupational Safety and Health Agency (OSHA) at the time when the regulator itself practiced a relatively non-coercive approach. Yet Rees further shows how over time, in view of OSHA's legalistic approach and its adversarial relationship with regulated firms, compliance professionals could no longer rely on this external threat as a basis for their internal authority and legitimacy. Similarly, Edelman *et al.* (1992) found that professional personnel journals, and both personnel and legal practitioners writing for these journals, tended to inflate the threat of employee litigation for 'unlawful discharge.' The authors propose that personnel and legal practitioners had an interest in amplifying the external risks to employers in order to generate legitimacy and to create a market for their respective personnel methodologies and legal services.

Second, other studies found that professionals sought to construct not just the risks and costs of non-compliance, but also the positive benefits that firms can gain from compliance, or from the implementation of formal compliance structures. Rees (1988) found that safety-management professionals substituted their initial amplification of OSHA's enforcement threat with an emphasis on the gains from improving their firms' safety records so as to reduce the insurance costs of the 'workers compensation scheme.' Edelman (1990), relying on writings in professional personnel journals, argued that human resource professionals sought to gain employers' support for 'due process' structures by constructing a link between such structures and employee satisfaction, the weakening of labor unions, and courts' favourable view of the organization. Similarly, Edelman *et al.* (1999) found that professional personnel journals constructed internal dispute resolution structures as a means of reducing the risk of employees' complaints to external regulatory agencies, as well as enhancing employee satisfaction and productivity.

Third, Edelman *et al.* (2001) show how, based on discourse and content analysis of professional personnel journals at the time when the legal civil rights laws became more controversial, management consultants came to promote the notion of 'diversity management' as an alternative to 'civil rights' for legally-protected groups. Diversity was construed as enhancing the loyalty and productivity of an increasingly diverse workforce, whereas civil rights were denigrated as an external imposition and burden. Edelman *et al.* (2001) conceptualize this phenomenon as the 'managerialization of law.' Noticeably, this third strategy differs from the above two insofar as it goes beyond construction of risks and benefits of (non-)compliance to the transformation of the very content of regulation and the possible undermining of its goals.

Building on the above literature, this article seeks to contribute to academic and policy debates by drawing upon a case study of British financial firms' responses to the Financial Services Authority (FSA) Treating Customers Fairly (TCF) initiative, which pioneered the FSA's more general shift to a principles-based regulatory regime. The empirical focus of the article is on firms' initial responses to TCF, and particularly upon the strategies adopted by internal supporters of TCF in order to overcome corporate resistance.

The tentative argument of the article, on the basis of the empirical data and the above literature, is that under conditions of substantial discrepancy between regulatory expectations and firms' and individual identities, we would expect to see process-oriented regulation reframed into business discourse, non-compliance professionals leading the process of internalization, and delegation of responsibilities down the organizational hierarchy. Due to limitations of space and focus, the article intentionally avoids assessing the consequences of this reframing and delegation for the *content* of regulation and its congruence (or not) with regulatory goals. Consequently, the article does not seek to assess whether TCF resulted in successful internalization of the FSA's regulatory goals.

Methodology

The focus of the article is on firms' responses and strategies at the early stages of the internalization of process-oriented regulation. In this regard the study differs from studies of more mature process-oriented regulatory regimes (e.g. Bennear 2006 and 2007; Gunningham and Sinclair 2009; Hutter 2001). The research tracks firms' responses to the TCF initiative from its inception (or reincarnation) in July 2004 through to 2009.

The research sample included large (1000 employees or more) insurance firms, retail banks and building societies. The focus was on these firms' implementation of TCF with regards to the design, sale and servicing of products that are aimed at the general public (e.g. personal pensions, mortgages, insurance, unit trusts or packaged investment products[2]). Banks' current and cash-based savings accounts came under FSA jurisdiction, and therefore under the TCF initiative, only in November 2009, towards the end of the research period.

The main sources of data for this research involve analysis of FSA and other publicly available documents, and 45 semi-structured interviews with 55 industry participants, conducted between February 2008 and May 2010 (these numbers exclude four additional follow-up interviews with participants whom I interviewed in 1998 and then again in 2010). The selection of interviewees was manifold. At the very early stage of the research, I approached those coordinating the response to TCF within key trade organizations to get a sense of their views of their relevant industries' overall responses to TCF. Thereafter, I relied on existing contacts and a snow-ball strategy to conduct a number of initial interviews with firms. Next, I systematically approached key retail financial firms based on my knowledge of the industry and trade organization websites. Interviews in these firms were sought by contacting either the relevant person, where known, or the press offices of relevant firms. The key obstacle to interviewing was locating and contacting the relevant people, since information on these matters is not publicly available. In addition, contacting firms during a major financial turmoil and the actual or near collapse of major financial institutions rendered interviews, particularly in the banking sector, more difficult. Nonetheless, once identified and contacted, only six firms, as well as the Financial Services Authority, rejected my interview request.

The interviewee sample includes 15 interviewees from nine retail banks and building societies, 25 interviewees from 14 insurance firms, three from other types of firms, four trade organization officials, five regulatory consultants and three other informed participants. The number of interviewees per firm varied, depending on access opportunities, from one to five. Within firms, interviewees included firms' risk or compliance officers (15), and non-compliance managers who were involved in the coordination of TCF (28).

A proxy for the extent to which this sample adequately represents large retail financial firms can be gauged from recent statistics published for the first time by the Financial Ombudsman Service (FOS)[3] regarding the number of consumer complaints per firm during 2009 (www.ombudsman-complaints-data.org.uk). The number of consumer complaints to the FOS is shaped by a combination of firms' relative market share, the quality of their services and their approach to complaint handling. Nonetheless, given their larger volume of transactions, all large firms contribute a substantial share of the FOS's caseload. Looking at the FOS's statistics, the sample of financial groups interviewed for this study make up 70% of the 30 largest generators of complaints, 66% of the 50 largest generators of complaints, 51% of the 70 largest generators of complaints, and 47% of the 100 largest generators of complaints.

Additional data included: (a) minutes of the meetings of an industry discussion forum, and (b) internal documents, which were provided by a number of firms, regarding

[2] A 'packaged investment product' might be a personal pension or a bond, the growth of which depends on the performance of a combination of funds or certain indices that are chosen by the insurance firm. This form of investment differs from tailored asset and portfolio management.

[3] The Financial Ombudsman Service is a statutory body, which handles complainants' requests for review of financial firms' decisions regarding their complaints.

their implementation of TCF. Data collection further involved visits to two branches and a call centre of one firm.

Interviews lasted between one and two hours. All interviews, other than three, were recorded and fully transcribed. Three interviewees declined recording and written notes were taken during the interviews. Interview transcriptions, FSA speeches and minutes from the industry discussion-forum were systematically coded for recurrent themes using qualitative data analysis software (Atlas ti).

While I aimed to conduct more than one interview at each firm, this was not always possible. In addition, as explained, interviewees occupied different positions within their organizations. Some were compliance professionals, whereas others were based in marketing, customer service or operations. Moreover, I interviewed them at different points in time, and this may have affected their views. On the whole, given the size and complexity of the relevant firms and the change over time in firms' attitudes to TCF, I did not feel that interviewees can adequately reflect their companies overall perception and experience of TCF as these were likely to vary within firms and over time. Consequently, the aim of the analysis is to draw recurrent themes from the interviews as a whole, rather than to explain variance among or within firms.

The Development of TCF as Process-Oriented Regulation

It is impossible to analyze firms' responses to TCF without some understanding of the British retail finance industry and the problems that the FSA sought to tackle with regards to firms' interaction with retail consumers. Since the mid-1990s, the selling of retail financial products has generated recurrent 'mis-selling' scandals, and high volume of consumer complaints (between three to four million a year were reported by firms to the FSA between 2006 and 2008) .[4]

The FSA was created in 1997 as an integrated state regulator, which took over the powers of the Securities and Investment Board (SIB), and was awarded new and enhanced formal powers in 2001 under the Financial Services and Markets Act (2000). Unlike its predecessor, the FSA regulates both firms' prudential status, and their market conduct – including their sale of retail financial products.[5] The FSA's jurisdiction initially covered firms' sales of life assurance, packaged investment products and unit trusts, and thereafter expanded to include mortgage lending (in 2004), the selling of general insurance (in 2005) and most recently, in November 2009, banks' cash deposits and savings accounts.

The traditional focus of SIB and FSA regulation in the retail finance sphere was on firms' disclosure of information to potential buyers and on their assessment of the 'suitability' of products to customers' needs, financial capability and 'attitude to risk'

[4] FSA complaints data, 2006-2008 suggests an average of around 3 million complaints a year for the industry as a whole. The FSA (2010) Review of Complaint Handling in Banking Groups asserts that 'Regulated firms currently report to us that they receive around four million complaints from customers each year' and this figure excludes complaints that are resolved within 24 hrs (8).

[5] The FSA's integration of prudential and conduct of business regulation is currently at peril with the recent election of a new government, and the Conservatives previous declaration of their intent to split the FSA once in power.

at the point of sale. The FSA's handbook includes a large number of specific rules (for example regarding the type of documents and information that firms should provide to their investment clients), as well as 11 high-level principles. Of the latter, Principle 6, which came to underpin the TCF initiative, instructs that: 'A firm must pay due regard to the interests of its customers and treat them fairly.'

In June 2001, in face of recurring mis-selling scandals, the FSA first announced its TCF initiative in a paper entitled 'Treating Customers Fairly after the Point of Sale.' The key message of this paper regarded the FSA's intention to broaden the scope of regulation beyond its traditional focuses on information disclosure and the suitability of products at the point of sale. In contrast with the FSA's later reformulation of TCF, in this early document it did not propose a reliance on Principle 6 (or any of the other principles) alone, or on firms' capacity for self-regulation. Rather, it declared its intent to issue rules and to use its regulatory powers to intervene in a number of key areas.

As of July 2004, three years after the original announcement of the TCF initiative, the FSA retained and expanded its asserted intention to transcend the traditional boundaries of retail finance regulation, but this agenda took a new form. More specifically, it combined a focus on process – i.e. on firms' self-evaluation, design and management of their operations, governance and controls – with a reliance on general principles, and an incremental shift towards a more outcome-focused approach.

The following extract from the FSA's 2004 paper summarizes the claims of this new regulatory agenda:

> We are reluctant to press on with ever more intrusive regulation ... Instead we would prefer to see our rules supplemented by an intelligent, thoughtful and effective implementation by firms of the high-level principle that they must treat customers fairly (FSA 2004: 4).

Hence, TCF was conceptualized and promoted to the industry and to others as principles-based, avowing the failure of prescriptive regulation to prevent widespread mis-sellings. This formulation of TCF as principles-based was followed by the FSA's assertion of a more general move to principles-based regulation (FSA 2005, 2007), including its subsequent 2006 review and simplification of its market conduct rulebook. Yet, despite these general and specific moves, the FSA's handbook retained many of its existing prescriptive and performance-oriented stipulations. Thus, in the main, TCF supplemented, rather than replaced, the FSA's existing regulatory prescriptions.

Moreover, alongside the FSA's principles-based approach, its new regulatory agenda required firms and their senior managers to systematically assess the risks that every aspect of their 'product life cycle' (FSA 2004), internal governance and controls, and organizational culture (FSA 2007) pose to the fair treatment of customers. It further requires firms to identify gaps in their current management of these risks, to implement needed changes, to measure the impact of these changes by means of relevant Management Information (MI) (FSA 2007a), and to evaluate their success and the need for further change. In so doing, TCF embodied a process-oriented approach. (Appendix A provides an example of the FSA (2005) guidance to firms' self-evaluation process).

It is noteworthy that the FSA's process-oriented approach extended beyond a focus on firms' internal governance and controls, demanding that firms analyze, design and manage their 'culture' (appendix B presents an excerpt from the FSA (2007) guidance to firms' self-evaluation of the extent to which their 'culture' supports or hinders their fair treatment of customers). Specifically, the FSA asserted that TCF entails fundamental change to the way in which behaviors are constituted by firms' business strategies, executive leadership and human resource management.

Finally, on top of its principles-based and process-oriented approaches, as of 2006 the FSA set six more specific outcomes against which it required firms to analyze, design and evaluate their compliance with TCF. (Appendix C lists the FSA's six TCF Outcomes).

In summary, TCF was born out of the perceived failure of the FSA's consumer protection regulation, and the recurrent stream of mis-selling scandals. TCF is a process-oriented regulatory regime, as defined in this article, insofar as it requires firms to systematically analyze the risks posed to the fair treatment of customers by every aspect of their operations, governance, controls and even organizational culture, and to design and evaluate their success in mitigating these risks. It further involves principles-based and outcome-focused approaches to regulation, as well as overlaying more particular prescriptive and performance-oriented regulatory stipulations.

Firms' Initial Response to TCF – 'We Are Already Doing it'

In the first three to four years after TCF was announced by the FSA it instigated little change in the industry. Few firms introduced substantial changes in response to TCF before mid-2006, and many others did not do so until 2007 and 2008. Interviewees explained that prior to 2007/8 their firms implicitly conceptualized TCF as an issue that required reporting rather than action. While compliance personnel produced 'gap analyses,' in response to FSA guidance, these tended to culminate in firms' conclusion that there is little need for them to introduce any substantial change. For example:

> [Before 2008] the FSA ... spoke to a lot of firms and said, 'So what's changed?' And the answer was, 'Not a lot ... We...did a gap analysis, but largely we're okay' (Compliance, insurance).

> [Prior to 2007 our] compliance [department] had done the gap analysis and...all the returns to the FSA ... So, forms went out [to the business], 'Fill these in, return it to compliance, and we'll confirm to the FSA that we treat customers fairly' (Customer experience, banking).

The main reason for the disjunction between the FSA's expectations and firms' response to TCF stemmed from a prevalent perception across the industry that firms were already treating customers fairly, and therefore no change was required. In some cases, this conviction was translated into explicit resistance, and a perception that TCF is beyond the legitimate scope of FSA intervention. The following interviewees highlighted the resistance to TCF at executive level in some firms:

> [Our chief executive] didn’t ... believe that there was a need to run a project for Treating Customers Fairly ... we've been an established, successful company since XXXX, of course we treated our customers fairly, why do we need the FSA to come in and ... tell us what to do, so, ‘Stay out, this is our patch and stop interfering’ (TCF project director, banking).

> Our chief executive says, ‘So you’re telling me ... we went from a start-up in a back room to FTSE XXX and we didn’t know how to treat our customers properly?’ (Compliance, insurance)

Other interviewees suggested that while TCF was seen within their firms as a good idea in general, it was perceived as requiring no change in their particular case, because their organizations considered themselves as outstanding performers in the retail sphere; for example:

> The ... difficulty we had with TCF ... [was that] our inherent culture is one of doing the right things for our customers ... the big challenge we had was, ‘Well, we do it anyway ... we don’t need to do anything’ (TCF project director, insurance).

> People said, ‘... our customer satisfaction is the highest in the industry ... therefore, everything must be okay ... of course we treat our customers fairly’(Customer experience, banking).

Coupled with firms’ belief that they are already treating customers fairly was their confusion as to what change might be required, such as:

> We and other financial services organizations did not do much about TCF, because it really wasn’t clear what we should be doing or that we had to be doing anything. The feeling was that we were already doing it (TCF coordinator, banking).

> My own perspective ... wasn't antagonism [to TCF], it was ‘What’s being expected here?’ ‘... what are we doing now [other than being fair to our customers]?’ (Customer experience, banking).

In addition to the above, some interviewees suggested that firms were unwilling to invest in change until the FSA clarified its expectations in order to avoid superfluous costs.

> Firms weren’t ... willing to spend, invest and change, because they couldn’t see what it was, they couldn’t feel the FSA knew what it was. And the FSA ... hadn’t thought it through (Consultant)

> [In the] first couple of years [our progress regarding TCF] was quite a slow burn ... because you were trying to second guess what the end game might be (Internal audit, banking).

Overall, the above data implies that the predominant reason for firms’ slow response to TCF was rooted in a disparity between the FSA and public conceptions of financial services' operations and selling practices as prevalently unfair, and firms' perceptions of themselves as providing, or at least aiming to provide, market-leading customer service, and therefore being fair. In comparison with the barrier posed by firms' self-perceptions, the costs of investing in TCF and even the uncertainty about FSA requirements came up in interviews as secondary reasons. The few firms, in my sample, that embraced TCF as a change programme early on suggested that they did not find it all that ambiguous, and that its vagueness did not stop them from identifying avenues for change and improvement.

FSA Strategies for Prompting Business Response to TCF

Before discussing the strategies that TCF supporters adopted to gain their firms' cooperation, it is pertinent to shortly describe how the FSA sought to induce the industry into action. Throughout 2004 and 2008 the FSA, in response to trade organizations' demands, produced extensive guidance and other communications in relation to TCF (see appendices A, B and C for examples). In addition, the FSA published yearly 'progress reports' with its assessment of the industry's overall progress in implementing TCF, highlighting anonymous examples of 'good' and 'bad' practices.

In addition to guidance, Principle 6 and the duty to treat customers fairly increasingly featured in FSA enforcement decisions. Thus, while in 2002 Principle 6 was not explicitly mentioned in any of the FSA's final enforcement notifications, it was mentioned in 10% of cases in 2003, in 13% in 2004, in 20% in 2005, in 58% in 2006 and in 67% in 2007[6] (while beyond the focus of this article, these figures have since declined to 50% of cases in 2008 and to 9% in 2009). In addition, a number of interviewees reported that during the course of 2007 their firms' chief executives received an individualized 'Dear CEO' letter from the FSA, which warned them that the regulator was dissatisfied with their progress on TCF.

Finally, early in 2007, the FSA set March 2008 as a deadline by which firms should be able to demonstrate their capability to fully assess and measure their operations against the six TCF outcomes by means of adequate MI, and December 2008 as the date by which firms should be able to show that they were consistently treating their customers fairly (with the permissible exception of minor failures that are properly identified and acted upon). Thereafter, around March 2008, the FSA conducted industry-wide reviews of firms' implementation of TCF, and in June of that year it published a progress report suggesting that 87% of large and medium-size[7] financial firms failed to pass this review. The final industry-wide TCF review, which was scheduled to take place around December 2008, was cancelled in November 2008 in light of the FSA's decision to refocus its supervisory resources at the height of the financial crisis. Instead, the assessment of TCF was integrated with the FSA's periodic supervision and inspection of firms on the basis of its general 'risk-based' approach, and the FSA has not published any statistics regarding firms' performance.

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[6] The statistics regarding FSA enforcement final notifications are limited to the issue of fines, and decisions regarding firms (rather than individuals).

[7] What financial services practitioners term 'medium-size firms' would be considered large firms in most other industries.

Whereas many of the firms in my sample failed to pass the FSA's March 2008 review of TCF, those who have had an inspection after December 2008 have all reported that the FSA has acknowledged that they have successfully 'embedded' TCF. Of course, firms' success to satisfy the FSA is not necessarily an indicator of their fair treatment of customers, and it can equally be attributed to the change in the FSA's priorities. What is nonetheless clear, as discussed below, is that the FSA's escalating pressure eventually induced firms into action and investment in the implementation of TCF.

Firms' Internal Strategies for Creating Momentum and Commitment for TCF

During 2007 and 2008, at different levels and pace, firms invested substantial resources in the implementation of TCF programmes or projects. Firms' implementation of TCF typically involved their creation of formal governance frameworks, their establishment of a project with clear deadlines for action and allocation of responsibilities, and several working groups each focusing on a different aspect of TCF. Among the implemented changes that recurrently came up in interviews were: the assembly of existing and new Management Information to enable firms' measurement of their TCF-related performance, incorporation of 'quality measures' into the calculation of employees' periodic bonuses, enhanced pursuit of customer feedback regarding the quality of firms' products and services, new mechanisms for assessing customers' understanding of firms' products and promotion materials, incorporation of formal requirements to consider TCF in various business processes (e.g. in recruitment and promotion), more extensive use of mystery shopping to assess the quality of sales in branches etc. Elaborate analysis of these changes and their impact is beyond the focus of this article.

Despite firms' initial resistance to TCF, most, although by no means all, of my interviewees believed that the changes that their firms have introduced in response to TCF were valuable to their businesses (although it must be acknowledged that their perception was possibly biased given their central role in their firms' design and implementation of TCF). Interestingly, firms did not assess *ex-ante* nor systematically measure *ex-post* whether the costs incurred in response to TCF were higher or lower than the benefits obtained. For instance:

> We didn't...do a formal cost-benefit analysis on [TCF] ... we had to just get on and do it [to meet the FSA's review deadlines]. But I think, if we go back now and say, from what we've spent, have we had commercial benefit out of it ... I'm sure the answer would be, 'Yes.' We've got a greater understanding of what our customers think about us ... we've got better MI on our distributors ... We've been able to make decisions on distributor relationships that we wouldn't otherwise have been able to make. I'm sure we could put a value on all of that if we felt so inclined, and say, 'Is that value greater than [what] we spent?' I'm sure it would be (TCF coordinator, insurance).

> Going forward, there will be a huge commercial benefit...because we have focused so much more now on relevant MI ... using that MI in an effective manner, with much tighter product [design and review] management ... maximizing the use of customer and distributor feedback ... the [customer] communications work ... [has] had huge, huge benefits ... if you get your comms

> right ... your queries and your complaints reduce ... [Although] ... because of the markets' [condition] at the moment, anything that we do ... is probably being countered by ... [poor] investment performance (Customer experience, insurance).

> Benefits to the business has been around understanding why ... we get early cancellations [of products], why customers drop out [after applying for a product] ... why we get complaints ... [In the past] we had lost a lot of business by clunky processes, but we've now understood what's happening and streamlined them. And it's helped us take cost out of the business, [although] not massive amounts ... and stopped the cause of some complaints, that's where the benefits [have] been (Customer experience, banking).

The findings of a survey, conducted by a market-research firm on behalf of FSA's Financial Services Practitioners Panel (FSPP, Dec 2008),[8] validates the generalizability of the views expressed by those interviewed for this research. According to the survey 55% of 'relationship managed'[9] retail firms, which largely matches the category of firms included in this research, agreed with the statement that 'the benefits of TCF outweigh the costs to my firm' (*ibid*, 46). This group of firms had the most favourable view of TCF relative to all other types of firms. It is quite possible that my sample was slightly biased towards a greater number of relatively enthusiastic interviewees, who were, as a result, more inclined to participate in a research interview. Below I examine the strategies via which compliance officers and other internal supporters of TCF instigated momentum and gained acceptance and commitment for their interpretation of TCF.

Strategy I: Leveraging FSA pressure

The literature on professionals' role in the internalization of regulation within firms would expect compliance professionals and other potential beneficiaries to convey and amplify the threat of external enforcement and to construct the benefits of compliance. If this was the case here, more firms would have reacted to TCF at an earlier stage and before the FSA's escalating pressure during 2007 and 2008. Yet, as explained above, this was not the case. Indeed, interviewees, particularly those outside compliance, perceived little urgency to react to TCF before 2007 and 2008.

What eventually caught managers' attention, in this case, was not compliance officers' amplification of weak FSA signals, but the FSA's actual use of enforcement, its setting of TCF review deadlines and the industry's colossal failure to pass the FSA March 2008 reviews. Once the FSA exerted substantial pressure, compliance personnel and other 'TCF allies' probably reinforced, rather than amplified, the FSA's message in order to drive senior managers into action. For instance:

> In the very early days, senior management buy-in wasn't there ... that was a very big obstacle ... we put a bit of pressure ... on the directors and the heads-of[-

8 The post survey was issued to almost 10,000 financial firms, of which 4,459 responded. Surveys were addressed to CEOs and head compliance officers.

9 'Relationship managed' firms are those that due to their size or relative risk have a designated FSA supervisor. All large retail firms are 'relationship managed'.

> departments] ... [But ultimately] it was the [FSA March 2008 review] deadline ... that bought them in (Customer experience, insurance).
>
> Our compliance department ... felt that we could be heading for a fall ... so they commissioned ... a couple of external consultancy reports ... and neither of those reports really gave us a particularly clean bill of health, and ... it sort of frightened people a little bit ... So, that gave ... ammunition to the risk department to ... say [to senior business managers], 'Look, this is your business, this isn't showing you in a great light. What are you going to do about it?'... But, even at that stage, it was ... quite a low key affair ... it never ... got ... the right sponsorship ... until we ... failed that first MI [FSA review] deadline in March, 2008, and ... that's when people really sat up and took notice, 'Blimey, we don't want to be in this category, that are going to be named and shamed, and we can't be seen to be ... failing' (TCF project director, banking).

It is noteworthy that external compliance and management consultants played a key role in the FSA and firms' design and implementation of TCF. It is possible that external consultants were more inclined to amplify the FSA's threat and messages, but my data does not allow me to currently test this hypothesis.

Hence, what finally generated momentum for the implementation of TCF, three or four years after the FSA July 2004 paper, was escalating regulatory pressure, probably coupled with reinforcement, rather than amplification, from the internal compliance departments. Yet, as put by the following interviewee:

> With a regulatory emphasis and with an internal compliance function which will test the implementation, getting TCF off the ground ... was probably less of a challenge. What becomes a challenge is actually embedding it culturally, so that it feels commitment-led rather than compliance-led (Customer experience, insurance).

In what follows I analyze the strategies via which interviewees sought to mobilize internal commitment for their interpretation of TCF.

Strategy II: Sidestepping Direct Threat to Identity

As discussed above, firms' unresponsiveness to TCF stemmed from its incongruence with their perception that they already treat customers fairly. The above process of senior management mobilization, in response to the FSA's escalating pressure, was frequently entangled with recognition that their firms' response to TCF failed due to lack of commitment and adequate investment. Nonetheless, this realization did not fundamentally change managers' underlying belief that they have always treated customers fairly, or at least aimed to do so. Rather, the FSA's focus on evidence and on MI in particular enabled firms (and the FSA) to sidestep the controversial debate over whether or not they treated their customers fairly in the past, and to redirect the locus of discussion and action to technical issues regarding the quality and consistency of formal processes, measurement, data validity and so forth. For instance:

> Respondent 1: We'd like to think that whenever we've been doing business ... [we were considering] the fairness to the customer ... what TCF has done is it's made us [act in a way which is] ... more visible, more disciplined, more documented ... and that's what wasn't happening before (Customer experience, banking).
>
> [TCF] imposed on us a greater discipline ... [For example] we have a [product] proposition development process ... over the years, that process ... wasn't used as thoroughly as it might be. That's not to say it [necessarily] delivered poor outcomes ... So ... we've revisited the process ... built TCF into it ... and we've made that [process] much more of a must-do, rather than an option ... [And as a result], rather than, necessarily, having better products ... we've now got much more confidence that they've been through a vigorous process before launching [new products] into [the] marketplace (TCF project director, insurance).

A more cynical view of TCF and of the FSA's assessment of firms' performance, which I seldom encountered among those interviewed for this research, is reflected in the following internal minutes of an industry discussion forum, which took place shortly after the FSA's publication of the results of its March 2008 TCF reviews.

> All felt that the 87% of firms that allegedly not met the [FSA] March deadline [review] were not necessarily treating customers unfairly but were unable to prove otherwise. Similarly, the 13% who were considered successful may not be treating customers fairly, but had MI to prove they were (Industry discussion forum, July 2008)

In contrast with the above cynical view, those interviewed for my research were inclined to view TCF more positively. They asserted that TCF compelled their firms to conduct more systematic analyses of their performance and to ensure more consistent level of 'fairness' to consumers by means of formalization. Firms' construction of TCF as having to do with provision of evidence for their firms' existing practices and cultures, alongside formalization and incremental improvement, enabled them to positively engage with TCF, while shielding themselves from a deeper challenge to their organizational and individual identities. Arguably, this construction could further buffer firms from fundamental change to their business strategies and practices. Yet this article is focused on the strategies that firms employed, rather than assessment of the ultimate outcomes of these strategies.

Strategy III: Framing TCF as a Business Issue and Responsibility

Parker (2002), and others (e.g. Rees 1988), have highlighted compliance professionals as the linchpin of the institutionalization of firms' commitment to regulatory goals. In contrast, interviewees tended to make a link between their firms' commitment to TCF and its conceptualization as a 'business issue,' which is designed and led by business directors, rather than by compliance professionals.

To reiterate, many interviewees located their firms' 'real' engagement with TCF as occurring sometime during or after 2007. Yet, compliance officers of the same and similar firms commonly reported that they started working on implementing TCF during 2005, shortly after the publication of the FSA’s July 2004 paper. The difference in the reported timing seems to be rooted in the allocation of responsibility for the coordination of TCF within firms. Up until 2007 TCF was typically led by compliance departments, and was conceived as a ‘regulatory issue.’ During 2007 and 2008 many firms changed their TCF governance structures, and allocated the primary responsibility for the coordination of TCF to directors within the business and outside compliance. In many cases, the new central coordinators of TCF were customer experience professionals (see below), who reported to the firms’ Marketing, Operations or Customer Service directors. Coupled with this shift in the responsibility for coordinating TCF was its reframing as a business issue. However, in some firms TCF was led by business directors (with compliance support) early on, and interviewees from those firms tended to perceive their firms as early adopters of TCF.

Senior compliance personnel tended to depict the above transfer of responsibility to the business as one that they had to force (sometimes unsuccessfully). They believed that only by owning the design and implementation of TCF would the business come to accept and appreciate its importance. For instance, the following compliance officers remarked:

> We've always seen ... TCF ... as ... something which the business itself had to take up. There was no possibility of embedding anything new unless they felt from the outset that they owned it’ (Compliance, insurance).
>
> Treating Customers fairly ... shouldn’t be seen as a compliance responsibility ... so we’re ... pushing people to take ownership of it, because the business has to own it, otherwise, it’s seen simply as a regulatory thing, ... something the FSA wanted us to do (Compliance, insurance).

Those at the receiving end, who now coordinated TCF, typically under the direction of a senior business executive (the TCF Sponsor) and a TCF Steering Committee, similarly asserted that framing TCF as a business, non-compliance, responsibility and activity was crucial in order to turn it into a meaningful change programme.

> Our compliance department had run with [TCF] ... for a while and had realized that ... it was ... too big just for compliance and they needed to push it out into the business, and that was going to give us the best chance of succeeding (TCF project director, banking).
>
> The reason [why the coordination of TCF] ... was put ... [into the marketing and strategy department] was ... because ... [we] needed somebody to pick it up and make sure it happens ... not just a compliance person who would report on how well we’re doing, but somebody [who would be able] to drive the change (Strategy, banking).

To an extent, the above shift of responsibility for the coordination of TCF from compliance to the business was a response to the FSA stressing that TCF is the responsibility of firms’ senior management. Moreover, one could argue that such a shift is an expected progression of any process-oriented regulatory scheme, as it passes from a ‘design and establishment phase’, to an ‘operational phase’, on the way to the sought-after ‘normalization phase’ (Hutter 2001, Ch. 12). Yet, the FSA’s formal requirement for senior management involvement could have been satisfied, as has been done in some firms, by nominating a senior executive as the Sponsor of TCF, while retaining day-to-day coordination in the hands of compliance departments. Moreover, the new coordinators of TCF did not perceive themselves as implementers of a TCF programme as previously designed by their compliance departments. Rather, they tended to perceive themselves as initiating their firms' first genuine response to TCF. Consequently, the shift of coordination from compliance to business units, and the reframing of TCF as a business rather than compliance issue, is best understood as a conscious strategy to overcome internal resistance and to generate legitimacy for TCF as an internally-motivated change programme.

Strategy IV: Linking TCF with Customer Experience

Entwined with firms' framing of TCF as a business activity, and the shift of responsibility for its coordination from compliance to the business, was firms' inclination to integrate the implementation of TCF with their existing customer experience (or similar) programmes and mission statements.

Customer experience is a marketing discourse and methodology, which is associated with organizations' use of customer feedback in any kind of form (e.g. surveys, focus groups, participation in online forums, real time post-transaction feedback, as well as 'ethnography' of interaction between customers and staff). The end goal of these programmes is to design firms' products and services in light of customers' feedback, so as to enhance their satisfaction, loyalty and their promotion of the firm to their families and friends, and ultimately to enhance the financial value of these customers to the firm (e.g. Berry *et al*. 2002 and 2006; Meyer and Schwager 2007; Riechheld 2003).

Interviewees' perceived the integration of TCF with their existing customer experience programmes and mission statements as the most natural and effective way to generate commitment for it. For example:

> [Our] approach to TCF was never to try and make it a regulatory stick to beat people with, we wanted to embed it naturally ... and that's why it was managed ... from a customer experience team ... [Compliance] were ... providing some detail around the type of things that we needed to do, but as far as the business was concerned, it was being rolled out ... and owned by the customer experience team (Customer experience, insurance).
>
> I was determined that we wouldn't run a TCF campaign, because people in the business ... get very worried about compliance and regulation ... I wanted us to link in [Customer] Experience with Treating Customers Fairly, so [that] there wasn't a difference (Customer experience, banking).

In one firm, while TCF was managed from within the customer experience department, it was deliberately conceptualized as having an independent remit. The TCF coordinator, a customer experience professional himself, remarked on this disapprovingly:

> In [the] retail [bank], the bit that's recognized as potentially adding economic value, which is our customer experience strategy ... is ... managed ... separately from how we manage TCF, which is seen, ... therefore, as a sort of risky thing [that] we just have to do for the regulator. Personally, I think that separation is completely unhelpful (TCF coordinator, banking).

In addition to overcoming internal resistance, the integration of TCF with firms' customer experience and related programmes can be further interpreted as a strategy sought by customer experience professionals, broadly defined, to secure internal resources for their customer-service improvement programmes. While not necessarily a conscious strategy, it is undoubtedly the case that many of the changes that firms implemented – new and enhanced forms of customer feedback – were consistent with the professional aspirations of customer experience professionals. In the financial services domain, at least in the firms interviewed for this research, customer experience programmes were relatively new, initiated in the late 1990s at the earliest, and more commonly during the early 2000s. From the point of view of these departments, the value of gaining additional resources for their programmes at the peak of a major financial crisis, in an industry in which new sales, rather than the improvement of services to current customers, are perceived as the key source of revenue, cannot be overestimated. The following interviewees made this argument explicitly:

> There are tough times ... so you start looking at your cost base ... [So if] we were going to spend £X million reviewing and standardizing all client outputs ... [somebody will say] 'That's fluffy, get rid of it'. [And you can answer back] 'Actually, no, you can't do that' [because of TCF] (Compliance, insurance).
>
> There's ... a drive ... at the moment ... given the financial climate ... to cut costs ... [and] we've seen TCF ... as ... the lone voice ... to make sure that whilst all this cost-cutting is going on ... the customer doesn't get forgotten about (Customer experience, insurance).

Finally, it should be recognized that integrating TCF and customer experience (or similar) programmes raises a question regarding the compatibility of their respective logics and aims. Answering this question is beyond the narrow aims of this article.

Strategy V: Decentralizing the Design and Management of TCF

One of the aims of process-oriented regulation is to build firms' internal capacity for self-regulation and to hold managers accountable for their firms' performance. In the case of TCF, the FSA expected firms' boards and executives to be able to drive and assess the fairness of products and services that their businesses provide to customers. Consistent with this aim, firms' formal governance structures for TCF, at least during the implementation phase, typically involved an executive TCF Steering Committee, shadowed by a less senior working-party, with representation from across the business.

At the same time, however, the coordinators of TCF sought to gain internal acceptance for it through decentralization of its design and management to individual business units. This decentralization was driven by necessity just as much as it was a conscious attempt to generate acceptance and commitment for TCF. The larger and more diverse the firms and financial groups, the less feasible it was for those coordinating TCF to centrally manage it in any meaningful way.

In some firms, those who coordinated TCF sought to design it in consultation with individual business units, whereas in other firms the design of TCF was effectively delegated to the different business units with a degree of challenge from the centre. Thus, in the first type of firm, the coordinators of TCF structured a coherent set of measurements and targets to guide their firms' future performance, after extensive consultation with the managers of individual units. In the second type of firm, each business unit was asked to produce a set of measurements and targets against which it would be judged, with challenges from the coordinating group. In both cases, however, the ideal that firms aspired to was that business units feel that TCF belongs to them, and that the MI would be used to run the business, rather than purely for reporting upwards to the board and externally to the FSA. For instance:

> Respondent 1: We said [to the business], 'we're not creating MI just for TCF, this has to be MI that has a valid business use ... things that [are] ... important for you, in running your business area ... that could also be an indicator that something's not working ... from a fairness perspective. So, whilst we've made suggestions and tried to stimulate ideas, it's always been, 'it's your MI, what [do] you need to run the business and what are you going to then put forward into the overall model which we report against the [FSA] six outcomes?' ...
> Respondent 2: What we said to the business was ... you set the thresholds, you monitor the thresholds ... [and] we'll challenge ... you (Customer experience and internal audit, banking).
>
> We didn't say [to directors], 'This is your target for suitability of advice,'... we worked with the business to say, 'You tell us, because you're going to use this MI, what do you need to effectively run the business and assess fair treatment? What MI do you currently have? What do you need to get? What should the target be?' And if they said something like, 'Well, I think 30% [investment advice] suitability rate is fine,' we would...challenge that and say, 'Well, generally, the FSA [would] expect 90%' (Customer experience, banking).

Where the design of the MI for TCF was more centrally-led, this was sometimes because the coordinators failed to engage the business as much as they would have liked to. For example:

> We tried very hard to get the businesses to ... own things for themselves, but ... they were just looking for somebody to give them the answer ... So, I would say it was ... [a] centrally ... driven project, with each business area then taking on the responsibility for producing the MI ... but not necessarily for having it designed ... for themselves (TCF project director, banking).

In addition to decentralizing the design of TCF, business units, in all firms, were typically given almost full autonomy over their day-to-day management of TCF (e.g. their internal governance of TCF and its communication to their staff). Moreover, individual business units were expected to take primary responsibility for the periodic generation and analysis of their MI as well as for the formulation of mitigation plans to manage failure in achieving their targets.

While beyond the aims of this article, it should be acknowledged that the decentralization of TCF, and particularly the approach wherein individual business units were allowed to set their own measures and thresholds, potentially weakened firms' board capacity to make sense of their overall corporate performance and to provide evidence of it to the FSA. In other words, there are potential tensions between decentralization and wide participation as a commitment-building strategy, managerial effectiveness and external accountability.

Strategy VI: Internal Communication with Employees

Interviewees perceived communication with employees, and messages from senior executives in particular, as key to the internalization of TCF. At the same time, firms' internal communications regarding TCF were equally intended to provide the FSA with evidence of their 'cultural embedding.' In this latter regard, firms' internal communications with employees were partly a form of 'cosmetic compliance' (Krawiec 2003). The following compliance officer, as well as others, remarked cynically about this:

> I walked into [one of our subsidiaries] and I saw all these posters up ... about TCF, and they'd apparently all been recently put up ... and I said, 'You've had a visit from the FSA?' and that's what happened (Compliance, banking).

The means of communication, and in particular the extent to which it facilitated dialogue, varied substantially. On the non-discursive side, probably all firms, as also found by Parker (2002), required their employees to complete a computer-based training on TCF. Equally, towards the FSA TCF reviews, many firms sought to raise staff awareness via executive speeches, TCF posters, cups, screen savers etc. The following interviewees' remarks hint at the intimidating, and defensive, aim of such non-discursive communication:

> We're having a real big communications hit on TCF, with training, posters, screen savers ... so that nobody can hide from understanding what their responsibilities are in their particular role for TCF (Compliance, insurance, large).

> Everybody has to go through a computer based training programme ... it's mandatory, so ... people can't say, 'I don't know anything about this' ... it's a big stick (TCF project director, insurance, large).

On the more discursive side, firms produced more personalized communication, with real case studies of how people across the organization interpreted and implemented TCF within their sphere of operations. In addition, some firms, and/or units within firms sought ways to engage in more discursive dialogue with their staff, so as to encourage staff commitment via active participation. For instance:

> We’ve ... got a CBT that the [central administration] ... have put together ... but I ... reckon a classroom environment is good for giving people an opportunity to ask questions about it. So that’s why I’ve got my ... training unit developing a course with lots of open sections in it where we can have open conversations (Customer service, insurance).

> We’ve been ... going around [the company] talking to group of staff, and trying to...engage with them, thinking about what does TCF mean for them (Compliance, insurance).

> [We’ve been] encouraging business areas and functions to think of what it meant for them rather than just giving them some sort of dry material to try and digest ... It was always ... ‘What does it mean for you in your area?’ ... [because if] it belonged to them ... it becomes embedded (Internal audit, banking).

Discussion and Conclusion

This article sought to analyze firms’ responses to TCF, a process-oriented regulatory initiative, and their internal strategies in pursuit of commitment for it during the early and precarious phase of its internalization.

Barriers to Internalization

Data analysis suggests that firms’ most common initial response to TCF was resistance and confusion, because it threatened and contradicted their organizational identities (Dutton and Dukerich 1991; Gilad 2008; Gioia and Schultz 2000; Ravasi and Schultz 2006), that is - their entrenched belief that they already treat customers fairly. Of course, I cannot make a judgment as to whether individual firms’ perceptions were right or wrong, and in particular my data does not allow me to assess the variation of ‘fairness’ across and within firms. Nonetheless, studies of retail financial industries, in the UK and beyond (e.g. Clarke 1999; Ericson *et al.* 2003, Ch. 6; Ericson and Doyle 2006; MacLean 2002), as well as ongoing public and regulatory concerns, would suggest that customer abuse or ‘mis-selling’ is a prevalent component of retail financial services. At the very least, this research suggests that a substantial gap exists between financial firms’ organizational identities and public perceptions of their operations.

It should be clarified that I am not suggesting that other type of impediments to internalization that others (e.g. Gunningham and Sinclair 2009; Hutter 2001) have identified – conflict between regulatory values and production imperatives and mistrust between managers and employees – do not exist in financial services. They clearly do, although my document and interview-based methodology and the focus of my interviews on the level of TCF coordinators made such conflicts harder for me to directly observe. My point is simply that in addition to the factors that were identified by previous research, firms’ primary focus on sales to the detriment of customer needs was masked and legitimized by firms’ conceptualization of themselves as ‘successful,’ ‘customer-centric,’ ‘customer-service oriented’ etc. It is also important to understand that firms’ customer experience (or similar) programmes and mission statements, which later came to be associated with TCF, were also the sources of firms' conviction that they are already investing in enhancing the fairness or quality of their products and services.

Firms' resistance to regulatory demands that are inconsistent with their identities, as observed in this study, is unlikely to be unique. Rather, such response is precisely what one would expect from any industry in which systemic deviance is so prevalent and entrenched that many manifestations of what externals might conceive as 'customer abuse' are internally perceived as normal and rational (Vaughan 1996). In addition, it should be acknowledged that we have very few accounts of the early phases of process-oriented regulation. Most current studies have focused on relatively mature process-oriented regulatory regimes. Hence, the extent to which British financial firms' response was extreme or unique is an empirical question, which cannot be adequately answered on the basis of current studies.

Delegation and Reframing as Commitment-Enhancing Strategies

Despite firms' resistance and slow response to TCF, many firms have eventually investment substantial resources in its implementation. Moreover, interviewees tended to have a very favourable view of the changes that their firms introduced in response to TCF. The question then becomes, how was commitment to TCF finally achieved?

Some of the strategies that internal supporters of TCF employed echo the predictions of extant literature on process-oriented regulation. To begin with, my study confirms the crucial importance of external regulatory pressure as a force for putting regulation on the agenda of senior managers (Parker 2002). In contrast, the data does not suggest that compliance professionals amplified the threat of FSA intervention (cf. Edelman *et al.* 2002; Krawiec 2003; Rees 1988), and insofar as they have attempted to do so, they have not been successful. If such amplification would have successfully taken place many more firms would have reacted to TCF at an earlier stage, and before the FSA's 2008 review deadlines.

Also consistent with the expectations of current research was firms' pursuit of commitment via extensive internal communication with employees. Yet, it was also shown that internal communications were often non-dialogic and focused on provision of superficial evidence of 'cultural transformation' to satisfy FSA reviews.

An additional strategy, which received less attention in current research (but see: Gunningham and Sinclair 2009), was firms' decentralization of the design and management of TCF. I have also drawn attention to the fact that in large and complex firms, of which large financial groups are an exemplar, such decentralization was a practical necessity just as much as it was a strategy for the generation of normative commitment. What this study, as well as that of Gunningham and Sinclair (2009), suggest is that resistance to regulatory demands, the need to overcome mistrust within organizations as well as sheer organizational complexity, are likely to drive internal delegation of the design and management of process-oriented regulation.

In addition to delegation, it was shown how internal supporters of TCF sought to generate commitment to it by reframing the way in which it was conceived by members of their firms. I have shown two manifestations of this reframing. First, I have demonstrated the shift in the content of discussions regarding TCF away from the controversial question as to whether or not firms treated their customers fairly, onto their ability to provide measurable evidence to themselves and to the FSA. This reframing allowed firms to conceptualize TCF as an exercise in providing evidence and incrementally improving their existing fair practices and cultures, thereby mitigating the threat to their organizational and individual identity.

Second, I have shown how TCF was reframed as a ‘business’ rather than a ‘compliance’ issue, coupled with its frequent linking with firms’ existing customer experience programmes, methodologies and mission statements. In so doing, TCF was conceptualized as an extension of firms’ existing activities and self-generated missions. This reframing was further associated with a formal shift in the responsibility for the coordination of TCF from compliance to non-compliance departments, and typically to customer experience units. In contrast with the findings of Braithwaite (1984), Rees (1988) and others, the success of these customer experience professionals was rooted not in their clout, autonomy or authority to speak the language of the state law. Rather, their potential success was grounded in their capacity to authoritatively speak internal business discourse and the fact that they were not ‘tainted’ with a close association with the FSA.

The reframing of TCF shaped firms’ perceptions of the benefits of TCF. In contrast with the expectations of current literature (e.g. Bennear 2006 and 2007; Coglianese and Lazer 2003), managers’ commitment to TCF was not an outcome of their *ex-ante* rational and systemic assessment of the commercial benefits that can be extracted from their investment in TCF. Rather, commitment was attained via reframing, as explained above, and the consequence of this reframing was a perception that TCF is commercially beneficial although this was never systematically assessed.

The reframing of TCF, and particularly its linkage with customer experience programmes and methodologies, echoes the findings of Edelman *et al.* (2001) regarding the replacement of legal civil rights discourse with managerial ‘cultural diversity’ rhetoric at the time when the civil rights laws became more controversial. Valerie Braithwaite’s (1993) study of the Australian affirmative action legislation similarly suggests that the Affirmative Action Agency sought to gain acceptance for the legislation by equating it with good HRM practice and discourse. She writes:

> Confronted with a hostile business community and armed with legislation without teeth, the agency had to find a means of selling EEO/AA law and practice to the Australian business community ... Through choosing human resource management as the horse to pull the legislative cart, the Affirmative Action Agency was able to preserve consensus and move forward (*ibid*, 350).

The hypothesis that comes out of this study of process-oriented regulation, and the above studies of Edelman and Braithwaite, is that the more intense the incongruence between regulatory demands and firms’ organizational identities, the more likely we are to observe the reframing and translation of regulatory concepts into pre-existing business discourses and methodologies. In addition, this article suggests that professions are endowed with unequal capacity to generate legitimacy for the institutionalization of law in organizational fields. The more resistance there is to regulation, the more we would expect that internalization would be the domain of non-legal and non-compliance professionals. One might further expect professionals' strategies to vary according to their location inside or outside regulated firms. External consultants are presumably more likely to amplify the threat of regulatory enforcement in order to increase demand for their services. Internal compliance professionals, in contrast, are arguably more likely to rely on positive constructions of the gains to be had from compliance due to their concern with legitimacy.

Finally, it should be emphasized that a number of important questions regarding the implications of the reframing of process-oriented regulation were left open in this article. First, there is an obvious question about the extent to which reframing legitimizes current practices, and therefore acts as a buffer to change. Second, there is a question regarding the effect of reframing on firms' interpretation of process-oriented regulation, and the congruence between such interpretation and regulatory goals. Finally, there is a likely conflict between delegation and firms' need to make sense of their overall performance and to account for their actions to the external regulator.

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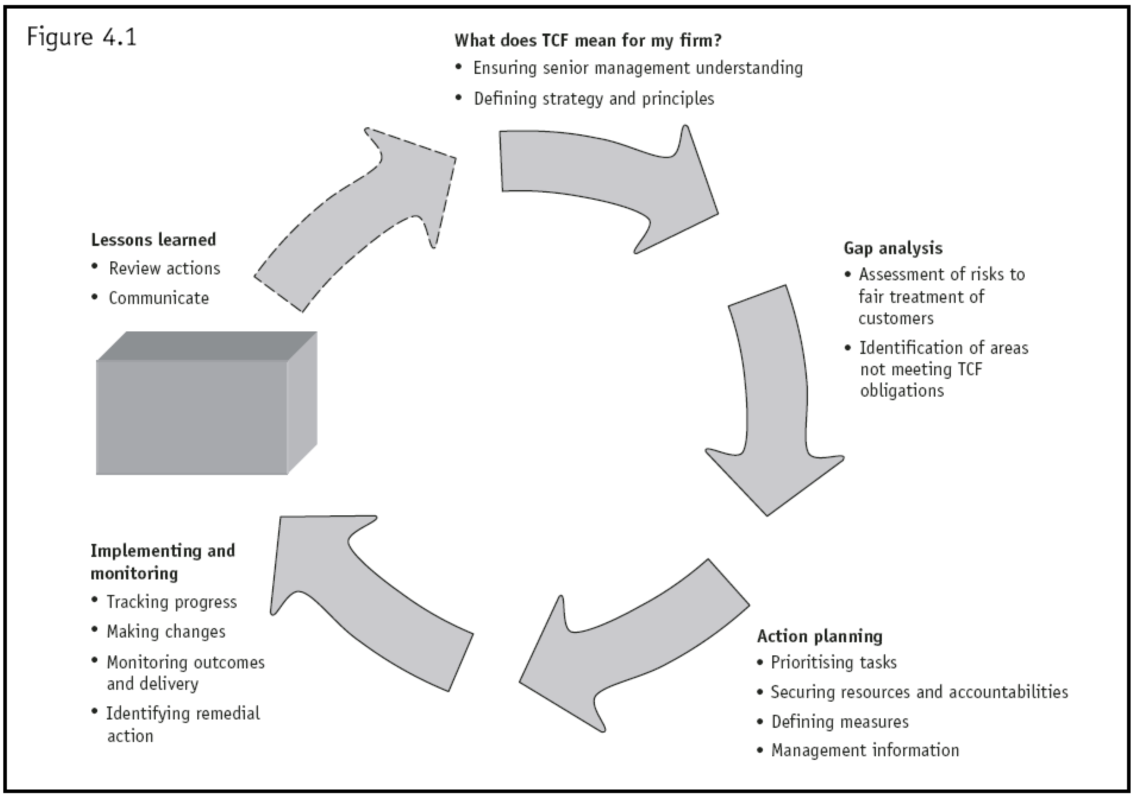
Appendices

Appendix A
Source: FSA (2005) Treating Customers Fairly – Building on Progress, p. 29

A structured approach to embedding TCF



Appendix B
Source: FSA (2007) Treating Customers Fairly – Culture, p. 21

Culture framework

Key drivers and high level indicators and contra-indicators

Indicators	Key Driver	Contra-indicators
Fair treatment of customers is central to the behaviour and values of all managers, they communicate messages about the fair treatment of customers effectively and apply appropriate controls and monitoring to ensure that the fair treatment of customers is delivered by their staff	**Leadership**	Managers (at any level) cannot explain and/or do not communicate what the fair treatment of customers means for them and their staff and cannot demonstrate that their staff understand what the fair treatment of customers means
The firm has a clear vision which supports the fair treatment of customers. This is reflected within the formulation and implementation of strategic decisions (including change management programmes and outsource arrangements). The firm's risk appetite reflects customer considerations	**Strategy**	The firm's vision is unclear/blurred or contradicts the fair treatment of customers. It does not consider the fair treatment of customers when making key decisions about future direction
Decision making at all levels reflects the fair treatment of customers. The firm uses staff, customer and other external feedback where appropriate, with timely action. The interests of customers are properly balanced against those of shareholders (and other customer groups)	**Decision making**	Minimal evidence that decisions reflect any consideration of the impact on customers. The firm is slow or unwilling to react to customer/staff feedback. Conflicts between the interests of shareholders and customers are consistently and inappropriately resolved in favour of shareholders.
The firm has controls, including management information, that aim to ensure and demonstrate the fair treatment of customers. These controls are integral to the firm's risk framework	**Controls**	The firm cannot evidence customer protection through its controls, has minimal management information and does not use this information to improve its treatment of customers
Management make positive behaviours and attitudes to the fair treatment of customers a key criterion in the selection of staff. They also make effective training and the maintenance of staff knowledge, behaviours and values core to the business. Managers use performance management to develop their staff in the fair treatment of customers, identifying and acting on poor performance and rewarding good performance	**Recruitment, training and competence**	The firm has inadequate arrangements to recruit, train and assess the competence of staff whose actions affect customers. It has little focus on the fair treatment of customers and has a lack of appreciation of how staff competence has an impact on customer experiences. Poor performance is tolerated
The firm's reward framework (including incentive schemes) throughout the business is transparent, recognises quality and supports the fair treatment of customers	**Reward**	The firm's reward framework concentrates on sales, volumes and profit without consideration of quality (i.e. the framework drives behaviours which may result in customers being treated unfairly) and there are no controls that mitigate the risks that arise from this framework

Appendix C
Source: FSA (2006) Treating Customers Fairly – Towards Fair Outcomes for Consumers, p. 3

Outcome 1: Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.

Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.

Outcome 3: Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.

Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances.

Outcome 5: Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.

Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.