

As soon as the FSA said that they would no longer conduct a special one-off measurement exercise to mark the end of the TCF initiative in early 2009 commentators quickly leapt to the conclusion that with all the other important priorities the FSA were going to let TCF fall by the wayside and concentrate on what some see as more serious matters.

Despite Sara Wilson stating in November 2008 that “Nothing could be further from the truth” there remains a sneaking suspicion that, despite the FSAs attempts to convince us that this is still a central plank of the agenda going forward, what we are hearing is spin and we will hear a lot less on this topic in the future.

Reflecting on what has been a tortuous experiment in implementing one Principle, I think we all hope that we will never approach a topic in quite this way again.

The FSA set out a long term, achievable and well paced programme for firms to follow to implement a TCF approach to their business which should have ensured that customers featured much more on the corporate agenda and give more than a passing nod to their interests was given when making decisions. A landmark enforcement action that highlighted the need to do this was the Hastings Direct action which may not have happened without the TCF focus.

Most of the other enforcements actions which cited Principle have been advice related and focussed on the missing evidence that suitability had been achieved. Would we have seen these in any event? Perhaps, after all the rules have been there since the beginning of retail regulation and the opportunity to examine these areas could have been taken without the TCF initiative. By focussing on customers the FSA does seem to have looked more closely at areas that have been taken for granted for some time.

Why was it so difficult to implement the requirements the FSA set out? From my observations through open courses and in house training, the main problem was the way in which firms, particularly the major players turned the exercise into an internally focussed process rather than the delivery of real fairness to customers. Inevitably the need for quantities of evidence and measures pushed firms in this direction and the industries initial confusion created a demand for the FSA to issue more and more detail creating a bureaucratic nightmare. I am sure that the FSA as well as the industry would not go down this road again.

The valuable lessons for us all are the need to focus on outcomes rather than inputs when trying to fulfil Principles. This approach has been extended in the area of financial crime where the FSA has set outcomes and I am sure the language of outcomes will be an abiding regulatory theme. There have been some benefits even if they are not fully embedded in cultures, yet:

- Greater awareness of the impact on customers of all that the firm does
- Highlighting awareness of all the firms who together contribute to the customer experience and forcing them to act in a more coordinated fashion
- Considering customer need, rather than competitive positioning, when creating new products and features
- Removing some of the worst examples of unfairness

Have readers noticed that the FSA seems to have started a public sector epidemic on fairness with initiatives such as “A Framework for Fairness: The Government’s ideas for a law about equality” “This is a new agenda for an active government that stands for fairness first” Ensuring fairness in government spending” etc.etc..

The real question for us is whether firms will keep their interest in customers if the FSA takes it’s foot off the TCF pedal. My personal view is that, as an industry, fairness to customers is not at the heart of our business culture and without continued oversight by the FSA there is a

danger, particularly with the pressure on costs we are suffering, we will snap back into the old practices. So will our regulator be diverted from this key topic?

Examining closely what has been published since November last year, and still awaiting the FSAs Business Plan 2009/10, the key statements have been:

"Fair treatment of customers continues to be very high priority within our Retail Strategy."
Sarah Wilson, Director TCF and Insurance Sector Leader 18/11/08

"So there is no doubt in my mind that we in the FSA must have distinctive retail priorities which will provide the backdrop to our RDR proposals: We will continue to focus on consumer outcomes and ensure firms treat their customers fairly." Jon Pain, Managing Director, Retail Markets, FSA. 25^{11/08}

"I have a clear message here and that is, in such a challenging operating environment, it is particularly important that you focus on the fair treatment of your customers when they go into arrears" Jon Pain, Managing Director, Retail Markets, FSA. 2/12/08

"Contrary to some articles you may have read towards the end of last year, TCF - which has now been included within our core supervisory work - remains a very high priority within our Retail Strategy. And fair contract terms are a key and very visible factor in firms treating their customers fairly." Katherine Webster, Manager of the Unfair Contract Terms Team, FSA, 13th January 2009

Other recent communications have their roots in TCF, in particular the concerns raised about remuneration structures of which we will, I am sure, hear more. On the whole TCF seems to be broadening our as a feature of most retail issues that the FSA has on its agenda.

We need the FSA to run the last lap and ensure that a TCF culture is embedded in firms and the level of focus on this topic in ARROW visits will be educational. Certainly the TCF initiative has caused the FSA to look much more closely than in recent years at the detail of transactions and file checks and interviews with staff at the sharp end are activities that became common in TCF visits and seem to be spreading to regular ARROW visits.

Ahead of ARROW visits firms should gather up the hard data and anecdotal evidence that will explain how outcomes for consumers have been improved as a result of their work and to reflect in their answers to questions how customers feature in their thinking and actions.

Without the FSAs continued attention to this topic the great effort made by so many people in the industry will all have been an expensive, time consuming exercise in uncovering problems and not addressing them. I believe that the FSA will expect and test that TCF is embedded and take strong action where they find the issue is treated superficially.

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