



Key Contact

Chris Harris
charris@bovill.com

“... culture is a fundamental factor in a firm's ability to promote the fair treatment of its customers...”

London office

**82 Blackfriars Road
London
SE1 8HA**

Phone: 020 7620 8440
Web: www.bovill.com

TCF – MEETING THE DECEMBER DEADLINE

November 2008

Overview

The FSA have been working for several years towards the delivery of a step change in the financial services industry so that consumers would be more likely to receive consistently fair treatment from the industry. Regulated firms will by now be aware of the final deadline for TCF – by the end of December 2008 firms should be able to demonstrate that they are consistently treating their customers fairly.

Background

The FSA have produced no new material since their June 2008 progress update. Rather, they have stated their belief that they have been very clear about what is expected and point to published guidance on the relative responsibilities of producers and distributors, as well as case studies and extensive examples of good and poor practice, the most recent of which was on TCF management information.

The TCF initiative has been the most evident example of principles based regulation from the Regulator, perhaps unsurprisingly, as FSA Principle 6, customers' interests, sits at its heart.

With the deadline almost upon us, firms will now want to know what success looks like. The FSA have previously said that firms will have to:

- demonstrate that senior management have instilled a culture within the firm whereby:
 - they (senior management) understand what the fair treatment of customers means;
 - they expect their staff to achieve this at all times; and
 - where (a relatively small number of) errors are promptly found by firms, put right and learned from;
- be appropriately and accurately measuring performance against all customer fairness issues materially relevant to their business, and be acting on the results;
- be demonstrating through those measures that they are delivering fair outcomes;
- have no serious failings – whether seen through MI or known to the FSA directly.

Firms often say they have always been treating their customers fairly – otherwise they would not still be in business. Now is the time to prove it and to do so comprehensively.

Culture

The FSA have always held the senior management of a firm as ultimately responsible for the firm's activities. FSA also see the overall culture that exists in a firm as being a fundamental factor in the firm's ability to promote the fair treatment of its customers. It is the senior management of firms who are expected to instil this culture and this was a shortcoming highlighted in the FSA's feedback on the firms who failed to meet their March 2008 deadline.

“...senior management need to promulgate clearly defined values and philosophies...”

“...firms need to measure performance against all customer fairness issues materially relevant to their business...”

Some firms have found it difficult to express or evidence their culture but this can be done effectively through the promulgation of clearly defined values and philosophies which are properly understood by staff. These values will include the concept of treating customers fairly. The evidence or demonstration of the existence of a culture will need to be more than a documented set of customer-focused corporate aims that staff receive and are expected to understand. The values will need to be manifest throughout the business such that all staff understand how they, as individuals, contribute to the achievement of them. This should feature in the recruitment and induction of staff, as well as awareness campaigns and other training for existing employees.

A further demonstration of a strong TCF culture is the existence of personal objectives for staff that have a clear relevance to a firm's values. Furthermore, the senior management of a firm need to be actively involved in the promulgation of the firm's values. After all, they are responsible for running things and should be setting an example to the rest of the staff.

Management Information

The way in which firms oversee their Management Information is a further important factor in their ability to demonstrate their fair treatment of customers.

It is not sufficient to measure just the relevant business processes through MI, rather, the reporting needs to show how the firm is delivering fair outcomes. Information on processes can be useful but is likely to require other supporting evidence.

The FSA have said that firms should not need to create substantial amounts of new information. This assumes, however, that there is a comprehensive suite of management information already in existence. Furthermore, firms may not have been used to trying to measure their activities in terms of consumer outcomes, howsoever defined, and at the very least will have needed to reinterpret their MI. It is, therefore, important to be able to explain how the information evidences the respective consumer outcomes.

The MI should also present a balanced view of the firm's fair treatment of its customers. MI often focuses on complaints, which can be perceived as negatives, and the targeted effort, or TCF progress, is to reduce the negative effect. Whilst complaints may be a critical measure of a firm's TCF activities, attention must also be given to the positive experiences, together with the appropriate and demonstrable measures. The December deadline requires firms to demonstrate they are consistently treating customers fairly and not that they are treating them less badly.

FSA's language in recent high profile enforcement cases continues their clearly stated expectation that customers should be treated fairly. Witness too the magnitude of the penalties in some of these cases - Alliance & Leicester were fined £7,000,000 and Liverpool Victoria Banking Services £840,000.

Conclusion

We reported in our last TCF briefing on the next steps the FSA have set out for themselves. These have not altered and, aside from reporting on the December deadline, TCF will become a business as usual activity from 2009 onwards.

There is a prompt here for firms wishing to demonstrably meet the December deadline. At this stage your TCF project should no longer be that; the fair treatment of customers should be well embedded in the business and part of the everyday culture of the firm.

Manchester office

**Barnett House
53 Fountain Street
Manchester M2 2AN**

Phone: 0161 247 8562
Web: www.bovill.com