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How Firms Translate Regulatory Messages

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Abstract

How is the *meaning* of 'compliance' constructed within regulatory regimes and by corporations? This important question has received surprisingly little attention in regulation scholarship. The key focus of existing regulatory research has been on the shaping of organisations' *motivations* for compliance, while bypassing the processes whereby corporations interpret and enact regulatory demands. Building on recent Sociological New Institutionalism research, this article argues that the content of compliance is shaped by regulators and firms' sequential and continuous framing, reframing and translation of regulatory messages. The result of this process is that even when regulated corporations are committed to comply, their translation of regulation will be shaped by local framings of problems and solutions. These arguments are based on a case study of the British Financial Service Authority's (FSA) framing of its requirement that firms 'treat customers fairly' and of the firms' strategic and non-strategic reframing and translation of this demand. The contribution of the article is both theoretical – highlighting the interpretative gap in current compliance theory – and methodological – developing a methodology for analysis of compliance-meaning construction.

1 Introduction: the interpretative gap in regulatory scholarship

How is the *meaning* of 'compliance' with regulatory demands constructed within regulatory regimes and within corporations? This important question has received surprisingly little attention in regulatory scholarship. The primary focus of existing research has been on organisations' *motivations* for compliance, and on the factors that shape their motivations (e.g. Ayres and Braithwaite 1992; Gunningham et al. 2003, 2004, 2005; Hutter and Jones 2007; Kagan and Scholz 1984; May 2004; May and Wood 2003; Parker 2002; Winter and May 2001). Somewhat less prominent in compliance literature is a focus on regulated entities' awareness, knowledge and access to information about regulatory requirements (Lee 2011; Hutter 2001; Koski and May 2006; Winter and May 2001, 2002). This latter line of research is more attentive to the ambiguous and uncertain nature of regulation and compliance. Yet even this literature presumes that regulation and compliance have meanings, which are given, universal and static.

This is not to suggest that researchers have failed to notice the uncertain and constructed nature of compliance with regulation. Rather, compliance research, especially as reflected in political science and public administration journals, tends to bracket the process of compliance construction out of the analysis (but see McCaffrey et al. 2007). Researchers typically evade the methodological problems that legal ambiguity creates for the study of regulation and compliance by relying on regulatees' self-reported compliance or on output measures of their performance (e.g. levels of pollution emissions). What current research largely avoids is analysis of the substance of regulatees' compliance, and no less important, of the *process* by which the meaning of compliance with regulation is constructed.

However, the process via which compliance is constructed is too important to be left out of regulatory literature. There are at least three reasons why this is the case. Firstly, all regulations and other legal rules are to a certain degree open to interpretation, and some regulations more so than others (Black 1997; Edelman 1992; Edelman et al. 1991; Parker and Nielsen 2009; Edelman and Suchman 1997). As Koski and May (2006: 329) observe:

> Most of the understanding of regulatory policy implementation is based on the study of regulatory mandates that establish directives for addressing particular harms and specific classes of regulated entities. Less attention has been given to situations for which the regulatory provisions are less focused. Yet many activities are regulated by simpler admonitions that amount to little more than 'do no harm'.

Secondly, new forms of regulation, such as management or process-based regulation, explicitly shift the responsibility for interpreting and translating what compliance entails onto regulated corporations (Gilad 2010). Consequently, local interpretation and translation of regulation are integral to what these new regulatory forms are all about. And thirdly, the latter change in regulatory form is part and parcel of a broader change to governance which involves delegation and decentralisation (to lower levels of government, independent agencies, and private entities), all of which entail that the interpretation and translation of administration is also conducted at different levels and involve various participants (Talesh 2011). Consequently, the scarcity of research on the process via which compliance with regulation is locally interpreted and translated within corporations is a major gap in existing literature.

In the next section I develop a process framework of compliance meaning construction, which builds on Sociological New Institutionalism (hereafter: SNI). SNI resembles historical institutionalism and was developed within political science, inasmuch as both are concerned with the formation, cementing and change of entrenched ideas. However, in recent years SNI has made some important advances in analysing the process via which the meaning of institutions takes shape and changes as they invade (and are tamed by) local settings, and in highlighting the role of agency in this process. After setting the theoretical framework, I will apply it to a case study of firms' responses to a major regulatory initiative requiring British financial firms to demonstrate their fair treatment of customers in all aspects of their operations. As shown below, the firms were initially disinclined to implement any changes in response to this initiative, inter alia because they interpreted it as something that they were already in compliance with. Thereafter, following regulatory pressures, the firms reinterpreted the regulatory requirement as entailing provision of formal evidence to the regulator regarding their already compliant practices. At the same time, the firms equated the regulatory requirement of 'fairness' with a business-marketing discourse and methodologies about the need and means for enhancing and managing the 'customer experience'. The article analyses these findings within the suggested theoretical framework and discusses their broader implications for the firms' responses to regulation.

The rest of the article is organised as follows: section 2 sets out the article's theoretical framework; section 3 describes the methodology; sections 4 and 5 provide necessary background to the case study; section 6 analyses the FSA's framing of the regulatory initiative, and section 7 – the hub of the article – analyses firms' sequential framing, reframing and translation of the regulator's messages. Section 8 concludes.

2 A conceptual tool box for the construction of regulatory meaning

So how do corporations interpret and enact regulatory demands? An up-to-date SNI framework, as developed below, would suggest that the meaning of compliance with regulatory requirements varies locally and over time. It takes material shape in light of participants' existing local frames of what is involved in complying (including locally legitimised contraventions of regulation). In addition, external and internal pro-change actors (e.g. regulators and compliance officers respectively) may try to reframe the local meanings that are attributed to compliance (cf. Lawrence and Suddaby 2006). Yet, the success of their strategies is constrained by their ability to invoke locally legible and legitimate alternative cultural frames (cf. Boxenbaum 2006); Markowitz et al. 2011; Meyer and Höllerer 2010). Four key concepts require our attention in order to theorise the process of corporations' construction of compliance: framing, reframing, strategic (re-)framing and translation.

Framing, reframing and strategic framing and reframing: Frames or cognitive schemas are loose categories of stored prior experience or expectations about the world (e.g. Tannen 1993). New information or interaction is always interpreted by reference to existing frames. To take a mundane example: when I tell my four year old daughter 'it is bedtime for you', she categorises (i.e. *frames*) this utterance as a game, as a negotiable request or as a command, based on her prior experiences with similar utterances. Alternatively, in order to make going to bed more agreeable to my four-year old, I may *strategically frame* our communication as 'it is story time for you'. And she may try, by way of responding, to *strategically reframe* our interaction, and render what she knows was intended as a command into a game or a negotiated exchange. Hence, the construction of meaning involves a sequence of framing and reframing moves, wherein meaning may transform as a result of actors' inconsistent cognitive frames and/or due to their intentional attempt to change the categorisation of the subject matter. Current SNI as described below, has not been sufficiently sensitive to the sequential nature of framing and reframing, and to the importance of non-strategic framing alongside its strategic twin.

To date, the focus of SNI research has been on the strategic framing of new institutions, predominantly by actors outside organisations. The conceptualisation and analysis of strategic framing in existing SNI theory builds on the notion of 'frame alignment' (Snow et al. 1986; Benford and Snow 2000) as developed in social movements theory. Framing (or frame alignment) happens when 'people align the new [institutional] idea [which invades their local setting] with words, images and values they already know' (Creed et al. 2002: 479). Benford and Snow (2000) differentiate between three subject matters of strategic framing – *problems*, *solutions* and *motivations*. They further suggest that underlying the framing of problems, solutions and motivations are broader ideological master-frames. The strategic framing of problems entails tapping into audiences' existing concerns and making links between these concerns and new issues. Strategically framing solutions involves demonstration of links between new techniques and established solutions. Finally, strategically framing *motivations* entails linking actions with audiences' existing notions of penalty, reward, urgency and so forth. Thus, strategic framing of regulation regard the attempt of actors – regulators, compliance professionals, consultants, managers etc. – to convey regulatory concerns in terms that regulatees will find comprehensible, to make links between new regulatory requirements and familiar techniques, and to shape regulatees' motivations for compliance.

Numerous examples from existing SNI research, all in the realm of American workplace legalisation and regulation, depict personnel professionals' strategic reframing of legal pressures and of their preferred HR techniques as solutions to these pressures. A number of such studies have shown how professionals, writing in personnel and legal journals, attempted to changes their audiences' motivational disposition by amplifying the legal risk posed by the civil rights laws, and by constructing human resource structures and procedures as legal defences (Dobbin and Kelly 2007; Dobbin and Sutton 1998; Edelman et al. 1992, 1999). Conversely, another set of studies shows how professionals sought to overcome audiences' resistance to the civil rights legislation by recasting the problem in managerial terms. For example, Kelly and Dobbin (1998) and Edelman et al. (2001) show, based on discourse and content analysis of professional personnel journals, how 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 'affirmative action' 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. Creed et al. (2002) have analysed the frames used by advocates of gay-friendly policies in the US. They found that advocates differed in their framing of gay-friendly policies as 'civil rights' or as a 'good for business' imperative depending on the arena within which they operated. Whereas gay rights advocates in congress were inclined to invoke the civil rights frame, 'advocates [within corporations] drew more directly on the *good for business* … frame – creating legitimating accounts that resonate with their organizations' market strategies … corporate cultures … concern for cost containment, reputation and sense of corporate citizenship' (Creed et al. 2002: 491).

As evident from the above analysis, existing SNI research of the construction of law focuses on its strategic framing by entrepreneurs outside organisations. The majority of existing studies rely in their analysis of strategic framing on professionals' argumentation in human resource or legal journals. They seldom investigate how these frames are thereafter construed *within* corporations (Creed et al. 2002 is an exception). This gap is problematic because current literature fails to capture the dynamics of local reframing of regulation, and the role of the audience (i.e. firms) in rejecting or embracing external frames. In addition, the above studies arguably overstate actors' *strategic* framing, while underestimating entrepreneurs' cognitive constraints and their embeddedness within existing frames or cognitive schemas.

Translation: Going back to my mundane example above, it is noteworthy that when my daughter and I frame and reframe the meaning of 'it is bed time for you' we inject this utterance with concrete *material* substance. This then has implications for *how* she goes to bed: what clothes does she wear, which toys are allowed into the bed, what type of music is relevant for this situation etc. In other words, the framing of the utterance shapes its translation into concrete actions and material objects which are particular to our specific interaction. In current SNI research this association between framing and concrete substance is referred to as 'translation' (Sahlin and Wedlin 2008; Zilber 2006, 2008).

Translation regards a process via which abstract ideas and categories are materialised in texts and practices. As Sahlin and Wedin (2008: 225) observe:

> What is being transferred from one setting to another is not an idea or a practice as such, but rather accounts and materializations of certain idea or practice. Such accounts undergo translation as they spread, resulting in local versions of models and ideas in different local settings.

The notion of local translation and variation is relatively new within SNI research, and it is gradually overtaking SNI scholars' previous assumption that once legitimised and entrenched, institutions diffuse *as is* across nations and organisational settings. In political science, similar work highlights that the diffusion of regulatory policies does not entail convergence in their meaning and substance (Radaelli 2005). The notion of translation developed in the context of the global spread of established institutions, highlighting their constant transformation alongside their travel. Yet it is equally relevant for organisational-level translation of national regulation.

To date SNI studies of the construction of law have not been sufficiently sensitive to the variance in local translations. Edelman, Dobbin and their colleagues, in line with the focus of much earlier SNI research on diffusion rather than local translation, have analysed the spreading of personnel structures and procedures across organisations. Their analysis has usually been limited to the organisations' adoption of broad formal structures. Rarely, if ever, have these studies delved into the micro translation of compliance into material procedures and objects within organisations.

Building on the above framework, this qualitative study focuses on the British Financial Services Authority (FSA) framing of the notion of 'treating customers fairly', and on its regulated financial firms' counter reframing and translation of this concept. The generalisable hypothesis of this article is that regulated organisations strategically and non-strategically reframe regulatory pressures in ways that are compatible with their indigenous frames, and that this has ramifications for their material translation of regulation. While this conclusion may seem obvious once we pay attention to the cognitive and material aspects of regulatees' implementation of regulation, it is important because it highlights the inherent limitations of regulatory intervention in organisational settings.

3 Methodology

This article employs an extreme case of ambiguous regulation for building theory regarding the process of compliance meaning construction. It compares the FSA and the financial firms' framing, reframing and translation of the regulator's requirement that firms implement the principle of fair treatment of customers throughout their businesses (hereafter: TCF [Treating Customers Fairly] initiative). The focus on this case of ambiguous regulation entails that transformation of meaning is particularly likely to occur. It is also likely to be the case that this transformation will happen as a result of actors' inconsistent cognitive frames, and not only due to their strategic attempts to change the categorisation of the subject matter. Thus, the analysis in this article is unlikely to be generalisable to all cases. Rather, I am using an extreme case in order to explore the little studied process via which regulation acquires its concrete local meanings and material substance. Nonetheless, as discussed in the introduction, I am assuming that *all* regulations are open to some interpretation, and that new forms of regulation are increasingly open ended.

The frame analysis was performed on two corpuses, combining qualitative and quantitative methodologies as appropriate for the data. The first corpus included all public speeches by FSA officials, delivered between 2003 and 2008 that mentioned 'treating customers fairly' anywhere in the text, yielding 16 speeches (about 52,000 words in total). The focus on FSA speeches was guided by the fact that these speeches were central to the FSA's development of the TCF initiative, and their content was closely monitored by the industry (Black et al. 2007). Following Benford and Snow (2000) and applications of their framework to SNI research (e.g. Creed et al. 2002), FSA speeches were analysed to gauge the relative salience of divergent framings of the regulatory concerns underlying TCF, the solutions to these problems and motivations for compliance. (The assessment of motivational frames was omitted from this article due to space limitations). Again, by 'frame' I mean linking the new regulatory concept – treating customers fairly – to categories of problems, solutions and motivations. The coding of problems, solutions and motivations was based on initial free coding of the speeches, as well as on my acquaintance with existing debates in British retail finance regulation. As presented in section 6, this dual inductive-deductive process resulted in a classification of FSA framing of problems and related solutions under six master-frames: (non-)compliance, consumer choice/empowerment, product regulation, organisational characteristics, managerial responsibilities and commercial discourse. Thereafter, the salience of each frame was measured by counting the number of mentions of relevant key words within the whole corpus of speeches (Table 1, first three columns).

The second corpus involved 50 semi-structured interviews with 61 industry participants[1] from the insurance, retail banking and building societies sectors, carried out between February 2008 and July 2010. Interviews focused on the firms' interpretation and implementation of the regulatory initiative. The interview research sample was limited to large (1,000 employees or more) financial firms. The final interviewee sample included 15 interviewees from 9 retail banks and building societies, 25 interviewees from 14 insurance firms, 3 from other types of firms, 4 industry association officials, 11 regulatory consultants and 3 other informed participants. The number of interviewees per firm varied

[1] Some interviews involved more than one participant.

from one to five, depending on access opportunities. Within firms, interviewees included firms' risk or compliance officers (15), and other managers who were involved in the coordination of firms' implementation of the regulatory initiative (28).[2] Interviews lasted between one and two hours, were recorded and thereafter fully transcribed.[3] Interview transcriptions were systematically coded for recurrent themes using qualitative data analysis software (Atlas ti). This coding allowed me to *qualitatively* depict the firms' receptiveness to (and reframing of) the FSA's framing of the problems underlying TCF, and the association between this reframing and the firms' translation of TCF. In addition, the material changes that 16 firms, for which sufficient information was available, introduced in response to TCF were categorised and quantified with reference to the FSA solution frames in order to allow descriptive statistics of firms' translation of TCF (Table 1, last two columns). The categorisation of the reported changes under the six solution frames involved judgement and acquaintance with the underlying subject matter. In addition, it should be acknowledged that interviews were semi-structured, and interviewees were simply asked what they perceived as the key changes that their firms introduced in response to TCF. They were not asked to choose from within a closed list of possible changes because at the time of interviews I could not know what this list might include. Hence, the quantification of firms' translations of TCF provides a rough approximation.

In order to protect the anonymity of firms and individuals, the names of interviewees and their organisations are omitted from the analysis. Interviewees are identified by reference to their generic role and the number of the interview (e.g. Compliance IV #12).

4 Background to the Treating Customers Fairly initiative

The traditional focus of the FSA and its predecessors' retail market regulation was on firms' disclosure of information to potential buyers and on their assessment of the 'suitability' of financial products to customers' needs, financial capability and 'attitude to risk'. Despite regulatory efforts, since the mid 1990s the selling of retail financial products has generated a series of 'mis-selling' scandals, that is – public and regulatory

[2] The selection of interviewees was manifold. At the very early stage of the research, I approached those coordinating the response to TCF within key industry associations to get a sense of their views of their members' overall responses to TCF. Thereafter, I relied on existing contacts and a snowball 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 industry associations' websites. Interviews in these firms were sought by contacting whoever coordinated the firm's response to TCF, where known, or the press offices of relevant firms. The key obstacle to interviewing was locating and contacting those who coordinated TCF within firms, 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 request to interview them.

[3] Four interviewees declined recording and written notes were taken during the interviews.

contention that firms failed to follow the regulatory requirement to sell financial products that are suitable to the needs and financial capacity of individual customers. A characteristic of many of these alleged mis-sellings was their industry-wide or sector-wide nature, as opposed to deviance by small or marginal firms (Clarke 1999; Ericson et al. 2003: chapter 6). During the research period, this phenomenon manifested itself in the retail banks' vast (mis)selling, and insurers' underwriting, of 'single-premium Payment Protection Insurance'[4] (hereafter: PPI). Mis-selling crises were accompanied by high volume of consumer complaints (an average of three million complaints per year was reported by firms to the FSA between 2006 and 2009).

This brings us to the TCF initiative. The FSA's handbook included 11 High-Level Principles (in addition to a large number of specific rules). Of these, 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.' Responding to recurring mis-selling scandals, the FSA first announced its TCF initiative in June 2001 and then again in July 2004. It proclaimed its intention to broaden the scope of retail finance regulation beyond its traditional focuses on information disclosure and the suitability of products at the point of sale, and to adopt a 'principles-based' approach to regulation (Black et al. 2007; Ford 2008), namely, reliance on broad principles over detailed rules.

In the years following the July 2004 announcement of TCF the FSA issued a series of informal guidance and its officials gave several public speeches wherein they articulated what they expected of firms. In addition to guidance, breaches of the duty to treat customers increasingly featured in FSA enforcement decisions. The FSA called upon firms' senior managers to systematically assess the risks that every aspect of their organisations' 'product life cycle' and corporate culture (FSA, 2004) pose to the fair treatment of customers, to identify gaps in their current management of these risks, implement needed changes, and evaluate the impact of these changes. In 2006 the FSA set six more specific outcomes against which it required firms to analyse, design and evaluate their compliance with TCF (see Appendix A). Finally, in 2007, the FSA set more explicit guidance regarding the drivers of 'fair culture' (FSA, 2007a) and the components of good 'management information' (FSA, 2007b) that managers ought to have in order to assess and drive their firms' compliance. In section 6 below I set these guidance against alternative frames of the problems and solutions underlying TCF.

[4] Single-premium payment protection is an insurance policy, which is bought alongside a personal loan, mortgage, credit card and other forms of credit. It covers the risk that the borrower – the policy holder – will default on his or her repayments of the loan, due to a change in personal circumstances. The basic feature of this product is that the insurance premium is paid up-front, rather than over the life time of the loan's repayment. Among consumers and regulators' concerns regarding this product were: consumers' effective coercion into buying the insurance in order to receive a loan, the limited cover provided by the relevant policies when consumers have defaulted on paying the loan, and the (almost) zero refund of premiums to consumers who repaid their loans early. Moreover, PPI policies tended to be expensive and were in effect used to offset banks' low interest rates on loans (Competition Commission, January 2009).

In May 2007, the FSA set March 2008 as the deadline by which firms should be able to demonstrate their capability to fully assess and measure their fairness to customers, and December 2008 as the date by which firms should be fully compliant with the duty to treat their customers fairly. Thereafter, around March 2008, the FSA conducted intensive 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 financial firms failed to pass this review. These assessments culminated in the FSA's communication of individual 'risk mitigation plans' that firms had to complete by December 2008. The final industry-wide TCF review, which was scheduled to take place around December 2008, was abruptly cancelled in November 2008 in light of the FSA's decision to refocus its supervisory resources in response to the global 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 (Black 2005), and the FSA has not published any statistics regarding firms' performance. What is, nonetheless, clear is that despite firms' implementation of the TCF initiative, as described below, the pervasive (mis)selling of payment protection insurance continued until it was legally banned by the Competition Commission Authority (CCA); a decision that was appealed by the industry and confirmed by the courts. In this regard, at least, the TCF initiative was unsuccessful.

5 Indigenous frames of firms' relationship with their customers

If prior frames matter for the regulators' successful communication of their message, and for how firms interpret and translate regulatory pressures, than our discussion of TCF should be enhanced by reference to the existing frames that shaped the firms' conceptions of their relationship with their customers. In the British retail finance sector, relationships with customers are framed within two divergent business strategies. The first strategy is encapsulated in the life insurance adage that 'insurance is sold, not bought', which over time took strong hold in other factions of the retail finance sector. Underlying this strategy are assumptions that the general population is under-insured and under-invested, that this is a result of low levels of financial literacy, and that it is therefore legitimate and imperative for firms to 'push' their products. Such product and sales-driven strategy manifests itself in the firms' design of money-spinning products and their inducement to staff or intermediaries, via sales targets, and individual and group-based incentives or commissions, to sell these products to as many customers as possible. Firms vary the level and structure of commissions and/or bonuses across products to incentivise distributors and employees to sell one firm's products over those of its competitors and more profitable products over others. Overall, this business strategy naturalises and legitimises the practices and institutional factors that underlie mis-selling scandals, i.e. sales targets, bonuses and the intentionally complex structure of financial products.

A second, alternative, business strategy, which is based in Marketing, proclaims to be customer-focused, rather than product-led and sales-driven. Marketing as a semi-professional discipline took hold in British retail finance in the mid 1990s in response to declining profitability, mis-selling scandals and regulatory pressures (Morgan and Sturdy 2000). Marketing emphasises the need for corporations to study customers' segmented preferences, and to design and offer products and distribution channels that match these diversified preferences so as to enhance customers' demand. In contrast to a product and sales-driven strategy, marketing assumes able consumers who have clear preferences and are able to exercise choice. During the research period, this marketing-oriented strategy was associated with two more specific methodologies: Customer Experience and Customer Relationship Management. Customer Relationship Management regard the firms' use of tools that are known to improve customers' emotional experience of the service, e.g. personalisation of service, politeness, clean and inviting environment etc. Customer Experience is associated with organisations' systematic use of customer feedback in any kind and form (e.g. surveys, focus groups, participation in online forums, real time post-transaction feedback, as well as observation of interaction between customers and staff). The end goal of Customer Experience methodologies is to design the firms' products and customer 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 (Berry et al. 2002, 2006; Meyer and Schwager 2007; Reichheld 2003).

It is noteworthy that the emphasis of marketing discourse that product design and sale should be customer-led and customer-focused, and the regulatory requirement that firms should sale products that are suitable to customers' profiles and needs, are seemingly compatible. Indeed, the mis-selling scandals of the 1990s, and the associated regulatory pressures and reputation damage, empowered marketing professionals and their techniques within financial firms (Morgan and Sturdy 2000). Consequently, firms rebranded themselves both internally and externally as customer-focused, adopted customer-related mission statements and set various change programmes to enhance the so-called customer experience. Yet, alongside these changes to business discourse, throughout the 2000s, the research period included, mis-selling scandals persisted. Thus, whilst the firms' mission statements celebrated the superiority of customer-led product design and sale, product-led hard sales techniques and related remuneration structures remained entrenched.

Table 1: FSA framing and firms translation of Treating Customers Fairly

FSA framing of TCF			Firms' translation of TCF	
Master frame	**Problem or outcome frame** (# of mentions in brackets)	**Solution frames** (# of mentions in brackets)	**Firms' responsiveness to FSA solution frames** # of firms (% of firms)	**Micro-content of firms' translation** (type of changes that firms introduced)
Compliance	Mis-selling (17)	Systems & Controls (13); Controls (36)	9* (60%)	Quality assurance of sales, claims handling & services; monitoring of sales by third parties/intermediaries; all alongside continuation of PPI mis-selling
Customer choice	Customer illiteracy (22)	Clarity of information (44)	11 (70%)	Review of the clarity of existing marketing documents; post-sales assessment of customers' understanding of the product
Products	Product complexity (6)	Product design (53)	11 (70%)	Enhanced focus groups and other forms of customer feedback as part of product design or product review processes; but very few reported changes to the complex structure of products
Organisational	Culture (97)	Training (22)	16 (100%)	TCF computer-based testing and quizzes; TCF tagged tea cups, mouse mats, screen savers etc – aimed at increasing awareness and preparing employees for FSA inspections of TCF implementation
		Remuneration (48)	9** (60%)	Introduction of 'quality' measures for employee bonuses, which are linked to customer satisfaction and loyalty; cancelation of bonus when the customer withdrew shortly after the sale; cancellation of bonus if quality assurance suggest high rate of misguided advice to customers

Table 1 (contd)

FSA framing of TCF			Firms' translation of TCF	
Master frame	**Problem or outcome frame** (# of mentions in brackets)	**Solution frames** (# of mentions in brackets)	**Firms' responsiveness to FSA solution frames** # of firms (% of firms)	**Micro-content of firms' translation** (type of changes that firms introduced)
Managerial	Senior management responsibility (165)	Management information (70) Evidence provision (14)	16 (100%)	Setting indices, targets and thresholds (red, amber, green), and collection of largely existing information to provide evidence for firms' fair treatment of customers; delegation of the design of indices, the setting of performance targets and the evaluation of performance to lower levels of management; regular reporting of data summary to senior governance committees
Commercial	'Experience for the consumer' (8)	Customer feedback (2) Customer research (4) focus groups (0)	6*** (40%)	Periodic customer feedback over firms' services; acquisition of new IT systems for recording customer feedback

(*) Excluding formalisation of product design and review processes
(**) But no firm changed the structure of commissions paid to independent external distributors
(***) Excluding focus groups and solicitation of customer feedback as part of product design

6 Regulatory framing of Treating Customers Fairly

The aim of this section is to gauge the links that the FSA in public speeches made between treating customers fairly and different problems and solutions, in order to thereafter compare the FSA's framing with that of firms as reported in interviews. The findings of the frame analysis are summarised in Table 1 (first three columns entitled 'FSA framing of TCF') and explicated below. (For elaboration of the frame-analysis methodology see section 3.).

As evident in Table 1, the most salient framing of TCF in FSA speeches, was its categorisation as a senior management responsibility ('senior management' or 'top management' mentioned 165 times). This managerial frame differs from a technical compliance frame, as discussed below, inasmuch as it calls for the centralisation of evaluation and decision making at the hand of firms' executives. For example:

> So what is different about this initiative from past regulatory action…? There are two key and related changes. The first, and the starting point, is underlining that TCF is the responsibility of senior management. But in doing so, making clear that senior management responsibility is not just about setting the vision for their organisation on TCF. They have also to drive their organisation to ensure that TCF is built consistently into the operating model and culture of all aspects of the business (Oliver Page, FSA director, 2005).

Associated with this managerial frame was the FSA's emphasis on the managers' need to use adequate 'management information' to assess, improve and monitor their firms' performance ('management information' or MI cited 70 times). Importantly, management information was framed as an *internal* tool of central monitoring in the hands of senior managers. In contrast, as will become apparent further below, firms reframed the FSA's demand that they gather management information as an expectation that they provide *evidence* of their already fair practices to the regulator. That said – the notion that firms should collect and provide evidence also appeared in FSA speeches (14 times).

The second most salient FSA framing of TCF was its categorisation as a 'cultural' issue (97 mentions of 'culture' or 'cultural') (hereafter: the 'organizational frame'). The precise meaning of 'culture' was never directly disentangled in FSA speeches. Instead, the FSA elaborated what it perceived as key drivers of culture: strategy, leadership, controls, training and remuneration (FSA, 2007a). Of these, remuneration – arguably the key cause of mis-sellings – was mentioned 48 times (with 20 citations of 'reward', 14 of 'commission' and 14 of 'remuneration'). A recurrent, almost standard, paragraph in FSA speeches went as follows:

> Treating Customers Fairly is a cultural issue … We have found that weaknesses in a firm's corporate culture can lead to poor quality outcomes for consumers. For example, firms with poor training and competence arrangements tend to offer poorer quality of advice. And if a firm relies heavily on rewards driven by sales-based commissions then this may – without adequate controls – lead to mis-selling (Clive Briault, FSA director, March 2007).

What is noteworthy about the above frames is that the issues to be addressed – 'senior management responsibility' and 'culture' – are defined positively in terms of the managers' need to take responsibility and to cultivate an organisational culture that will support TCF. They are not explicitly framed as deficiencies to be amended. The salience of the above two frames – the managerial and the organisational – contrasts with the

FSA's lesser emphasis on the following four frames (although some important nuances are discussed below).

Firstly, the FSA could have framed its initiation of TCF as driven by the firms' non-compliance with its existing regulations, the recurrence of mis-sellings, and the need for enhanced formal controls and power to compliance professionals (hereafter the 'compliance frame'). Explicit reference to 'mis-selling' (or to the risk of mis-selling) appeared only 17 times in FSA speeches. Thus, while mis-selling scandals were clearly the driver underlying the TCF initiative, they were not particularity salient in FSA framing of what TCF is about. This relatively low salience of mis-selling most likely reflects the FSA's attempt to underplay the link between TCF and what for firms was a highly contentious issue, which as shown below, firms tended to dismiss as a media construct irrelevant in their case and so forth.

Equally, firms' need to buttress their formal compliance systems ('Systems & Controls' in FSA jargon), while by no means insignificant, was not a central theme of FSA speeches. The regulatory term 'Systems & Controls' appeared only 13 times. 'Controls' appeared 36 times,[5] but mostly as part of a longer list, and sometimes in negation such as:

> I am aware that there are commentators … out there telling firms that treating customers fairly is all about setting up costly systems and extensive governance processes. This is not our position at all … we are … keen …. to give firms a clearer indication of what we want them to achieve without them having to follow an overly-defensive approach (Clive Briault, FSA director, 2005).

As to compliance professionals, if anything, the FSA framed delegation of authority to compliance departments as part of the problem rather than the solution. For example:

> The FSA's principles, rules and guidance place responsibility on senior management for incorporating the fair treatment of customers into the firm's corporate strategy, delivering that strategy and monitoring its effectiveness. But in some firms these issues are treated in a minimalist, box-ticking way and are *buried in Compliance Department*s. They are not owned by senior management and therefore, hardly surprisingly, have little impact on the culture and behaviour of the individual members of staff who make up the firm (Carol Sergeant, FSA director, 2003; emphasis added, SG)

Thus, FSA speakers did not seek to drive firms to *necessarily* adopt more formal compliance systems, nor to empower compliance departments. This may have been because their past experience suggested that such systems tend to be decoupled from the

[5] I counted all cases where the word 'controls' was used as a noun rather than action. If I were to include 'controls' as an action, the number of mentions would be 37 instead of 36.

firms' strategic decision making, and day-to-day operations. In addition, given New Labour's Better Regulation Agenda – i.e. its commitment to reduce regulatory burdens while enhancing regulatory effectiveness – it is unsurprising that the FSA chose to frame TCF as enhancing managerial autonomy over stressing the need for more rules and formal controls.

Secondly, the FSA could have framed the problem underlying TCF as relating to information asymmetries between firms and consumers, and to emphasise the need for consumer empowerment (hereafter the 'customer choice frame'). FSA speakers certainly acknowledged consumers' deficient 'financial capability' or 'financial literacy' as problematic, and expressed the FSA's commitment to financial education and to the cultivation of 'confident and capable consumers' (22 mentions). On FSA financial education see Williams (2007). Yet, this problem frame was not as salient as the above references to culture and to senior management responsibility. Consistent with this construction of consumers as vulnerable and incompetent, the FSA stressed that there is a marked difference between satisfying customers and treating them fairly. For instance:

> … in a market where there is a large gap in understanding between the firm, and the consumer … there is a big difference in consumer satisfaction and consumers that are treated fairly. Put bluntly, satisfied consumers may have been treated very unfairly (Sam Tymms, FSA head of department, 2006).

Alongside, and independent of, the FSA's categorisation of customers as ignorant and vulnerable, FSA speakers stressed their expectation that firms provide consumers with clear and non-misleading information so as to allow them informed choice (provision of clear information mentioned 44 times). It is noteworthy that this positive solution frame is twice as salient as the more controversial problem frame of customer illiteracy and vulnerability.

Thirdly, the FSA could have framed the structure of financial products as the key problem, and the firms' need to modify and simplify their products and charges structure as the solution (hereafter the 'product frame'). Yet, FSA speakers refrained from suggesting that the structure of the firms' products is flawed (although they sometimes referred to product complexity as a source of confusion for consumers; 6 mentions). Moreover, they made statements such as: 'We expect the markets to determine what products should be produced and distributed,' and 'We are not, and do not want to be, a product or price regulator.'

These statements were consistent with British financial regulators traditional approach that all products are suitable for some customers depending on their needs and risk appetite. Whereas the structure of financial products hardly appeared as problem in speeches, FSA speakers positively stressed that firms should design products that are intended to fulfill the needs of specific target groups ('product design', 'designing product' and associated phrases appear 53 times). As shown below, the FSA's stress that firms should match product design to customers' segmented *needs* was understood and translated by the firms' marketing professionals as a requirement to decipher customers segmented *preferences*.

Finally, and crucially for the argument in this article, missing in the FSA's framing of TCF were explicit links with marketing and customer experience values and jargon (hereafter: the 'commercial frame'). The low occurrence of 'customer feedback' as a 'solution' in FSA speeches ('customer feedback' mentioned twice, 'customer research' mentioned 4 times, and 'focus groups' not mentioned even once) is compatible with the FSA's abovementioned framing of consumers as vulnerable and ignorant. In contrast, as discussed further below, solicitation of customer feedback was unsurprisingly central to how the firms' marketing and customer-experience professionals came to reframe and translate TCF.

In sum, the FSA framing of TCF stressed its categorisation as a senior management responsibility and as a cultural issue, which cannot be delegated away to compliance or disposed of by means of formal systems and controls. This framing of TCF seems to have been strategic inasmuch as it focused on positive outcomes and solutions over contentious problems (i.e. mis-selling, customer illiteracy and flawed products). It was also consistent with a more general discourse in British government about the need to enable innovation and to limit regulatory burdens. However, FSA speakers did not seek to overcome the firms' resistance by making explicit links between the aims of TCF and business-marketing/ customer experience discourses and tools. If anything, in response to the firms' framing and reframing of TCF as discussed below, the FSA stressed that there is a clear difference between satisfying customers and treating them fairly.

7 Firms' reframing and translation of Treating Customers Fairly

Having analysed the FSA's framing of TCF we now move to the firms' response to it. The analysis is divided into two main periods: the firms' initial non-strategic reframing and inaction between 2004 and 2007, and their subsequent strategic reframing and translation of TCF between the end of 2007 and 2009.

Initial non-strategic reframing and inaction

During the first three to four years following the FSA's 2004 announcement of TCF it instigated little industry investment in any change implementation. Of those firms that participated in this research and regarding which sufficient data was available, only 2 firms introduced a formalised change programme in response to TCF by 2005, 4 more firms have done so during 2006, whereas 15 did not do so until 2007 and 2008. One firm retained its approach that TCF entails little if any change throughout the research period. The firms' inaction was associated with their framing of treating customers fairly as something that they already adhere to, and therefore requiring reporting rather than change implementation. This interpretation of TCF was in part rooted in the firms' linkage between 'fairness' and *commercial* marketing indicators: customer retention, customer satisfaction, market size etc. For example:

> … the executives [who]…. were sort of espousing that view [that we already treat customers fairly] could point to … past work they'd done on complaints handling, [and to] customer satisfaction scores, to say, 'if we weren't treating our customers fairly, something would be showing up on these measures' (Compliance IV #45).

In addition, firms perceived TCF as requiring no action, because they equated 'fairness' with their existing formal compliance systems, on the one hand, and their customer-centric business strategy, mission statements and programmes, on the other hand. The latter were manifestations or firm-specific translations of broader marketing (and customer experience) discourses. For instance:

> *Our culture was* [already] *customer-centric, it was great customer service experience*…[and as a result] we were very inert and didn't do anything [re TCF] (Customer experience IV #27).

As discussed in Gilad (2011), as the FSA pressure escalated, the firms' initial puzzlement turned into more explicit resistance due to the threat that TCF posed to their self perception (or 'organizational identities'). By contrast, interviewees from 6 firms described their organisations as early implementers of TCF. Of these firms, 5 were medium-size insurance firms, whereas only one was a major insurer. The latter major insurer, though being an early implementer, retreated to a 'business as usual' approach shortly after initiating its first TCF-implementation programme, and reinstated another programme towards the end of 2007. The relative amenability of medium-size insurers to TCF can be understood in light of their tendency to perceive their organisations as failing behind in terms of investment in new marketing methodologies (i.e. customer research, customer experience and customer relationship management). Thus, while these firms like others associated TCF with a commercial, marketing, discourse of customer-centricity, they were responsive to it due to their perception of their organisations as lagging behind their competitors in making the move from a product-led to a customer-led business strategy (see section 5 above). For example, interviewees from one of these firms explained:

> Traditionally, [large financial] groups … have tended to do far more detailed research with consumers … it resulted in … groups like ours … who are of a medium, smaller size, having to up our game (Compliance IV #31).

Finally, mis-selling scandals and mass consumer complaints, including with regards to the selling of single-premium PPI by many of the firms that were interviewed for this research, were not registered by firms as an indication of their 'unfairness'. This is because firms tended to play down the significance of consumer complaints and mis-selling scandals. Interviewees often referred to mis-sellings as an historical phenomenon of the 1980s and 1990s, or as something that happens in other, less customer-centric and responsible firms. They were also inclined to frame mis-selling not as a substantive problem, but as a regulatory or media construction, such as:

> Most of the mis-selling is not … definitely mis-selling. It's about [us] not being able to prove the [investment advice] documentation is right [from a technical compliance point of view] (Compliance IV #12).
>
> … the accusations against the finance sector … some of it is media-driven, and the media being the media, they're not interested in boring stories, they're interested in scandal, because that's what sells papers and gets you turning your television on (Customer experience IV #40).

On the whole, the above data suggests that the firms' initial interpretation of TCF as requiring no action was shaped in light of existing frames – commercial indices, the firms' organisational identities, and the industry's tendency to underplay the ubiquity and gravity of mis-selling. With the escalation of FSA pressure and enforcement during 2007 and 2008, and its setting of clear review deadlines in March and December 2008, the firms felt compelled to respond in order to satisfy the FSA. Yet, as evident below, their translation of TCF, whilst responsive to the FSA's messages, nonetheless injected it with commercial, marketing, values and methodologies.

Strategic reframing and translation

Between the end of 2007 and 2008 the firms invested substantial resources in the implementation of TCF. Table 1 (last 2 columns, entitled 'firms translation of TCF') summarises quantitatively and qualitatively what interviewees from 16 firms where sufficiently detailed information was obtained, perceived as the main changes that their organisations have introduced in response to TCF. (For elaboration of the coding and its limitations see section 3).

As evident from Table 1, the firms' translation of TCF was, a priori, responsive to the FSA's messages. Yet, as shown below, it involved reframing of the problems with ramifications for the reframing of FSA solutions and their translation. Two key findings are of particular interest. Firstly, all 16 firms have introduced some form of management information for TCF. Yet, as elaborated upon below, the firms' reframed the logic underlying the collection of management information from an internal tool of evaluation and change implementation into provision of evidence to the FSA regarding their already fair practices. In the same vein, all 16 firms engaged in 'TCF training', which they saw as a response to the FSA's stress that TCF is a cultural issue. Yet, the firms' reframing of the logic underlying their communication with employees emphasised not the need for cultural change, but for familiarising their staff with FSA TCF jargon in order to prepare them for the regulator's review deadlines. The ramifications of this reframing for the translation of TCF were that the firms' implementation of TCF mainly rendered their existing performance more transparent and quantifiable. Secondly, inasmuch as firms introduced some changes to their existing processes, these changes tended to be consistent with the firms' commercial frames. For instance, 11 firms made some change to their product design processes, and 9 adjusted their employee remuneration policies in response to the relative salience of these issues in FSA speeches. Yet, as discussed below, the micro translation of these concepts was shaped by the discourse and methodologies of customer experience. Moreover, striking about the firms' translation of TCF was their relative inclination to invest in new means for customer feedback (6 of 16 firms) notwithstanding the FSA's very low focus on this issue (2 mentions).

Fairness as an evidence problem

All 16 firms, as mentioned, translated TCF into some form of management information tools. Typically, this took the form of an Excel file, organised around the FSA's Six TCF Outcomes, with a number of indices against each Outcome, numeric targets and thresholds for each index, and periodic rating of the firm's performance as green, amber or red. Firms employed various techniques for aggregating and summarising their varied performance across subsidiaries and individual units. This similarity in management information format, adopted by the firms, was not dictated by the FSA. If anything, the FSA was driving firms away from overly quantitative assessment of TCF. Rather, the firms' translation of TCF into indices, targets and thresholds embodied what for them was a familiar and legitimate format of risk-management and/or performance-management measurement scorecards (cf. Dejean et al. 2004).

The FSA, as discussed above, framed management information primarily as an *internal* monitoring tool in the hands of senior management, with external evidence as a secondary goal. Yet in the firms' talk, at least initially, management information was often associated with the need to provide external evidence to the FSA. Compliance professionals and other TCF coordinators within firms explained how this focus on evidence enabled them to cajole their business colleagues into action. Such as:

> People … [said] 'We are [Insurance Plc] of course we do the right things for customers … .' And … we then say, 'Okay, well, evidence it, prove it, show it,' and that was difficult (Customer experience IV #30).

Equally, interviewees from all 16 firms reported their firms' engagement in communication of TCF to their employees. Yet, internal training was framed as a means for preparing employees for the FSA's inspections, as well as collection of evidence for the firm's 'cultural embedding' of TCF. Many firms required their employees to complete a Computer-Based-Training (CBT) on TCF. Equally, towards the FSA TCF reviews, many firms sought to raise staff awareness via executive speeches, TCF posters, mugs, screen savers etc. These forms of communication had the advantage of being easily quantifiable (e.g. the number of employees that passed the test, the number of speeches delivered) and visible to FSA supervisors. 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 I said, 'You've had a visit from the FSA?' and that's what happened (Compliance IV #7).

Firms' reframing of TCF as an exercise in collecting and providing evidence for their existing organisational cultures and practices had important implications for their micro-translation of 'fairness'. Interviewees suggested that their firms' design of management information for TCF mostly involved collection and better analysis of existing business data, and formalisation of existing processes. Critically, interviewees suggested there was limited change to the processes and practices underlying their management information indices (see the discussion in the next section). In other words, the firms' 'fairness' indices mostly reflected their carry out and outputs of control processes that already in place before TCF, either for regulatory or for commercial/marketing reasons. Inasmuch as change was implemented, this was mainly in terms of formalising or rationalising existing processes so as to make them more consistent and thereby measurable. Similarly, the targets that the firms set for themselves typically reflected their existing performance as well as incremental improvement in areas where they saw a commercial need to enhance their performance vis-à-vis their competitors.

In sum, compliance officers and other TCF supporters, at least initially, strategically reframed the issue underlying TCF as a problem of evidence rather than substance. In so doing they bypassed confronting their colleagues' existing frames, which equated fairness with their existing formal compliance systems and customer-centric mission statements, programmes and procedures. It is noteworthy that the motivation of the firms' compliance officers in stressing the need for evidence was to induce managers into action. Yet the outcome of this reframing, even if inadvertently, was that it legitimised maintenance and only incremental change to the firms' existing practices.

Fairness as a whole-business responsibility

FSA speakers emphasised that TCF is a senior management responsibility which cannot be delegated to compliance. Compliance officers who were sensitive to these messages built on the FSA's pressure to induce business managers to 'take ownership' of TCF, and conceptualised their own role in terms of auditing firms' compliance. They reiterated that TCF is a 'business issues and responsibility', as opposed to 'compliance responsibility'. For example:

> Historically if something like TCF came out … [everybody would]… have turned to me and said, '… it's your job to make this happen', whereas now we make a

> conscious decision [to say:] … this is a business issue and therefore the business needs to brace it … it's going to be led by a business manager (Compliance IV #12).

Consequently, during 2007 and 2008 firms allocated the primary responsibility for leading and coordinating TCF to managers outside compliance. In only 2 of the 16 firms was the coordination of TCF left in the hands of compliance departments. One of these outliers was the only company in my sample that regarded TCF throughout the research period as 'business as usual' and therefore requiring no change programme implementation. In the second company the compliance officer actively, albeit unsuccessfully by the time of interview, sought to transfer the coordination of TCF to business managers.

With some variation, each firm established an executive-level TCF steering committee headed by a 'TCF sponsor' (e.g. the firm's marketing director), shadowed by a 'working' committee of second-tier managers from across the firm. Some firms nominated a designated middle manager to head the working committee, and to coordinate their response to TCF. Typically, these managers were those in charge of the firms' customer experience teams located either within their marketing departments or customer service operations. Other firms nominated interim project directors and project teams to drive their response.

The firms' framing of TCF as a '*business* issue and responsibility', while responsive to FSA messages, somewhat differed from its framing by the FSA as a '*senior management* responsibility'. As discussed in Gilad (2011), the coordinators of TCF sought to gain internal cooperation via wide participation of managers across the business in its design and implementation. Consequently, to different degrees, they encouraged and relied upon the managers of individual business units and subsidiaries to decide which indices are best suited to measure the 'fairness' of their individual units, continuously assess their own performance, devise local change programmes as they deem necessary, and to then provide a periodic summary and commentary on their performance to the firms' managing executives, the Board and the FSA.

There were multiple reasons for the firms' internal delegation of the design, implementation and practical carrying out of TCF to individual business units. It was both an attempt to generate internal commitment for TCF via wide participation, and a practical necessity given problems of asymmetric information and deficient coordination within large financial corporations. The important point for the argument in this article is about the complex chain between: (a) the FSA's framing of TCF as a senior management responsibility, (b) compliance officers' reframing of TCF as a business issue, and (c) the firms' diverse translations of the allocation of authority and division of labour among the executives, the business/customer experience coordinators of TCF, and the managers of individual business units and compliance departments. The diversity of the firms' translations was arguably related to firm-specific framings of the allocation of authority and the division of labour between different parts of the company, irrespective of TCF.

Some firms were generally more (de-)centralised, or have had more/less pro-active compliance departments, and this had implications for their interpretation and translation of TCF.

Fairness as enhanced customer experience

Finally and unsurprisingly, the implementation of TCF was often integrated with the firms' existing customer-experience programmes. Interviewees perceived the integration as the most natural and effective way to generate commitment for it. For example:

> … people [in other firms] went, 'Oh … TCF, what is this? … bloody the FSA …', whereas, we thought, 'Actually, there's a lot of merit in doing this.' We did it wholeheartedly – we did it from a marketing and customer strategy perspective, rather than a compliance one (Marketing IV #39).

The reframing and integration of TCF with the firms' customer experience programmes had important implications for its translation by firms. As already mentioned, interviewees suggested that TCF entailed limited collection of new data and/or change to processes. Nonetheless, inasmuch as some change was implemented, enhanced solicitation and use of customer feedback and engagement – the bread and butter of customer experience – were salient in the firms' translation of TCF. The fact that firms perceived TCF as demanding their investment in enhanced solicitation of customer feedback suggests that they have interpreted the FSA messages via their own customer experience framing.

As evident from Table 1, 11 firms introduced some change to their product design and review processes. This, in itself, was responsive to the salience of product design in FSA speeches. Yet, the micro content of firms' translation involved enhanced solicitation and formalisation of customer feedback and customer research as part of product development and review processes. Also apparently responsive to FSA messages was firms' adjustments of their existing employee remuneration schemes (9 firms). Firms reported that their firms incorporated 'qualitative' performance measurements beyond sales volumes, into employees' remuneration and bonus schemes. Yet, the content of these 'qualitative' measures was often commercially driven, and customer-experience related: linking employees' remuneration to customers' satisfaction and/or their reported loyalty ('inclination to recommend the firm to their family and friends'). In addition, 6 firms (40%) reported that TCF drove them to solicit more periodic feedback on various aspects of their services, and/or to purchase new IT systems to support their customer engagement and/or their capture, and analysis of customer feedback. An interviewee from one of these firms remarked:

> … there's a big turnaround in terms of the value that we contribute to consumer research … it is now riddled through everything we do in a way that it wasn't

> before, [previously] it was very ad hoc … that's the biggest change (Marketing IV #37).

Earlier it was noted that marketing/ customer experience and regulatory discourses are compatible in their emphasis that the firms' products and services should be sensitive to customer needs. They do, however, differ in two important respects which entailed that firms' linkage between TCF and their customer experience programmes could have undermined some of the FSA's intentions. Firstly, the methodologies of customer experience rest on the assumption that customers have clear *preferences* that can be studied, whereas the FSA was sceptical about consumers' financial literacy and sought to drive firms to design products that are both comprehensible and match customers' 'objective' *needs*. Secondly, marketing methodologies are intended to cater for customers' emotional needs and states, i.e. making them feel comfortable, welcome, esteemed etc. Consequently, as mentioned, FSA speakers stressed that there is an important difference between satisfying customers and treating them fairly.

As with their general receptiveness to FSA messages, interviewees were sensitive to the FSA's distinction between fairness and satisfaction. Some of them explained how they sought to satisfy both the FSA and their own goals. Others, however, while conceding the need to differentiate between customer satisfaction and fairness, reframed 'fairness' as being about the quality of firms' management of customers' emotions. In other words, they perceived fairness as the result of a successful 'customer experience' or 'customer relationship management'. For example:

> Customers, who are told their claim isn't going to be paid, [do not] feel satisfied. But … 80% ... of those customers, whose claims are declined, [were] saying they were treated fairly. And that is all about the explanation [of] the rationale for the decline … in a way [that is] … clear … open … unambiguous and very empathetic. Given that, the customers will still say, 'Hey, you treated me fairly.' (Customer experience IV #35).

8 Discussion and conclusion

The main focus of regulatory compliance literature has been on the corporations' motivations for compliance. This literature suggests that regulators can enhance corporations' compliance by using the right blend of enforcement, education, third-party involvement and guidance. A major limitation of this literature is that it tends to assume that the meaning of compliance is given and static. In contrast, as this study has shown, 'compliance' is better understood as a flexible and malleable institution which takes shape over time and alongside its penetration of organisations.

Moreover, while some researchers, mostly sociologists, have acknowledged that compliance is interactively constructed, we do not yet have a solid theoretical framework and methodology to make sense of the *process* of compliance construction. This article proposes a compliance construction framework and methodology, which builds on insights of Sociological New Institutional (SNI) theory regarding the construction of meaning in institutional fields, and extends these insights to the organisational level. It proposes that the meaning of compliance is translated into local material procedures and objects as a result of regulators and regulatees' sequential strategic and non-strategic framing and reframing of regulatory requirements. This process is continuous because the meanings of compliance alter with regulators and firms' changing problems and solutions' frames.

These findings and arguments are important as they stress that both researchers and regulatory practitioners need to acknowledge the inherent limits of regulation and other forms of social controls, when penetrating other social spheres (cf. Teubner 1993). This does not suggest that organisations are unmovable objects which cannot be changed. Quite the contrary, I am suggesting that organisations continuously reframe and translate institutional pressures in light of their changing conceptions of problems and solutions. Yet, this process of change is internally constituted by the organisation members' categorisation of issues, some of which are more institutionalised than others.

More specifically, the proposition that emerges from this study is that compliance construction involves the following complex and continual sequences: (a) regulatory messages are strategically framed and reframed so as to enhance their favourable reception by multiple audiences, and by regulated firms in particular; (b) industry-wide and firm-specific indigenous frames shape the firms' non-strategic reframing of regulatory messages; (c) internal pro-change actors will tend, for both strategic and non-strategic reasons, to reframe regulatory pressures to align them with less threatening internal problem frames and as an incremental extension to existing solutions frames; and (d) the reframing of regulatory messages results in material translations of compliance that embody the firms' particular discourses and methodologies. These arguments are elaborated below.

Firstly, the article suggests that more attention should be given to the regulators' framing of their public messages. Much compliance research focuses on one-to-one interface between inspectors and individual regulatees. By comparison there is surprisingly scant research on the strategies that regulators employ in their public communications (but see Gilad 2008; Yeung 2009). The SNI framework that was advanced here would expect regulators to strategically link new regulatory demands with their audiences' existing categories of good regulation and/or commercial logic. For example, it was shown that the FSA was inclined to link TCF with positive outcomes and solutions (e.g. management responsibility and management information) over more contentious frames, and to align it with broader notions of 'better regulation'.

Secondly, the article proposes that corporations judge their own practice as compatible or incompatible with regulatory messages through their indigenous frames, which may be inconsistent with regulatory intentions. These frames may be industry-wide categories as reframed within the corporation or firm-specific conceptions. Inasmuch as these frames are institutionalised/ taken for granted, the firms' reframing of regulatory messages is not a strategic choice. Persistent regulatory pressure which threatens such entrenched cognitive frames, will be met with purposeful defiance and avoidance strategies. It was shown above that most financial firms' initial non-response and later, resistance, to the FSA's messages was rooted in their linkage between fairness and their performance against commercial indicators. Equally, early implementers of TCF were not those who acknowledged mis-selling as a problem, but those who perceived themselves as commercially failing behind in terms of their adoption of state-of-the-art marketing methodologies.

Thirdly, an SNI framework would expect internal pro-change actors to reframe regulatory messages so as to align them with internallynaccepted problems and to construct their own favoured techniques as solutions not only to these problems but also to regulatory demands. In so doing, pro-change actors simultaneously enable change whilst buffering their organisations from regulatory attack on their taken-for-granted cognitive frames. Their act of reframing is likely to be intentional, that is, strategic. Yet, their choice of certain frames over others is further rooted in their own embedding in professional and corporate-specific discourse. In this case, it was shown how compliance officers and marketing professionals sought to reframe the problem underlying TCF as concerning evidence, as a business issue and responsibility and as a customer experience issue. These frames enabled firms to engage with TCF without directly confronting their beliefs that they are already compliant. They further created an explicit link between the FSA messages and an accepted, and therefore legitimate business concern with the customer experience. The actions of compliance officers and marketing professionals were, to an extent, strategic inasmuch as they explicitly sought gain their colleagues' cooperation. Yet, the content of the reframing was not purely strategic inasmuch as these actors themselves believed that their firms' are already fair, that what the FSA are essentially after is enhanced customer experience, and that the adequate way to enhance the customer experience is via making it a whole-business enterprise. In other words, even those who strategically reframe regulatory messages are constrained by and embedded in industry and firm-specific discourses.

Fourthly, this article is certainly not just about the ways in which regulators and firms talk about compliance. It is also about the way in which their talk translates into local procedures and objects. For example, 'senior management responsibility' is reframed into 'business issue and responsibility', which is then translated into local variations of work allocation for choosing appropriate performance indicators, setting performance targets, evaluating performance targets and deciding on further action. It is further suggested that the reframing of regulation can lead to local translations of regulation, which are both responsive to regulatory messages yet not fully compatible with the logic underlying these messages. This argument diverges from an expectation that formal compliance structures will be decoupled from the firms' operations, and from accusations that firms' compliance structures are merely a form of 'window dressing'. While these arguments are sometimes correct, this article suggests that even when organisations are committed to comply, their translation of regulation will be shaped by local framings of problems and solutions.

Fifthly, it should be acknowledged that the above arguments have been developed on the basis of an extreme case of ambiguous regulation. Yet, regulation increasingly takes the form of vague and non-prescriptive standards and categories, which require regulators and regulated firms to engage in interpretation and translation. Moreover, while this article is framed as being about the firms' compliance with regulation, its key insights are relevant to other fields. For instance, the same insights are relevant for local framing and translation of international standards, and to street level implementation of central government mandates. In all these cases it is relevant to think not only in terms of motivations for compliance but also in terms of local framing, reframing and translation of the meaning of what is involved in compliance.

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Appendix A

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.

Source: FSA (2006) *Treating customers fairly – towards fair outcomes for consumers*, p. 3

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