

IFA Magazine – 10th Anniversary look at compliance

Compliance over the years.

IFA Magazine has been publishing almost exactly the same length of time as my own compliance business. We have shared some interesting times. Very much under the old Chinese curse “May you live in interesting times!”

The one thing that has been constant over the years is that things will continually change. This has all been fairly positive for compliance consultants as firms have needed help at every step of the way.

In 2011, firms were still getting to grips with the Treating Customers Fairly guidelines. Treating Customers Fairly (TCF) is an outcomes based regulatory and supervisory approach designed to ensure that regulated financial institutions deliver specific, clearly set out fairness outcomes for financial customers.

The six outcomes of TCF are.

1. Culture and Governance - Clients are confident that they are dealing with firms where the fair treatment of customers is central to the firm culture.
2. Product Design – The products and services marketed and sold are designed to meet the needs of identified customer groups and are targeted accordingly.
3. Clear Communication – To give clear information to clients and keep them informed before, during and after the time of contracting.
4. Suitable Advice – Where clients receive advice, the advice is suitable and takes account of their circumstances.
5. Performance and Standards – The performance of products and service levels are according to our clients’ expectations.
6. Claims, Complaints and Changes – Clients do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.

None of these in themselves involved any change in practises to most firms who were acting ethically, but firms needed to prove the TCF was embedded in all their processes, rather than simply being a tick box exercise.

The next regulatory change was the Retail Distribution Review (RDR) which was launched by the Financial Services Authority (FSA), with most of the rules it introduced taking effect at the end of 2012.

The main points from the RDR:

- Firms must be either Independent or Restricted.
- Advisers needed to be qualified to at least Diploma Level to continue to advise.
- Advisers could not charge commission and could only operate on an Adviser Fee basis.

The classification of firms made some sense but did not stop networks from describing their panels as some kind of independence.

The adviser fee issue was a well-meaning try by the FCA to move advisers from sales to advice. Whilst, this should have meant better value for clients, the providers and advisers simply re-badged commission to adviser fees. If they were charging commission of 3%, they simply charged a fee of 3%. No real change was achieved.

The increased qualification required by advisers simply forced many advisers to stop advising, either altogether or on regulated products. Personally, my experience is that higher qualification does lead to better advice. So this was a positive thing for all the advisers still able to practice. The higher level may have weeded out some of the sales-orientated people.

The higher qualification was to bring financial advisers into line with professionals, such as accountants or solicitors. I believe that a further step to Chartered Status achieves this and that step up can only be a matter of time.

The next bit of regulation to come in was the Financial Advice Market Review. The review builds on improvements made to the financial advice industry brought about by the Retail Distribution Review (RDR) which raised the standards of professionalism across the financial advice market.

FAMR was launched jointly with HM Treasury in 2015 and built on the work of the RDR.

Both were significant milestones which sought to improve standards in the distribution of retail financial services products. We committed to review their impact on the market for support for consumers seeking to invest, and to test whether they delivered their desired outcomes..

The recommendations outlined in the report were aimed at:

- providing affordable advice to consumers
- increasing the accessibility of advice
- addressing industry concerns relating to future liabilities and redress, without watering down levels of consumer protection.

The government and the FCA Board welcomed the report on 16 March 2016 and accepted the recommendations directed at the Treasury and the FCA respectively. The report also made recommendations directed towards employers, service providers and consumer groups.

The recommendations fell into 3 key areas: affordability, accessibility, and liabilities and consumer redress.

In 2016, we saw the introduction of Markets in Financial Instruments Directive 2 (MiFID2).

UK legislation and rules regulating markets in financial instruments (UK MiFID framework) cover firms that provide services to clients linked to 'financial instruments' (generally: shares, bonds, units in collective investment schemes and financial and commodity derivatives), and the venues where those instruments are traded.

For investment firms that undertake investment services and activities, the UK MiFID framework sets requirements in a number of broad areas including:

- conditions and procedures for authorisation
- organisational requirements, including rules on handling of client assets
- conduct of business requirements
- pre- and post-trade transparency requirements when dealing over-the-counter in financial instruments
- transaction reporting

Fortunately for advisers, MiFID 2 was more about fund managers and had little effect on firms except on the reporting of investments.

In late 2019, we had the introduction of the Senior managers and certification Regime for all firms. This was a further attempt by the FCA to get the industry to give customers better outcomes.

The Certification Regime involved the evolution of the FCA register to include mortgage advisers. The onus was put back on firms to authorise advisers and to monitor the advisers that they could be signed off as “fit and proper” to advise.

The Senior Managers Regime brought in scope of responsibility for directors and senior managers.

Codes of conduct were brought in to remind people of the behaviours expected. The Conduct Rules set standards of personal conduct against which we can hold people to account. They apply to all employees of solo-regulated firms, except for certain ancillary staff who are specifically excluded.

First Tier – Individual Conduct Rules

1. You must act with integrity
2. You must act with due care, skill and diligence
3. You must be open and cooperative with the FCA, the PRA and other regulators
4. You must pay due regard to the interests of customers and treat them fairly
5. You must observe proper standards of market conduct

Second Tier – Senior Manager Conduct Rules

- SC1. You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
- SC2. You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system
- SC3. You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- SC4. You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

Once again, The FCA wants this to be a culture running through organisations, rather than a bit of training to tick a box.

After so many efforts, the FCA is still looking for the silver bullet to get good outcomes for customers.

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