

TREATING CUSTOMERS FAIRLY

Update

The FSA recently issued a progress report on the Treating Customers Fairly (TCF) initiative following a review of larger (relationship managed) firms. Although the review looked at larger firms, the findings are highly relevant for all firms.

1. KEY POINTS

1.1 What is management information?

Management Information (MI) is information that is collected during the course of day-to-day business. This could include information on clients, staff and sales activities, contacts and business quality reviews. If collected correctly, it should provide an on-going update and record of key aspects of the business, for examples sales/meeting records.

MI may be information that requires some periodic review. For example data relating to complaints, where lessons may only be learned and remedial action taken, once trends are identified and analysed or a particular failing discovered.

1.2 Deadlines set by the FSA

All firms were expected to have appropriate MI flows in place to test whether they are treating their customers fairly by the end of March 2008. Firms must also be able to demonstrate that they are actually treating their customers fairly by the end of December 2008.

1.3 Progress to Date by Larger Firms

The FSA assessed 96 of its relationship-managed firms against the March 2008 deadline requirement. It looked at the following areas:

- the adequacy of the measures – do they actually capture the outcome in question?
- the integrity of the measures – where a firm says it is measuring the suitability of advice for example, is it doing so accurately?
- the operational use of the material – firms needed to show that the material was in an operational state even though there may not yet be a track record of using it.

The FSA made the following comments:

- 13% of the firms assessed met the deadline on time. However, the FSA says it thinks that, with a very substantial and continuing effort, approximately 80% of the sample are still capable of meeting the December deadline. This means that 20% of firms are unlikely to meet the deadline, and this percentage could of course be higher.
- Of the firms that failed to meet the deadline on time, there was a large variation in results, ranging from those firms which had invested significant time and energy and so almost met the deadline, to those firms that the FSA says it has considered for investigation and enforcement action on grounds of potential or actual consumer detriment. These later firms showed much less engagement with TCF.
- All firms that failed to meet the deadline on time have received a strong message that urgent progress is needed.
- One firm, so far, has been referred to enforcement.

1.4 Progress to Date by Smaller Firms

The small firms' enhanced strategy, launched in January 2008, is still in its relatively early stages, and the FSA has said that early signs are encouraging, but there is still much more work to do.

1.5 Why have firms made good or poor progress?

There are no particular sectors that have or have not shown progress, but there are certain characteristics common to firms who are making good progress. These are:

- firms' own commercial strategies were consistent with fair treatment of customers
- firms demonstrated active senior management involvement
- firms ensured that the fair treatment of customers was written into personal objectives and reward at all levels within the company
- firms listened to, and acted on, feedback from customers

Firms making slow progress tended to have the following characteristics:

- they failed to give TCF enough effective sponsorship at the most senior levels
- they placed too much reliance on existing business-as-usual MI
- they underestimated the scale of the challenge and started too late
- they confused process with outcomes
- they confused satisfaction with fairness

2. KEY MESSAGES

2.1 Increased Regulatory Attention for Non Achievers

The report shows that, for the large firms examined, at least 20% are unlikely to meet the December deadline. This means that these firms are likely to face "significant regulatory attention" up to and including enforcement action. In some cases, the FSA has for example already requested an audience with the firm's Board, has required firms to commission help from auditors or consultants ('skilled persons') or encouraged firms to seek such external assistance. It is highly probable that action will be taken against individual senior managers of some firms in the future if the FSA feels that the firm's culture of senior management responsibility is not being taken seriously enough.

The FSA has also said that it will be taking every opportunity to look at a firm's progress towards meeting the December 2008 deadline. This will include looking at TCF during all contact with a firm and during thematic work. It will "take tough action" with the worst firms and will "deal more visibly and forcibly" with those who are failing to deliver fair treatment of customers. Regulatory attention may mean giving firms individual deadlines, requiring them to obtain skilled person reports, FSA staff addressing the Board and ultimately referring to enforcement action.

2.2 FSA material is not formal Guidance

The TCF initiative is all about making sure that each firm considers its own circumstances, client base and products and then ensures that its customers are treated fairly. Although there is now plenty of material available on the FSA website and elsewhere about the good practice issues that firms have put into place, none of these should be considered as a template for another firm to follow. Material published by the FSA is not "Guidance" under the meaning of the Financial Services and Markets Act (FSMA). The key message is that each firm should make sure that their own culture is suitable for them, their clients and their own circumstances and then identify the necessary management information needed to ensure that they can monitor internal processes and demonstrate TCF. That said, we strongly recommend that firms look through what has been produced.

2.3 Client Understanding

The FSA has made it clear to us that they do not expect firms to demonstrate that customers understand the wider concept of TCF but that firms can do more to ensure that material is capable of being understood by clients. This will particularly apply to larger firms' marketing material, but also have relevance to the way small firms communicate with their clients, for example the content and structure of client agreements and suitability letters.

3. BEST PRACTICE IDEAS

The report includes several case studies relevant for small firms. The following are general best practice ideas that could be considered by all small firms:

Some smaller intermediary firms:

- Have a “TCF champion” to oversee TCF issues and to take responsibility for implementing them;
- Have an action plan which is regularly reviewed and updated with specific responsibilities allocated;
- Reconsider the providers which are used to ensure access to markets that meet customers’ needs and demands;
- Make sure that their financial promotions are checked over by external consultants against TCF criteria and that marketing material is signed off by an appropriate senior management function;
- Have incentive structures for advisers that are TCF friendly. Examples quoted include
 - making sure that both top performers and inexperienced advisers are subjected to additional file checks to double check suitability;
 - Advisers may not be rewarded for business that fails to pass these checks;
 - Remuneration packages may include an incentive for meeting TCF related key performance indicators (KPIs);
- Monitor fact finds to ensure these are fully completed and include sufficient information to enable advisers to treat customers fairly by making appropriate and suitable recommendations;
- Regularly review a range of KPIs including business spread, cancellations, not taken up rates, execution only and complaints. The results of these are used to identify TCF risks and remedial action that may be required or additional training that is needed;
- Ensure that any complaints are reviewed at senior management level and that the cause of these or any patterns are identified. The findings are then acted on and used to identify any staff training requirements and review and update firm’s processes and procedures;

Many firms are asking staff for ideas on how to improve the business, a key indicator here is would the staff member recommend the firm to family and friends with confidence?

The above is only a selection ideas that the FSA has noted, so all firms should make sure that they read the relevant section in the report.

4. NEXT STEPS AND FURTHER INFORMATION

The FSA will be taking all available opportunities to further assess firms’ progress against the forthcoming December 2008 TCF deadline. This is likely to include ongoing engagement via ARROW visits (for larger firms) and through other thematic work (all firms) to remind firms of their obligations on TCF. The FSA says it will “take tough action on the worst firms by focusing on and dealing more visibly and forcibly with a targeted group of those firms who are failing to deliver fair treatment of customers”. Further assessments will be carried out early in 2009 and the results from that exercise will be used to assess industry progress. The results of this exercise are likely to be published in September 2009.

Thereafter, the FSA says that it will cease to have a specific TCF initiative. Instead, the assessment of how firms treat their customers will become a part of “business as usual” and monitoring will be undertaken using ARROW reviews, the enhanced strategy for small firms, and thematic work. Through these MI will be considered and how firms actually treat their customers will be assessed.

The report can be found at the following link on the FSA website:

http://www.fsa.gov.uk/pubs/other/tcf_progress.pdf

More information on TCF can be found at the FSA’s dedicated webpages at the following link:

http://www.fsa.gov.uk/pages/Doing/small_firms/general/tcf/index.shtml

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