

Email exchange between Lesley Titcomb, FSA's Director of Small Firms and Contact and Simon Mansell Managing Director of Temple Bar IFA Limited.

From Lesley Titcomb 26 March 2008

Dear Simon

Thank you for your email of 6 March. I apologise for the delay in replying.

I have had a number of letters from small IFAs along the same lines as your original email to me of the 19 February. As a result, I have decided to post our exchange of emails on our small firm website so that other firms can learn from this valuable exchange of views and comments.

TCF, with its principles-based approach and focus on consumer outcomes, is central to our work in ensuring a fair deal for consumers. It underpins the delivery of our statutory consumer protection objective and times of market turbulence are when consumers need protection the most. Our Financial Risk Outlook (FRO) for 2008 recognises the difficult economic and financial conditions, but emphasises that firms must not divert attention away from focus on the high-level principles. In particular, firms will need to ensure they treat customers fairly. Today's market offers an excellent opportunity to embed a new TCF culture, sending out immensely strong messages to staff and customers. Against this background – and despite the pressures faced by firms – we think it is essential for firms to press on with meeting the Treating Customers Fairly deadlines.

We take the view that the occurrence of significant numbers of complaints does not demonstrate high consumer financial capability. On the contrary, the dissatisfaction that drives complaints often arises from consumers experiencing 'nasty surprises' during the life of the product, and those surprises often reflect failures of understanding at point of sale, as well as, in some cases, failures by firms to be as clear and fair as they ought to be at point of sale.

TCF should not pull in an opposite direction to other regulatory obligations and should not be seen as 'another thing on the list' - but rather be the attitude of mind that forms the basis for making decisions on how to implement such obligations such that fair outcomes for consumers are achieved. That said, clearly smaller firms have a challenge in sequencing all the thinking they might need to do during 2008, and don't have the relative luxury of being able to run parallel work streams with different staff taking responsibility for each. (Of course, sometimes that is a relative advantage as there is no danger of inconsistency.) An important communication point for us and others going forward is to ensure we fit other regulatory initiatives (eg thematic announcements) into the context of TCF so that firms can see where they inter-relate and how working on one can simultaneously help with the other.

This is why I sent my letter to all small retail intermediaries following publication of our Business Plan 2008/09.

The enhanced strategy for small firms has two key objectives:

1. Root out, and take a firmer regulatory hand with those firms who are not interested in treating their customers fairly, so that overall standards are raised, and the reputation of this industry is improved.
2. Help those firms that are trying to do the right thing, to 'up the pace of compliance' and make faster progress on TCF.

A progress report last year found that only 41% of small intermediary firms met the TCF implementation deadline of 31 March. On-going project work also clearly indicates that the many small firms still have some way to go before they treat their customers fairly. It was clear that the pace of progress had to increase if small intermediary firms are to meet the December 2008 TCF deadline of being able to demonstrate through the use of their own management information that they consistently treat their customers fairly. This led us to re-examine our approach towards small firms.

To explain the assessment process and our expectations regarding TCF to firms we have introduced new, interactive road shows. Firms will be able to find out more about how to meet their TCF obligations, work through real TCF issues that may affect their firm, and learn from other firms about how they approach TCF. Communicating to firms through road shows is an integral part of these new measures which we are confident will contribute towards smoother assessments and higher levels of compliance. The aim of these events is to deliver messages to firms during a period where they are preparing for and being assessed. We hope this will maximise the opportunity for messages to be acted upon and firms' thinking and behaviours to be challenged and changed, if necessary.

We want to work with as many firms as possible, so even if firms haven't made sufficient progress, if the management is willing and the culture within the firm is right for change we will work with those firms to raise standards.

This strategy has been fully supported by the Smaller Business Practitioner Panel (of the 12 members of this Panel, there are currently 2 representatives who are IFAs) who believe that firms which enjoy a closer supervisory relationship with the FSA are more likely to understand and engage positively with meeting their regulatory responsibilities than those that don't. So whilst we envisage that these new measures will act as a meaningful deterrent to those firms who are wilfully trying to evade our regulations they are as much about incentivising those firms who are motivated to comply.

I hope this provides you and other small firms with some comfort as to why we have introduced the enhanced strategy for small firms. Whilst I welcome hearing from individual firms with their views and comments I am afraid that replying individually is very resource intensive and diverts valuable resource away from the very important job of supervising approximately 17000 small firms. I therefore intend that this response should close our correspondence on this matter.

From Simon Mansell 6 March 2008

Lesley

Thank you for your prompt reply. My letters are held in open forum as I do not wish to restrict this debate to individual personalities. Mr Sants has in the past been happy to remove his warnings and I would ask you to respect this communication in the same open way. If you are unhappy with that then please do not reply.

This letter/e-mail is sent in Open Forum and any response will be held in open forum

You say complaints are only one measure of how fairly a firm is treating its customers. Of course this is true but why do you fail to take account of the huge regulatory burden that is already in place?

Pension reviews (retrospective), FSAVC reviews (retrospective), Split Caps review (retrospective), endowment reviews (retrospective), With Profits Reviews, 100% file checks, 1:10 file checks, Terms of Business, Illustrations, Key Facts, Fact Finds (signed by clients), Suitability Reports within 5 days of sale, and the huge plethora of documents that are then sent to the client post sale. In addition the electronic RMAR reporting to the FSA and also until recently the audit requirements imposed on small IFA firms. You will be aware that IFA were not granted the small companies audit exemption. Yes I agree that complaints are but one measure – but how many measures do you need? Why is this not enough for the FSA?

You talk about the “low financial capability among consumers”. You must surely be aware that the FOS peaked at 100K complaints a year. Was this an example of those same consumers with so-called low financial capability? Did the FSA not read the consumer blogs showing how to get compensation payments? Every body and their brother were queuing up to get their shortfall handout! Unregulated ambulance chasers, “total memory recall template letters” via consumer websites and the “impartial” FOS - all supplied consumers with instructions on how too succeed. Neighbours in my street stopped me and told be they had better get their compensation claim in before it was too late - oblivious to the morality of deceit. I witnessed wave after wave of FSA/FOS letters written to my clients encouraging them to claim. Meanwhile the adviser sat pretty, hands tied, no right of appeal, no right to a hearing, no binding or persuasive rules of evidence and also paying for the privilege win or loose! The FOS/FSA set up the adviser as a compensation punch bag without the protection of the law.

Lord David Lipsey didn’t consider consumers to have “low financial capability among consumers” when speaking at a Social Market Foundation/Provident Financial event at the Labour conference 27/09/07 in Bournemouth he articulated a view that in his experience, some of those compensated “knew it was in their interest to forget what had happened to them”. He went on to say this problem increased over time as more people got payouts and advised others on the correct thing to say to ensure they were compensated despite not having a valid case.

You maintain you have a duty in law to be proportionate and risk-based. These are fine words but their authority comes from but the same FSMA 2000 that ignores the fact that the UK government is a signatory to the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948: Article 6 - Right to a fair trial. Article 7 - No punishment without law and a right to appeal. Rights granted to EU MiFID advisers but not it seems UK advisers. You say you are checked by your board and the practitioner's panel. However you fail to mention the Treasury appoints your board and in turn FSA appoints the panel. There are no IFAs on this independent panel in spite of the fact they account for 80% distribution! One might be forgiven for thinking 80% of your panel would be IFA based!

From Lesley Titcomb 5 March 2008

Dear Stephen

Thank you for your email.

As I explained in my earlier reply, larger firms will have their own visits and assessments, so I can assure you that all firms, whatever their size, will come under our radar and that we are not picking on a particular group of firms.

My own responsibility is for retail intermediaries - and this includes firms whose business is predominantly mortgage advice and general insurance broking as well as IFAs. Our enhanced strategy is designed to encompass all of these firms, and it is not only directed at IFAs.

You mentioned the ombudsman figures. These have been quoted to us many times before, and they have yet to make us doubt for one minute our supervision strategy for the firms we regulate. This is mainly because complaints are only one small measure of how fairly a firm is treating its customers. If all we had to do was look at a firm's ombudsman figures to see whether they were meeting our requirements and treating their customers fairly then regulation would be a lot easier than it is. When we assess a firm we're looking at much more than how many complaints they get. We've seen many examples of firms with spotless complaints records but who fall down in other areas. It would be foolish of us to rely on complaints figures to determine where our regulatory spotlight should land.

I should also mention that most complaints never make it to the ombudsman, that the figures do not compare like with like, and that low financial capability among consumers mean that most do not know that they have been treated unfairly but I suspect you know all this, and that we are not going to agree on this point.

I would like to finish by saying that we have a duty in law to be proportionate and risk-based. We have significant external checks and balances, such as through the independent members of our board, and through the practitioner panels who we consult. That and our determination to make a real difference to consumers mean that we would not take forward our enhanced strategy if we did not believe it was needed and if we did not believe it would improve outcomes for consumers and improve the reputation and standing of the industry.

I know that Hector has replied to you separately on your views on Northern Rock.

From Simon Mansell 25 February 2008

Thank you for your response. If you apply the TAF code "Treating Advisers Fairly" you will see that your e-mail does not really explain why you are applying 3000 field visits to a sector of the distribution chain that has only 12% of complaints. In law justice not only must be done it must be seen to be done. Do you agree that regulation must be seen to be applied across all distribution channels in proportion to the known risks? Northern Rock 110 billion, small IFA's only 12% of complaints - it just doesn't add up or feel in proportion, especially when Mr Sants has admitted that inadequate supervisory practices were partly to blame for the Northern Rock liquidity crisis.

My question remains: Why does the FSA focus on the 12% minority and not 71% majority, the consequences of which were highlighted by the Northern Rock failure?

From Lesley Titcomb 25 February 2008

Dear Mr Mansell

Thank you for your message on 19 February and for taking the time to email me. I am pleased to see that you are taking an interest in our enhanced strategy for small firms.

You clearly share my view that it is important for us to ensure that all firms are delivering fair outcomes to their consumers.

For mortgage, financial adviser and those GI intermediaries selling higher risk products, we believe that the assessments we will undertake as part of our enhanced strategy along with the increased help and support we are offering to small firms will give us the best route to achieving this outcome. This is part of the FSA's commitment to a thriving small firm sector.

We are pursuing different approaches with larger firms, as our business plan sets out, but I can assure you it is with the same vigour and objective in mind.

From Simon Mansell 19 February 2008

Ms Titcomb

RE: Lesley Titcomb's letter to Small Firms re: Small Retail Intermediaries - Supervisory Priorities for 2008/9

Risk based monitoring means you monitor those at greatest risk of harming the consumer? I am perplexed as to why the FSA deems it appropriate to conduct 3000 field visits on small IFA's to see if they are Treating Their Customers Fairly.

By the way have you heard the news about Northern Rock? I understand a failure to regulate Northern Rock has cost an estimated 110 billion. Compare this with the

small IFA, a distribution channel that has 80%* of distribution with only 12%* of complaints? Would it be outlandish of me to suggest that the FSA resources would be better spent visiting and auditing banks, building societies and life offices where their failure represents a "real" threat to the public?

The Financial Ombudsman Service (Annual Review for 2007/07) and the FSA website. The FSA regulates about 29,000 firms. Around 90% of the firms they regulate are categorised as 'small'. (FSA Data)

FOS Complaints Received during the financial year 2006/07

Financial services firms complained about by sector %
Life insurance and investment product-providers 37
Banks 30
Independent financial adviser (IFAs) 12
General insurers 11
Building societies 4
Mortgage intermediaries 1.5
General insurance intermediaries 1.5
Other (including fund managers and stockbrokers) 3

Let me add this up for you $37\% + 30\% + 4\% = 71\%$ of complaints and you want to send out FSA officials to 3000 IFA who represent only 12%.

The FSAMA 2000 Section 2 state that the FSA must have regard to:

"The need to use its resources in the most efficient and economic way".

From all of the above information, we can draw the following conclusions:

1. FACT - Small IFA firms generally create the least complaints (IFAs representing a significant proportion of the 26,000 small firms).
2. FACT - The FSA should concentrate on regulating the Banks, Life Insurers and other Product Providers.
3. FACT - The FOS figures prove that the main problems lie with the larger organisations.
4. FACT - The RDR talks about 'current market problems', and is directed mainly at independent advice.
5. FACT - It would seem that the FSA have not clearly identified these issues and the related sector and provided clear evidence of such 'problems'?

Question: Why does the FSA focus on the 12% minority and not 71% majority as highlighted by Northern Rock?