

FG15/10: Summary of feedback received

July 2015

Consultation title	Risks to customers from performance management at firms
Date of consultation	16 March 2015 – 15 May 2015
Summary of feedback received	<p>We received 13 responses to our guidance consultation from a range of respondents including banks, building societies, insurers, and trade associations.</p> <p>Respondents were very supportive of the report and guidance and generally thought that it would be helpful to firms in identifying poor performance management practices and managing the mis-selling risks that can arise in this area.</p> <p>It was suggested that we could be clearer about how the guidance applies, including for smaller firms and the treatment of small and medium-sized enterprise (SME) customers.</p> <p>Some respondents commented that our supervisory approach to this area should be proportionate, bearing in mind our work had not identified evidence of widespread issues and the report was in part based on intelligence from whistleblowers.</p> <p>While the significant majority of responses were positive, some respondents felt that the finalised guidance, and the examples of practices that can create undue pressure, would benefit from further clarity in a small number of places.</p>

Response to feedback received

In this section we summarise the key feedback received and our response to the feedback.

(1) The use of information from whistleblowers could mean the FCA's views might be influenced by a minority of disaffected employees.

Our response: Whistleblowers provide invaluable information about wrongdoing in the regulated sector. The report acknowledges that we have not seen evidence of widespread issues with performance management, but we have seen instances of poor practice from follow-up work on intelligence from whistleblowers, some of which is ongoing. Many of the individual whistleblower cases contained consistent themes and in our report from February 2015, *'How we handle disclosures from whistleblowers'*¹, we reported that between March and December 2014 there was an increasing number of reports about pressure on sales staff. More broadly, our consultation paper CP15/4² contains proposals for new whistleblowing requirements on how firms should handle disclosures. They aim to ensure that all employees are encouraged to blow the whistle where they suspect misconduct, confident that their concerns will be considered and that there will be no personal repercussions. The guidance on performance management, in the section in Chapter 2 on 'Other indicators of undue pressure', notes the importance of ensuring issues arising from staff feedback are escalated within the firm and appropriate action taken.

2) One respondent suggested that, as we said we have not identified widespread issues, our supervisory approach to this risk area should be proportionate and focus on any causal links between performance management issues and poor consumer outcomes. It should be separate from any assessment of an HR/employment nature, e.g. areas like employment law or disputes dealt with by employment tribunals which would be outside of our remit.

Our response: As we said in the report, we have identified instances of poor practice, but we did not undertake a programme of direct assessments of firms and we have not identified evidence of widespread issues. We are required to have regard to the need to act proportionately when exercising our regulatory functions and we have stated that our focus is on the risks that are posed to consumers by inappropriate practices. We expect firms to manage these risks effectively, although it is not our role to prescribe how firms manage the performance of their staff. The guidance aims to help firms manage the risk of mis-selling.

3) One respondent noted the risk of undermining businesses if firms feel less able to use legitimate performance management practices. Another respondent suggested the examples of practices that can create undue pressure (page 7) should be strongly caveated to recognise that such practices may not necessarily lead to consumer detriment.

¹ <https://www.fca.org.uk/your-fca/documents/how-we-handle-disclosures-from-whistleblowers>

² <https://www.fca.org.uk/news/cp15-04-whistleblowing-in-deposit-takers-pra-designated-investment-firms-and-insurers>

Our response: Our report and guidance recognise the benefits to firms and consumers of good performance management practices. The focus of the guidance is on helping firms to manage mis-selling risks arising from these practices.

In the wording at the beginning of the examples of practices that can create undue pressure (page 7), we have said that such management activities are not inherently inappropriate. We also said that what is important is how such activities are carried out and ensuring they are done consistently with putting the interests of customers at the heart of how the business is run. We have made some changes to the text and examples on page 7 to make it clearer how some practices can create undue pressure.

4) The guidance should include the role of Internal Audit in managing performance management risks and in firms making effective use of information from whistleblowing.

Our response: We agree that Internal Audit has an important role in the mitigation of conduct risks in firms that are large enough to have this function. We have not specifically added this to the guidance as the role of internal audit has been covered in various previous publications. For example, the consultation paper CP15/4 on whistleblowing makes reference to the oversight role of audit functions.

5) Some respondents asked why our review focused on sales staff when many other roles can have an impact on consumer outcomes, e.g. debt collection departments.

Our response: Similar to previous guidance on financial incentives, the main focus of this report and guidance is the risk of mis-selling. This is because, as we have previously noted, it is important that firms' progress on financial incentives is not undermined by other pressures on sales staff preventing the achievement of long-term improvements in consumer outcomes.

However, we recognise that performance management approaches can give rise to risks to consumers in other areas. In 1.19 we say that the report should also be helpful in considering how the poor performance management of staff can have an impact on customer outcomes in other areas, such as complaints handling, claims processing, mortgage arrears and customer retentions.

We have added the example of debt collection departments to the other areas in 1.19.

6) One respondent was concerned there was not enough reference to the protection of small and medium-sized enterprise (SME) customers as users of financial services.

Our response: In 1.16 ('Who is the report aimed at') we have included reference to SME customers. However we will add text at the beginning of Chapter 2 ('Guidance to firms') to also include a clear reference to SME customers.

7) One respondent felt the guidance was geared towards larger firms and the good practice examples were not helpful to small firms with only a few staff.

Our response: We think the guidance and good practice examples can be helpful to smaller firms. All firms, regardless of size, should understand the risks that arise when an excessive emphasis on sales results can lead to undue pressure on staff. We have also published a one minute guide³, which summarises the guidance in a way that should be helpful to very small firms. While the smallest firms still need to have regard to risks around mis-selling, it is acknowledged that some of the examples may have less practical application for firms with only a few staff and who do not operate teams of sales staff or advisers.

8) Some respondents highlighted the difficulties in evidencing and assessing the informal interactions between staff, which are part of performance management. One firm, making a similar point, also suggested it would be helpful for the FCA to clarify the expectation of a principal firm where we refer to having a "sufficient understanding" of an appointed representative's approach to performance management (1.18).

Our response: We recognise that there are challenges in monitoring performance management. In 2.10 we noted that poor practice may not be documented and is therefore more difficult to identify.

The guidance aims to help firms to think about how they can do more to identify and mitigate risks in this area, for example, the section in Chapter 2 on 'Other indicators of undue pressure' suggests a range of information that might be helpful in identifying potential poor practice that may not be documented.

The focus of the guidance is on managing risks from performance management. Principal firms will need to consider what information they need about an appointed representative's approach to this area, so they have a sufficient understanding in order to be satisfied such risks are being managed effectively.

³ <http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/systems/performance-management>

Changes made to the guidance as a result of feedback received

In response to feedback received (as outlined above) we have made some small changes to the guidance:

- we have added the example of debt collection departments to the other areas in 1.19
- we have made some changes to the text and examples on page 7 to make it clearer how some practices can create undue pressure
- in Chapter 2 (Guidance to firms), we have added text in 2.2 to make clear the position for SME customers

We have also updated references and links to other publications relating to individual accountability for banks, and other relevant firms in Chapters 1 and 3.

You can access the full text of the guidance consulted on here:

<https://www.fca.org.uk/static/documents/guidance-consultations/gc15-01.pdf>