



# Rapid response required

How to respond to a thematic review effectively

TCC examines the role thematic reviews play in the FCA's supervisory approach and how it expects firms to react to them.

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## Introduction

Thematic reviews form a key part of the FCA's approach to regulation. They serve to highlight the regulator's work in particular areas and are a vehicle for communicating the issues uncovered and re-enforce its expectations and regulatory requirements.

The importance of being able to respond to thematic work cannot be underestimated, which is why, in this white paper we examine the FCA's expectations and best practice in this area.

It's important to note that these expectations aren't solely limited to those firms directly involved in the FCA's thematic work. All firms need to be aware of, and react appropriately, to the FCA's findings.



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Andy combines detailed FCA knowledge with commercial awareness to assist clients with managing conduct risk and providing solutions that enable business growth.

Andy has considerable experience assisting firms to respond appropriately to FCA supervision, in particular thematic reviews.



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## How does the FCA use thematic reviews?

In order to keep ahead of the latest regulatory issues and meet FCA expectations, it's important to understand the role each type of FCA communication plays in its regulatory approach:



### Thematic Reviews

Designed to state the outcome of an FCA investigation into a specific market or regulatory issue, including any failings or poor practices uncovered.



### Market Studies

An overview of a particular sector or product group, designed to highlight potential issues the regulator may wish to address, whilst also inviting input from the wider industry.



### Policy Statements

A report of the responses received following a thematic review, plus policy amendments to address the issues raised.



### Occasional/Discussion Papers


Research and perspectives on a particular topic, designed to stimulate debate within the wider market.

On the whole, the FCA's approach to communicating with the industry has become more open and constructive, with the inclusion of key performance indicators in the 2016/17 Business Plan providing some guidance as to the specific metrics the regulator will be using to measure change in the industry.

Another significant change in the FCA's approach is the move away from the previous firm classification of C1-C4 into fixed or flexible portfolios. While those firms in the fixed portfolio (previously C1 and C2 firms) continue to be supervised on a firm or group-basis, those now in the flexible portfolio will engage with the FCA through a combination of thematic work and industry engagement on wider issues within specific sectors. This has helped, not only to reduce the time firms need to spend preparing for routine monitoring visits, but also enabled the FCA to more efficiently share best practice and continually assess compliance across the market.

There is also a great deal more collaboration, not only through the publication of its discussion and occasional papers, but also as part of its thematic work, undertaking primary research within target firms to assess compliance and gauge the extent of any poor practices. Collaborating with the FCA in this manner isn't something to be fearful of, in fact it can be beneficial if approached in the right manner. It goes without saying that firms should maintain an open, collaborative and honest relationship with the regulator, but going beyond this and demonstrating a willingness and commitment to change in light of any issues or potentially negative practices uncovered during the process will result in a more positive response from the FCA.



A woman with long, wavy brown hair is smiling and looking off to the side. She is wearing a black top. The background is a blurred office setting with large windows. A semi-transparent text box with a yellow and green border is overlaid on the right side of the image, containing a quote.

“Collaborating with the FCA isn’t something to be fearful of, in fact, it can be beneficial if approached in the right manner.”

## Keeping on top of the FCA's thematic reviews

Thematic reviews are becoming more common as a result of the FCA's changing approach to regulation, which has shifted from firm-based oversight to a greater focus on emerging market issues.

Because of this it's important for you to be aware of the FCA's planned and current thematic activity as, once the findings of a thematic review have been published, the regulator expects you to take any necessary action to correct the issues raised if they occur within your own operation.

### How to find out about planned thematic reviews:

The FCA provides details of its planned thematic reviews through a number of publications and speeches. Below is a list of the most common documents the FCA uses to communicate its intended activities throughout the year, which you should be regularly checking:

#### The FCA Business Plan and Risk Outlook



This is a key document that all firms should read and be aware of as it sets out the regulator's priorities for the coming year and outlines the planned thematic work it will undertake, with indicative timescales. If you haven't yet had the chance to read this year's Business Plan, why not read TCC's handy analysis of the key points.

#### FCA website



The regulator announces the launch, and publishes the findings of, all thematic work within the news area of its website.

#### Policy Development Updates



This monthly document outlines the forthcoming publications with indicative timescales for release. Although not strictly focussed on thematic work, the updates do include feedback statements and guidance consultations which have resulted from thematic work.

#### FCA Regulation Round-Up



Another monthly publication which highlights the FCA's current work by sector, making it easy to identify the publications and activities directly relevant to your firm's activity.

#### TCC's Regulatory Round-Up




If you'd prefer more regular communications about the FCA's latest activity, TCC's weekly Regulatory Round-Up newsletter provides an essential summary and analysis of key topics. It's free to sign-up.

TCC has worked with firms both at the onset of thematic work and with those which have failed to keep up with regulatory changes. Arguably in this second situation the damage has already been done as the firm has failed, not only to take heed of the FCA's findings, but also to assess whether their operation is meeting regulatory expectations.

If firms don't react to the findings of thematic reviews and the FCA finds those issues are still prevalent within a firm it is likely to take severe action. This is because, as highlighted above, the FCA does provide ample notice, and information, about its thematic work and expects firms to take note of its findings and make changes where poor practices or wrongdoing has occurred.



A close-up, profile view of a man with dark hair and a beard, smiling broadly. He is wearing a light-colored shirt and a dark suit jacket. The background is a soft, out-of-focus indoor setting with warm tones. A semi-transparent teal box with a yellow border is overlaid on the right side of the image, containing a quote.

“The FCA does provide ample notice and information about its thematic work and expects firms to take note of its findings and make changes.”

## Can you prepare in advance for a thematic review?

Upon finding out that a review is forthcoming, there are things that you can do in advance of the regulator undertaking investigative work to ensure you are adequately prepared. One of the first steps is to familiarise yourself with the FCA's previous communications on the subject, as many of the issues the regulator is battling with, such as culture, sales practices and treating the customer fairly (TCF), are not new. This will provide some insight into previous concerns, which, when combined with the FCA's focus for the upcoming review, will build a clear picture of why any activity is being undertaken.

Once you have a firm understanding of the issues the FCA is likely to concentrate on during its thematic work, the next step is to conduct a full compliance audit into those areas of potential scrutiny, as well as any business areas that are linked, such as staff training, customer communications or remuneration. This will identify any areas where the current operation does not meet FCA expectations, or where improvements can be made in order to deliver better outcomes.

A compliance audit should look at whether policies, procedures, systems and controls are up to scratch and would withstand scrutiny should the company be involved in the investigation.

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## What should you do if you are implicated in a review?

Thematic reviews involve the FCA examining the activities and documentation of a sample of firms from within the target sector. Receiving notification that your firm will be part of a piece of thematic work can be daunting, but it's important to be co-operative and provide all the information requested within the allotted time frames.

Depending on the subject of the review, the FCA usually focuses on documentation around the controls, policies and procedures that surround that particular aspect of a firm's operation. Because of the varied nature of the regulator's thematic work, there is no single approach that the FCA adopts during each review. However, they nearly all involve an aspect of desk-based research, including information requests and systems access, which usually occur a couple of weeks prior to any site visit. A site visit will consist of interviews with key members of the board and senior management.

For example, in the recent responsible lending review, in which the FCA examined how effectively firms had embedded the MMR lending requirements, the regulator carried out four different types of research:

- Desk-based reviews of the lending policies and strategies of firms that represent 75% of lending under the MMR regulations;
- A review of the individual lending decisions across new lending, contract variations, remortgages and declined cases of both mainstream lenders and lifetime mortgages;
- Lending scenario case studies to compare lending decisions across providers;
- Firm visits to gain a deeper understanding of key issues.

This thematic review covered 75% of lending decisions and covered a range of different lending scenarios and mortgage types, which was why multiple forms of research were required.



The first step, upon finding out that you will be involved in a thematic review, is to begin the process of reviewing your documentation. At this stage it is common for firms to realise they don't have the internal knowledge or understanding of the FCA's expectations.

Obviously, the FCA goes into any thematic work with the expectation that firms are complying with both the letter and spirit of the regulatory regime. As such, it is not forgiving of firms that are unaware of up-coming thematic work or who have not taken any proactive steps to maintain compliance. In this situation there is the potential for firms to be referred to enforcement.

However, the FCA is generally more accepting and supportive of companies that have identified shortcomings within their operation, whether through routine monitoring or more in-depth investigation, and have put plans in place to address them prior to any regulatory involvement.

It's important to know when thematic work will be coming and what the FCA intends to look at. That way you can ensure your firm examines its own operation to find and address any aspects that may not be meeting expectations. Aside from investigative work specific to up-coming thematic reviews, firms should also be undertaking regular, in-depth compliance reviews.

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For those involved in a thematic review, we can help prepare the necessary documentation to ensure it's up to scratch, particularly around the issues associated with the thematic. TCC's team can also help firms pull all that information together into the required format and submit it to the FCA as required.

We are also experienced in conducting mock interviews. While other compliance consultancies may offer an exact mirroring of the FCA's interview process, we combine ours with additional training and guidance so that if your senior executives do find themselves in an FCA interview, they are equipped with the right skills and knowledge in order to perform effectively. The FCA will quiz a firm on their submitted documentation, so it is essential that all potential interviewees are familiar with the contents of the policies and procedures in question and how they are enforced. As part of our service, we may also undertake some wider research within your firm, depending on the subject of the forthcoming review. For example, when helping a firm prepare for a thematic review on issues surrounding the sales process, we will undertake a sample of file reviews to assess compliance with internal procedures and regulatory obligations.

Once the FCA has concluded its site visit, they will provide feedback to the firm and highlight any areas where they have concerns, although this may not necessarily follow immediately after. At this point TCC can construct a detailed remediation plan and timetable detailing how each issue will be addressed and monitored. In order to maximise the benefit of engaging TCC, and minimise the risk of a S166, this should be undertaken as soon as feasibly possible following an FCA visit.

TCC is perfectly placed to help any firm implicated in the FCA's programme of thematic reviews and the team has extensive experience in assisting companies during what is often a tense and difficult time. However, in order to get the best results, firms need to be proactive and seek help from an independent third party sooner rather than later and especially before the FCA come knocking. Depending on the issue and the existing compliance framework it can take significant time to get a firm up to scratch and we cannot stress the importance of allowing enough time to properly fix an issue, otherwise you run the risk of more severe consequences.

## What should you do if you're not implicated in a review?

Not playing an active part in a thematic review is not a reason to be complacent and ignore the results. Once published, ensure you read the final report and any associated or subsequent documentation to ensure you have a good understanding of the issues and the FCA's thoughts around them. Many contain examples of good and bad practices which can be useful for benchmarking your own practices against.

However, as the FCA has moved away from a prescriptive regulatory approach, the findings of thematic work have served to simply highlight the issues, rather than provide explicit guidance on how it expects firms to address them. This leaves them open to interpretation, which may not align with the FCA's intentions and could lead to inappropriate changes or a misdirected focus.

TCC can help firms tackle any uncertainty around the FCA's intentions or the appropriate next steps following a thematic review by providing a detailed, independent overview from former FCA and FSA supervisors, as well as designing an action plan for tackling any issues with the regulator's priorities in mind.

Firms are becoming more familiar with the structure of thematic reviews due to their increasingly frequent use over the past three years, however, many are still focussing only on those that directly affect their operation. Firms need to be aware of the issues

emerging from all of the FCA's thematic reviews and consider whether any of the findings are also applicable to them.

For example, in 2015 the FCA undertook a thematic review into the product development and governance of structured products, finding that senior managers must do more to put customers at the heart of the firm's approach to product governance. While the regulator only looked at structured products in this case, the expectations around product design and governance are the same for all products, so all firms involved in the design and distribution of financial products should have reviewed the findings and ensured their own operations were meeting regulatory expectations.

In a similar fashion, the FCA identified the treatment of long-standing customers in the life insurance sector as an area where poor practice was occurring and this led to a much wider focus on the treatment of existing customers across the industry, as well as the inclusion of the issue as one of the regulator's key priorities for the coming year.

Responding to, and preparing for, thematic reviews in good time is essential for getting through unscathed. In our experience complacency usually results in expensive remedial requirements. Therefore, a little preparation can go a long way, especially if it is reinforced with the in-depth regulatory expertise of the TCC advisory team.

## How can we help?

### Before the review:

- Help prepare documentation for the review to make sure it's up to scratch
- Help you pull all the information together ready to submit as required
- Conduct mock interviews
- Investigation around the theme i.e. file reviews to check sales process

### After the review:

- Construct a detailed remediation plan and timetable detailing what is going to be fixed

Take advantage of our tailored guidance on the thematic reviews that are relevant to you. Act now - the next one is just around the corner!



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