TCF – Guidance for Asset Managers

What is TCF?

TCF stands for Treating Customers Fairly. All FSPs are required to incorporate the 6 TCF outcomes into their business operations.

About the guide:

This guide is aimed at helping Asset Managers understand what TCF is all about, and give you some ideas as to what it means for you. In this guide we give you the 6 TCF outcomes, and ask some questions that you can consider. The guide should not be viewed as an absolute guideline but as a starting point to making TCF central to your FSP.

The legal standing of TCF:

The TCF Roadmap suggest 1 January 2014 as an effective date for TCF. This date was initially based on a view that most of the groundwork in creating TCF awareness and communicating the FSB's expectations would have been achieved by then – an estimate which has largely proven accurate. The expectation was also that some specific legislative provisions would have been in place by end 2013. Some of the specific timelines in the Roadmap have however shifted, largely due to the need to align developments with the evolving Twin Peaks framework.

However, the important message that the FSB has been emphasising for some months is that there is not going to be a once-off "big bang" TCF implementation date. Instead, the FSB is in the process of introducing TCF into both our regulatory and supervisory frameworks on a gradual, incremental basis. Although there will be explicit inclusion of TCF principles in future new over-arching legislation to be introduced in time under Twin Peaks, it is clear that existing legislative and regulatory frameworks already allow us to introduce most elements of TCF.

So for financial advisers, for example, s2 of the FAIS General Code of Conduct already obliges FSP's to *"at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry."* In practice, a material failure to deliver one or more of the TCF Outcomes will already constitute a breach of this obligation, and would therefore be actionable by the regulator. A number of the more specific obligations in the General Code, for example those relating to disclosure, suitability of advice, etc. are equally consistent with the TCF principles. Similar examples exist in other pieces of FSB-supervised legislation.

In addition, the FSB, in consultation with the TCF Regulatory Framework Steering Committee, is in the process of identifying opportunities to enhance and align existing subordinate legislation to further support TCF delivery. Two key current projects underway, to illustrate, are the development of standardised compulsory Key Information Documents for all retail products, and the development of enhanced, cross-sectoral complaints management and reporting requirements.

Turning from regulation to supervision, no regulatory change is required to enable the FSB to start taking TCF considerations into account in its supervisory approach. Increasingly therefore, regulated entities will start seeing that the FSB has already begun asking questions about client fairness outcomes (over and above checking compliance with specific rules-based provisions) when we carry out on-site visits or when we investigate specific business practices or complaints.

So to summarise: To a large degree, the FSB is already implementing TCF, and will incrementally keep embedding TCF related elements into our supervisory approach and regulatory framework. Where specific new requirements are introduced, these will always be preceded by appropriate consultation, but the general principles of TCF have been consistently communicated for a number of years, and we therefore expect regulated entities to already be applying fair treatment principles in their overall business processes. Where smaller FSP's are concerned, we acknowledge the need for on-going guidance and support regarding our TCF expectations, and the FAIS department is including this support in its supervisory interactions with FSP's.

What is the role of your Compliance Officer in TCF?

SFSPs need to always keep in mind that TCF is not the responsibility of your compliance officer nor can it be outsourced to another party. TCF is something that needs to be incorporated into the way that you conduct business every day and in the way that you deal with your clients.

A compliance officer can provide guidance and assistance to your FSP with regards to how you will incorporate TCF into the way you conduct business but it will be up to you as a FSP to ensure that TCF is central to your FSP.

What should you do?

1. Think about TCF and your business – can you answer the questions on page 4?
2. If you have staff members, discuss the outcomes with them and agree how you will live TCF in the business.
3. Decide how you will incorporate TCF outcomes into your business processes. See the additional considerations include on pages 5 and 6 of this guide.
4. Document your decisions (update policies and processes).
5. Review your policies and processes on a regular basis (at least annually), and adjust where necessary.
6. Get feedback from your clients on the service you provide to them, and use this to check what you do well (keep on doing this) and where you can improve (do something different)
7. View any complaints that you receive as an opportunity to learn and improve. See page 6 and 7 of this guide for specific information on complaints handling.
8. Develop open communication lines with the product suppliers you use, to make sure you understand the products and services.
9. Give feedback to product suppliers on you and your client's experiences of their product performance, promotional material, and service delivery before, during and after the contracting stage.

Note on the Category II wholesale environment:

Those Category II FSPs operating within the wholesale space (as opposed to the retail space) need to keep in mind that TCF is still applicable to them as FSPs as their actions and decisions still have an impact on the end consumer e.g. the impact of costs.

Please remember:

You can and should customise your approach to TCF to your business. It should be integrated into the total approach to doing business, and not seen as a standalone activity, which is the sole responsibility of a select group of people. TCF is everyone's business.

The culture of every FSP should reflect the approach to TCF.

OUTCOME 1

Clients are confident that they are dealing with FSPs where the fair treatment of clients is central to the FSPs culture

- Have you thought about TCF and how you treat your clients?
- Is your board involved with TCF decisions, and communicating to staff about it?
- If you are your own client, would you be happy with the way you are treated?
- Do you and your staff talk about the treatment of clients, and do you have an unified approach?
- How do you currently comply with section 2 of the GCoC?
- Do you do a due diligence on other businesses before contracting with them?

OUTCOME 2

Financial services & products rendered to clients are designed to meet the needs of clients

- Do you understand your clients, their financial situation and their financial needs?
- Do you understand what the products really do, and how it matches the needs of your clients?
- Do you do due diligence on all the funds/ products / providers you offer?
- Do you do a suitability analysis in terms of section 8 of the GCoC?
- How do you comply with section 4(b) of the Discretionary Code?

OUTCOME 3

Clients receive clear information & are kept appropriately informed before, during & after the time the financial service is rendered.

- Do you use clear explanations of the products when talking to your clients?
- Do you keep your clients informed of your own processes & info required by others in the value chain?
- Do you guide clients about the info required by product suppliers?
- How do you disclose information in terms of section 7 of the GCoC?

OUTCOME 4

Where clients receive advice, the advice is suitable & takes account of their circumstances

- Did you conduct a suitability analysis in terms of section 8 of the GCoC?
- Did you check the clients needs against the recommendations?
- Does your record of advice comply with GCoC and contain all required disclosures?
- Do you consider all requirements relating to replacement products?
- How do you comply with section 6(1) of the Discretionary Code?

OUTCOME 5

Clients have products that perform as FSPs told them it would, & the service is at an acceptable standard & what they expect.

- Do you check product performance before you offer to your clients?
- Do you give feedback to product suppliers about their products & services?
- How do you select funds? What do you consider in the process?

OUTCOME 6

Clients do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint

- When you provide after-sales services, is it easy for clients to contact you for assistance?
- Do you make it a priority to assist clients who have complaints?
- If an IFA contacts you on behalf of a client, do you have processes to assist him/her?

Additional considerations:

Outcome 1 - Culture

1. Have your board and executive management thought about the strategic implications of TCF?
2. How, if at all, has TCF responsibility been allocated to management & staff?
3. How would you build it into reward structures?
4. What is the level of staff awareness of TCF?
5. What TCF governance structures, controls and management information do you need to develop?
6. Does your risk management framework take TCF related risks into account?

Outcome 2 – Product Design

1. To what extent to you consider the profile of the end client when designing products, constructing funds (i.e. structuring portfolios and their charges)?
2. Would you know whether your funds/ products were being sold into the wrong target markets?
3. If so, what would you do about it?
4. Would TCF standards influence your choice of who you allow to 'wrap' or distribute your products or whose platform you put them on?
5. What due diligence do you undertake when deciding to structure products/ portfolios?

The Asset Consultant may have to consider this aspect carefully – do they provide sufficient details about the client and the client's existing position to the asset manager?

Outcome 3 – Clear Information

1. Do you consider the end client when you develop marketing and product disclosure material? This includes fund fact sheets and other marketing material you may use, including websites.
2. Do you ever test it with clients/ IFA's? Focus groups could be very useful to test this.
3. Do you review the quality and accuracy of material used by others who market or distribute your products?
4. What would you do if you discovered misrepresentation of your products/ services?
5. Are you accessible to end clients who may need information on your products?
6. What controls do you have in place to ensure your product/ service information remains current?

Outcome 4 – Suitable Advice

1. What insight do you have into the quality of advice provided about your products/ portfolios/ services?
2. Do you consider whether the advisers who provide advice on your products/ portfolios/ services have the adequate knowledge thereof?
3. What would you do if you discovered mis-selling of your products?
4. Do advisers have reasonable access to any information they may need to advise on yourproducts/ portfolios/ services?
5. Do you monitor the adviser/ client behaviour to alert you to possible inappropriate advice?
6. Do you have management information that you could mine for trends, e.g. complaints about specific IFA's?
7. Do you provide sufficient information about the features and risks of the fund/ portfolio?
8. Generally the product should have a general statement of target market (client categorization) and the suitability.
9. A disclosure of the typical risk profile of target market the product seeks to address.

Outcome 5 – Performance expectation & service

1. Do you have a clear understanding with all others in the value chain around this?
    a. Who is responsible for managing investment performance expectations?
    b. Whose job is it to mitigate risk for clients if you deliver poor investment performance or breach mandates?
    c. Who is responsible for keeping clients informed of environmental changes that could result in products not meeting the expectations?
2. Do you have adequate service liaison structures in place to ensure the end client receives reasonable service?
3. Do you consider the client service standards of those who market or distribute your products?
4. How do you deal with errors?
5. What happens if there was a profit as a result of an error? Who does it belong to?
6. Do you do client reimbursement?
7. Asset managers would need to do assessments with FSPs in terms of service levels and standards if the FSP is the end client.

8. Asset managers would need to conduct feedback assessments in terms of whether the products are suited to what the product supplier said it would.

Outcome 6 – Claims, complaints, switches

1. What insight do you have into the types of end client complaints relating to your funds/ products – directly or indirectly?
2. How easy is it for an end client to complaint to you?
3. Do you consider the end client's position when dealing with complaints from others in the value chain?
4. Do you have a policy for client redress?
5. Does it deal with affected clients that have not complained?

Issues to consider if you are an asset manager:

1. The mechanics and risk profile of the product and focus should be on how to disclose that in plain language. In a CAT II and IIA environment this can become very complex.
2. Understand who the client is of the Cat II, ultimately it is the client whose money is invested, however based on the diversity of Cat II FSP's, the value chain can have more than one client e.g. the pension fund, the broker force, the administrator, the trustees.
3. Risk Management Plans must incorporate the TCF principles and monitored on an on-going basis.
4. Make TCF a standing agenda point at all investment committee meetings
5. Consider your conflict of interest policy and Personal Trading policy. How do you deal with specific issues that could be a conflict, such as where the CAT II FSP buys shares in cat I FSP's and referrals are generated from there.
6. Accountability in terms of outcome 4 and 5 should be clearly defined in the value chain.
7. Have you considered Part II, section 4 of the Specific Code of Conduct for Discretionary FSPs? Part 4(b) places specific duties on FSPs. They cannot rely solely on the signed mandate, as the mandate requirements in section 5 differs from the requirements of section 4. Please review this again in the light of TCF as well.

Complaints handling:

When looking at complaints from a TCF perspective it needs to be taken into account what the FSP does with the information gathered from complaints:

- Is the complaint reviewed and value derived from it?
- Is the information used to prevent similar complaints (identify the cause of the complaint), identify how clients in a similar position will be affected, identify whether you are promoting the right products etc.?
- Is the complaint dealt with and the information that could be gathered from the complaint ignored?

Basic principles of complaint systems and procedures

The FSP is required to maintain an internal complaint resolution system.

- This system and procedures must be documented
- It must be based upon a complaints policy, which outlines a comprehensive procedure for complaints resolution.

The procedure needs to be transparent so that clients have full knowledge of how their complaints will be resolved.

The procedure should also be easy to use so that clients can lodge complaints using convenient communication systems.

Most importantly, the resolution procedure should be fair to the client, the FSP and staff.

Complaints – General rules

The FSP must:

- Assist any client who has a complaint to lodge it in writing
- Use the existing system to keep a record of all complaints for 5 years
- Deal with complaints from clients in good time and in a fair manner
- Start the complaint investigation and respond promptly
- Tell the client what further steps to take under FAIS or any other law if the client is not satisfied with the resolution offered.

Complaint resolution – Minimum requirements

The minimum requirements to ensure effective and fair resolution of complaints:

- Availability of adequate manpower and other resources
- Adequate training of all relevant staff
- Clear responsibilities for processing routine and serious complaints
- Follow up procedures to avoid repeat complaints and to improve service.

Complaint resolution – Specific obligations

The FSP is also required to meet very specific criteria in resolving complaints.

- Have a written internal complaint resolution system and procedures of the provider, and this must be updated regularly
- Make access available to clients at any relevant office or branch of the provider, or by electronic medium
- Include a reference to the duties of the provider and the rights of a client;
- Include a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and
- Include the name, address and other contact particulars of the Ombud;

- Must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
- The receipt of complaints must be promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with section 18 (*b*) and (*d*) of the Act;
- After the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that—
- The complaint receives proper consideration;
- Appropriate management controls are available to exercise effective control and supervision of the consideration process;
- The client is informed of the results of the consideration within the time provided:
- If the outcome is not favourable to the client, full written reasons must be furnished to the client within the time provided
- The client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.

- In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.