



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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From AC

That's it – we have had enough now

Friday 20 December sees the closing of our offices for 2013 – the end of our first year as Associated Compliance. We will be reopening on Monday 6 January 2014.



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If by some strange quirk of events or twist of fate you have an urgent compliance related query over the period we are closed you are welcome to contact Craig or Peter throughout the holidays or Bryan anytime other than the 25th – 1st January, via their cell phones for assistance.

Whatever you and yours may be celebrating or partaking of during the holiday period may you enjoy it and be safe.

Treating Customers fairly – what does this mean to UMAs and Brokers?

If you are a broker or UMA, you are probably saying to yourself “What’s all the hype? If we didn’t already treat our customers fairly, we wouldn’t have any customers. So what’s new?”



Unfortunately the FSB does not share this view. Their experience has shown that relying on firms to do the right thing is not on its own sufficient to drive the behavioural and



culture change required to deliver consistently fair outcomes for policyholders.

As a consequence they decided to introduce the concept of ‘Treating Customers Fairly’ (TCF) which they adopted from the UK’s Regulator who spent 12 years putting it all together.

Good or bad, it’s here right now, not at some distant date which some believe - and it’s here to stay.

What’s more scary is that if you think that the FSB and Ombud have been unnecessarily heavy-handed, this is nothing to what is going to happen to those that ignore TCF.

So what is it exactly and what does it mean to the typical broker and UMA?

TCF is an outcomes based approach which ensures that the promises made by practitioners are actually delivered, demonstrated by formalising procedures and ensuring that the 6 TCF Outcomes are maintained throughout the policyholder’s insurance purchase life cycle, from product design and promotion, through advice and servicing, to complaints and claims handling.

The six outcomes are:

- Policyholders can be confident they are dealing with firms where TCF is central to the corporate culture;
- Products & services marketed and sold are designed to meet the needs of identified policyholder groups and are targeted accordingly;
- Policyholders are provided with clear information and kept appropriately informed before, during and after point of sale;
- Where advice is given, it is suitable and takes account of policyholders’ circumstances
- Products perform as firms have led policyholders to expect, and service is of an acceptable standard and as they have been led to expect; and

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- Policyholders do not face unreasonable post-sale barriers imposed by firms to change product, switch providers, submit a claim or make a complaint.
 - Before we take a closer look at these, it is necessary to understand how TCF will be monitored by the FSB.

The FSB decided that delivery of TCF requires a regulatory framework that will effectively balance principles-based and rules-based regulation to ensure that firms deliver the desired outcomes of discipline and transparency in a consistent manner. Consequently, they will use a combination of market conduct principles and explicit rules to drive it.

What is more important is that they have made it very clear that they will enforce the delivery of these outcomes through imposing a range of visible and credible deterrents to unfair treatment.

In our last newsletter, we gave explicit examples as to how TCF has had an impact on the UK's insurance market, and bearing in mind that here in SA our TCF programme is almost identical, it would be in everyone's interest to take this threat very seriously.

What do UMAs and Brokers have to do?

There are three phases to TCF:

Phase 1

Formalise policies and procedures and carry out a gap analysis to measure current levels of TCF implementation;

Phase 2

Take the necessary management action to implement TCF principles;

Phase 3

Monitor practices and views/opinions from all stakeholders and take remedial action as appropriate.



In addressing the first phase, typical questions that have to be answered are:

- Is a formal TCF Policy in place?
- Have specific objectives been formulated and reduced to writing?
- Are senior management tested to ensure they have adopted TCF objectives?
- Has a review of the main business processes to identify areas requiring improved TCF outcomes been completed?
- Have TCF objectives been communicated to all staff across the business?
- Is a formal procedure in place for assessing staff and management understanding of TCF and the organisation's TCF commitments?

Believe it or not, there are more than 100 questions like these which, only when fully addressed, will complete phase 1.

The actual roles and responsibilities within the market place are still being discussed. In fact as recently as 12 November SAIA held the latest of a series of meetings which will ultimately produce a guideline on the roles and responsibilities between insurers and brokers. However at this stage direct insurers have not been included in this discussion. This document will assist with a better understanding of the roles of the different players. The fact that is not yet clear is an indication that the TCF process is one of gradual implementation and not a specific start date.

Will it be necessary to appoint a compliance officer to monitor TCF?

It is evident that although there will be no official requirement for UMAs and brokers to appoint a compliance officer to monitor TCF principles, nevertheless it would be prudent to appoint an outside expert to assist with the process. In this respect we will be making our services available from January to assist our clients should they wish to make use of our expertise.

TCF as a Conduct of Business (CoB) Framework: This was the title of a presentation at the recent Regulatory workshop held by the FSB – we have a copy of the presentation if you would like a copy – info@associatedcompliance.co.za.

TCF workshop

22 January sees us hosting a workshop, in conjunction with the FSB, on TCF. There is a growing expectation that FSPs, especially insurers and UMAs, should be well down the road to developing their TCF strategy but there are still many questions to be answered. The format will be a workshop not a presentation. The TCF team at the FSB will be provided with questions prior to the day to allow them time to prepare suitable answers. These questions, in the main, will have been provided by you, the FSP, and will obviously deal with the issues that you want to be addressed. It will demand that any attendee will need to have a fair understanding of the TCF structures and ideally have already undertaken the self assessment questionnaire as it is this level of preparation that will have generated your questions.

The recently released TCF guide for smaller FSPs and Asset Managers will also greatly assist with the required understanding levels. If you need a copy of one of these just let us know at info@associatedcompliance.co.za.

We want attendees to leave this workshop with clarity where you need it and will enable you to continue with implementation of your TCF strategy.

We are aiming this initial workshop at our insurer, UMA and larger broker clients, partly as these are the primary “targets” of TCF and partly to keep the numbers at a manageable level. However any client should feel free to submit their questions for inclusion in the workshop. Please send these to info@associated-compliance.co.za.

What else will 2014 have in store?

We have been working on a number of service delivery projects over the last few months and will start to roll these out in the New Year.





These include:

- **New monitoring/reporting tool.** The long awaited new report format will start to be used from the 2015 reporting period i.e. June 2014. We may well do selective tests with willing clients earlier than that as we test the report in a “live” environment. The report is far more extensive than those previously used by either ICE or Pretium Services and have been developed due to a need to ensure FSPs are better informed of their regulatory requirements and based on the level of detail being looked at by the FSB during on-site visits.

Although the report contains far more detail than in the past it is far easier for the Key Individual to see at a glance where their shortfalls exist by means of a Management Overview section that summarises the status of each key monitoring area by way of a traffic light system: Red = Non compliant, Green = Compliant and Amber = systems or procedures in place but still some work to be done. You will be able to navigate to the offending section of the report directly from the overview to review the detail that has been recorded.

The report, whilst printable, is not designed to be read in hard copy. The management overview is more printer friendly should you wish to have a paper version but as this has all the required status information that should be all you need.

There will eventually be 3 versions for use with;

- Non mandated intermediary,
- UMA, and
- Insurer.

Each will also have a format for branches and what we term the remote representative - an individual representing you that are based in an area and usually operating from home or shared offices.

When it is your turn to move onto the new format we will obviously provide guidance



as to how to utilise the report.

- **SAIA Code of Conduct monitoring:** For those of you with binder agreements you will have noticed, we hope, that one of the responsibilities imposed on you by your insurer/s is the need to comply with certain aspects of the SAIA Code of Conduct. This service will ensure that you both understand the Code, adhere to it and can report back to your principal as to your state of compliance at any given time.
- **Binder monitoring:** A broader version of the SAIA Code monitoring in that it looks to monitor all your responsibilities in terms of your binder.

Where we believe that based on your profile you would benefit from any of these services we will contact you. However should you wish to discuss any aspect before that please feel free to discuss request more detail.

A full summary of the event will be provided to all clients during February.

Our blogs this month were:

- **FSB RE1 and RE 2 merger.**
- **UMA's – should they continue to be licenced for advice?**
- **A reminder on our staff changes.**

Go to www.associatedcompliance.co.za/News/ACBlog for the full articles.

Insurance legislation conference – limited feedback:

We recently attended the FSB conference on insurance legislation. Whilst most of the feedback from the FSB was not that new but the one aspect reported on by the FSB that will be of interest to most of you was the broker remuneration discussions (Retail Distribution Review). Some of the ideas for changes to broker remuneration that have been put forward by the FSB include:

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- Commissions paid by insurers would be for providing an intermediary service only. There was no indication as to whether the rate of commissions would change if this were the case.
 - Advice would be a service that the FSP would charge the client for.
 - There are no services, in their opinion, which can be provided by an FSP that would fall outside the definition of intermediary services. So that would mean no additional broker fees at all.
 - Platform fees (from the investment sector) should not be changed

It must be stressed that these are just ideas at this stage and there would need to be a lot of debate around these – and what an interesting debate it is going to be. Time lines? No real indications given – but we doubt anything in 2014.

We have a copy of the presentation made if anyone would like a copy – requests to info@associatedcompliance.co.za.

Insurers providing fulfilment service for brokers

It seems there are a number of insurers providing a service to brokers whereby they undertake all client contact with the broker doing little more than providing a lead to the insurer. Whilst this may be a legitimate business model some areas need to be checked to assess the exposure/protection for the broker in these agreements:

- Who takes responsibility for the analysis/record of advice process? The General code of conduct provides no relief for insurer who is an FSP from these standards.
- Does the client understand the relationship?

The above aspects really do need to be checked out where you may have these relationships. The following is more of a question we are asking:

- If full commission is paid is this not a contravention of the conflict of interest regulations that require an FSP who receives a benefit i.e. no sales process undertaken by the broker - to pay fair value for the benefit?



New debarment forms

We have been talking in recent newsletters of the new guidance note on the debarment process issued by the FSB. They have now updated the paperwork required to be submitted to the FSB in the debarment process. If you would like a copy of these now then please send a requested to info@associatedcompliance.co.za. Just remember that should you need or feel you need to debar a key individual or a representative then please discuss with us first so we can guide you on the thinking and the process.

The question of whether or not a “Trading As” name must be registered

We have had this query a few times and have never really known what the answer was. We have spoken to the FSB and CIPRO over the years and they have always pointed us towards PAIA and the people there didn't have a clue and at the end of the day we made the assumption that there was no real control over “Trading As” names.

The FSB recently held an on-site visit at a client who has a trading as name. The input received has now highlighted the problem once again so we checked with Statucor, who seem to know what the answer is. They confirmed that the Consumer Protection Act, rather than the Companies Act, requires the registration of a “Trading As” name with CIPC and this can be done in one of three ways;

1. Register a Trade Mark, which would be a permanent arrangement. The cost of which will be in the region of R5 000. We don't necessarily agree with this option as a “trading as” name is unlikely to be seen as a trademark and has to be renewed every 10 years.
2. Reserve a Defensive Name. This costs in the order of R2 000 and is only valid for 2 years and would need to be renewed biennially, at a cost, currently at R2 000 (current price) or
3. Register the “trading as” name as part of the registered name in the first place.

We have a number of articles available if anyone needs to do some background reading to assist in the decision making process.

All the required paperwork is available on the CIPC website.

POPI

The Protection of Personal Information Act was gazetted on 27 November 2013. The actual commencement date for the act has not been announced yet and there may be different dates gazetted for different sections of the act. See the reference to the article on POPI under Interesting things we have read.



We will be offering an additional service to assist with POPI in the New Year.

UMAs and advice

We wrote last month about our view that in view of the restrictions on a UMA and interacting with clients directly that advice was no longer a licence component needed. This view has been challenged by a member of the SAIA legal and compliance committee and has undertaken to take the matter up formally via SAIA with the FSB. If the results of this discussion require a change in our view we will obviously discuss with you further.

From the FSB

Fee increase

The fees payable for the various types of applications have been increased with effect

from 20 December 2013. We have summarized some of the more common fees that FSPs pay to give you an idea of the level of increase:

Application type	Old fee	New fee
Addition of Key Individual	R 935	R1180
Addition of a Category	R1000	R1290
Addition or change of an auditor/ Accounting officer/ independent reviewer	R 250	R 325
Change of name of an FSP	R 480	R 660
Request for certified copy of FSP licence	R 150	R 200
Reprint of FSP licence	R 400	R 510
Recognition of Generic Qualification	R1700	R2200
RE Examination	R 600	R1050
Application from exemption from the RE or Qualification Requirement	R5200	R1500

Annual compliance reports

The FSB have invited input on the questions/format for the 2014 report from compliance officers with a view to releasing a draft early in 2014. We have submitted a number of suggestions – time will tell what notice will be taken of our input. We will keep you posted.

NMIs who charge fees in contravention of binder regulations – what is expected of the compliance officer?

This question was asked at a recent Compliance institute FAIS Exco committee meeting held in conjunction with the FSB. The feedback provided was that where there is clear/suspected abuse i.e. charging fees that are not justified and/or seen as excessive around the charging of fees to clients then individual cases should be referred to the insurance division for investigation. This process will continue until finalization of the RDR (broker fee discussions) exercise currently underway.



The situation with NMIs with no binders who choose to charge fees is less clear as to how this should be handled but abuse should still be reported where felt necessary.

We will need to assess the status of fee charging by FSPs, especially where binders and outsource agreements are in place.

FSB assessment of binder fees paid by insurers – what is happening?

The insurance division of the FSB have confirmed that they are busy consolidating all the data provided by insurers relating to what is paid by them for the different binder functions. It is not clear as to when this exercise will be completed or what actions, if any, will be taken once complete. It is expected that the extremes (one assumes the high ones) will be questioned by the FSB. Watch this space!

New assistance business (funeral) limits

The FSB recently confirmed that the limit per policy for this category of business with under this category (FAIS Cat A) had been increased from R 18,000 to R 30,000. Where FSPs have been writing higher limits in a life policy under FAIS Category B1 this could be reviewed and dropped to category A which has some obvious advantages on the educational and supervision front. However no changes should be made without discussions with the risk carriers involved.

Category V – status?

This is the category aimed at the so called “professional client” that was expected to be released any time now. However it has been confirmed that this category is not ready for launch and in fact an updated draft Code of Conduct will now be issued, although it was not known when this would be.

FSB Directive on Causal Event Charges

The Registrar has published a directive on the maximum causal event charges which may be deducted under Part 5A and 5B of the Regulations issued under the Long-term Insurance Act. This directive made specific reference to the practices of the insurers in these charges was not in line with the fair outcomes envisaged within TCF – we suspect



these principals will start to be quoted more and more. It is not just a case of having regulations to follow but you must be seen to applying these regulations in a fair manner (i.e. don't look to circumvent the rules because you can – you should be asking “should we?”). [Click here](#) for a full copy of the directive – courtesy of Moonstone.

Guidelines on Advertising and Marketing - The following summary is courtesy of Moonstone

In the light of an increase in practices relating to advertisements, brochures and similar communications that are contrary to section 4(3) of the Long-term and Short-term Insurance, steps aimed at addressing this were announced at the FSB's recent Regulatory Seminar.

An information letter is being drafted to provide guidance to insurers on the interpretation and application of section 4(3). This will in all likelihood follow the pattern of recent interventions concerning binder agreements and causal event charges. A draft information letter is published, calling for input from the industry, followed by feedback, and the eventual publication of a directive.

The information letter will reflect the manner in which the Registrar will apply the relevant sections of the Act and prevent different interpretations and application of section 4(3) by the industry.

The following general principles will apply:

- accuracy and truthfulness
- clear identification of the insurer
- disclosure principles
- preventative and remedial measures

Principles which will apply to specific practices will include:

- White labelling
- Comparative marketing
- Value judgments or subjective assessments by an insurer (“puffing”)

- Endorsements
- Cash-back bonuses

The FSB has published a draft directive setting out the rules and procedures that retirement funds will have to follow when they invest in hedge funds. If you need a copy please ask at info@associatedcompliance.co.za.

Sanlam fined R3 million for overpaying brokers

The FSB has fined Sanlam a collective amount of R3 million for paying brokers commission in excess of the regulated amount. Sanlam Developing Markets and Channel Life, a subsidiary of Sanlam, were fined R2 million and R1 million respectively. The contravention was the result of a system design error. We are trying to establish whether the overpaid commission had to be paid back.

From the Short-term Ombud

The Ombudsman for Short-term Insurance has announced that an appeal mechanism against final rulings issued by his office would become effective on 1 December 2013. The mechanism will be available to consumers and insurers, but only where the Ombudsman has granted the applicant leave to appeal will appeals be considered. Time will tell how effective this system is and what it will do to the



costs of a referral to the Ombud – which for the insured may well be prohibitive.

From the Financial Intelligence Centre

Directive 01/2013 has been issued by the FIC. It deals with the responsibility of accountable and reporting institutions to update details originally supplied when they registered. It specifically states that the updating must take place via their web based portal and no details must be submitted to their offices.

Interesting things we have read

Insurance Gateway October 2013

Health Insurance - Gap Cover Back on the Table.
[Click here to read more.](#)

FA News had a similar article on this subject. [Click here to read more.](#)

Treating Customers Fairly: A practical perspective.
[Click here to read more.](#)



The full Impact of POPI. [Click here to read more.](#)

FANews

11/11/2013 – FAIS Ombud annual report. [Click here to read more.](#)

27/11/2013 – FAIS DETERMINATION RAISES TRUST ISSUES an interesting case involving an FNB staff member where the Ombud ruled against the client for failing to see the “red flags” that were evident in the various transactions. [Click here to read more.](#)



COVER

20/11/2013 Regulator's proposals on cell captive insurance are largely positive, says industry leader. [Click here to read more.](#)

Moonstone

11/11/2013 – More on TCF. [Click here to read more.](#)

And finally some interesting facts we came across:

Of the 22,112 FSPs 10,130 are fully authorised, with the remainder being in various licence states, including Rejected, Withdrawn, Suspended, and Lapsed. For the 10,130 that are fully authorised, these FSPs have 123,436 Representatives (including Sole Proprietors) working for them. The size segmentation is as follows (all figures as at 30 September 2013):

143 have no Reps,
7,470 have 1-3 Reps,
1,325 have 4-7 Reps,
420 have 8-11 Reps,
480 have 12-30 Reps,
192 have 31-100 Reps,
100 have >100 Reps.



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