COMPLIANCE OFFICERS KEY ISSUES

TREATING CUSTOMERS FAIRLY (TCF)
FAQS

This guide has been provided free of charge and for guidance only. It does not constitute as a legal document or compliance advice. If you are unsure of your legal and regulatory obligations, you should consult the FCA Handbook.

Whilst LS Consultancy has made every effort to ensure that the material contained in this template is relevant and accurate, the template is only available for public viewing and use on the basis that LS Consultancy disclaim all liability to the fullest extent permitted by English Law for any loss or damage arising out of the use of this document or for any reliance by users upon its contents

Treating Customers Fairly in today's market

The current economic environment remains challenging for firms, with a continuing low interest rate environment where returns on investments have not returned to the levels seen in the past. This generates risks for consumers.

Firms will be looking to move into a phase of growing revenue by cutting costs and increasing revenues in order to maintain or improve profitability at the same time as consumers are reducing levels of household debt and looking to save and invest their money with good returns. Some consumers will be in financial difficulty and may struggle to maintain commitments made at the start and after the crisis.

TCF, with its focus on consumer outcomes, is central to the Financial Conduct Authority's (FCA) work in ensuring a fair deal for consumers. It underpins the delivery of their consumer protection objective and the future objectives of the FCA.

We hope to help demonstrate the seriousness and key value of the TCF initiative. This document contains frequently asked questions about treating customers fairly (TCF) under the following categories:

1. **About TCF**
2. **Expectations of firms**
3. **Evidencing TCF** (*Management information*)
4. **Culture**
5. **Providers and distributors**.

About TCF

Is TCF part of more intrusive supervision? The regulator is focusing our more intrusive approach on 'conduct of business' risks just as much as on prudential risks. They have strengthened their focus on conduct risks, with a Conduct Risk Division to identify and mitigate conduct risks and to support their assessment of TCF as part of their core supervisory processes.

They aim to do this by proactively focusing on the outcomes firms are delivering for consumers. Their more intrusive supervisory approach means we will be ready to make more judgements about the quality of consumer outcomes.

How much importance do you place on TCF? The fair treatment of customers continues to be a high priority for the FCA. Difficult market conditions pose particular risks to fair outcomes for consumers. They will continue to take tough, decisive action where they find actual or potential consumer detriment and this will include taking action against senior management. Has the focus on TCF ended? If not, how will you test firms to determine that they are delivering?

Although TCF is quite an old initiative it remains a vital part of the FCA's supervisory approach and as such, it has been fully integrated into their core supervisory work and embedded within their Firm Systematic Framework (FSF). This will help to safeguard the legacy of the significant effort made by the FCA and by firms on their TCF programmes, in terms of improved outcomes for consumers. Where they find failings, they will use their full range of regulatory powers to take action.

- **How do you define fairness?**

The six consumer outcomes which the FSA (the FCA's predecessor) have published define what we expect as fair outcomes for consumers.

- **How far does TCF apply to overseas customers of UK firms?**

Principle 6, 'a firm must pay due regard to the interests of its customers and treat them fairly', applies to activities carried out from establishments in the UK. This includes activities carried out from UK establishments with overseas customers.

- **Where does responsibility for the fair treatment of customers' rest within a firm? Is it just a compliance issue?**

It is the responsibility of a firm's senior management to make sure their firm treats its customers fairly. Senior management must also ensure a TCF culture is implemented and fully embedded throughout the firm. Will the Financial Ombudsman Service (FOS) take account of TCF good practice? TCF is concerned with the outcomes that a firm delivers to consumers and its culture, and how the culture ensures or reduces risk to fair outcomes for all customers.

The FOS deals with individual cases where a particular problem has arisen that cannot be resolved between the customer and the firm. In doing this, it takes account of Principle 6, as it does of all FCA rules guidance and standards, in reaching its decisions by referring to what in its opinion is fair and reasonable.

- **How does TCF apply to the unregulated business of a firm?**

While the principles for business do not apply directly to unregulated business, if the FCA discover behaviour related to a firm's unregulated business which arouses concern, they may use this as an indicator of risks in the firm's regulated business. The firm's culture determines whether customers are treated fairly. In the FCA's dialogue with firms on TCF they have said that it is difficult to see how they could successfully introduce a culture in one part of their business (the regulated part) without simultaneously expecting the same approach elsewhere (the unregulated part).

- **What will happen if a firm does not take TCF seriously? Will the FCA take enforcement action over TCF?**

The FCA expect senior management to take responsibility for ensuring their firms treat their customers fairly. This includes identifying risks, having appropriate systems and controls in place to mitigate these risks, and making sure these are effective. If they notice a breach that requires enforcement action, they will consider taking action against individuals within the firm if they think senior management have failed in their responsibilities. They will continue to take enforcement action on breaches of Principle 6.

- **Isn't this just all about customer satisfaction?**

No. Satisfied customers may not always have been treated fairly or vice versa. Although firms' use of data on customer perceptions is a useful management information tool, TCF is about more than satisfying customers.

- **Is it unfair that some customers have to pay more for certain financial products or services?**

The regulators view is that a firm’s decision to provide products (or not) and at what price (whether over the phone, internet or by email) as a commercial decision by that firm. Furthermore, to treat customers fairly does not mean that a firm is required to offer the same products or levels of service to all customers, as long as it delivers the product or level of service promised, and that customers are protected from unpleasant surprises from the products they buy.

- **What does TCF mean for small firms?**

The FCA view a firm’s decision to provide products (or not) and at what price (whether over the phone, internet or by email) as a commercial decision by that firm. Furthermore, to treat customers fairly does not mean that a firm is required to offer the same products or levels of service to all customers, as long as it delivers the product or level of service promised, and that customers are protected from unpleasant surprises from the products they buy. The assessment of whether small firms are treating their customers fairly is now part of the FCA’s overall approach to supervision. This reflects the FCA's wider stance, with TCF now being part of their day-to-day approach to supervision. Small firms should be clear that they will continue with their focus on fair outcomes for the customer and, where they see possible detriment or risk, will take any necessary action in line with their more intensive and intrusive approach to regulation.

LS Consultancy

Expectations of Firms

- **What does the FCA consider to be serious regulatory failures?**

1. The list below is a reminder of some of the areas that have been the focus of recent FCA thematic work or communications:
2. ongoing poor PPI sales practices;
3. failure to explain clearly key information in product disclosure documents (such as Key Features Documents);
4. poor quality advice (for example, in pension switching);
5. failure to take into account the right factors in making lending decisions;
6. unfair arrears management practices when firms are trying to secure payments on outstanding debts;
7. with-profits funds run without due independent challenge;
8. high pressure selling of shares;
9. failings in the sale and marketing of structured products;
10. failure to resolve issues concerning firms' promotional material and using unfair terms in customer contracts (which result in material levels of consumer detriment)

- **What action will be taken against failing firms?**

The FCA will continue to challenge firms rigorously where there are issues and take tough, decisive action where necessary. The standard against which firms will be judged remains high and where they find failings, they will continue to use their full range of regulatory powers to take tough and visible action.

- **If a firm met any qualification deadlines or milestones, does this mean that it no longer needs to focus on treating customers fairly?**

No, fair treatment of customers is a continuing requirement. New risks to consumers will emerge as firms move into new areas of business, alter their strategies and design new products. The FCA expect firms to keep risks to the fair treatment of customers under review to ensure they deliver against their ongoing requirement to treat their customers fairly. By having effective Management Information (MI) in place, firms will be able to regularly test whether they are consistently treating customers fairly, and to take necessary action to put things right where they are not.

LS Consultancy

- **What do firms have to do to meet the FCA's expectations?**

The FCA expect all firms to be able to demonstrate to themselves and to them that they are consistently treating their customers fairly. In this they expect firms to:

1. demonstrate that senior management have instilled a culture within the firm, whereby they understand what the fair treatment of customers means;

- where they expect their staff to achieve this at all times; and
- where the firm promptly identifies (a relatively small number of) errors it puts things right and learns from them;

2. be appropriately and accurately measuring performance against all customer fairness issues materially relevant to their business, and be acting on the results;
3. be demonstrating through those measures that they are delivering fair outcomes; and
4. have no serious failings – whether seen through MI or known to the FCA directly, including in areas of particular regulatory interest previously publicised by the FCA. Evidencing TCF (Management information)

- **What is management information (MI)?**

MI is information that is collected during a period of business activity. It may be about customers, staff, calls, visits, meetings, sales, opinions, parts of a process, predictions etc. MI is not just numbers. Quantitative data is valuable to any business, but commentary or opinions are also MI and can help provide a comprehensive, balanced view. All information relevant to a firm, from whatever source, can be described as MI.

- **Do I have to have a TCF MI pack?**

No. Evidence could come in a variety of forms, for example, conventional MI, results of compliance checks, and senior management's assessment of call-centre traffic or press coverage. In fact, anything that provides sound and reliable information on whether a firm is treating its customers fairly could, in principle, be used as evidence.

- **Can a firm rely on the results of customer satisfaction surveys to tell whether it is treating its customers fairly?**

MI on customer satisfaction may be indicative of fairness. However, it does not demonstrate fairness – customers can be satisfied with unfair treatment and dissatisfied with fair treatment. So satisfaction can only go so far in measuring TCF.

- **What is TCF management information (MI)?**

TCF MI is information or measures which tell firms how far they are delivering the six consumer outcomes. It may include other evidence not typically captured as part of a firm's existing MI. The FCA's "Treating customers fairly

- guide to management information" page provides a range of materials that may be useful for firms including our latest publications, real examples of management information by outcome and suggestions on how firms may wish to improve and use their TCF MI.

- **What do you mean by qualitative TCF MI?**

TCF MI should not be seen as just spreadsheets and figures in monthly board reports. Qualitative MI is commentary and analysis rather than just numbers – this may relate to the quantitative data captured by a firm. TCF MI is likely to include a mix of both quantitative and qualitative data and measures. It may also include one-off reports that are relevant to TCF, such as the results of a customer survey, an internal audit or compliance report.

- **Does the FCA require smaller firms to produce the same MI as larger firms?**

No, they do not. All firms should produce MI to measure TCF outcomes as appropriate for the size and nature of their business. Even the smallest firms should produce evidence to satisfy themselves that they are treating their customers fairly.

Culture

- **How will the FCA assess culture in firms?**

The July 2007 paper Treating customers fairly - culture sets out the culture framework based on six 'key drivers', which they believe have a significant influence on behaviours in firms. The FCA have fully integrated the framework into their FSF risk-assessment process and this helps their supervisors assess whether the drivers of behaviours in a firm are aligned to the delivery of sustainable fair consumer outcomes. It also helps to identify risks that might prevent good performance being sustained or to identify or explain poor performance where it exists.

- **What's in it for firms?**

It is only through establishing the right culture that senior management can convert their good intentions into actual fair consumer outcomes. The FCA think using the culture framework will help senior management in firms to understand some of the root causes of unfair outcomes, and therefore reduce the risk that customers are treated unfairly. In the FSA July 2007 paper they included a 'management behaviours' framework for small firms. This identifies the key management behaviours which could influence how a customer is treated and will help firms to make the appropriate cultural changes to ensure the consistent delivery of fair consumer outcomes. As part of their enhanced strategy for small firms they are using this framework to assess how firms’ management are embedding TCF into the way they run their business.

- **If a firm is not treating its customers fairly in its non-regulated activity, can you still take action?**

The FCA cannot take action against practices that are not consistent with TCF in areas which they do not regulate. However, if they become aware of unfair practices in a non-regulated area of a firm's business, they would then question whether fairness is part of a firm's corporate culture and look at the regulated areas of the firm.

- **Why is the FCA looking at culture?**

The FCA recognise that there is no single ideal culture across the financial services industry, and that all cultures are likely to have good and bad aspects. Their aim is, therefore, to seek to facilitate the creation of good cultures and intervene when bad ones seem to be creating unacceptable outcomes.

In the FSA's July 2006 paper Treating customers fairly – towards fair outcomes for consumers, the regulator stated that they intended to look at some of the organisational and management and management arrangements that may encourage or inhibit the move from senior management commitment to the consistent delivery of fair treatment of customers in all parts of a firm's business. They believe that it is only through establishing the right culture that senior management can convert their good intentions into actual fair outcomes for consumers and ensure that delivery of these outcomes are sustainable.

Providers and distributors

Will the responsibilities put overseas providers selling products in to the UK at an advantage? No. Typically, an overseas provider will distribute its products through a UK distributor that is bound by the principles. The UK distributor will need to consider its responsibilities to the customer and will be harder to do if it cannot be confident the provider has met its responsibilities. What if the definition of provider and distributor is not straightforward?

Firms should look at the roles they play in providing and distributing a product, and work out which responsibilities apply. Ultimately, responsibility flows from the role the firm undertakes – not the label attached to it.

- **Which principles are relevant for firms when they consider their responsibilities to treat customers fairly?**

The key principle for firms to consider is Principle 6 - 'A firm must pay due regard to the interests of its customers and treat them fairly'. However, firms should also consider their regulatory obligations under the other principles which also contribute to ensuring that customers are treated fairly. For example:

I. Principle 2 – 'A firm must conduct its business with due skill, care and diligence';

II. Principle 3 – 'A firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems'; and

III. Principle 7 – 'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading'.

These principles mean that, where the firm does not have direct contact with customers, the regulatory obligations under the other principles will contribute to the fair treatment of customers.

- **Will it place UK providers selling abroad at a disadvantage?**

No. Regulation of this kind serves to strengthen the UK as a financial centre. In any event, UK providers should already be meeting these standards.

- **Are you asking providers to police their distributors?**

Not at all. The FCA expect firms to actively look at how their products are being distributed, in particular by collecting management information about patterns in distribution and distribution channels. It should be clear if what is happening in a practice is consistent with what it planned for the product. But this is not the same as us expecting firms to 'police' or 'second guess' their individual distributors.

- **Can't providers and distributors decide for themselves how to share responsibility?**

Whether providers and distributors can agree between themselves how to divide responsibilities will depend on the circumstances. In particular, it depends on the nature of the regulatory responsibility; the extent to which such an agreement would be reasonable; whether the arrangement is clear to both parties and properly recorded; and the systems and controls used to monitor whether the agreement continues to be appropriate in the circumstances.

How can we help?

We offer a number of distinct products and services which can be deployed individually or combined to form a broader solution.

When you face business or regulatory challenges, we provide solutions that are tailor-made to your needs with a view to releasing your energies to focus on your clients.

We work both within individual teams and across many departments to offer a complete solution, with a range of cost effective, compliance and marketing solutions which are uniquely suited to supporting firms.

VISIT: www.lscprom.co.uk

LS Consultancy