



Financial
Services
Board

Treating Customers Fairly (TCF)

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Agenda

- Policy context
- Regulatory context
- TCF elements and outcomes
- Process so far and next steps
- Considerations for the retirement funds industry



Policy context

The National Treasury has published its policy position for financial sector regulation in “*A Safer Financial Sector to Serve South Africa Better*”. (published with the February Budget Speech).

Some pertinent points:

- *Policy objectives*: (1) Financial stability (2) Consumer protection and market conduct (3) Expanding access through financial inclusion (4) Combating financial crime
- Shift to “twin peaks” regulation – prudential regulation (SARB) and market conduct regulation (FSB), over the medium term
- *Main market conduct proposals*: (1) Retail banking market conduct under the FSB and (2) implementation of TCF
- TCF is described as a “framework for tougher market conduct oversight”.
- Broad outcomes will guide TCF implementation but clear, enforceable rules and regulations also need to be in place to ensure these outcomes are achieved – reliance on firms “doing the right thing” is insufficient.

“The challenge facing the FSB, NT and the DTI is to develop a framework that complements prudential oversight, setting standards of conduct that are more stringent than those generally applied to other non-financial goods and services.” (my emphasis).



Regulatory context

- The FSB's role is to *implement* policy formulated by the National Treasury
- Market conduct regulation (including TCF) will become the FSB's primary mandate
- TCF emphasis is on protection of *retail* customers
- Some TCF outcomes are already quite well addressed in existing FSB legislation (esp. FAIS) but others are inadequately addressed (more focus needed on product supplier conduct; focus on culture vs compliance).
- TCF will complement other consumer protection legislation – eg. CPA, NCA, PPI, sector specific legislation
- Council of Financial Regulators will ensure co-ordination and information sharing between regulators re enforcement, market conduct and legislation
- Ombud schemes will deliver “ultimate fairness” – but focus is on individual cases – TCF will apply holistically



Elements of the TCF framework

Measures to embed a TCF culture within regulated entities. This should not be a compliance function, but owned at the highest level to drive a change in mindset.

A regulatory framework that focuses on the spirit, intent and principles as well as rules. Clarity of regulatory expectations is important.

The proposed framework comprises:

A new supervisory approach that will test achievement of TCF outcomes “on the ground” – more pre-emptive & intensive.

The right incentives to achieve enforcement through credible deterrence. Reliance on industry goodwill alone is not sufficient.



The 6 TCF outcomes

1. Customers can be confident they are dealing with firms where TCF is central to the corporate culture
2. Products & services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly
3. Customers are provided with clear information and kept appropriately informed before, during and after point of sale
4. Where advice is given, it is suitable and takes account of customer circumstances
5. Products perform as firms have led customers to expect, and service is of an acceptable standard and as they have been led to expect
6. Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch providers, submit a claim or make a complaint

These outcomes are to be demonstrably delivered throughout the product life cycle, from product design and promotion, through advice and servicing, to complaints and claims handling.



TCF cultural framework

Leadership

- Board, senior and middle management to provide direction and monitor delivery

Strategy

- TCF built into management plans – not just in vision & value statements

Decision-making

- All decisions impacting on customers must be subject to TCF challenge. Staff must be able to challenge without repercussions.

Controls

- MI to be identified, collected and evaluated to monitor success of TCF outcomes

Performance and management

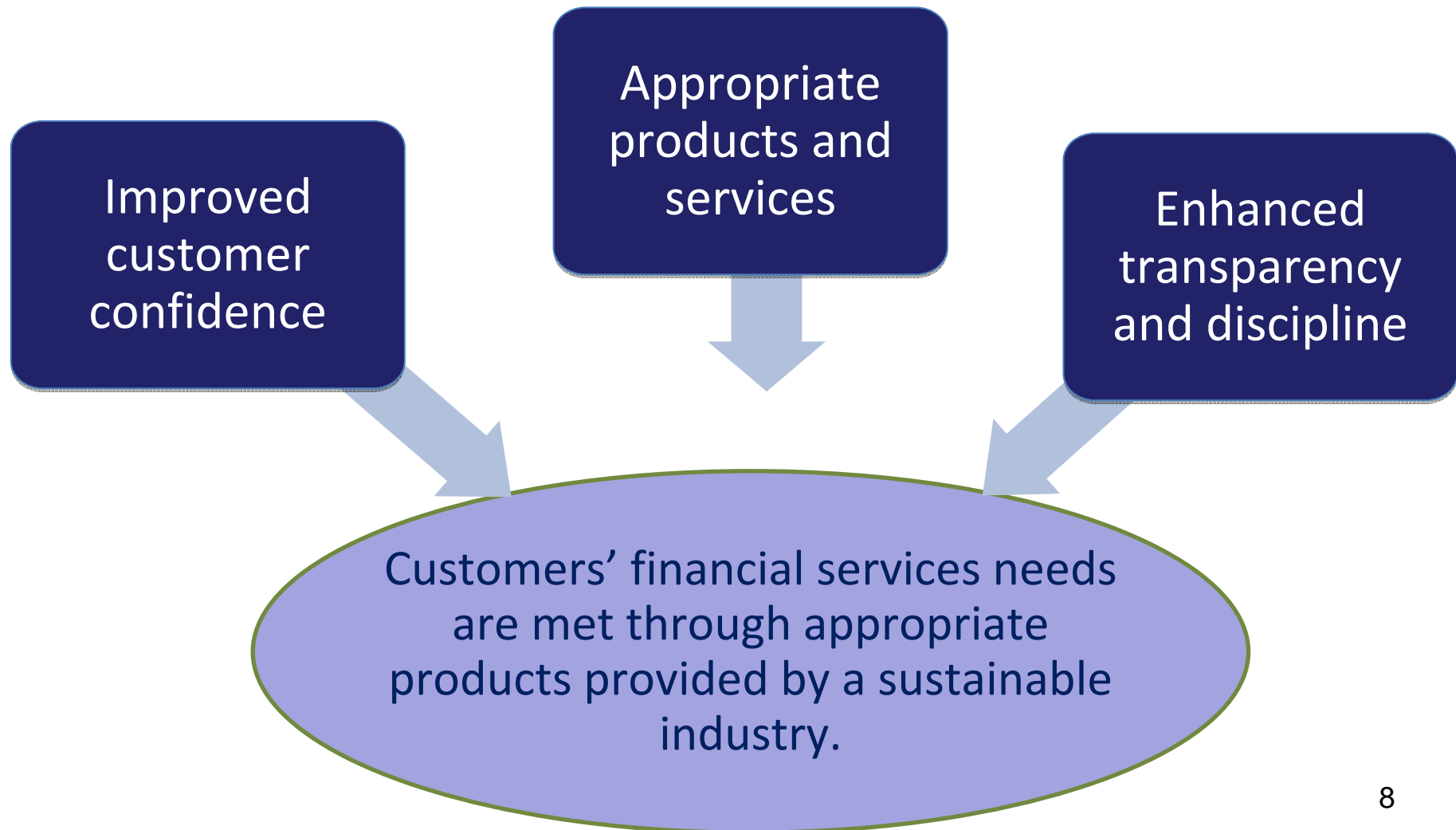
- Appropriate recruitment, training and evaluation against TCF competence and expectations

Reward

- Incentive schemes to take cognisance of fair customer outcomes



Final outcomes





The process so far

- FSB published a TCF discussion paper at the end of April 2010 to introduce the TCF concept
- Stakeholder workshops to debate TCF and obtain stakeholder perspectives – including a workshop with the UK's FSA
- FSB has appointed a dedicated resource to head up the TCF implementation with support from an internal cross-sectoral task team
- Considering comments received - THANK YOU!



Comments received

Comments were helpful, and generally supportive of the TCF initiative.

Main requests for further clarity related to:

- Scope of industry sectors affected – esp. Will / should the banking sector be included? How will retirement funds be dealt with?
- What is meant by “retail” customers? How will “wholesalers” be affected?
- Gaps and / or overlaps with existing legislation
- Questioning the conceptual approach of regulating “fairness” and “ethics”
- Approach to supervision and enforcement – esp. with regard to “legacy” products and practices

The TCF roadmap will seek to respond to these comments, in a general manner, as far as possible. Some answers will need to emerge in future phases.



Next steps

The TCF Roadmap, to be published by end March 2011, will provide:

- A summary and response to comments received
- Details of the planned implementation approach & timelines for future phases

Future phases will include:

- Providing industry with a TCF self-assessment tool
- Engaging identified institutions to conduct a benchmarking study
- Developing the TCF regulatory framework (after a regulatory gap analysis and in consultation with industry and other stakeholders)
- Internally developing the FSB's TCF supervisory and enforcement framework
- Guidance for industry as appropriate to the phases
- Alignment with Ombud roles and FSB Consumer Education initiatives



TCF considerations for the retirement funds industry

National Treasury has highlighted particular policy challenges for retirement funds, many of which relate – directly or indirectly - to the issue of fair treatment of retirement fund members, potential members and their dependants.

These include:

- The preservation imperative
- Uneven treatment of various retirement savings products
- Member and trustee education
- The need to enhance choice through disclosure and transparency - “high and opaque” charges remain a concern and NT has specifically signalled these as a focus of the TCF initiative
- Possible economies of scale through umbrella funds
- Lack of harmonisation of public sector funds



TCF considerations for the retirement funds industry (cont.)

The legal construct of retirement funds – with their complex combination of member, fund / trustee, sponsor / employer, insurer and benefit and investment administrator inter-relationships - raises questions regarding the application of TCF as a *retail* consumer protection tool.

Members of retirement annuity and preservation funds are (always?) retail customers. As such, administrators of these funds will be expected to deliver TCF outcomes for members.

But more complex questions include:

- What are the TCF accountabilities of RA and preservation fund trustees? How will these reconcile with their common law and PF130, Regulation 28 and proposed Code of Ethics fiduciary obligations?
- Where both administrators and trustees carry TCF accountability, how is this to be apportioned and balanced? How should conflicts be resolved?
- Arguably, commercially operated occupational umbrella funds can be regarded as operating in the retail space. If so, what are the respective trustee and administrator TCF accountabilities?
- Should offering individual member choice trigger TCF accountabilities, even for occupational funds? If not, what is the best consumer protection framework for these members to ensure reasonable consistency with the TCF outcomes?
- Although financial advisers dealing with individual members will clearly have TCF accountabilities, what are the TCF expectations for fund level advisers?

Stakeholder engagement on these questions will be required to ensure consistent delivery of fair member outcomes, within an efficient and enforceable framework.



Thank you
Questions please?