



TCF – Guidance for small FSPs/ Independent Financial Advisors (IFAs)

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 small FSPs/IFAs 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 rather 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 customer 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 should you do?

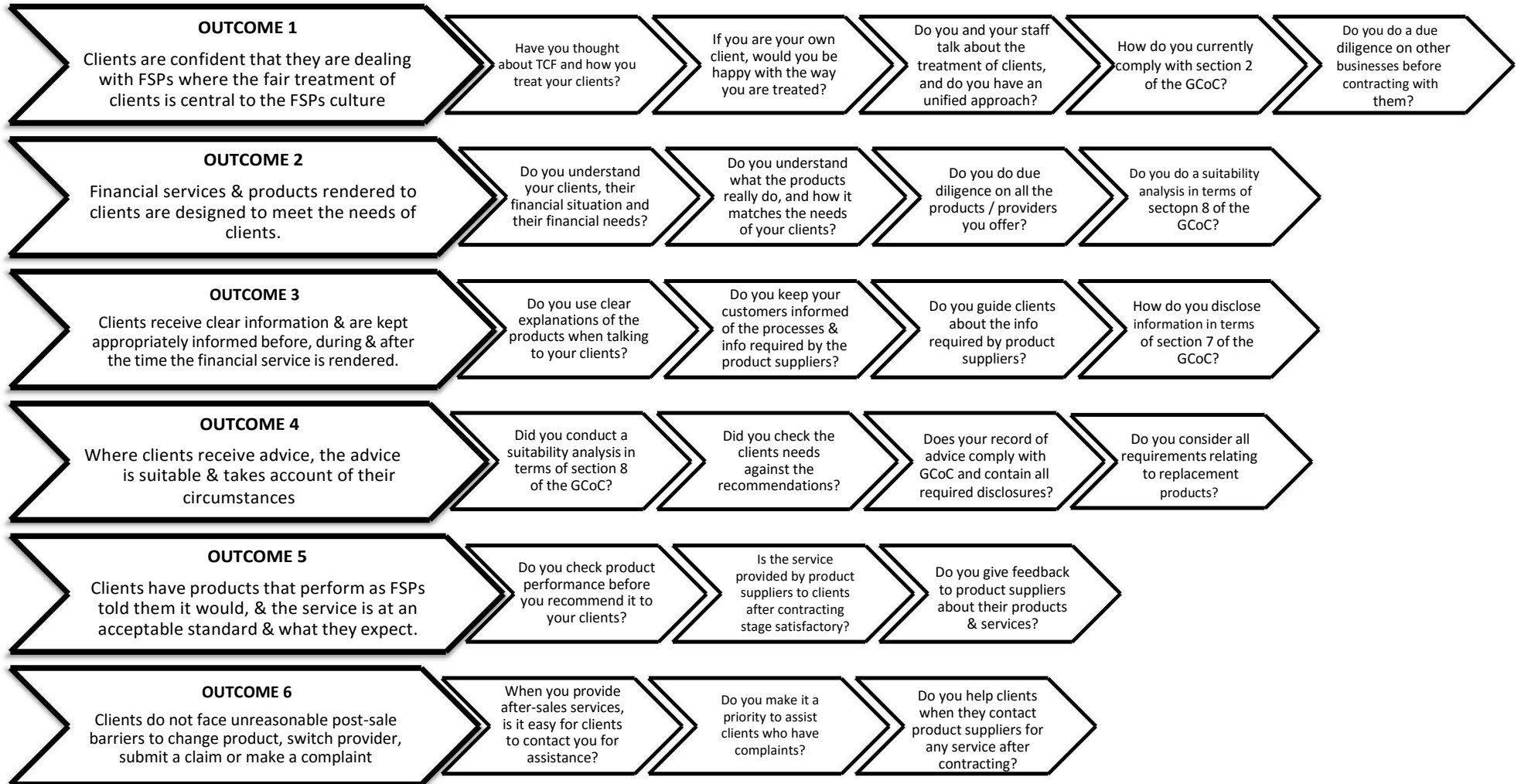
1. Think about TCF and your business – can you answer the questions on pages 4 and 5 of this guide?
2. If you have staff members, discuss the outcomes with them and agree how you will live TCF in the business.
3. Decide how you will incorporate TCF outcomes into your business processes.
4. Document your 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 customer's experiences of their product performance, promotional material, and service delivery before, during and after the contracting stage.

What is the role of your Compliance Officer in TCF?

Small FSPs 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.

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Some additional questions you may find very useful:

1. Does your approach to FAIS enable you to demonstrate Outcome 4?
2. What are you doing about the other 5 outcomes?
3. Are you clear about your TCF responsibilities – at all times?
4. Do you understand the difference between your TCF responsibilities and those of the product supplier, underwriting manager, etc?
5. Are your customers clear about this as well?
6. Who is responsible for TCF in your FSP?
7. How do you measure TCF delivery?
8. Has your staff been trained in TCF? Including administrative staff?
9. How do you take TCF into account when dealing with a product supplier or asset manager?
10. How do you take TCF into account when you decide to market a specific product?
11. How do you confirm which target market a product is designed for and then ensure you market accordingly.
12. Do you test the clarity and appropriateness of product material before giving it to clients? What do you do if it isn't up to standard?
13. How do you ensure that clients get post-sale information when they need it?
14. Do you insist that product suppliers give you and your representatives specific product training?
15. What level of feedback do you give to product suppliers on their products and services?
16. What controls do you have in place to monitor risk of poor advice by your representatives?
17. Do you monitor the representative's complaints, claims, replacements, portfolio switches?
18. What do you do to mitigate risks for clients when you discover a problem with the advice?
19. Have you communicated your service standards to your clients?
20. How do you support your clients at claims stage?
21. Do you analyse and act on complaints for TCF purposes?

Complaints handling

It is very important that you analyse your complaints handling process to ensure that it meets the FAIS and TCF requirements:

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.
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**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.
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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?; or
- Is the complaint dealt with and the information that could be gathered from the complaint ignored?