

Upcoming regulation to set the tone

Yurika Pistorius, Compliance and Sustainability Officer of Centriq Insurance sheds light on the FSB's discussion paper on how to treat South African customers fairly.

The market conduct objectives as set out in the Financial Services Board's (FSB) discussion paper on Treating Customers Fairly (TCF) provides valuable insight into how South African firms can ensure that consumers gain a better understanding of the product/s they buy.

The discussion paper, which forms part of the first phase of the FSB's total roll-out of the forthcoming regulation, dealt with the following matters among others:

- The successful implementation of TCF at various management levels, including the Board
- The important role of management in driving and monitoring TCF outcomes and objectives
- The inclusion of TCF in company strategy, vision and values
- The inclusion of TCF in decision-making processes that impact on products sold to consumers
- Staff members' role in evaluating and challenging companies' TCF objectives
- The measurement of the outcome of companies' TCF programmes
- The recruitment and training of staff and agents to ensure that TCF objectives are achieved
- Performance management of staff members and agents who must be trained to deal with TCF
- Rewards and incentives for successfully achieving TCF objectives

PRODUCT TYPES, ROLL-OUT AND DESIGN

The discussion paper highlighted the need for South African firms to better explain fee structures that apply to investment products among others as it was found that, in some cases, the product design defeated the apparent purpose of the product. E.g. the improbability of a positive return on investment policies due to high and layered fee structures imposed on products.

Products with highly restrictive contractual wording that has the effect of creating a very small claim ratio also came under the spotlight, e.g. health policies that cover highly obscure conditions but exclude more common diseases and conditions.

Misleading marketing material and empty promises received attention, e.g. companies that state that claims will be paid out within 48 hours although they lack the manpower and/or systems to do so.

It was also noted that consumers need to be properly informed about the pro's *and* con's of products, including the key risks associated with a product and the extent of exclusions or limitations so that an informed decision can be made. For this reason, church, work or community groups that are used as broad-based distribution channels will most probably fall away in the future as members are in most instances inadequately trained and cannot explain the nature of a product and its exclusions on a professional level.

CHALLENGES DURING THE ADVICE-PHASE

The discussion paper used upfront commission structures in long-term insurance as an example, stating that some commission structures may lead to over-eagerness to sell inappropriate policies, e.g. where a highly incentivised policy (as opposed to a non-insurance product that offers less upfront remuneration and is more suitable to a client's needs) is sold to a customer who clearly cannot sustain premium contributions.

Financial firms that direct all business to an associated insurance company were also mentioned in the document, stating that clients may not be aware that they can choose an alternate supplier and may therefore not be able to determine if the associated company offers real value for money.

POINT-OF-SALE

Bundling of different components of a product, including associated premiums or fees that are not brought to the attention of the consumer may keep the consumer from understanding that he/she may opt out. It may also keep the consumer from understanding the full extent and nature of the insurance product and/or its value.

The discussion paper furthermore stated that:

- The absence of clear and simple language and/or inadequately defined terms in point-of-sale material used by sales persons and/or the broker may potentially confuse the consumer.
- In the case of telemarketing, consumers are sometimes misled by the apparent ease of the process, and may not pay attention to the need to provide follow-up or additional information. E.g. the ID and licence numbers of additional drivers may be requested. However, the importance of submitting this information may not be emphasised. In this case, consumers run the risk that claims involving such additional drivers will be rejected.

AFTER POINT-OF-SALE

Customers' experience after point-of-sale concluded that many consumers were surprised by service fees or charges that took effect after a policy was called into use because these charges or service fees, e.g. broker commission, were not properly explained or disclosed at point-of-sale.

The discussion paper also noted that while charges on withdrawals and surrenders from contractual savings' products of insurers, for example, may be incorporated into the design of the product in order to encourage long-term savings, inadequate advice given prior to point-of-sale may indicate that the consumer has neither appreciated the nature of the contract nor his/her responsibility in undertaking it. Moreover, the contractual arrangements may not be at all suited to the financial position of the client, which may result in a negative after-sales experience.

COMPLAINTS AND CLAIMS HANDLING

Many firms assign considerable resources to the repudiation of claims instead of ensuring that adequate information is provided to consumers upfront. E.g. after a claim is made, much effort is put into proving that there was inadequate disclosure by the policyholder and/or that a condition pre-existed. At the time the contract was signed, however, little or no effort was made to extract sufficient information and/or explain the consequences of pre-existing conditions.

The discussion paper also stated that in some cases, payouts of retirement annuities are delayed by administrative inefficiencies for months on end, leaving the consumer out of pocket and unable to take advantage of other investment opportunities.

A new approach that involves principles of fairness embedded in the cultural behaviour of firms seems called for rather than ad-hoc regulatory fixes.

THE WAY FORWARD

To conclude, the discussion paper suggested that the appropriate regulatory regime to facilitate the successful implementation of a TCF programme in a South African firm requires that:

- Regulatory expectations are clarified and ensured through legislative revision, regulatory change and the provision of guidance notes to the industry.
- Programmes are monitored through pro-active and intensive supervision.
- Compliance is ensured by means of appropriate incentives and sanctions.
- Consumer responsibility is ensured through client education.
- Ultimate fairness is facilitated by working with the statutory and voluntary ombudsmen and adjudicators.

Having said that, it is imperative to note that each and every one of the key elements as discussed in the FSB's document are interrelated and that the success of a TCF programme will depend on the successful implementation of all of the elements.

NOTE TO THE EDITOR:

The FSB has published the discussion paper to clarify what is meant by 'treating customers fairly' in South Africa and to obtain views from the industry as a whole and consumers by stimulating debate and comment. After written submissions are received, a workshop will be convened to discuss all comments where after the FSB will set out its TCF vision and programme in stages.

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