



Treating Customers Fairly

Complaints Management Discussion Document

Proposed requirements for customer complaints management by regulated financial institutions, aligned to the Treating Customers Fairly (TCF) framework

TCF Outcome 6 provides that “*Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch providers, submit a claim or make a complaint*”. The current financial services regulatory framework in relation to complaints management is inconsistent, with different levels of responsibility placed on different types of entities. This document invites comment on a proposal for a more consistent and comprehensive regulatory framework to support delivery of the complaints related aspect of Outcome 6, across different types of financial institutions.

This proposal is the outcome of a series of consultations, going back to February 2013, with the multi-stakeholder TCF Regulatory Framework Steering Committee.

The FSB takes this opportunity to thank the Steering Committee members and the organisations they represent for their constructive contributions to the development of this proposal.

DISCUSSION DOCUMENT

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PROPOSED REQUIREMENTS FOR CUSTOMER COMPLAINTS MANAGEMENT BY REGULATED FINANCIAL INSTITUTIONS, ALIGNED TO THE TREATING CUSTOMERS FAIRLY FRAMEWORK

1. BACKGROUND

The Financial Services Board (FSB) has adopted a Treating Customers Fairly (TCF) framework as the basis for its supervision of the conduct of business of regulated financial institutions¹. The TCF framework will also be a key component of the future market conduct regulatory authority's mandate to promote fair treatment of financial customers under the "Twin Peaks" model of financial sector regulation². The TCF approach seeks to ensure that specific, clearly articulated fairness outcomes for financial services customers are demonstrably delivered by regulated financial institutions, at all stages of the relationship between the institution and its customers.

Effective management of customer complaints by financial institutions is a vital component of financial consumer protection. TCF Outcome 6 provides that ***"Customers do not face unreasonable post-sale barriers imposed by firms³ to change product, switch providers, submit a claim or make a complaint"***. The current financial services regulatory framework in relation to complaints management is inconsistent, with different levels of responsibility placed on different types of entities. This document proposes a more consistent and comprehensive regulatory framework to support delivery of the complaints related aspect of Outcome 6, across different types of financial institutions.

This proposal is the outcome of a series of consultations, going back to February 2013, with the TCF Regulatory Framework Steering Committee (the "TCF Steering Committee")⁴. After consideration of all inputs provided by the TCF Steering

¹ For further detail regarding the TCF framework, please see the "TCF Roadmap" (March, 2011) and subsequent TCF related communications, available on the FSB's website: www.fsb.co.za.

² Please refer to the policy publications "A safer financial sector to serve South Africa better" (February 2011) and "Implementing a twin peaks model of financial regulation in South Africa" (February, 2013), available on the National Treasury website: www.treasury.gov.za.

³ The term "firm" is used in the phrasing of the TCF Outcomes and elsewhere in this document, to refer generally to any financial institution currently regulated by the FSB and, under the Twin Peaks regime, to be regulated by the market conduct authority. Terminology used in subordinate legislation will however align to the terms used in applicable primary legislation.

⁴ The Steering Committee is a multi-stakeholder consultation forum, comprising representatives of the FSB, the National Treasury, the SA Reserve Bank, various industry and professional associations and Ombud schemes.

Committee, the proposal is now published as a Discussion Document, inviting broader stakeholder comment.

As input into the development of this proposal, the Insurance Department of the FSB carried out a thematic review of complaints handling practices in a sample of long-term and short-term insurers during April to June 2014. The findings of this review, which we believe support the need for consistent and comprehensive regulation of complaints management, are summarised in Annexure D.

- *Annexure A* sets out the six TCF Outcomes, for ease of reference.
- *Annexure B* is a list of international standards and other information sources considered in developing this proposal.
- *Annexure C* summarises some of the most significant comments made by TCF Steering Committee members in the course of earlier rounds of consultation with them, as well as the FSB's previous responses to such comments. The FSB takes this opportunity to thank the TCF Steering Committee and its workstream members for their constructive input to date.
- *Annexure D* summarises the findings of a thematic review of insurers' complaints handling practices, carried out by the FSB's Insurance Department during April to June 2014.

2. COMPONENTS OF A FRAMEWORK FOR TCF ALIGNED COMPLAINTS MANAGEMENT

The overall regulatory framework for complaints management should comprise the following prescribed⁵ components, each of which is discussed in more detail in paragraphs 2.1 to 2.6:

- Consistent regulatory definitions of "complaint" and related terms.
- Standards and requirements for firms to implement internal complaints management processes, including record keeping, monitoring and analysis.
- Requirements for TCF aligned categorisation of complaints.
- Requirements in relation to the engagement between firms and Ombud schemes.
- Requirements for reporting complaints information to the regulator.
- Requirements for public reporting of complaints information.

⁵ Section 3 discusses how these components may be embedded into the current regulatory framework, pending the development of a more overarching market conduct regulatory framework under Twin Peaks.

2.1. Definitions⁶

To ensure that regulated firms consistently manage complaints in accordance with TCF standards, and to ensure meaningful and comparable complaints related management information and data, consistent definitions of certain key terms are required. The following definitions are proposed:

“Complaint” means an expression of dissatisfaction by a complainant, relating to a product or service provided or offered by a financial institution, or to an agreement with the financial institution in respect of its products or services and indicating that -

(a) the financial institution or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the financial institution or to which it subscribes;

(b) the financial institution or its service provider’s maladministration or wilful or negligent action or failure to act, has caused the complainant harm, prejudice, distress or substantial inconvenience; or

(c) the financial institution or its service provider has treated the complainant unfairly

and regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a customer query⁷.

“Complainant” means a person who has submitted a specific complaint to a financial institution or, to the knowledge of the financial institution, to the financial institution’s service provider and who –

(a) is a customer or prospective customer of the financial institution concerned and has a direct interest in the agreement, product or service to which the complaint relates; or

(b) has submitted the complaint on behalf of a person mentioned in (a),

provided that a prospective customer will only be regarded as a complainant to the extent that the complaint relates to the prospective customer’s dissatisfaction in relation to the application, approach, solicitation or advertising or marketing material contemplated in the definition of “prospective customer”.

“Compensation payment” means a payment, other than a goodwill payment, by a financial institution to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the financial institution’s contravention, non-compliance, action, failure to act, or unfair treatment forming the basis of the

⁶ The FSB recognises that certain of the definitions proposed differ from existing definitions in some current legislation. See the discussion in Section 3.

⁷ This last part of the definition of “complaint” does not imply that customer queries are elevated to the status of complaints. The intention is simply to clarify that where the complaint is made together with a query, that does not exclude it from being regarded as a complaint – an interpretation which some commentators have previously sought to adopt. For the expression of dissatisfaction concerned to qualify as a complaint, all requirements set out in the definition of “complaint” and “complainant” will still need to be met.

complaint , where the financial institution accepts liability for having caused the loss concerned.

“Compensation payment” excludes -

- (a) payment of amounts contractually due to the complainant in terms of the financial product or service concerned, or
- (b) refunds of amounts paid by or on behalf of the complainant to the financial institution where such payments were not contractually due

but includes interest on late payment of amounts or refunds referred to in (a) or (b).

“Customer” of a financial institution means any user, former user or beneficiary of one or more of the financial institution’s financial products or services, and their successors in title.

“Customer query” means a request to the financial institution by or on behalf of a customer or prospective customer, for information regarding the financial institution’s products, services or related processes, or to carry out a transaction or action in relation to any such product or service.

“Financial institution” means a financial institution as defined in the Financial Services Board Act 97 of 1990⁸.

“Goodwill payment” means a payment by a financial institution to a complainant as an expression of goodwill aimed at resolving a complaint, but where the financial institution does not accept liability for any financial loss to the customer as a result of the matter complained about.

“Prospective customer” of a financial institution means a person who has applied to or otherwise approached the financial institution in relation to becoming a customer of the financial institution, or a person who has been solicited by the financial institution to become a customer or has received marketing or advertising material in relation to the financial institution’s products or services.

“Rejected” in relation to a complaint means that the complaint has not been upheld and the financial institution regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint. This can arise either where the financial institution rejects a complaint without offering to take steps to resolve it because the financial institution regards the complaint as unjustified or invalid, or where the customer or prospective customer does not accept or respond to the financial institution’s proposals to resolve the complaint and the financial institution then advises the complainant that it does not intend to take any further action to attempt to resolve the complaint.

⁸ This is likely to be changed to refer to the relevant definition in the Financial Sector Regulation Bill, once enacted.

“Reportable complaint” means any complaint other than a complaint that has been –

- (a) upheld immediately by the person who initially received the complaint;
- (b) upheld within the financial institution’s ordinary processes for handling customer queries in relation to the type of agreement, product or service complained about, provided that such process does not take more than five business days to complete from the date the complaint is received; or
- (c) submitted to or brought to the attention of the financial institution in such a manner that the financial institution does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints.⁹

“Service provider” means another person with whom the financial institution to whose products or services the complaint relates has an arrangement in relation to the marketing, distribution, administration or provision of such products or services, regardless of whether or not such other person is the agent of the financial institution.

“Upheld” in relation to a complaint means that the complaint has been finalised in such a manner that the complainant has explicitly accepted that the matter is fully resolved or that it is reasonable for the financial institution to assume that the complainant has so accepted¹⁰. A complaint should only be regarded as upheld once any and all undertakings made by the financial institution to resolve the complaint have been met.

2.2. Internal complaints management

To demonstrate commitment to TCF Outcome 6, it would be necessary for any firm to develop, implement, monitor and internally report on an appropriate and effective internal process to manage customer complaints. In addition, firms are expected to use customer complaint information as an important source of management information to measure their delivery of the full set of TCF Outcomes. To confirm these regulatory expectations, the regulatory framework should set consistent obligations for all firms to develop and

⁹ Comment is specifically invited on this paragraph (c). This exclusion from the definition of “reportable complaint” is proposed in response to the valid concern that, given the relatively wide definition of “complaint”, some complaints may arise in circumstances where it is not reasonably practical to formally capture and record all the details required for reportable complaints. This includes cases where dissatisfaction is expressed in circumstances where it is not reasonably practical to require the complainant to provide the relevant level of detail – for example, a customer complaining about slow service while waiting in a queue, or expressing dissatisfaction about a firm’s products or services to a representative of the financial institution they happen to meet at a conference. However, concerns have been raised that such an exclusion is open to potential abuse by financial institutions. Note that, if adopted, any such exclusion would be subject to the firm’s obligation to ensure it imposes no unreasonable barriers to complaining and that its complaints process is transparent, visible and accessible with reference to the customer base concerned. The FSB acknowledges that regulatory guidance and specific supervision (for e.g. scrutiny of complaints management processes and mystery shopping) may be required to ensure that such an exclusion does not give rise to under-reporting of complaints or inadequate complaints management.

¹⁰ Note that, in cases where a complaint is partially resolved in favour of a complainant (for example by the firm paying a proportion of the amount requested by the complainant), the complaint may only be regarded as “upheld” where the complainant accepts, or is reasonably assumed to have accepted this as full resolution.

implement complaints management processes, and set consistent standards which those processes should meet.

It is accepted that complaints handling requirements need to be proportional to the nature, scale and complexity of the business concerned, as well as sufficiently flexible to cater for different types of products, services and business models¹¹. A set of overarching standards and requirements for complaints handling is therefore proposed. These standards and requirements are mainly principles based but may be supplemented by specific rules where appropriate, either for all sectors or for specific sectors or situations, as the case may be.

Standards and requirements for complaints management processes will include at least the following:

- A requirement to develop a Complaints Management Process (CMP), meeting prescribed standards.
- Standards for complaints record keeping.
- Standards for complaints monitoring and analysis.

Details of these proposed standards and requirements are set out in paragraphs 2.2.1 to 2.2.3.

2.2.1. Complaints Management Process (CMP)

All regulated financial institutions will be obliged to develop, implement and maintain a complaints management process (“CMP”) that records in writing the institution’s commitment to fair and transparent complaints handling, and its systems, processes and procedures for internal resolution of complaints. The CMP and the processes it sets out must be appropriate to the particular firm’s business model and the nature and scale of its products, services and customer base, and must meet the following standards:

- a) The firm’s senior governance body¹² must approve and endorse the CMP and any changes thereto, and review it on a regular basis.
- b) The CMP must be readily available to all staff, representatives and service providers involved in marketing, distributing, providing or administering the firm’s products or services or interacting with customers or prospective customers in any way, who must be appropriately and adequately trained on its provisions.
- c) Responsibility for oversight, implementation and monitoring of the CMP must be allocated to one or more specific staff members, with the appropriate level of authority, competence and resources to ensure that the CMP is adhered to fairly, objectively and transparently and that any conflicts of interest are identified and

¹¹ Where justified to ensure proportionality, certain standards or specific rules may be relaxed in specific situations, for example in respect of very small firms with limited infrastructure or where the nature of a process or business model renders them unduly onerous. The FSB may also, if it deems this necessary, provide guidance from time to time in relation to how standards or rules should be applied in certain situations.

¹² The board of directors of a company, or equivalent for other structures.

mitigated. This function may be delegated to an appropriately constituted committee or office, although the senior governance body will remain accountable for the delegated function.

- d) Responsibility for handling of specific complaints must be appropriately delegated to ensure efficient handling. Delegation should be to staff who are adequately trained and have an appropriate mix of experience, knowledge and skill in complaints handling, in the relevant complaints subject matter, in the principles of TCF, and in relevant legal and regulatory provisions. The organisational structure must also ensure that such staff are not conflicted and are empowered to make impartial decisions or recommendations.
- e) The CMP must establish processes that will ensure that potential complainants do not face unreasonable barriers to making a complaint. The complaints process must be transparent, visible and accessible through channels that are appropriate and accessible to the firm's target customer groups. Wherever feasible, customers and prospective customers should be provided with a single point of contact for submitting complaints. Transparency of the process includes adequate and appropriate communication to customers and prospective customers regarding how to complain (e.g. the type of information required from the complainant; where, how and to whom to submit the complaint; any time limits on submitting complaints; any other relevant responsibilities of the complainant). All relevant communications must be in clear and understandable language. The complaints process must be free of charge¹³ to the complainant.
- f) The CMP must enable complaints to be considered after taking reasonable steps to gather and investigate all relevant information and circumstances and with due regard to TCF principles and commitments.
- g) Complaints must be acknowledged on receipt and complainants must be promptly informed of the process that will be followed in handling the complaint (e.g. indicative timelines; availability of escalation or ombud options in the event of an outcome not in the complainant's favour; contact details of the person who will be handling the complaint in order to follow up on progress.)
- h) Complaints must be effectively dealt with in the shortest reasonable time, and in accordance with any prescribed timeframes and any timeframes set out in the firm's CMP.
- i) Complainants must be kept adequately informed of the progress of their complaint, and of the firm's decision in response to the complaint. Where resolution takes longer than expected, the complainant must be informed of causes of the delay and provided with revised timelines. Where a complaint is upheld, any commitment by the firm to make a compensation payment, goodwill payment or to take any other action must be carried out without delay and within any agreed timeframes. Where a

¹³ Where some aspects of the complaint investigation may entail cost to the complainant, for example reasonably requested new medical evidence to review an insurance claim, the complainant should be made aware of this as early as reasonably possible.

- complaint is rejected, the complainant must be provided with clear and adequate¹⁴ reasons for the decision and must be informed of any applicable escalation or dispute resolution processes, including how to use them and any relevant time limits.
- j) An appropriate internal complaints escalation or review process should be established wherever feasible. This process should provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler, and may also provide for complainants to escalate complaints not resolved to their satisfaction. The escalation or review process should be allocated to an impartial, senior functionary within the firm or appointed by the firm for this purpose.
 - k) Complaints must be appropriately recorded, monitored and analysed and must be categorised in accordance with TCF Outcome related risks (See paragraphs 2.2.2, 2.2.3 and 2.3 below). The recording, monitoring and analysis process must provide for an adequate level of regular reporting to relevant management levels, including to the senior governance body.
 - l) Appropriate processes must be in place for engagement between the firm and any relevant Ombud scheme/s in relation to complaints. (See paragraph 2.4 below).
 - m) Appropriate processes must be in place to ensure compliance with any prescribed requirements for reporting complaints information to any relevant regulatory authority or to the public. (See paragraphs 2.5 and 2.6 below).
 - n) The CMP must include a process for managing complaints relating to the firm's service providers (as defined above). This process must include proper oversight measures to ensure that service providers have adequate complaints management structures in place and mechanisms for monitoring and analysis of aggregated complaints data in relation to complaints received by the service provider, for the handling of any such complaints as may be directly submitted to or referred to the firm itself, and for the referral of such complaints to the service provider concerned for resolution where appropriate. Where complaints are referred to the service provider, the CMP should ensure that the complainant is appropriately informed of the process being followed and that the firm takes reasonable steps to monitor the outcome of the complaint.
 - o) A firm's governance and control processes – including risk management, internal and external audit and compliance functions, as appropriate – should enable on-going monitoring and management reporting on the effectiveness of and compliance with the firm's CMP, including by service providers.

2.2.2. Standards for complaints record keeping

As a prerequisite for effective complaints monitoring and analysis, complaints must be accurately, efficiently and securely recorded. The complaints record keeping system (as

¹⁴ The extent of reasons provided should be sufficient to enable the complainant to meaningfully challenge the basis of the decision through relevant escalation or appeal mechanisms.

established by the firm's CMP) must enable recordal of at least the following in relation to reportable complaints:

- All relevant details of the complainant and the subject matter of the complaint, including copies of all relevant evidence, correspondence and decisions.
- Appropriate TCF aligned categorisation of complaints (see paragraph 2.3 below).
- Progress and status of the complaint, including whether such progress is within or outside any relevant prescribed timelines or internal service levels.
- Details of numbers of complaints received, complaints upheld, rejected complaints, complaints escalated by complainants to the internal review function (where applicable)¹⁵, complaints referred to an Ombud, compensation payments and goodwill payments.

Firms are encouraged to also record as many of the above details as possible in relation to non-reportable complaints¹⁶. Where non-reportable complaints are concerned, a firm's CMP must include appropriate processes for handling such non-reportable complaints, including reasonable steps to identify noteworthy trends in relation to the types, volumes or incidence of non-reportable complaints.

2.2.3. Standards for complaints monitoring and analysis

Effective monitoring and analysis of complaints is a key tool for firms to use to identify, manage and mitigate emerging TCF related and other market conduct risks within their operations, to identify opportunities for improving TCF outcomes for their customers, and to prevent recurrences of poor outcomes and errors.

In order for firms to use complaints information to manage conduct risks and effect improved outcomes and processes as pro-actively as possible, complaints information should be scrutinised and analysed on an ongoing basis. Depending on the volume and nature of complaints received, a combination of qualitative and quantitative analysis should be undertaken. Qualitative analysis can for example include reviewing particular complaints as case studies and using them for staff training purposes or as motivations for process or product improvements. Quantitative data can be used to identify positive or negative trends and take these into account to confirm the success of initiatives or mitigate emerging risks, as the case may be.

Complaints analysis should be used to –

- Identify root causes common to categories of complaints and instances where such root causes are likely to affect other customers, products or processes.
- Identify failings in control systems.
- Detect poor staff or service provider performance, lack of skills or misconduct.

¹⁵ See paragraph 2.2.1(j) above.

¹⁶ Non-reportable complaints are those complaints contemplated in paragraphs (a), (b) or (c) of the definition of "reportable complaint". See also the discussion in footnote 9.

- Track the success of the firm's TCF delivery, or risks to TCF delivery.
- Demonstrate the benefits of effective complaints management by using lessons from complaints analysis to effect meaningful improvements for customers and the business.

2.3. TCF aligned complaints categories

The six TCF Outcomes constitute a set of principles against which the conduct of business of firms in relation to their customers, as well as the effectiveness and suitability of the regulatory and supervisory approach of the FSB (as market conduct regulator), will be tested.

Against this background, it makes sense for both firms and the regulator to be able to use complaints information to measure the industry's progress in delivering the TCF Outcomes, and to identify and mitigate risks to the delivery of those Outcomes. To achieve this, the FSB proposes that financial institutions be required to manage and categorise complaints in line with the TCF Outcomes.

TCF aligned complaints categorisation entails the following:

- a) Financial institutions should categorise, record and report on complaints by identifying the TCF Outcome category to which a complaint most closely relates, and group complaints accordingly. Paragraphs 2.3.1 to 2.3.9 provide more detail on the minimum complaints categories required and set out examples of types of complaints which would typically fall under each category. For some of the TCF Outcomes (Outcomes 5 and 6), additional sub-categories are proposed. There is therefore a total of nine minimum categories which should be used, wherever applicable.
- b) This categorisation is not intended to restrict institutions from using any other internal complaints categorisation process that they deem appropriate, over and above or in conjunction with the nine TCF aligned categories.
- c) Future regulatory and public complaints reporting will require affected institutions to report using the TCF aligned categories.
- d) Where a particular complaint could fall under more than one category firms should, for reporting purposes, identify the category to which the complaint most strongly relates. For internal analysis purposes however, where a complaint clearly indicates more than one type of TCF failing (for example a complaint relating to both poor administrative service as well as misleading disclosure), the firm should consider how best to ensure that both types of failing are identified and managed. The FSB accepts that additional regulatory guidance in relation to complaints categorisation may be required from time to time.
- e) Each of paragraphs 2.3.1 to 2.3.9 below provide non-exhaustive examples of possible complaint types in relation to each of the nine categories. These examples are provided as guidance, to assist firms in interpreting the scope of the category. Subject to paragraphs (f) and (g) below, it will therefore not be prescribed that firms

must design their CMP's to further categorise complaints in accordance with the possible complaint types under each of the nine categories.

- f) Despite paragraph (e) above, firms are strongly encouraged to consider a more granular categorisation than the minimum nine prescribed categories, particularly in the case of larger retail firms with substantial customer bases, high product and transaction volumes and / or diverse types of complaints. In these instances, the regulator will expect firms to be in a position to demonstrate TCF related actions they have taken in response to their complaints analysis processes, and they may have difficulty in doing so if their complaints categorisation takes place at too generic a level.
- g) Firms should also note that, over and above reporting based on the proposed nine minimum categories set out below, reporting requirements for specific types of firms, products, services and / or business models may require additional levels of complaint data. Consultation with affected stakeholders will take place prior to the introduction of any such additional requirements. Possible examples would include further categorising some or all categories of complaints in accordance with different product or service lines, different distribution channels and different target customer groupings¹⁷.

The proposed nine minimum complaints categories are as follows:

2.3.1. Outcome 2: ¹⁸ *Complaints relating to the design of a product or service*

This category will include complaints indicating that specific features of the product or service are unfair, inadequate, confusing or overly complex, or unsuitable for the customers at which they have been targeted. Complaints regarding unfair or confusing pricing, costs or charges would fall into this category. Complaints specifically relating to early termination charges, where applicable, should however be included under Category 6(a), and not under this Category.

For purposes of this category, complaints regarding the features or operation of bundled products or add-on / value added services, customer incentives or loyalty benefits should be included.

Reporting requirements in relation to this category are likely to require firms to further sub-categorise these complaints in respect of the classes of products and services concerned, as well as in respect of the target customer groups for those products and services.

¹⁷ For example, the proposed Conduct of Business statutory returns for insurers, on which the FSB is in the process of consulting the insurance industry, require TCF aligned complaints reporting as well as additional levels of complaints data.

¹⁸ Note that TCF Outcome 1 has not been explicitly included in the complaint categorisation, as it is unlikely that meaningful numbers of complaints will be received from customers relating specifically to the organisational culture of firms. Where such complaints are made, they are likely to have been triggered by the customer's experience in relation to one or more of the other TCF Outcomes. In the event that a complaint arises that does relate solely to Outcome 1, this can be categorised under the catch-all "Other complaints" category described in paragraph 2.3.9.

2.3.2. Outcome 3: Complaints relating to information provided

This will include complaints that any documentation provided to customers or prospective customers, or other communications with customers or prospective customers are inaccurate, unsuitable, misleading, incomplete, confusing, unclear, etc. It will cover both advertising and marketing material as well as specific product or service related communications. It will also cover information provided at all stages of the product life cycle, not only at or before point of sale. Complaints regarding such information could apply to either the content of the information, or the manner or medium in which it is provided. It will also include complaints regarding a failure to provide information, or complaints that information was provided at an inappropriate time.

2.3.3. Outcome 4: Complaints relating to advice

This category relates to complaints that advice provided did not take adequate account of the customer or prospective customer's needs and circumstances (including affordability), was factually incorrect or misleading, or that advice was not provided when the complainant believes it should have been provided. Complaints indicating that the adviser was subject to a conflict of interest, or was lacking in knowledge, skill, experience or integrity would also fall under this category. Complaints directed to advisers themselves, relating to the adviser's remuneration, would also be included. Complaints relating to the inclusion of advice related charges in the cost structure of the product itself, however, should be addressed under Outcome 2.

Reporting requirements in relation to this category are likely to require firms to sub-categorise these complaints in respect of different types of distribution channels¹⁹, such as:

- Tied channels
- Multi-tied channels
- Direct marketing channels
- Independent channels
- Other.

It is important to note that the FSB would expect product suppliers who distribute their products through multi-tied or independent intermediaries to record and monitor complaints that relate to advice provided by such intermediaries. See also paragraph 2.2.1(n) in this regard.

2.3.4. Outcome 5(a): Complaints relating to product performance

This category will include complaints indicating a customer's disappointment in becoming aware of limitations relating to the product or service that are not in line with their expectations. Where applicable, this would include (but is not limited to) complaints regarding perceived poor investment returns on investment, savings or retirement savings

¹⁹ The Retail Distribution Review currently being undertaken by the FSB may result in changes to the types of distribution channels to be taken into account.

products. The category would also include complaints indicating that the customer was not kept adequately informed during the life of the product of matters that affect the product's ability to meet expectations. Complaints regarding a product supplier's exercise of any contractual right to terminate a product or amend its terms would also fall under this category.

Complaints relating to non-payment of insurance risk claims should not however be placed in this category but in the Outcome 6(c) category.

Reporting requirements in relation to this category are likely to require firms to sub-categorise these complaints in respect of the classes of products and services concerned, as well as in respect of the target customer groups.

2.3.5. Outcome 5(b): Complaints relating to customer service

Customer service complaints are those expressing dissatisfaction with the firm's administration of requests and transactions (including complaints regarding the firm's technological support) and complaints relating to the way in which the firm's staff have dealt with the customer (for e.g. complaints of rudeness, incompetence or non-responsiveness). This would include complaints regarding the administrative processing of payments to or by the customer. Complaints relating to breaches of privacy or confidentiality also fall under this category.

It is important to note that complaints relating to the customer service standards of third party or outsourced service providers are included in this category and should be specifically identified.

Complaints arising from alleged fraudulent activity by the firm or a third party, where the customer is dissatisfied with the manner in which the firm has handled the matter or with the assistance provided by the firm in attempting to resolve the matter, would typically also fall under this category. It is recommended that fraud related complaints of this type be specifically identified.

Service complaints relating to the complaints handling process itself or to the administration of insurance risk claims, should not be included in this category but in category 6(b) or (c), as appropriate.

2.3.6. Outcome 6(a): Complaints relating to product accessibility, changes or switches

This category relates to complaints in respect of barriers or limitations on access to funds, or on the ability to transfer products or services to another provider, or on the ability to make changes to the product or service. Types of barriers or limitations covered would include penalties, termination charges, lengthy notice periods, complex "red tape" administrative hurdles when trying to access funds, etc.

Note that complaints relating to non-payment of insurance risk claims should not however be placed in this category but in the Outcome 6(c) category.

2.3.7. Outcome 6(b): Complaints relating to complaints handling²⁰

This includes complaints regarding the administration of the complaints process, such as delays, poor communication regarding processes and decisions, cumbersome or inaccessible processes, failure to inform complainants of their rights regarding escalation or Ombud mechanisms, etc. It does not include dissatisfaction regarding the outcome of a complaint, which would be regarded as a continuation of the original complaint.

2.3.8. Outcome 6(c): Complaints relating to insurance risk claims²¹

This category should be used for the above types of complaints only. Complaints relating to other forms of disbursements, such as investment, savings or retirement benefits should be classified under either Outcome 5(a) or 6(a), as appropriate.

These complaints would include (i) complaints relating to the administration of the claim process (such as delays, poor communication regarding processes and decisions, cumbersome or inaccessible processes, etc.), (ii) complaints relating to actual non-payment of claims and, where applicable (iii) complaints regarding the quality of workmanship where claim settlement entails repair or similar services²².

In the case of non-payment of claims, reporting requirements in relation to this category are likely to require the relevant firms to further sub-categorise these complaints in respect of the reasons for non-payment, such as:

- Required claim documentation / evidence not submitted
- Criteria for insured event not met
- Waiting period not expired
- Exclusion applies
- Excess applies²³
- Non-disclosure or misrepresentation
- Policy / benefit not in force
- Claimant is not the person entitled to the benefits (beneficiary disputes)²⁴

²⁰ It is accepted that such complaints will often arise from another, original complaint. Firms should use their discretion, as contemplated in paragraph 2.3(a), to determine whether these are to be managed as separate complaints or as a single complaint.

²¹ This category will generally only be relevant to claims for death, disability, health or critical illness benefits provided by long-term and short-term insurers. It will however include claims for such risk benefits provided by retirement funds, or in terms of group life cover schemes offered by employers to their employees in addition to retirement benefits.

²² This would apply primarily to short-term insurance claims

²³ This would apply primarily to short-term insurance claims

²⁴ This would include disputes regarding retirement fund trustees' death benefit payment decisions under s37C of the Pension Funds Act.

- Dispute re quantum of claim
- Other reasons.

2.3.9. Other complaints

A catch-all category for any complaints not falling within one of the above TCF aligned complaints categories or sub-categories. This category should however not be treated as a “default” reporting category. The FSB will, in the course of its review of complaints reporting and management, interrogate cases where a disproportionate number of complaints are categorised as “other”.

2.4. Engagement with Ombud schemes

Details of the regulatory provisions governing interaction between regulated firms and ombud schemes are to a degree dependent on the outcomes of the current National Treasury review of the ombud schemes structure. Regardless of the final ombud model however, the following requirements, which in some cases are already provided for in the current regulatory framework, can be expected to apply:

- Obligations on regulated firms to clearly and transparently communicate the availability and contact details of the relevant ombud’s services to customers and prospective customers at relevant stages of the customer relationship. Relevant stages include point of sale, relevant periodic communications, on receipt of a complaint, and when a complaint (or a claim, in the case of insurance) is rejected.
- Where appropriate, obligations on firms to display and / or make available information regarding the availability and contact details of the relevant ombud’s services at premises²⁵ and / or on websites.
- The principle that the firm should endeavour and, wherever feasible, be afforded an opportunity to resolve the complaint with the complainant before a final determination or ruling is made by an ombud. This does not however imply that a complainant’s access to an Ombud may be impeded or unduly delayed where the firm’s complaint management process is onerous or inefficient, or where the circumstances justify direct recourse to the ombud.
- Open and honest communication and co-operation between the ombud and firms in endeavouring to resolve complaints through conciliation or mediation (as opposed to final ruling or determination) as the preferred option.
- Firms should maintain specific records and carry out specific analysis of complaints referred to them by the ombud and their outcomes.
- Firms should monitor determinations (whether involving their own firm or others), publications and guidance issued by relevant ombuds with a view to identifying failings or risks in their own products or practices.

²⁵ Display of these details or making them available (such as through readily accessible pamphlets or leaflets) at the firm’s premises would, for example, be appropriate where the firm has “walk-in” customer contact points.

Pending the review of the Ombud schemes structure, consultation with current voluntary Ombud schemes to identify opportunities for co-ordinating their complaints handling processes with the framework proposed in this paper will continue. It is also recognised that differences in categorisation between the categorisation models used by firms and those of the Ombud schemes will need to be taken into account in developing reporting requirements and in analysing complaints data. Alignment will however be facilitated once firms themselves categorise complaints on a TCF aligned basis, as they will then be able to indicate their view of the relevant category to the Ombud in their responses to the Ombud.

2.5. Complaints reporting to the market conduct regulator

An effective complaint management system combined with effective complaints reporting and monitoring provides an early warning signal to regulators and supervisors. More particularly: *“Analysing consumer complaints data across financial services entities in a standardised reporting format, provides information to regulators and supervisors on how to improve market conduct, and helps regulators to identify consumer risks, regulatory gaps, systemic irregularities in the market place, and to assess the effectiveness of regulatory measures and compliance with laws and regulations.”*²⁶

Submission by firms of meaningful and reasonably consistently compiled complaints information enables the regulator to use the complaints information, in much the same way as a firm is expected to use it, to identify and mitigate emerging TCF related and other market conduct risks, to identify opportunities for improving TCF Outcomes for financial services customers, and to prevent recurrences of poor outcomes and errors. The regulator can use the information concerned to take conduct risk mitigation or remedial action either at the level of the individual firm or group concerned (micro conduct risk) or at an industry-wide or sector-wide level (macro conduct risk). Complaints information is also a useful factor, among others, to consider in prioritising supervisory scrutiny of different firms for purposes of risk-based supervision. Complaints reporting to the regulator is therefore a necessary tool to facilitate the principles of risk-based, proportional, pro-active and pre-emptive supervision.²⁷

The FSB is therefore in the process of developing more detailed proposals to introduce regulatory complaints reporting requirements, in a prescribed format, for regulated firms. The first industry to which this obligation will apply is the insurance industry, with both long-term and short-term insurers soon being required to submit regular conduct of business statutory returns, which will include – *inter alia* – complaints related data. Consultation with the insurance industry on proposed reporting templates is currently underway. Requirements in respect of other industry sectors will be considered as a subsequent phase, and consultation on any such requirements and implementation timelines will be undertaken²⁸.

²⁶ See the Update Report on G20 Principles 4, 6 and 9 by the G20/OECD Task Force on Financial Consumer Protection, referred to in Annexure B.

²⁷ As contemplated in both the TCF Roadmap and the Twin Peaks implementation document.

²⁸ It is recognised that prescribed reporting requirements need to take the principle of proportionality into account, as contemplated in paragraph 2.2 and footnote 11 above.

The proposed definition of “reportable complaint” above, is intended to reflect those complaints that firms are expected to fully record internally and that will be required to be included in the data submitted to the regulator. In other words, although firms are expected to manage all complaints (as defined) in their internal CMP’s, complaints of the types defined as falling outside the scope of “reportable complaints” may be excluded for detailed record keeping purposes and for regulatory complaints data reporting purposes. (See also paragraph 2.2.2 above.) The regulator will however review a firm’s overall complaints management processes in the course of its ongoing supervision and risk assessment of that firm.

As discussed in paragraph 2.3, complaints reports will require complaints data to be categorised in accordance with the nine TCF Outcome aligned categories and sub-categories described. In addition, complaints reports will also be required to include data relating to volumes, ageing / timelines and status of complaints (for e.g. complaints received, complaints still in progress, rejected complaints, escalated complaints, rejected complaints referred to the Ombud, complaints resulting in litigation, complaints upheld , compensation payment details, goodwill payment details, etc.).

Firms are also likely to be required to track and compare complaints data over different time periods in order to report on increases, decreases and trends. This may require reporting on identified complaint trends that are indicative of broader underlying problems with a firm’s products, services or practices, and of the firm’s risk mitigation plans in this regard.

The format of any prescribed reporting templates will be consulted on.

2.6. Public complaints reporting

Principle 9 of the G20 High-level Principles on Financial Consumer Protection includes the following statement: *“At a minimum, aggregate information with respect to complaints and their resolutions should be made public”*.

As explained in the TCF Roadmap, the FSB intends to go beyond this minimum standard and require firms to publicly disclose prescribed elements of their own complaints related data²⁹. As discussed in the TCF Roadmap³⁰, the FSB believes that the reputational impact of meaningful public disclosure can act as a deterrent to unfair customer treatment, and an incentive for firms to compete over the quality of the customer experiences they deliver. Through correctly structured public complaints reporting, a measure of market discipline will therefore come to bear on firms, that will incentivise TCF delivery.

Consultation on the extent, format and types of data to be published will be undertaken once further progress has been made in finalising the details of the proposals set out in this paper regarding definitions, complaint categorisation and regulatory complaints reporting. Consultation will include considering the extent to which the complaints categorisation

²⁹ Some TCF Steering Committee members have suggested that the regulator, as opposed to firms themselves, should carry out the firm-specific public disclosure, using data submitted to them by the firms. Options regarding complaints reporting responsibilities can be considered in the course of further consultation on public disclosure requirements, but at this stage it is the FSB’s preference that the reporting obligation, once introduced, should rest on firms themselves, subject to the necessary prescribed controls to ensure consistency and visibility.

³⁰ See Chapter 6 of the TCF Roadmap.

proposed in this document for reports to the regulator, is suitable for public reporting. Consideration will also be given as to which types of firms will be required to publicly report complaints data and what criteria should be applied to exclude certain firms, if any, from such requirements.

3. EMBEDDING TCF ALIGNED COMPLAINTS MANAGEMENT IN THE CURRENT REGULATORY FRAMEWORK

Some, but not all, current legislation or subordinate legislation already imposes specific obligations on firms to develop and implement complaints handling processes as part of their operations, and in some cases prescribes specific requirements and standards for these processes. The most comprehensive of these sets of requirements is the complaints handling process prescribed in Part XI of the General Code of Conduct under the Financial Advisory and Intermediary Services (FAIS) Act. The complaints management proposals in this document have therefore been distilled largely from the current FAIS provisions, also taking into account other local and international standards and practices³¹.

Over time, the intention is to incorporate final definitions and requirements in the market conduct regulatory framework being developed for purposes of the “Twin Peaks” implementation, on an over-arching, cross-sectoral basis. In the interim, however, it is recognised that existing legislated definitions and requirements, where they exist, will continue to apply in specific circumstances until such time as regulatory alignment can be achieved. Where current definitions and requirements are included in subordinate instruments, not requiring primary legislative amendment, opportunities will be sought to align these as far as possible, with appropriate adjustments where necessary to ensure consistency and relevance.

Further consultation will take place in the normal course on any specific proposed amendments to existing legislation or subordinate legislation. However, comment is invited on the high level proposed approach to embedding TCF aligned complaints management requirements in the current regulatory framework, as it applies to different types of financial institutions and dispute resolution structures, as set out in paragraphs 3.1 to 3.8 below.

3.1. Long-term and short-term insurers

The requirements and standards in relation to a firm’s CMP, complaints record keeping and complaints monitoring and analysis, can be implemented through amendments to the Policyholder Protection Rules (PPR’s) issued under the Long-term and Short-term Insurance Acts respectively. Since the promulgation of the Financial Services General Laws Amendment Act, such amendments may be effected by the Registrar of Insurance.

Requirements in relation to complaints reporting can be introduced through existing powers of the Registrar in relation to information requests or statutory returns. Consultation with the insurance industry regarding a regular Conduct of Business Return by insurers, including complaints related data, has already been undertaken.

³¹ See Annexure B for information sources reviewed.

Consideration will also be given to the responsibilities of insurance binder holders in relation to managing and reporting on complaints in relation to the activities they carry out on behalf of insurers.

3.2. Collective investment scheme (CIS) managers

In terms of the Collective Investment Schemes Control Act, the Registrar of Collective Investment Schemes determines conditions of registration for a CIS manager. These conditions already provide for a complaints management process, and can be amended as necessary to require such complaints management process to meet the requirements and standards in relation to a firm's CMP, complaints record keeping and complaints monitoring and analysis.

Requirements in relation to complaints reporting can be introduced through existing powers of the Registrar in relation to information requests or statutory returns.

3.3. Retirement funds and retirement fund administrators

Regulation 30 under the Pension Funds Act, which prescribes the requirements for the Rules of retirement funds, already requires such Rules to provide for the manner in which disputes between a retirement fund and its members or between the retirement fund and another person whose claim derives from a member, shall be settled.

Further detail regarding complaints management requirements – such as the above requirements and standards in relation to a financial institution's CMP, complaints record keeping and complaints monitoring and analysis – can be introduced through current regulatory enhancements that the Registrar of Pension Funds is in the process of effecting. In addition to a review of Regulation 30 requirements, these include the development of a Good Governance Directive for retirement fund boards of management (to replace and enhance the current PF Circular 130) and the revision of disclosure requirements currently contained in PF Circulars 86 and 90.

Where retirement fund benefit administrators are concerned, the current revision of registration requirements under s13B of the Pension Funds Act can impose explicit obligations on administrators in relation to managing complaints on behalf of the funds they administer.

Requirements in relation to complaints reporting can be introduced through existing powers of the Registrar in relation to information requests or statutory returns.

3.4. Financial services providers

The General Code of Conduct under the FAIS Act already imposes detailed obligations on authorised financial services providers in relation to complaints management processes. The relevant provisions of the Code can be amended as necessary to align to the above requirements and standards in relation to a firm's CMP, complaints record keeping and complaints monitoring and analysis.

The Registrar of Financial Services Providers is commencing a review of current FAIS reporting requirements, including but not limited to a review of the current Compliance Report format and process, to enable enhanced conduct of business monitoring. This review can include introducing requirements for complaints reporting.

In view of the broad range of types and scale of financial services providers authorised under the FAIS Act, the principles of risk-based and proportional supervision will be applied to determine the level and type of regulatory and / or public complaints data reporting required by different categories of providers.

3.5. Market infrastructures (MI's) and authorised users

As part of the broader “Twin Peaks” implementation, the regulatory and supervisory frameworks for MI's and their users – including aspects of the current self-regulatory organisation (SRO) model – are under review. The review includes a consideration of the extent to which the conduct of business obligations of MI's and authorised users should be more closely aligned to the requirements for other types of regulated activities (for example, possible greater alignment between the conduct obligations of intermediaries under FAIS and authorised users under the Financial Markets Act (FMA)).

Pending completion of this review, the intention is to introduce appropriate elements of the above requirements and standards in relation to a financial institution's CMP, complaints record keeping and complaints monitoring and analysis into the revised Code of Conduct for Authorised Users, which the FSB is currently consulting on. In the course of the broader review, the extent to which the current complaints management requirements to be included in the Rules of MI's in terms of the FMA, should be adapted to address the full set of requirements in this document (including TCF aligned complaints categorisation and reporting), will be considered.

3.6. Credit rating agencies

At this stage, it does not appear that the type of complaints management processes envisaged in this proposal will be appropriate to credit rating agencies, given the nature of their role. Credit rating agencies are however expected to manage any complaints relating to their activities in accordance with their overall operational and risk management processes.

3.7. Banks

Regulatory mechanisms for imposing requirements and standards on banks (in relation to their transactional banking activities) for a CMP, complaints record keeping, complaints monitoring and analysis and complaints reporting will be a function of the broader conduct of business regulatory framework being developed through the “Twin Peaks” legislative process. Note however that, to the extent that banks' advisory and intermediary activities are already subject to the ambit of FAIS, the complaints management framework for financial services providers as discussed in paragraph 3.4 will apply equally to banks.

3.8. Alignment with current alternative dispute resolution frameworks

It is important to note that the proposed definitions of “complaint” and “complainant” differ to some degree from current corresponding legislative definitions³² and definitions in existing voluntary ombud schemes' terms of reference. Accordingly, the definitions proposed in this document are not fully aligned to the definitions currently founding jurisdiction of the

³² See for example the relevant definitions in the FAIS, Pension Funds and Financial Services Ombud Schemes (FSOS) Acts.

relevant ombuds. For example, to qualify for ombud jurisdiction, a number of current definitions of “complaint” require an allegation of financial prejudice and / or require that the complainant must be an actual existing customer of the firm. For TCF purposes, the proposal is that firms would be expected to consider a broader range of complaints, including complaints relating to inconvenience caused by poor service and complaints by prospective customers.

Although the review of the ombud scheme model that is currently underway may create opportunities to review and align these definitions, such alignment is outside the scope of this proposal. At this stage therefore, and subject to further consultation on any specific proposed measures, it is likely that the various regulatory measures discussed in paragraphs 3.1 to 3.7 above will – at least for a time - entail some differences between the range of complaints that firms will be expected to manage internally and report to the regulator, as compared to the range of complaints that may be dealt with by the applicable ombud schemes.

4. NEXT STEPS

Interested parties are invited to comment on the proposals set out in this discussion document by no later than 1 December 2014. Comments may be submitted -

- In writing to Ms Leanne Jackson, Head: Market Conduct Strategy, Financial Services Board, P.O. Box 35655, Menlo Park, 0102; or
- By e-mail to FSB.TCFcomplaints@fsb.co.za

This discussion document is available on the Financial Services Board website (www.fsb.co.za).

After consideration of comments received, further consultation will take place on specific measures to implement relevant aspects of the proposals.

ANNEXURE A

The six TCF Outcomes comprising the TCF framework are:

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

ANNEXURE B

The following information sources were considered in developing the proposed requirements for TCF aligned customer complaint management:

1. South African legislation (including relevant subordinate legislation)

- 1.1. Collective Investment Schemes Act, 45 of 2002
- 1.2. Consumer Protection Act, 68 of 2008
- 1.3. Financial Advisory and Intermediary Services Act, 37 of 2002
- 1.4. Financial Services Ombud Schemes Act, 37 of 2004
- 1.5. Long-term Insurance Act, 52 of 1998 and Short-term Insurance Act, 53 of 1998 (Policyholder Protection Rules)
- 1.6. National Credit Act, 34 of 2005
- 1.7. Pension Funds Act, 24 of 1956.

2. Industry Codes

- 2.1. Association for Savings and Investment in South Africa (ASISA): *TCF Best Practices Guideline and Standard on Complaints Resolution*
- 2.2. Banking Association of South Africa (BASA): *Code of Banking Practice*
- 2.3. Financial Planning Institute (FPI): *Professional Standard*
- 2.4. South African Insurance Association (SAIA): *Code of Conduct*

3. South African policy and regulatory proposals

- 3.1. *"A safer financial sector to serve South Africa better"*, National Treasury, February 2011
- 3.2. *"The TCF Roadmap"*, Financial Services Board, March 2011
- 3.3. *"Implementing a Twin Peaks model of financial regulation"*, Financial Regulatory Reform Steering Committee, February 2013
- 3.4. Draft *Financial Sector Regulation Bill*, December 2013

4. International standards and practices

- 4.1. Autorite de Controle Prudentiel (ACP), France, *"Recommendation on Complaints Handling"*
https://acpr.banque-france.fr/fileadmin/user_upload/acp/Fichiers_EN/Recommandations_et_fichiers_D_CPC/Recommandation-2011-R-05-of-the-ACP.pdf
- 4.2. Autorite des Marches Financiers (AMF), Quebec, *"Commercial Practices Monitoring Program"*
http://www.lautorite.gc.ca/files/pdf/reglementation/lignes-directrices-assurance/g_scp_2013.pdf
- 4.3. European Insurance and Occupational Pensions Authority (EIOPA), *"Guidelines on Complaints Handling by Insurance Undertakings"*

<https://eiopa.europa.eu/publications/eiopa-guidelines/guidelines-on-complaints-handling-by-insurance-intermediaries/index.html>

- 4.4. Financial Conduct Authority (FCA), UK, “*FCA Handbook*”

<http://www.fca.org.uk/handbook>

- 4.5. G20 High Level Principles on Financial Consumer Protection

<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

- 4.6. G20 / OECD Task Force on Financial Consumer Protection, “*Update Report on the work to support the implementation of the G20 High-level Principles on Financial Consumer Protection – Principles 4, 6 and 9.*” (September 2013)

<http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

- 4.7. Insurance Regulatory and Development Authority (IRDA), India, *presentation* submitted to the IAIS Market Conduct Sub-Committee³³

- 4.8. International Association of Insurance Supervisors (IAIS), *Insurance Core Principle 19, “Conduct of Business”*

<http://www.iaisweb.org/Insurance-Core-Principles--795>

- 4.9. National Association of Insurance Commissioners (NAIC), United States, “*Market Regulation Handbook*”.³⁴

- 4.10 Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors

<https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors>

³³ Not publicly available.

³⁴ Available for purchase from the NAIC.

ANNEXURE C

In the course of consultation with the TCF Steering Committee, extensive discussion has taken place regarding various aspects of this TCF aligned complaints management proposal. Some of the key issues raised, and the FSB's responses to the TCF Steering Committee, are summarised as follows:

- **Using the concepts of dissatisfaction and unfairness in defining complaints**

Some TCF Steering Committee members raised a concern that including an “expression of dissatisfaction” and / or the fact that the firm has “treated the complainant unfairly” in the definition of “complaint” cast the net unnecessarily wide, and would pose practical challenges in managing so-called informal complaints. The counter proposal was that it would be adequate for TCF purposes if only complaints that are handled as part of a firm’s “formal” complaints processes were included. The FSB disagrees with this view for various reasons. The inclusion of an “expression of dissatisfaction” in the definition of complaint is consistent with a number of international approaches. The inclusion of unfair treatment in the definition is already a feature of the definition of complaint in the Financial Advisory and Intermediary Services (FAIS) Act and a reference to “having treated the client unreasonably or inequitably” is included in the definition of complaint in the Financial Services Ombud Schemes (FSOS) Act. Requiring customers to adhere to the particular firm’s “formal” complaint handling process before their complaint would qualify as such is also not consistent with TCF Outcome 6, which requires that customers do not face unreasonable barriers imposed by firms to submit a complaint. Particularly in the case of financially unsophisticated customers, the exclusion of complaints that do not follow a firm’s specific requirements could constitute an unreasonable barrier. The concern that it may not be practically feasible to record all relevant details of so-called informal complaints is accommodated in the proposed exclusions from the definition of “reportable complaint”.

- **Dealing with so-called “invalid” complaints**

Some TCF Steering Committee members suggested that only “valid”, “reasonable”, or “legitimate” complaints should be included in the definition of “complaint”. The FSB’s view is that this approach would be incorrect. The test should be whether or not a customer is dissatisfied, as opposed to whether or not their dissatisfaction is justified or reasonable. Where a firm regards a complaint as unjustified, then it will reject the complaint and report it as such. If reporting indicates a high proportion of rejected complaints, then this is itself indicative of a potential TCF challenge in the area concerned. Even in cases where the firm is blameless, complaints could be a valuable indicator of issues where, for example, consumer education focus is needed, or where gaps exist in regulation.

Some TCF Steering Committee members suggested that a definition or guidelines should be provided regarding what constitutes “unfair” treatment, for purposes of deciding whether or not a complaint alleging unfair treatment should be recognised as a valid complaint. Again, this suggestion is not supported, as the test for what constitutes a complaint should be whether or not the complainant believes themselves to have been treated unfairly, not whether or not the firm agrees.

- **Including prospective customers as complainants**

Some TCF Committee members were of the view that only actual, existing customers of firms should be recognised as complainants, and that including prospective customers in the definition would unduly increase the volume of complaints to be managed by firms. The FSB acknowledges that including prospective customers in the scope of the definition potentially increases the scope of complaints management obligations, but believes this is necessary. TCF Outcome 2 includes a requirement for fair treatment in the way products are marketed, while Outcomes 3 and 4 require fair treatment at the pre-sale phases of the product life cycle. Restricting the scope of eligible complainants to existing customers only would mean that complaints regarding marketing and other pre-sale practices may not be recorded and managed.

- **Requiring firms to manage complaints in respect of third party service providers**

Some TCF Steering Committee members argued that it was impractical and onerous to require firms to manage complaints that did not relate directly to the firm's own products and services, but to services or add-on products provided by third parties. Some commentators accepted that complaints against third party service providers should be in scope, but argued that this should be limited to third parties legally acting as the agent of the firm.

Although the FSB accepts that in some business models managing these complaints may pose practical challenges, we feel strongly that a commitment to TCF requires firms to take responsibility for customer outcomes across the value chain the firm has chosen to put in place. Where aspects of a firm's customer offering are dependent on arrangements the firm has entered into in relation to the marketing, distribution, administration or provision of its products or services, it is incumbent on the firm to take reasonable steps to ensure that such arrangements deliver fair customer outcomes. This includes having insight into and responding appropriately to customer complaints relating to these arrangements.

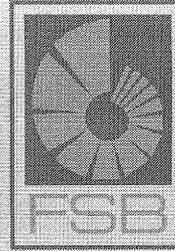
Paragraph 2.2.1 (n) of the discussion document proposes what the FSB believes to be a sufficiently flexible approach to addressing the management of such complaints in a firm's CMP.

The FSB also does not believe that this responsibility should be confined to third parties acting in a formal agency capacity. In particular, the FSB has previously communicated its expectation that TCF requires firms who distribute their products through independent intermediaries, to take shared responsibility with such intermediaries for fair customer outcomes. Further details of regulatory expectations in this regard will be communicated through the Retail Distribution Review process currently underway.

ANNEXURE D

The pages which follow contain the findings of a Complaints Management Thematic Review carried out by the FSB's Insurance division during April to June 2014, together with an Information Letter issued to insurers in this regard.

**FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA**



**LONG-TERM INSURANCE ACT, 1998 (ACT 52 OF 1998)
SHORT-TERM INSURANCE ACT, 1998 (ACT 53 OF 1998)**

Addressee:	Long-term and short-term insurers	File:	10.41.1.7.2 10.41.2.7.2
Issue date	Reply date	Information Letter	Status
17/10/2014	-	3/2014(LT&ST)	ISSUED
Subject:	Key Findings: Complaints Management Thematic Review		

1. BACKGROUND AND PURPOSE

- 1.1 The purpose of this information letter is to share the key findings of the thematic review undertaken by the Insurance division of the Financial Services Board during April to June 2014 in respect of complaints management processes of insurers.
- 1.2 The key findings document is attached hereto.
- 1.3 The purpose of sharing the key findings is to encourage insurers to assess the effectiveness of their complaints management process and, where necessary, effect improvements or enhancements to complaints handling methodologies.
- 1.4 The key findings will inform –
- 1.4.1 future supervisory conduct of business reviews; and
 - 1.4.2 planned amendments to the Policyholder Protection Rules issued under section 62 of the Long-term Insurance Act No. 52 of 1998 and section 55 of the Short-term Insurance Act No. 53 of 1998, respectively, in respect of complaints management.
- 1.4. Insurers are encouraged to consider the key findings together with the proposals contained in the Financial Services Board's *Discussion Document on Customer Complaint Management by regulated financial institutions, aligned to the Treating Customers Fairly framework* (the "Complaints Management Discussion Document"), to be published on the website.

2. AVAILABILITY AND INFORMATION SHARING

This Information Letter is available on the website (www.fsb.co.za) of the Financial Services Board.

REGISTRAR OF LONG-TERM AND SHORT-TERM INSURANCE

1. Purpose and scope of the review

During the period April to June 2014 the Insurance Compliance Department of the Financial Services Board (FSB) carried out a thematic review of the complaints management practices of a sample of insurers. The purpose of the review was to assess the quality and maturity of current complaint management processes and to identify the types of challenges faced by insurers in relation to complaints management, in anticipation of the FSB's introduction of enhanced complaints management and reporting requirements for regulated financial institutions.

A sample of 21 insurers was reviewed, comprising 9 long-term and 12 short-term insurers. A mix of intermediated and direct business models as well as small, medium and large insurers (by market share) were included in the sample. The review also focused on retail/personal lines insurance operations.

Additional criteria used when selecting specific insurers were:

- Number and nature of complaints referred to the FSB;
- Number of complaints referred to the long-term and short-term insurance Ombud schemes respectively; and
- Overturn ratio as published by the Ombud schemes.

2. Methodology of the review

The Insurance Compliance Department developed a framework to ensure that the review would facilitate comparisons between various insurers who have similar business models and/or operate within similar target markets.

At each insurer the system(s) used for complaints management were reviewed, to ensure an understanding of the practical application of the insurer's complaints processes and procedures. This systems review was also used to verify the process descriptions provided by insurers in interviews and discussions.

Records of actual complaints were further randomly selected to review the effectiveness and quality of the insurer's responses. These complaints included: Matters that were still in progress; finalised matters; complaints submitted directly by complainants; complaints received from Ombud schemes; complaints overturned by an Ombud scheme; complaints where the insurer changed its initial decision on a complaint after a complainant re-referred the matter to the insurer; and complaints where the insurer changed its initial decision after the complaint was escalated internally within the insurer.

3. Trends identified

The review identified a number of general trends:

- 3.1 Although some insurers have proactively begun to categorise and analyse complaints in line with the proposed TCF outcome categories, a number indicated that further guidance is required as to what is expected from them in this regard.

3.2 Those insurers that appeared to be struggling with their complaints management process were hampered by a lack of one or more of the following:

- a centralised complaints register to enable regular and accurate trend analyses;
- trained and experienced staff that were dedicated to complaints management and with the necessary expertise in relation to both complaints management and the insurer's business;
- an appropriate delegation of authority to the complaints handling function to make independent and fair decisions, without interference from operational areas or budgetary conflicts;
- management taking an active interest and role in complaints management;
- the use of management information reports to track the feedback given on complaints and the re-occurrence of complaints by the same complainant as an indication whether the first call resolution strategy is effective;
- quality checks and/or audits of the complaints management process, including the quality of complaints analysis and resolution; and
- a complaints management process that includes complaints handled or escalated to outsourced entities, and specifically to binder holders¹ and intermediaries.

4. Specific findings

Paragraphs 4.1 to 4.14 below are a summary of the FSB's key findings and observations from the thematic review. In some cases we include details of specific questions insurers were asked, as well as a small selection of actual responses obtained from insurers, in order to illustrate widely divergent current approaches to complaints management within the insurance industry.

4.1 The effectiveness of systems for complaints management and consolidated record keeping

In order to capture, store, monitor and analyse complaints data an insurer should have a system with these functionalities as a minimum, but that would also allow the insurer to appropriately categorise complaints and conduct a root cause analysis and/or identify complaints trends. (Going forward, the proposal is that complaints categories should be aligned to TCF outcomes). An insurer should also, regardless of the sophistication of its complaints management systems, be able to demonstrate that it captures and/or consolidates all complaints in an appropriate register. If a consolidated complaint register is not available, it is not possible to conduct a meaningful root cause analysis, as discussed in paragraph 4.2.

A number of insurers indicated that they are struggling with outdated systems which do not have all the functionalities they require. In other instances insurers have more than one complaints system in place and these systems cannot be aligned or integrated

¹ A binder holder refers to an underwriting manager or non-mandated intermediary as defined in Part 6 of the Regulations issued respectively under Section 72 and Section 70 of the Long- and Short-term Insurance Acts.

with one another. A number of insurers also indicated that they keep different complaints registers in different branches, divisions and/or departments. In some cases, although the insurer does maintain a consolidated complaints register, the accuracy of data is compromised as various underlying systems are used, each with different data capturing and formatting rules. Many insurers pointed out that different business units have different interpretations regarding complaints categorisation and capturing.

A number of insurers have no automated complaints management system in place and manually capture complaints on a spread sheet. Although this does not necessarily mean the system is ineffective, the room for human error and data inconsistency is increased. Consistent complaints categorisation is also more difficult.

Interestingly, there was no clear correlation between the size of insurers sampled and the sophistication or quality of their complaints management systems or registers.

The following question was posed to insurers:

How and on how many systems are complaints recorded?

Response (a)

Records of complaints are drawn from different forms and platforms such as our IT systems, e-mails, spread sheets, our website as well as social media.

Response (b)

All complaints are sent to the Head Office where it is captured on one system.

Response (c)

We record all calls, correspondence and notes on our internal system. Complaints can, however, not be captured on this system and we manually capture it on spread sheets.

Response (d)

Within the company we record all complaints electronically on the system. Binder holders and intermediaries should maintain their own electronic registers.

4.2 Root cause analysis and corrective action

An insurer should be able to analyse its complaints data in order to determine the main reason(s) for complaints. This will enable the insurer to pro-actively identify trends and take any corrective action that may be required with regards to a product, a process, a specific employee or type of complaint, or in relation to the complaints management process itself.

Without conducting a root cause analysis an insurer cannot effectively respond to complaints related information as the same type of complaints will re-occur without the ability to take preventative steps to address the actual origin/root cause of complaints.

A number of insurers conducted no or very limited root cause analysis of complaints, only addressing complaints on a reactive case-by-case basis. In some cases, insurers explained that they do carry out root cause analysis, but could provide little or no evidence that they had taken corrective action in relation to identified complaint trends.

The following question was posed to insurers:

What are the root causes/trends that have been identified for the majority of complaints?

Response (a)

We do not know as we do not have the data available.

Response (b)

The majority of complaints are due to repudiated claims, unsatisfactory service and premium refunds.

Response (c)

We do not settle claims within the specified service level agreements.

4.3 Inclusion of complaints management in the audit scope and/or plan

Only half of the insurers reviewed could demonstrate that their complaints management processes, or at least certain areas thereof, are included in the scope of either internal or external audit.

In a few instances, although the insurer advised that the complaints process is indeed audited, they were not in a position to provide evidence of related audit findings or of action taken in response to audit findings.

When no independent review of its complaints management is conducted within an insurer, the insurer will not be in a position to determine objectively and accurately whether its internal processes or policies are consistently and correctly applied.

The following questions were posed to insurers:

Is the complaints handling process and information provided to the insurer audited? If yes, how often and by whom?

Response (a)

Yes, monthly audits are done on complaints by our internal audit department.

Response (b)

Yes, the Compliance team audits the information while they are doing their annual audits at the different agents.

4.4 Complaint categorisation

In a number of instances complaints are captured in accordance with their source (i.e. who they are received from), and there is no clear and consistent categorisation of the nature of or reason for the complaint. Where complaints are categorised according to type or reason, the extent to which the categories were aligned to TCF outcomes differed significantly.

It was further identified that some insurers have too many categories (sometimes in excess of 100) which made it impossible to meaningfully identify any trends and/or conduct a root cause analysis. In other cases it was found that the categories are not

“closed” and that employees could add to the list of already existing categories. This resulted in duplication of categories which again skewed any trend and/or root cause analysis. For example “premium refund” and “refund of premium” were set up as different categories on one insurer’s system.

Most insurers also have a complaints category named “Other” for complaints that do not naturally fall within any specific complaints category. Although the need for such a category is accepted, instances were observed where this category appeared to have been used indiscriminately, with a large proportion of complaints categorised under “other”, thus undermining the ability to conduct a proper root cause analysis as discussed in paragraph 4.2.

The following questions were posed to insurers:

What categories are currently being used to capture complaints?

Are you aware of the proposed TCF categories for complaints and what difficulties do you foresee in reporting in these categories?

Response (a)

We use the source of the complaint as the category. We are reviewing the process to align to the TCF categories.

Yes, we are aware of the categories and the biggest difficulties are that complainants approach the Ombud directly and intermediaries not understanding their role regarding TCF, but we will train them.

Response (b)

Currently we use the following main categories: advice, fund performance, service and admin issues, fraud, product flaws and claims related.

Yes, we are aware of the categories. We need to train everyone on the TCF categories who is involved in the complaints handling process on what type of complaints falls within which category – especially when a complaint falls into more than one category.

Response (c)

Complaints are classified into: Ombud, FSB and general service complaints. We have 20 categories and 132 sub-categories.

Yes, we are aware of the categories and foresee a number of difficulties: the first to establish a consistent approach to identify complaints as per the categories. Secondly, defining key factors such as fairness which are likewise understood by us and our clients. The last difficulty is building the categories into the system.

4.5 Monitoring Ombud complaints and overturn ratios

An insurer’s complaints management system should enable it to specifically monitor complaints referred to Ombud schemes, including the overturn ratio, as published by the different Ombud schemes. In particular, we would expect an insurer to understand why its overturn ratio is high relative to the industry or its peer group, where applicable. (As mentioned above, one of the criteria for selecting insurers to participate in this review was a relatively high Ombud overturn ratio).

The extent to which insurers proactively monitored Ombud complaints and complaint ratios differed. In particular, it was evident that insurers who allow binder holders and intermediaries to handle complaints on their behalf, do not effectively manage and/or have control over complaints lodged with the binder holder and/or intermediary. In most instances, the insurer only became aware of such complaints once they were received from the Ombud. This observation is further elaborated on in paragraphs 4.10 and 4.11.

In instances where insurers were able to show that they had conducted a root cause analysis of their high overturn ratio, insurers identified, amongst others, the following reasons:

- ineffective claims handling process;
- insufficient communication with the complainant;
- poor service;
- lack of training or expertise by employees dealing with complaints; and
- misleading or confusing product material.

A number of insurers defended their overturn ratio by explaining that the relatively high ratio was simply an indication of the insurer's efforts to co-operate and preserve a good relationship with the Ombud, and not a reflection on the quality of its complaints management. This view is rather disturbing, as it suggests that despite the Ombud view the insurer does not recognise the validity of the complaint and will therefore be unlikely to take any action to address the relevant root cause or improve their complaints management process.

One insurer submitted that the Ombud does not have the necessary expertise and knowledge to deal with their complaints as their products are more complex than those offered by the rest of the insurance market. Again, this view is of concern as it is likely to result in the insurer disregarding the Ombud's view and not taking corrective action in response to the high overturn ratio.

Many insurers also expressed their frustration during the review that complainants "choose" not to approach the insurer directly, but rather approach the Ombud directly. In these instances, insurers were not able to explain why complainants did not approach them or whether they had made any efforts to improve this process. In this regard also see paragraph 4.14 below.

4.6 Complaints turn-around time and adherence to the complaints policy

Most insurers have internal rules regarding the maximum time that it should take to resolve a complaint. There are normally different rules depending on the type or source of the complaint, for example a service complaint as opposed to a complaint received from an Ombud scheme.

These insurers would also monitor the average turn-around time on complaints through management information and could identify through exception reports when the maximum timeframes are exceeded.

These rules are usually included in the insurer's internal complaints handling policy.

Employees dealing with complaints normally receive training and understand what is required of them to adhere to the allocated time-lines.

In some instances, however, it was found that despite having internal policies and timelines, insurers either do not adhere to their internal rules or do not even measure turn-around time and compliance with their own complaints policy. In other instances the internal turn-around time appeared unreasonably lengthy, raising doubts whether this was consistent with TCF Outcome 6.

It is noteworthy that insurers that did not measure turn-around times, were also not able to provide a root cause analysis of complaints.

The following question was posed to insurers:

What is the average turn-around time for each type of complaint?

Response (a)

Service related claims, which include claims complaints, are dealt within approximately one or two weeks and complaints referred to the Ombudsman within 90 days.

Response (b)

Claims complaints – 59 days, Service complaints – 21 days and Sales complaints – 56 days.

4.7 Lodging complaints on-line

Most insurers have functionality available on the insurer's website for complainants to register/lodge a complaint on-line. The level of sophistication in this regard varies quite significantly between insurers.

In some instances, although the functionality was available, it was not easy to lodge a complaint as this option could only be found after clicking on various tabs on the website.

4.8 Complaints monitoring at distribution channel level

In order to identify possible mis-selling or other poor outcomes arising from the way its products are distributed, an insurer would be expected to monitor the number and nature of complaints at distribution channel level, for example by distinguishing between complaints arising from direct channels, the insurer's own representatives, independent intermediaries, binder holders, affinity relationships, etc.

Most insurers reviewed did monitor complaints per distribution channel to varying degrees including in some cases at individual representative level (typically in the case of "tied agent"² models). In some cases this type of monitoring was done on an *ad hoc* basis. There was, however, a significant variance in how insurers use this information. In some instances, even where distribution channel monitoring occurred more frequently, insurers did not necessarily do anything proactive with the information. Certain insurers advised they they discuss the findings with the intermediary or third

² In the context of this thematic review a tied agent means an intermediary that promotes and markets the products of only one insurer.

party concerned, but there was little evidence available of these discussions having taken place or of any formal processes in this regard.

4.9 Monitoring complaints to binder holders and intermediaries

When an insurer uses the services of binder holders and/or intermediaries, most insurers explained that they expect these third parties to keep complaints records: however, this data is not integrated into the insurer's complaints register/s. These insurers were not able to consolidate the information as the registers were mostly in different formats and/or systems.

Some insurers do not require that the registers kept by binder holders or intermediaries are submitted to the insurer on a regular basis. Without this data it was found that insurers are not aware of complaints and cannot proactively identify or respond to trends.

In some instances insurers would, on an *ad hoc* basis only, review the complaints register of binder holders and intermediaries, but only after the complaints have been finalised. The insurer could therefore not influence the effectiveness of the complaints handling process or the decision made on the complaint.

Where an insurer does not have access to or does not monitor complaints to binder holders or intermediaries, its complaints data will clearly be inadequate and its ability to carry out root cause analysis compromised.

In the case of binder models, where the name of the underwriting insurer is not clearly disclosed, this unfairly inhibits complainants' access to the insurer and results in complainants not approaching the insurer directly, or at all.

The following questions were posed to insurers:

Are intermediaries, representatives and tied agents expected to keep record of all complaints and report on them?

If yes, how often and in what format do they report to you?

Response (a)

No. We do not keep record of complaints received against brokers. Internal representatives are expected to keep record and report on them.

Response (b)

They are obliged to keep a register but they do not have to report to us.

We don't know, but it is part of the Internal Audit scope.

Response (c)

Yes, only upon our request. The format would be spread sheets.

4.10 Training on complaints handling

It was apparent that full-time employees of an insurer responsible for complaints handling usually receive at least some form of training on complaints handling, but this was much less evident in business models where third parties such as binder

holders or service providers deal with complaints in relation to the insurer's products or services.

4.11 Internal escalation process

The review revealed significant differences in approach regarding the extent to which insurers have internal escalation processes in place where complaints are not resolved at first instance. Practices vary from comprehensive internal arbitrator models, to a "take it or leave it" approach where customers dissatisfied with the insurer's initial response are referred to the Ombud or other external recourse.

In the long-term insurance industry in particular, it was noted that a number of insurers believe that the effectiveness of complaints handling is related to the existence of an internal arbitrator – usually a senior full-time employee of the relevant insurer. These insurers pointed out that they were focusing on ensuring that the internal arbitrator plays a bigger role in complaints management.

Nevertheless, the review did not show any clear correlation between the existence of an internal arbitrator and the general effectiveness of the insurer's complaints management processes.

The following question was posed to insurers:

Does the complaints handling process provide for an escalation process?

Response (a)

There is no escalation process. The complainant can escalate it to the Ombud or a court of law.

Response (b)

We have an escalation process but it has not been implemented in the business.

Response (c)

Yes, the complaints handling process provides for a specific escalation process for each type of complaint. Complaints which are not resolved within 30 days from initial submission must be reported to the Compliance Manager and the CEO.

Response (d)

In complex cases the complaints are escalated to the relevant manager and if still unresolved a case is prepared for the complaints resolution committee.

4.12 Using complaints data to improve product or service design

Insurers that conduct a root cause analysis of complaints were generally in a position to demonstrate the changes or enhancements that they have made to existing products or services. In these instances the insurers could also see a direct correlation between the change in a product / service and the reduction of complaints linked to that product or service.

The following question was posed to insurers:

Have any amendments been made to your products based on the feedback

from complaints?

Response (a)

Amendments were made to our policy wordings to remove ambiguity, where it appeared that complainants did not understand our policy wordings.

Response (b)

We changed the name of the product and we now phone clients after inception to ensure they understand the product.

Response (c)

No, as our products are governed by legislation.

4.13 Compensation payments

The majority of insurers reviewed allow for some form of compensation payment in their complaints management process. The level of record keeping of compensation payments, however, varied significantly between insurers.

A wide range of interpretations exist as to what is regarded as a compensation payment. In the short-term insurance industry, it is mostly understood and applied as a waiver of the complainant's excess on a claim. In the long-term insurance industry it is most often described as a form of compensation to apologise for poor service and any inconvenience caused to the complainant.

Some insurers have clear rules regarding these payments and some have gone so far as to specify maximum amounts that can be paid in regard to specific types of complaints. Compensation payments are normally approved by senior management at an insurer.

In a few instances insurers kept no record of compensation payments, and although they confirmed that such payments occur, there was no supporting management information available.

Proper monitoring of the reasons for and the frequency and quantum of compensation payments can provide useful insight into problem areas and trends, to facilitate proactive product or process improvement. There was however little evidence of this approach, with compensation payments in the main being used as a purely reactive means of making good for poor customer treatment after the fact.

There are also inconsistent approaches in regard to which area of the business carries the cost of compensation payments. In some instances, the area responsible for the conduct giving rise to the complaint carries the cost, while in other cases compensation payments come out of a separate cost centre.

Most insurers explained that they do not specifically budget for these payments as they are concerned that this would drive incorrect behavior. In either case, there was little evidence that the risks of conflicts of interest had been considered in determining the basis on which compensation payments are made.

An additional observation in relation to compensation payments is that there is no clear distinction made or recorded between compensation payments made to make good a loss attributable to the insurer's actions, or purely as a gesture of goodwill or

“ex gratia” payment.

The following questions were posed to insurers:

How is provision made for compensation payments?

What percentage of the total number of complaints was resolved by paying a compensation payment?

What is the average compensation amount being paid to resolve complaints?

Response (a)

Payments are made from the Claims Department’s budget.

There is no data available as we don’t track this.

We normally waive excess, so this not a payment in cash.

Response (b)

Payments are made out of the department’s budget that made the error. This is done to teach the business unit lessons on enhanced service and to ensure that mistakes are not repeated.

2.3%

R3 182.

Response (c)

No specific provision is made but if any payment is made, it will be from the Claims budget.

1.5% of all claims include a compensation payment.

There are no specific records but payments can be between 50%-80% of the value of the claim.

4.14 First call resolution of complaints

In numerous instances it was apparent that complainants complain more than once, on the same issue, to an insurer before the complaint is resolved.

It was further found that in many instances complaints are incorrectly or prematurely recorded as “completed” by employees before the complaint is in fact fully concluded. This was due to a number of reasons, including inadequately trained employees, staff errors or negligence, poor systems, and generally poor customer service standards.

The extent to which insurers monitor “first call resolution” varies. In some instances there was a direct correlation between the effectiveness of first call resolution and the number of complaints that an insurer receives and/or the number of complaints that are referred to an Ombud scheme.

5. Next steps

Insurers are encouraged to consider the findings of this review to assess the effectiveness of their complaints management process, including the extent to which their current practices are consistent with the proposals contained in the FSB's *Discussion Document on Customer Complaint Management by regulated financial institutions, aligned to the Treating Customers Fairly framework* (the "TCF Complaints Management Discussion Document" – available at www.fsb.co.za).

Where such an assessment identifies weaknesses in an insurer's complaints management process, the insurer should consider proactively effecting improvements or enhancements to its process, in anticipation of the introduction of stronger regulatory requirements in this regard.

The review findings will also be used by the FSB as a point of reference when supervisory conduct of business reviews of insurers are conducted.

The findings will also inform planned amendments to the Policyholder Protection Rules issued under section 62 of the Long-term Insurance Act No. 52 of 1998 and section 55 of the Short-term insurance Act No. 53 of 1998, respectively, in respect of complaints management, as contemplated in the Complaints Management Discussion Document.