The Banking Conduct Standard explained

When the Financial Sector Regulation Act (FSRA) was introduced in 2018, the Financial Sector Conduct Authority (FSCA) was given the explicit mandate of regulating and supervising the way banking institutions conduct themselves in relation to the provision of financial products and services to customers. As part of fulfilling this mandate, and considering various risks identified in the sector, the FSCA developed the conduct standard which enables it to supervise banks.

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1. What is the Banking Conduct Standard and its purpose?

The Banking Conduct Standard is a new regulation that requires all banking institutions to comply with the promotion of the fair treatment of customers. The standard will assist the FSCA monitor the conduct of banks by ensuring that their customers are central to the development of products and through the provision of their services. This will be demonstrated through their customer-centric culture, strategy and governance processes.

2. How will the FSCA be administering this banking conduct standard?

The FSCA has been given the explicit mandate of regulating and supervising the way banking institutions conduct themselves in relation to providing financial products and services to customers. For the FSCA to meaningfully supervise and fulfil this mandate, there must be an enforceable market conduct regulatory framework against which the FSCA can measure conduct across the banking sector.

3. What was the problem the FSCA tried to solve with the standard?

Over the past decade, several conduct weaknesses had been identified within the South African banking sector including poor outcomes being experienced by financial customers, highlighting a clear gap in the regulation of market conduct of banks.

4. What was the problem the FSCA tried to solve with the standard?

In 2016/2017, National Treasury commissioned the World Bank to undertake a diagnostic focusing on identifying potential deficiencies from a fair-treatment perspective in banks. It was found, through this, and other research that certain gaps could be addressed through various introductions including a supervisory framework for the conduct of banks.

Through the introduction of the Banking Conduct Standard, the FSCA wants to improve outcomes for customers, where banks should provide; better disclosure, and that product offerings must be designed and targeted to appropriate customer groups.

5. Who will be regulated?

All licensed registered banks, mutual banks, co-operative banks, local branches of foreign banks and foreign banks with approved local representative offices.

6. Why should the Banking Conduct Standard matter to customers?

Because it identifies six TCF outcomes against which banks will be held accountable for; and should a client not experience fair treatment, they have the right to raise their concerns.

7. What impact is the FSCA hoping the standard will have on the sector?

It is envisaged that the banking conduct standard will lead to improved outcomes for customers due to better disclosure, and that product offerings will be designed and targeted to appropriate customer groups.

Customer suitability, for the typical financial product lifecycle, should be top of mind when products are designed. Fair customer treatment should be embedded in the banks culture, underpinned by their governance, policies and procedures.

8. How will this standard incorporate the six TCF outcomes?

Customers have the right to:

1. Be treated fairly. Customers need to be confident that they are dealing with a bank, where the fair treatment of its customers are central to its culture. This will be demonstrated through banks strategies and governance processes.
2. Use products and services suitable to their needs. The products and services marketed and sold need to be designed to meet the needs of identified customer groups and are targeted at these customer groups. Banks must have oversight protocols and processes in place to ensure that this objective is met.
3. Provide customers with clear (non-jargon and legal filled) information before, during and after point of sale. The Banking Conduct Standard sets out minimum standards for advertising, including the governance processes that must be in place for the approval of advertisements. In addition, the Standard sets out the disclosures that must be made to a customer to ensure that they are aware of, and understand all the relevant facts that could reasonably be expected to influence their decisions relating to the financial product or financial service.
4. Full disclosure and advise about the complexity of a financial product. The banking conduct standard identifies the factors that need to be considered when making disclosures to customers, such as the nature and complexity of the financial product. This is to ensure that a customer is given appropriate information about a financial product or financial service at the point of sale to help guide the customer’s decision-making in relation to entering into, using, or maintaining the product or service.
5. Keep banks accountable that their products performed as promised. The Banking Conduct Standard is only applicable to retail financial customers and sets standards for the prohibition of unfair product terms and conditions, including additional product design standards applicable to this market segment.
6. Raise your concerns when faced with unreasonable post-sale barriers imposed by firms to change products, switch providers, submit a claim or make a complaint. The complaints management framework that a bank must establish, should include appropriate training of responsible staff, the categorisation of complaints received from customers and other procedures that need to be in place. Furthermore, with account closure and switching, both initiated by the bank as well as by the customer themselves – these rules and guidelines are provided in the conduct standard.

9. How will the FSCA effectively monitor compliance?

The FSCA will monitor compliance of the Banking Conduct Standard by using pro-active supervisory approaches, which enables the FSCA to anticipate problems and intervene at the right time to prevent bad customer outcomes. This proactive approach will cover both emerging risks within a specific bank, as well as concerns at a sector level. Once risks have been identified, the FSCA will engage the bank concerned to try remedy the situation and pre-empt consumer harm or seek redress where harm has occurred.

10. It is said that the FSCA effectively balances principles-based and rules-based requirements to ensure that banks deliver fair customer outcomes. What does this mean?

The Banking Conduct Standard effectively balances principles-based (where banks are guided by their own principles, policies and procedures); and rules-based requirements (what banks promise is what customers get), to ensure that they deliver fair customer outcomes in a disciplined, transparent and consistent manner. Banks will be expected to design and implement appropriate governance policies and other control mechanisms that will ensure that fair treatment of customers is central to their organisation. Banks will also be required to demonstrate to the FSCA that fair outcomes for customers are consistently delivered when providing financial services and financial products to customers.

11. Are banks expected to adhere to all six TCF outcomes with immediate effect, is that realistic?

How to apply the banking conduct standard and general obligations are effective immediately. Specific transitional periods will be allowed for the alignment of all existing products and services, if required, over the next eight to 12 months.

12. How will a customer know if they are unfairly treated i.e. charged with unfair penalty fees? Is there a benchmark provided to banks by the regulator?

A customer will know if they are unfairly treated if; their products and services are not suitable to their needs, they are not provided clear (non-jargon and legal filled) information before, during and after point of sale, if full disclosure and advise about the complexity of a financial product isn't provided, if their products don't perform as promised and if they are faced with unreasonable post-sale barriers imposed by firms to change products, switch providers, submit a claim.

From the FSCA's perspective, our approach is two-pronged:

- Proactive engagements between the FSCA and the industry/individual banks to ascertain benchmarks.
- Conduct thematic reviews, where the FSCA is guided by trends seen in market, which include customer complaints.

13. What is the complaints process – does a customer raise a conduct complaint directly with the FSCA?

Customers must first submit a complaint to their bank (before escalating to another body). If the customers query is unresolved, they should raise it with the banking ombudsman. If there is still no resolve, customer can raise their complaint with the tribunal.

However, there may be individual complaints that will signal a broader conduct issue in the industry. In those instances, the FSCA will intervene.

14. Different scenarios, situations and challenges will require different responses – how will the FSCA expect the banks to respond consistently to customers?

Banks will be required to use their guiding policies, clear processes and procedures to yield consistent outcomes. They need to design and implement appropriate governance policies and other control mechanisms that will ensure that fair treatment of customers is central to their organisation, which ultimately yields consistent outcomes.

Click here for the conduct standard and consultation report.