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# Regulation Alert

## A Guide to Regulation by the FCA of the Consumer Credit Sector - Update 2

The Financial Conduct Authority (FCA) is now in full swing reviewing applications for authorisation from consumer credit firms. Presently, it is accepting applications from payday lenders and log book lenders. Firms operating within these sub sectors must submit their applications by 1 March 2015 and 1 April 2015 respectively. The FCA will continue to accept applications from the different consumer credit sub sectors until April 2016.

In this update, the second part of our series of guides, we look specifically at what the FCA defines as "Treating Customers Fairly" and how Management Information can be used to measure it.

### Treating Customers Fairly ("TCF")

Businesses that are regulated by the FCA are required to comply with the following 11 principles at all times:

1. A firm must conduct its business with **integrity**.
2. A firm must conduct its business with due **skill, care and diligence**.
3. **Management and control**: a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. **Financial prudence**: a firm must maintain adequate financial resources.
5. A firm must observe proper standards of **market conduct**.

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6. A firm must pay due regard to the **interests of its customers** and treat them fairly.
7. **Communication with clients**: a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8. A firm must manage **conflicts of interest** fairly.
9. **Customers and relationships of trust**: a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10. A firm must arrange adequate protection for **clients' assets** when it is responsible for them.
11. **Relations with regulators**: a firm must deal with its regulators in an open and cooperative way.

When you apply for authorisation, you will be asked specifically about principle 6 above, regarding how your firm "*ensures that it treats its customers fairly*". TCF is central to a firm's conduct, and places the wellbeing of customers at the heart of how firms run their business.

The FCA has developed 6 possible consumer outcomes in relation to TCF, as follows:

1. Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
2. Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
3. Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
4. Where consumers receive advice, this advice is suitable and takes account of their particular circumstances.
5. Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard as they have been led to expect.
6. Consumers do not face unreasonable post-sale barriers imposed by firms to prevent them changing product, switching provider, submitting a claim or making a complaint.

The FCA expects firms to make use of suitable Management Information ("MI") to monitor TCF outcomes.

## Using Management Information ("MI") to Monitor and Control "TCF" Performance

## Firms are integrating TCF into their business culture

Businesses need to think about how the delivery of service incorporates the six TCF consumer outcomes. An example of incorporating TCF into your culture could be making a member of staff responsible for the information provided to customers at various stages of the sale process. The firm then measures how effective this person is in that role, reviewing their performance at their appraisal and linking performance to remuneration.

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## Firms have the appropriate MI to assess whether they are treating customers fairly

A typical approach to MI involves developing responsibilities, processes, controls and standards. Firms need to gather evidence through appropriate MI to establish the extent to which they are meeting their TCF goals.

An example of the use of MI might be as follows: advisers within a firm are required to complete documentation in relation to the fourth TCF outcome, which demonstrates the decision process behind a recommendation of a particular product. There is then a control in place, whereby that documentation is reviewed by the firm's compliance department to determine if it has been prepared to the required standard.

A review is then conducted by the compliance department into 75% of sales for a particular quarter.

The review finds that:

- 5% of documentation was returned to sales advisers, as it did not contain sufficient evidence to conclude that the advice standards set by the firm had been met.
- 2% of the documentation indicated that the advice provided was incorrect and the wrong product had been sold.
- 10% of documentation that was returned to sales advisers in the previous quarter had still remained with them.

The availability of this information enables management to evaluate the success of this TCF outcome and the changes that are necessary to improve performance.

## Demonstrating success – MI demonstrates that firms are consistently treating customers fairly

Once a firm has identified the measures to use in order to demonstrate success, it should do the following:

1. Establish performance standards – the levels of performance necessary to demonstrate that the firm is treating customers fairly and achieving the TCF outcomes.
2. Measurement of how the firm has performed against these standards.

## Reviewing, identifying and remedying: processes in place that monitor MI to enable the right people to take action

Given that TCF should be central to a firm's values, it is important that MI data is provided to the appropriate management. They should be aware of TCF performance and can then actively monitor and control results as well as review plans to improve performance where necessary. This should be well documented so that there is a clear trail of the monitoring process being followed.

The MI should be reviewed by comparing it to expectations and MI for previous periods to ensure it is coherent. The review process should then identify any causes of failure with actions developed to remedy them.

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Who might perform the reviews will depend on the size and nature of the organisation. A possible review structure for a medium sized business would be as follows:

- Overall TCF performance is reviewed by the Board of Directors and is an agenda item at board meetings.
- Heads of Division review general TCF trends each month with the managers that report to them.
- Local management takes responsibility for dealing with day to day TCF issues, such as a failing sales adviser.

## How we can help

PKF has assisted many firms to become authorised with the FCA and every application on which we advised was completed successfully. Our knowledge of the FCA's authorisation process enables us to provide practical advice before, during and after the process, helping you to achieve authorisation and to understand your obligations under the new regulations.

## Services that PKF provides include:

- Preparing a complete application for authorisation.
- Reviewing an application prepared by a firm prior to submission to the FCA.
- Preparation of financial forecasts for inclusion within an application.
- Assisting firms to respond to matters raised by the FCA after the submission of an application.

For more information please contact

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