

CONSUMER PROTECTION IN THE INSURANCE SECTOR.



Why Consumer Protection?

- Information asymmetry
- Low level of financial literacy
- Level of transparency
- Innovative and complex financial products
- Backbone of a developing Economy
- Unfair business practices
- Response to various legal and non-legal instruments on Consumer Protection

Legal Instruments on Consumer Protection

Review of some of the existing legal instruments shows a convergence of mandates with respect consumer protection.

- Constitution of Kenya, 2010
- Consumer Protection Act 2012
- Competition Act 2010
- Insurance Act CAP 487 laws of Kenya.

Consumer rights - Article 46:

Consumers have the right—

- ❑ to goods and services of reasonable quality;
- ❑ to the information necessary for them to gain full benefit from goods and services;
- ❑ to the protection of their health, safety, and economic interests;

Article 35;

- ❑ to information held by the state
- ❑ information held by another person for the exercise or protection of any right or fundamental freedom.
- ❑ correction or deletion of untrue or misleading information that affects a person.

Fair administrative action - Article 47:

- Every person has the right to administrative action that is **expeditious, efficient, lawful, reasonable** and **procedurally fair**.
- If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given **written reasons** for the action.

Enforcement of bill of rights - Article 22:

- Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

Consumer Protection Act 2012

Purpose of the Act- Section 3 (4):

Among others:

- promoting **fair and ethical** business practices;
- protecting consumers from all forms and means of unconscionable, **unfair, unreasonable, unjust** or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;
- improving **consumer awareness and information** and encouraging responsible and **informed consumer choice** and behavior;
- promoting **consumer confidence, empowerment** and the development of a culture of consumer responsibility.

Competition Act 2010

One of the objectives of the Act is to protect consumers from **unfair and misleading market conduct**.

Creates the following offences:

- ❑ False and misleading representations
- ❑ Unconscionable conduct in business practices

- ❑ Sec 3- Protection of policyholders and beneficiaries
 - ❑ - formulate and enforce standards
- ❑ Sec. 5 – approval of contracts and rates
- ❑ Sec. 76 – right to receive payment under a policy
- ❑ Sec. 77 – defaults of insurer, broker or agent
- ❑ Sec. 80 – proposal and policy documents not to be misleading
- ❑ Sec. 87 – cooling off period
- ❑ Sec. 114 – notice for transfers and amalgamations

- ❑ Sec. 120 – prohibits voluntary winding up
- ❑ Sec 156 – premium to be received on behalf of insurer
- ❑ Sec. 164 – misleading advertisements
- ❑ Sec. 179 – policyholders compensation fund
- ❑ Sec. 196A – notification of cancellation of registration
- ❑ Sec. 203 – settlement of claims

Consumer Protection at the International Level

At the international level, the standard for consumer protection for insurance consumers is set out by the International Association of Insurance Supervisors (IAIS).

- IAIS vouches for fair treatment of customers.
- This has in essence set the Consumer Protection bar and strengthened consumer rights.

The TCF Model of Consumer Protection

- The TCF Model of Consumer Protection incorporates the legal instruments .
- TCF aims to raise standards in the way firms carry on their business by introducing changes that will benefit consumers and increase their confidence in the financial services industry.

TCF focuses on six outcomes

- **Outcome 1** Consumers can be confident that they are dealing with firms where the fair treatment of customers 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 consumer groups and are targeted accordingly
- **Outcome 3** Consumers are provided with clear information and kept appropriately informed before, during and after the point of sale

TCF outcomes continued

- **Outcome 4** Where consumers receive advice, the advice is suitable and takes account of their circumstances
- **Outcome 5** Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect
- **Outcome 6** Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint

Ensuring that all consumers are treated

- ⇒ **equitably,**
- ⇒ **honestly**
- ⇒ **fairly**

at **all stages** of their relationship with insurers, insurance intermediaries and insurance service providers from

- ⇒ **product design**
- ⇒ **marketing**
- ⇒ **advice**
- ⇒ **point of sale and**
- ⇒ **after sale stages.**

Consumers are confident they are dealing with firms that put fair treatment of customers at the centre of their culture.

TCF through Products and Service design

Confirming that insurers, insurance intermediaries and insurance service providers ;

- Market and sell Products and Services designed and developed for **specific target markets**, based on a **clear understanding** of the likely needs and **financial capability** of each customer group.

TCF in Customer Advice

- Ensuring that, where advice is provided on insurance services, **advisers** are **fully equipped to provide** advice that is suitable to the needs of the customer concerned, balancing the commercial objective of increasing sales with the objectives of TCF and avoiding conflicts of interest.

TCF at point of sale.

- Provide **clear and fair information** to enable customers make informed decisions about transacting with the regulated entity, its products and services.
- This means that **product risks, commitments, limitations** and charges must be transparent.
- Disclosure around **bundled products** must enable customers to understand the different components of the bundle.

TCF after point of sale.

Confirming that insurers, insurance intermediaries and insurance service providers ;

- Provide customers with **ongoing relevant information** to enable them to monitor whether the product or service continues to meet their needs and expectations.
- Provide acceptable levels of service for post-sale transactions or enquiries.
- Monitor and respond to **changes in the wider environment** that may affect products and impact on particular groups of customers.

TCF in Complaints and Claims Handling.

Confirming that insurers, insurance intermediaries and insurance service providers ;

- Honour representations, assurances and promises that lead to legitimate customer expectations.
- **Meet legitimate expectations** and not be frustrated by unreasonable post-sale barriers.
- Have **fair and consistent handling of claims** and a mechanism to deal with **complaints** promptly and fairly.
- **Identify common underlying** causes of complaints and take action to eliminate the root cause.

IMPLEMENTING TCF

Culture and Governance

- Regulated entities will primarily **demonstrate** that fair treatment of customers is central to the firm's culture.
- Firms will need to focus on the **TCF outcomes** at all stages of interaction with customers in the products life cycle.

How?

- Build TCF approach in the organizational structures and processes that include but are not limited to:
 - ⇒ Leadership
 - ⇒ strategy
 - ⇒ decision making
 - ⇒ governance and controls
 - ⇒ performance management
 - ⇒ reward system

Management Information (MI)

Management Information will be used to monitor and measure performance in delivering the TCF outcomes. Firms must provide **objective evidence** that;

- ⇒ they are treating customers fairly
- ⇒ have embedded TCF in their organizational culture.

Firms will be expected to show that they have analyzed MI to indentify TCF risks and areas for improvement and acted upon findings to enhance customers experience.

Regulated entities will have mechanisms for monitoring and responding to changes in the **broader environment such as economic and regulatory** developments that could impact on customers and their insurance needs and **act promptly** where adverse customer impacts arise

Self-assessment tool

- Regulated entities will develop their **own self-assessment** tool that is tailored to their own business models.
- Findings of self-assessment will be used to set goals to raise TCF standards where areas of improvement are identified.
- Regulated entities will provide **objective evidence** that they are treating their customers fairly and have embedded TCF in their organizational culture.

Proactive Supervision

The Authority will proactively identify **potential areas** of consumer concern or stress.

Emphasis will be on pre-empting negative consumer outcomes than reacting to complaints.

Will cover emerging risks with specific firms as well as macro conduct risks.

Once risks have been identified, **intrusive engagement** with the firm will be required to rectify the situation and pre-empt consumer harm.

On site Supervision.

There shall be **on-site supervision** that will include specific examination and assessment of;

- ⇒ a regulated entity's TCF related processes
- ⇒ Management Information,
- ⇒ engagement with Board members and management to form a view of the extent of leadership commitment to TCF culture.

Off-site supervision

There shall be **off-site supervision** that includes measures such as

- ⇒ “mystery shopping” interactions with regulated entities,
- ⇒ surveys of customers and intermediaries,
- ⇒ inputs from other stakeholders such as consumer organizations and the media to test customer experience “on the ground”.

Once risks have been identified, engagement with the insurer will be carried out to rectify the situation.

INCENTIVE & DETERRENCE

Disclosure & Reporting

Application of positive and negative incentives will be used to enforce fair treatment of consumers.

- Regulated entities will be required to **publicly disclose** identified **TCF performance** measures such as claim statistics on;
 - ⇒ repudiations,
 - ⇒ disputes,
 - ⇒ complaint volumes,
 - ⇒ period for claims settlement ,
 - ⇒ adherence to service levels standards
- Regulated entities will also submit **non-public TCF** reports as required by the Authority.
- The Authority will analyze and respond **effectively and decisively** to the reports.

Enforcement Mechanisms for Deterrence

The Authority will enforce the TCF framework through a combination of;

- proactive intervention for identified industry and firm-specific conduct risks,
- regulatory sanctions with “naming and shaming” for regulated entities in breach,
- prosecution of individual wrongdoers.

What Should you do?

- Think about TCF and your business.
- Discuss TCF principles with your staff and agree how you will live TCF in the business.
- Get feedback from your clients on the service you provide and use this to check what you do well and where you need to improve.
- Analyze and act on complaints for TCF purpose and view them as an opportunity to learn and improve.
- Train your staff on TCF.
- Have control measures to monitor risk of poor advice by your representatives.
- Communicate your service standards to your clients.