

The Financial Lane TCF Compliance Plan

Treating Customers Fairly

In preparation of the Conduct of Financial Institution Bill (COFI), the objectives of this compliance plan are to:

- Embed the six TCF outcomes into business operations and decision-making.
- Ensure clients are treated fairly at all stages of the product life cycle.

The Six TCF Outcomes and Implementation Measures

Outcome	Description	Implementation Actions	CO Comments
1.Culture & Governance	Clients are confident they are dealing with a FSP where TCF is central to culture.	<p>Embed TCF into staff performance reviews.</p> <p>Include TCF in staff meetings and risk registers.</p> <p>Staff meeting notes require FSPs to embed TCF into their culture by empowering employees to do the right thing and ensuring there are real consequences for unacceptable conduct.</p> <p>Trends on complaints and compliments</p>	

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The Financial Lane (Pty) Ltd t/a Kinsella Financial Services
Authorised Financial Services Provider: FSP 51688
In Association with:
Kinsella Financial Services (Pty) Ltd: FSP 51718
Sweidan and Co (Pty) Ltd: FSP 45893

Outcome	Description	Implementation Actions	CO Comments
		<p>Handling of claims and difficult clients</p> <p>Insurers requirements have not been met</p> <p>Declined claims</p>	
2.Product Design	Products meet the needs of identified client groups and are targeted accordingly	<p>Conduct a financial needs analysis</p> <p>Define a target market.</p>	
3.Clear Information	Clients are provided with clear, timely, and appropriate information.	Ensure mandatory disclosures are given to the client.	<p>Section 7(1)(a) of the General Code requires an FSP to:</p> <ul style="list-style-type: none"> clearly explain the nature and key terms of a contract or transaction to a client, and fully disclose all relevant information needed for the client to make an informed decision. <p>Section 7(1)(c)(vii) of the Code mandates providers to disclose concise details of special terms, conditions, and restrictions.</p>

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Outcome	Description	Implementation Actions	CO Comments
4.Suitable Advice	Clients receive advice that is suitable and takes their needs into account.	Ensure product specific training is concluded and is ongoing. Ensure training registers are updated regularly.	
5.Performance Expectations	Products perform as clients have been led to expect.	Provide policyholders with renewals and policy updates. Monitor new business, lapses, cancellations and replacements Performance reports, delays in claims processing may indicate concerns with Outcome 5, which focuses on service standards.	
6.Post-Sale Barriers	Clients are not faced with unreasonable post-sale barriers.	Ensure fair and timely complaint handling processes. Simplify claims and cancellation procedures Barriers to lodging complaints or poor follow-up could signal a failure to meet Outcome 6, which aims to eliminate	Section 2 of the GCOC is act with due skill, care, and diligence required of providers

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Outcome	Description	Implementation Actions	CO Comments
		unreasonable post-sale barriers. These problems are often made worse when complaints aren't managed in line with the established process or register	

Latest Determination – FAIS OMBUD

The FAIS Ombud has handed down another determination which emphasises that financial services providers have a duty to ensure that clients are made aware of material changes to an insurance policy.

*This is the latest determination from the FAIS Ombud, which is explicit in that, when **informing policyholders of material changes, the Ombud will not accept the mere sending of automatically generated mailers as sufficient evidence that an FSP has fulfilled its disclosure obligations. Instead, they need to check whether the affected policyholders have, in fact, received critical information and acted on it.***

In a similar determination involving emailed communications earlier this year, the Ombud found an insurance brokerage negligent for not updating a client's contact details. The client did not receive notifications about a tracking device requirement, which led to the client being unaware of the new policy condition, causing the claim to be rejected.

*The latest determination, also involved emailed **notifications about a tracking device requirement**. Although it was not disputed that the brokerage used the policyholder's correct email address, it could not prove to the satisfaction of the Ombud's Office that the relevant emails were successfully delivered or read.*

The complainant, Theresa Ralph, bought a Prado Land Cruiser in December 2021 and added it to her short-term insurance policy, while removing another vehicle. At the time, the Land Cruiser was not classified as a high-risk vehicle, and a tracking device was not a requirement of cover.

Ralph's vehicle was stolen in November 2023 during an armed robbery.

Six months before the incident, the insurer introduced a requirement for high-risk vehicles to be fitted with tracking devices. Quite understandably, Ralph's claim was rejected because this condition of cover was not met.

If Ralph's claim had been successful, the settlement would have been the vehicle's retail value of R786 300. Furthermore, if the tracking devices had been installed, the insurer would have waived the excess.

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In her complaint to the Ombud, Ralph said she did not receive emails from her broker, Efficient Insure Advisory Services (Pty) Ltd, informing her of the new requirement.

Efficient Insure produced a copy of a bulk email sent to policyholders on 28 April 2023, informing them of the requirement. Specifically, policyholders with high-risk vehicles were required to install two tracking devices – of which at least one must be an early-warning device – by 1 June 2023.

It also produced a copy of another bulk email in this regard that was sent to policyholders on 2 May. They were informed, inter alia, that the deadline had been extended to 1 August.

Efficient Insure submitted evidence that it sent the annual policy renewal notice to Ralph in August 2023. The email highlighted that Ralph should familiarise herself with any changes to the policy schedule and must comply with any warranties in respect of the vehicle, which included the installation of tracking devices.

*Efficient sent **the emails** to Ralph's work email address, submitting it had always used this as its **primary means of communicating with her**.*

It pointed out that Ralph admitted that her employer blocked Efficient's emails. Efficient submitted it could not be held responsible for a third party blocking or hindering its communication with Ralph.

Ralph also stated that she received notifications of blocked emails. Efficient said Ralph should have followed up on the notifications about important communication that had been blocked.

Ralph submitted that she asked Efficient, on numerous occasions, to use an alternative email address to her work email address. Furthermore, she had used her personal email address to inform Efficient, more than once, that her employer was blocking its emails.

Initial recommendation

The Ombud's Office initially recommended that Efficient settle the loss in full. But the Office revised its position after receiving further submissions from Efficient, which argued it acted reasonably by sending the emails in April and May 2023.

The Office found that Ralph was at least partly responsible for the loss. She was aware that her employer was blocking Efficient's emails, but she did not instruct the FSP to change her email address. Ralph asked Efficient to use her personal email address only when she became aware that an email had not been received. This did not constitute a formal instruction.

Efficient accepted the Office's recommendation that it settle 50% of the loss.

No audit trail evidence

Ralph made further submissions arguing for the reinstatement of the original recommendation for the settlement of the full loss.

According to the determination, she tried to obtain evidence from her employer that the emails were never received, but her employer required a court order before it would do so.

Ralph submitted the onus was on Efficient to provide the audit trails and evidence that the emails were sent to her work email address. Efficient confirmed that its bulk email communication is generated through its policy administration system, which is designed to create an audit trail. The system would alert Efficient if an email was not delivered.

The Ombud's Office asked Efficient to provide audit trails of the emails sent to Ralph.

Efficient "sent copious documents and emails in response", but none of them contained any evidence of an audit trail to show that the two emails in question were sent, delivered, or read, the Ombud, Advocate John Simpson said in his determination. He noted that Efficient was able to provide audit trail evidence for other emails it sent to Ralph.

Non-compliance with the Code of Conduct

The Office assessed whether Efficient's conduct adhered to the General Code of Conduct for Authorised FSPs and Representatives.

Section 7(1)(a) of the General Code requires an FSP to:

- **clearly explain the nature and key terms of a contract or transaction to a client, and**
- **fully disclose all relevant information needed for the client to make an informed decision.**

Simpson found that Efficient was unable to provide sufficient evidence that it informed Ralph of the change to the policy, or that it followed up to ensure she was aware of the change.

Section 7(1)(c)(vii) of the Code mandates providers to disclose concise details of special terms, conditions, and restrictions.

He said Efficient was unable to provide sufficient evidence that it informed Ralph of the new and special condition relating to the tracking system.

Section 3(2) of the Code requires FSPs to have systems to record, store, retrieve, and protect all verbal and written communications and documents related to financial services provided to clients, as required by the FAIS Act and the relevant codes, and retain these records for five years after the product ends or the service is completed.

Efficient was unable to provide the audit trail records of the emails. "These records were material and should have been stored," he said.

Simpson commented that Efficient "appears to regard itself as a mere conduit or post-box for the insurer, and by merely sending two emails, it has discharged its significant responsibilities". However, as the **General Code of Conduct indicates, its duties and responsibilities were more extensive.**

It was reasonable. It was expected that Efficient, as the expert in the field, would provide all the information and assistance necessary to ensure that Ralph was well advised and informed about a new special condition, such as a tracking device to expect Efficient to follow up to check whether she was aware of the requirement and whether the device had been installed.

"A reasonable broker would have emailed the complainant to inform her of the new requirement and followed up with at least one more email and a phone call to ensure that she was aware of the requirement," Simpson said.

He found that Efficient's actions did not display the due skill, care, and diligence required of providers by section 2 of the Code.

If Efficient had complied with its duties in terms of the Code, there was a high probability that Ralph would have installed the device, and the claim would have been successful.

"The respondent's failure to comply with the Code led to a situation where the complainant was not reasonably made aware of the requirement and did not take the necessary steps to comply," he said.

The Ombud ordered Efficient to pay Ralph R786 300, plus interest of 11.25% a year from the date of the determination to the date of final payment.

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