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BANKING & FINANCE

# Conduct standard for banks

5 August 2020 *8 min read*

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Pursuant to the Financial Sector Regulation Act, 2018 ("**FSRA**"), the Financial Sector Conduct Authority ("**FSCA**") was mandated to regulate and supervise the conduct of banks in relation to the provision of financial products and services. In fulfilling this mandate, the FSCA published the Conduct Standard for Banks on 3 July 2020 (the "**Conduct Standard**"), the main objective of which being to introduce requirements in order to ensure the fair treatment of financial customers of banks. The Conduct Standard will, in addition to the existing regulatory requirements imposed pursuant to current legislation in relation to the provision of financial products or financial services, apply to banks conducting business in South Africa.

In accordance with the terms of the Conduct Standard, a bank, in conducting its business must do so in a manner that prioritises the fair treatment of financial customers. This fair treatment requires of banks to achieve six defined outcomes, namely:

1. customers should be confident that they are dealing with a bank in respect of which the fair treatment of financial customers is central to such bank's culture;
2. in relation to financial products and financial services provided to retail financial customers, such financial products and services are suitably designed to meet the needs of identified types, kinds or categories of customers to whom they are targeted at;
3. clear information is given to customers and customers are kept appropriately informed before, during and after the time of entering into a contract with such bank in respect of the financial products or the financial services offered;
4. the advice provided to customers in respect of a bank's product is suitable and takes into account the needs and circumstances of such customer;
5. customers are provided with financial products which perform as they have been led to expect by the bank and/or its duly authorised representative(s), and customer service is of an acceptable standard and in line with such expectation which has been created by the bank; and
6. customers do not face unreasonable post sale barriers in order to change or replace a financial product and/or financial service or to request a withdrawal or submit a complaint in relation to such financial product and/or financial service being offered by a bank.

Furthermore, when a bank renders a financial service, such service must be rendered in accordance with the underlying contractual relationship with the relevant customer as well as in accordance with the instructions of the customer, which must be executed as soon as possible, having due regard to the interests of the customer.

In order to achieve these six outcomes, the Conduct Standard sets out prescribed parameters which must be adhered to by a bank:

1. **outcome 1** - section 3 of the Conduct Standard imposes an obligation on financial institutions to document, adopt, implement and monitor the effectiveness of appropriate governance arrangements which are necessary to ensure that the financial institution conducts its business in a manner which prioritises the fair treatment of financial customers. Banks are furthermore obligated to, *inter alia*, act honestly, fairly, with due skill, care and diligence, and in a manner which does not bring the financial sector into disrepute;
2. **outcome 2** - section 4 of the Conduct Standard addresses the design, suitability and performance requirements with which financial products and financial services must comply. In addition, an obligation has been imposed on financial institutions to establish and implement appropriate oversight arrangements in order to monitor and review the design and suitability of its financial products and financial services on an ongoing basis. Notwithstanding the provisions of section 4, additional requirements have been imposed under the Conduct Standard in relation to "*retail financial customers*". These requirements have been set out in further detail in section 5 of the Conduct Standard and include additional specific references to retail customers within the confines of, *inter alia*, sections 4, 6, 7 and 8 of the Conduct Standard respectively;
3. **outcome 3** - pursuant to the provisions of section 6 of the Conduct Standard, financial institutions must ensure that their financial products and financial services are advertised in a manner which is clear, fair and not misleading. Additional obligations have been set out in relation to any advertising to be undertaken by a financial institution insofar as a financial institution may utilise the services of a third party to advertise their

financial products and/or financial services on its behalf. The financial institution will ultimately remain responsible for the manner in which the product or service is advertised and will be required to ensure that the advertisement complies with the requirements of the Conduct Standard;

4. **outcome 4** - section 7 of the Conduct Standard in turn addresses various disclosures which must be made by a financial institution to a customer before, during and after conclusion of a contract in relation to the provision of a financial product and/or financial service, so as to ensure that a customer is aware of all the relevant facts that could be expected to influence the customer's decision in relation to such financial product and/or financial service. When making disclosures to customers, a financial institution must take into account, *inter alia*, the nature and complexity of the financial product and/or financial service concerned, the needs of the customer, the reasonable level of knowledge, understanding and experience of the customer, as well as the timing of when such information is disclosed to the customer in order that such customer may make an informed decision in relation to entering into, using or maintaining the financial product and/or financial service respectively;
5. **outcome 5** - in line with the provisions of section 4 of the Conduct Standard, a financial institution must continually monitor and review the design and suitability of financial products and financial services on an ongoing basis. This would include that the financial institution must regularly review their oversight arrangements in order to ensure that they remain effective and up to date. A financial institution must also ensure that timeous remedial action is taken in respect of those financial products and/or financial services which are reasonably expected to lead or are leading to unfair outcomes for financial customers. In addition, in terms of section 5 of the Conduct Standard, unfair product terms and conditions, including unfair charges, are prohibited. The provisions of section 5 of the Conduct Standard however only apply to retail financial customers; and
6. **outcome 6** - section 8 of the Conduct Standard sets out the procedures which must be implemented by financial institutions in relation to any complaints which financial customers may wish to lodge in relation to their treatment by such financial institution. A financial institution must similarly review its complaint management framework on a regular basis and document required changes thereto. Appropriate internal complaints escalation and review processes must also be established and implemented by financial institutions. Section 10 of the Conduct Standard, in turn, addresses the relevant provisions in relation to the termination, closure or switching of financial products and/or financial services by financial customers. A financial institution may not impose an unreasonable barrier where a financial customer requests the termination, closure or transfer to another bank of a financial product and/or financial service and must assist a financial customer upon receipt of any such request. Similarly, the contractual arrangements between a financial customer and a financial institution must make provision for the circumstances in which such agreement may be terminated or closed by the relevant customer. To the extent that a financial institution refuses to provide a financial product and/or render a financial service to a customer or refuses to withdraw, terminate or close the financial product and/or financial service in respect of one of its financial customers, such financial institution must document and implement the relevant processes and procedures relative hereto. Section 9 of the Conduct Standard details the parameters with which any action may be taken by a financial institution in relation to the refusal to withdraw, terminate or close a financial product and/or financial service, as well as what action may be undertaken and when such action may be undertaken.

It is the FSCA's expectation that the Conduct Standard will give effect to better and more improved outcomes for financial customers with an emphasis on transparency and disclosure in relation to the offering of financial products and financial services to particular customer groups.

Banks will, as a result of the publication of the Conduct Standard, need to analyse the impact of the Conduct Standard on their current business operations as well as steps to be undertaken in order to implement the Conduct Standard in their general business operations.




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