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Fair conduct programmes – information for smaller firms

This information sheet provides information and examples to help smaller Financial Institutions (FIs) establish, implement and maintain their fair conduct programme. It complements our other resources relating to FI licensing. It will be useful for smaller firms holding or applying for a licence to act as an FI under the Financial Markets Conduct Act 2013 (FMC Act).

Financial institutions are required to have a fair conduct programme (FCP) that is designed to ensure their compliance with the fair conduct principle.

All FCPs need to meet the same minimum requirements. However, the way that firms of different sizes and types approach their FCP will differ. We recognise that smaller FIs may find the process of establishing, implementing and maintaining an FCP more challenging than larger FIs or firms that already hold other licences issued by the FMA.

This information sheet will help smaller deposit takers and insurers that require an FI licence, during the licensing process and after the licence has been issued. It provides additional information and support for smaller FIs, but it does not provide all the information an FI will need to meet their obligations. It should be read in conjunction with the other documents and information referenced below.

This information sheet does not change any legal requirements, and FIs are not required to read it before making a licence application. The examples are suggestions to help smaller FIs meet their obligations under the FMC Act; they are not exhaustive, are illustrative in nature, and are not intended to impose any additional obligations or requirements above what is set out in the legislation and regulations.

What is a fair conduct programme?

The 'fair conduct principle' is the requirement to treat consumers fairly. An FCP comprises effective policies, processes, systems and controls that are designed to ensure the FI's compliance with the fair conduct principle. In practice, an FCP puts structure around how fair treatment of consumers is achieved.

Establishing your FCP

'Establishing' an FCP refers to the process of creating an FCP. FIs need to establish their FCP before making their licence application, because they will need to answer questions about their FCP in the application.

An FCP needs to be in writing and, ideally, approved by your board of directors.

Existing resources

The FMA has published the following range of documents to help FIs with their licence preparations, and there is other useful information on our website: [Conduct of Financial Institutions \(fma.govt.nz\)](https://www.fma.govt.nz). This includes definitions of key terms used in this information sheet and in the documents detailed below.

One-page checklist

Our [8 steps to apply for a financial institution licence](#) is an easy one-page checklist that is a great place to start. It provides a 'roadmap' of the key steps involved in applying for an FI licence, along with links to resources and our contact details if you need any help.

Licence application guide

All the questions we ask in the application form are outlined in the [licence application guide](#). Getting an understanding of what will be asked will help prepare you for submitting your application.

The licence application guide details what to do before you apply, and provides information to help you complete your application, including a 'what we mean' section that outlines our expectations and requirements specific to each question.

We encourage you to read the application guide as you embark on establishing your FCP. It contains useful information about what needs to go in your FCP, not just how to make your application.

FCP information sheet

The [FCP information sheet](#) is a key resource with useful information and examples to help you establish your FCP. It should be read alongside the licence application guide.

Getting started

After you have familiarised yourself with the resources on the FMA website, it's important you understand the minimum requirements for FCPs. These are outlined in [section 446J](#) of the Financial Markets (Conduct of Institutions) Amendment Act 2022 ([CoFI Act](#)). Section 446J(1) outlines the areas you will need to have policies, processes, systems and controls in place for. The licence application guide and FCP information sheet can help you understand these requirements.

A useful step is to make a list of your existing policies, processes, systems and controls. Consider whether each of these will help you meet your obligations under the CoFI Act. Where the answer is yes, those will form part of your FCP. You may find some of your existing policies, processes, systems and controls don't need to be included in your FCP.

As you review your existing policies, processes, systems and controls against the minimum requirements for FCPs, we suggest you note any gaps between what you need and what you currently have in place. To address these, you could make changes to what you already have, create additional policies, processes, systems and controls, or a combination of both.

It's important you understand which policies, processes, systems and controls help you meet your obligations as an FI. Recording your thinking as part of your FCP can be a useful way to demonstrate how you meet your obligations. For example, "this policy helps me treat consumers fairly because...".

Making it proportional

The CoFI Act requires an FI to have regard to its nature, size and complexity when establishing its FCP. Ideally, an FCP will be 'right sized' for your business. Smaller, simpler businesses are likely to need a less complex FCP. There are other factors to consider, which are outlined in [section 446J\(2\)](#) of the CoFI Act and in the FCP information sheet.

Think about the risk factors that relate to your specific business. This will likely include risks that other FIs face, but there may also be risks that relate to the unique operations and characteristics of your firm. For example, you may be a smaller FI but if you offer higher-risk products or have complex distribution arrangements, this will need to be reflected in your FCP. This doesn't necessarily mean you need a longer FCP, but you will need to explain how your policies, processes, systems and controls account for those risk factors. This is illustrated in the following example.

An FI is small and has a simple product suite that it provides directly to consumers. The size and nature of the business may mean that its FCP does not need to be as detailed as that of a larger, more complex business. However, the FI has identified that a large portion of its consumers are in circumstances that mean they are vulnerable to unfair treatment. As a result, its FCP has a strong focus on how those consumers are identified and supported, which reflects the identified risks.

Your FCP does not need to contain the same level of detail throughout. There may be parts that are very simple, and parts that need to be more in-depth. Making these judgements would show that you have a

good understanding of the unique conduct risks your business faces and have tailored your FCP to respond to these risks in a proportional manner.

Your FCP only applies to the part of your business providing relevant services and associated products¹ to consumers. If the part of your business providing products and/or services to consumers is small, then your FCP should reflect this.

Structuring the FCP

Your FCP needs to be in writing and cover the policies, processes, systems and controls you have in place to ensure consumers are treated fairly. There isn't a prescribed template and it's up to you how you structure it. It's important you choose a structure (format) that reflects your business and will be usable by your staff.

As a smaller FI, it may suit you to have your whole FCP in a single document, as you may have a smaller number of policies, processes, systems and controls in your business. We have seen some FIs choosing to document their FCP in this way – it can work well for simpler businesses.

Alternatively, you may choose to have an overarching framework or summary document that explains your FCP and has links to the separate policies, processes, systems and controls. This structure can work well for larger or more complex FIs – but may also be suitable for smaller businesses to link new and existing policies, processes, systems and controls together to explain how they support the fair treatment of consumers.

Regardless of the structure, it's important you design something that will work for your business. It shouldn't be copied or adapted from somewhere else if it's not going to suit the way you work.

You may find it helpful to involve the people in your business (for example, product manager, IT, branch manager, frontline staff) to offer their ideas and help establish your FCP.

The following suggestions may help you think about how to set out your FCP. You are not required to follow any of these if you don't think they will work for your business.

- Use headings or chapters that align with the minimum requirements in section 446J of the [CoFI Act](#). That will make it easier to explain your policies, processes, systems and controls against the minimum requirements.
- Align your FCP with the sections of the application guide, which cover topics like products and conduct risk management, as well as areas that relate to the FI licence standard conditions such as business continuity and record keeping. This may enable you to group similar information together to provide a logical reference point for the obligations you need to meet as an FI.
- Structure your FCP around the nature of your existing policies, processes, systems and controls. This will enable you to utilise a familiar format, which may make the exercise easier. This is illustrated in the following example.

¹ For definitions of key terms used in this information sheet, refer to [Key terms under the CoFI regime \(fma.govt.nz\)](#)

A small FI has a staff manual that sets out all its current policies and procedures, including Code of Conduct, internal policies, and product and system information. It adds a new chapter to the manual, titled 'Fair Conduct Programme', that identifies which areas of the staff manual relate to the CoFI requirements. Some aspects of CoFI, such as designing and managing incentives, and regularly reviewing the FCP, are not addressed by the existing content of the manual, so it adds content to the manual to cover these areas.

Implementing and maintaining your FCP

Roles and responsibilities

As outlined in the FCP information sheet, the minimum requirements for FCPs require FIs to have clearly defined roles, responsibilities and accountability arrangements for identifying, monitoring and managing conduct risks.

We expect the FCP to include the key roles or types of roles within the FI, and provide detail about the responsibilities of each role or type of role in relation to fair conduct. In some FIs, particularly smaller FIs, there may not be roles dedicated to delivering fair conduct (including establishing, implementing and maintaining the FCP). Instead, we anticipate that in smaller FIs, responsibility for fair conduct may form part of the responsibilities of one or more existing roles. This should be documented in your FCP. Managers of smaller FIs should ensure everyone knows who is responsible for what within the business.

Governance and oversight

As outlined in the FCP information sheet, an FI's governing body plays a central role in overseeing the establishment, implementation and maintenance of the FCP. The minimum requirements for FCPs include regular and comprehensive reporting to the governing body about conduct risks.

Some smaller FIs won't have a management team that's separate from the directors who are accountable for overseeing the firm. If the members of your governing body are directly involved in the day-to-day delivery of your relevant services and associated products, the way they exercise oversight and how they access information about the FI's treatment of consumers will be different to that of larger firms where the directors are not as close to the day-to-day operations.

Even when your directors are closer to the day-to-day operations, CoFI still requires that there is reporting to the governing body about conduct risks (i.e. risks associated with conduct that does not comply with the fair conduct principle) and failures to comply with the fair conduct principle. This is important to ensure the directors have sufficient information to make decisions and set expectations for everyone in the firm about the fair treatment of consumers.

Reporting should be relevant and proportional to your business. For example, smaller firms may not have dedicated data analysis and reporting functions, but should still have indicators (or 'metrics') in place that

measure how consumers are being treated. Your indicators should be able to tell you when things are going right, and when they aren't.

In order to provide meaningful insights, your conduct reporting should consider both short-term and long-term consumer outcomes. For example, it could look at who is using your products and how they are being used, and any indicators of potential issues such as unusually high cancellation rates or complaints about particular products.

Testing the effectiveness of your FCP

FIs are required to maintain an effective FCP. There is more on this subject in the FCP information sheet. There is no requirement for how smaller FIs achieve this, such as employing a conduct manager or undertaking a conduct audit. However, you do need to have mechanisms in place to assess the effectiveness of your FCP. We expect you to be able to explain how you will make that assessment, and why the assurance mechanisms you have chosen are suitable for your business. This includes explaining how often you will review your FCP, and what types of circumstances would trigger a review.

The following example illustrates how a small FI could choose to maintain and review its FCP.

A small FI plans to review its FCP on an annual basis. It has a limited product suite and a simple structure with only one branch, and in the ordinary course of business it doesn't expect to make significant changes that could increase the risk of unfair treatment to consumers. Its FCP includes a requirement for an additional review if it does introduce new products or if a systemic issue of unfair consumer treatment is identified. The monthly branch checklist completed by the branch supervisor ensures this requirement isn't overlooked.

On an annual basis, the branch supervisor has a meeting with all staff to discuss the FCP and identify if it's working effectively. The branch supervisor also refers to customer complaints, the issues register, quality assurance checks and other activities in the business to form their views. The report about this process is reviewed by the general manager, to provide oversight of the review process. These processes, including the steps that need to be taken if the review identifies any issues with the FCP, are explained in the FCP itself.

Using external parties to help you meet your obligations

We recognise that smaller FIs may not have the internal resources to easily establish, implement and/or maintain their FCP. One response is to outsource this activity by using a consultant or other professional to assist with these obligations. It is not a requirement to do this; the information and support provided by the FMA is designed to support FIs to comply regardless of how they choose to resource this activity.

Another way that smaller FIs can obtain support for their compliance activities, including establishing, implementing and maintaining their FCP, is to connect with other FIs to share ideas and different perspectives. One means of doing this is through membership of an industry association that provides support for a range of firms.

It is important to note that even when a consultant, other professional or industry association is involved in or supports establishing, implementing and/or maintaining an FI's FCP, the FI remains directly subject to, and liable for, compliance with the CoFI Act duties relating to FCPs. FIs must understand any documents, policies, processes, systems and controls produced by external parties, and be able to explain how these are effective in meeting the organisation's obligations.

If you are considering using an external party to assist with your FCP, we recommend taking the time to ensure you understand what they are going to deliver for you, how it will be tailored and right sized for your business, and how this will help you meet your obligations. You will still need to have personnel in your business who are responsible for the implementation and ongoing operation of your FCP.