

## Treating customers fairly: market conduct legislation arrives

South Africa's Cabinet has formally approved the submission to Parliament of the COFI (Conduct of Financial Institutions) Bill 2025. That may be the dullest possible opening to an article, but it is important to financial entities and their customers. The first draft of policymaker plans to implement market conduct as a regulatory vehicle was published in 2010. This has been a long time coming. The principles established in the 2010 paper remain largely intact.

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10 APR 2026

The key to understanding COFI and its approach is that this is outcomes-based legislation. This means that it is not what the entity does that matters, but the outcome that it achieves. What outcome? The evidence that it is treating its customers fairly (TCF) in all that it does.

### Six core outcomes

The intended outcomes of the market conduct framework are as follows:

1. TCF is central to the **corporate culture** of the financial services provider (FSP) and customers are confident that this is the case.
2. Products and services are designed to **meet the needs** of identified customer groups, who are targeted according to this identification.
3. Clear **information** is provided to customers before, during and after the sale of the product or service.
4. All **advice** provided to customers is suitable, taking into account their circumstances.
5. Products **perform** as FSPs have led customers to expect they would; services are also in line with customer expectation and meet an acceptable standard.
6. Customers do not encounter unreasonable **barriers** to changing product or provider, or to submitting a claim or making a complaint.

In a nutshell, at all stages in the development, offering and servicing of a product, the asset manager, insurer, bank, pension fund, financial adviser and all other FSPs must demonstrably put the needs of the customer at the heart of their offering.

### What is different about principles?

Financial sector regulation was, for decades, based on a set of actions or rules. Banks had to meet minimum capital requirements, for example. Insurers were required to demonstrate adequate solvency, profitability and liquidity, submitting regular returns as evidence that this was the case. Pension funds prepared financial statements and met a range of operational norms.

These are all good. They remain legitimate regulatory requirements that help to safeguard customer interests.

But rules like these are no longer considered sufficient. Of what benefit is a solvent FSP if it is cheating its customers through unfair product design or taking years to respond to their complaints or claims? Some of this ill practice could be reversed through natural competition or the impact of poor reputation, but not all of it is obvious to the market. The impacts of the high fees of long-term insurer-offered savings products were simply unquantified, for example.

Principle-based regulation, in contrast to a set of rules, aims to meet a set of outcomes. Success is defined by the achievement of these outcomes.

### The sting in the tail

The difficulty for FSPs is that they are not used to operating to outcomes. It is no longer sufficient to argue that customers are satisfied because they do not complain. Perhaps they don't know how to complain. Maybe the FSP is not tracking complaints. What if the customers do not even know that they ought to complain?

The key is that the burden of proof will now fall on the FSP. That's not so hard, you say. I think it may be. Complaint statistics prove that customers are dissatisfied. They may even show that the FSP is addressing this dissatisfaction. But they cannot be used to show that customers are broadly happy with the products and services that are offered. Neither can the absence of complaints.

The bar is higher than that. Refer to the first outcome. The FSP must be able to show not only that TCF is central to its corporate culture but that customers believe this to be the case. How can the FSP show that? It must ask its customers whether this is what they believe.

At the heart of principles-based legislation, like the TCF outcomes at the heart of COFI, is the requirement that the bank or pension fund can demonstrate that six outcomes have been met consistently. This requires institutional design that puts the customer at the centre of all operations. It also calls for the systematic gathering and evaluation of customer satisfaction at all touchpoints of the provider with their customers.

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Many of the articles in this series urge you the customer to learn more about the product you are interested in. This one encourages you to insist that you are fairly treated and that the product that you have purchased delivers what it promises. It must do so with the clarity to leave you satisfied with your decision to purchase it. [Rob Rusconi](#)