FCA Compliance – High level principles, TCF and approved persons

In October 2013 the Financial Conduct Authority, (FCA), published a consultation paper outlining their detailed proposals for firms operating in the consumer credit sector, which includes debt counselling and adjusting. The final proposals are expected to be published in March 2014 with FCA regulation coming into force on 1st April 2014.

The detailed draft rules and guidance outlined in the FCA Consumer Credit Sourcebook, (CONC), are based on the Office of Fair Trading Debt Management Guidance. Several parts of the Insolvency Service DMP Protocol have also been incorporated into the consultation.

Debt management, (counselling and adjusting), are classed by the FCA as high risk activities. So, although a number of DRF members have experience of FCA regulation as a result of selling other regulated products, it is worth emphasising that. the intrusive supervisory approach of the FCA to monitoring compliance that may well be new to members.

This paper is a high level briefing for DRF members which outlines some of the key concepts in the FCA's regulatory approach.

We think the FCA's regulatory philosophy can be summed up as follows:

- You must obey the detailed rules and also the spirit of them as defined by the high-level principles, which are also mandatory.
- You must have processes that show you are compliant and which prevent and root out non-compliance.
- You must have processes that improve compliance in your business.
- You must have transparent, comprehensive reporting to support this.
- You must have people in your business who take responsibility for compliance and who have the authority to make necessary changes and improvements. These people will be individually legally responsible for ensuring this is the case.

FCA strategic & operational objectives:

The FCA strategic objective is to ensure that the relevant markets function well.

To support this, the FCA have three operational objectives:

• To secure an appropriate degree of protection for consumers.
• To protect and enhance the integrity of the UK financial system.
• To promote effective competition in the interests of consumers.

FCA Principles

The FCA have 11 high level principles that underpin their approach to regulation.

1 Integrity	A *firm* must conduct its business with integrity.
2 Skill, care and diligence	A *firm* must conduct its business with due skill, care and diligence.
3 Management and control	A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A *firm* must maintain adequate financial resources.
5 Market conduct	A *firm* must observe proper standards of market conduct.
6 Customers' interests	A *firm* must pay due regard to the interests of its *customers* and treat them fairly.
7 Communications with clients	A *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A *firm* must manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*.
9 Customers: relationships of trust	A *firm* must take reasonable care to ensure the suitability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment.
10 Clients' assets	A *firm* must arrange adequate protection for *clients'* assets when it is responsible for them.
11 Relations with regulators	A *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice.[1]

FCA expectations of firms:

The FCA expect customers' interests to be at the heart of how firms do business. Customers can expect to get financial services and products that meet their needs from firms that they can trust. Meeting customers' fair and reasonable expectations is the responsibility of firms, not that of the FCA.

The 6 FCA Treating Customers Fairly (TCF) outcomes:

TCF is at the heart of the FCA's regulatory approach. The FCA's 6 consumer outcomes explain what FCA want TCF to achieve for consumers. The FCA will use these outcomes as an important factor in guiding regulatory decisions and actions.

- **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 are kept appropriately informed before, during and after the point of sale.
- **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.

Approved Persons[1]

The Approved Persons regime is key to the FCA's approach to regulation. An approved person is an individual who has been approved by the FCA to perform one or more controlled functions on behalf of an authorised firm.

Under the Financial Services and Markets Act 2000, the FCA may approve an individual only where it is satisfied that a candidate is fit and proper to perform the controlled function(s) applied for. When considering a candidate's fitness and propriety, the FCA considers:

i. honesty, integrity and reputation;
ii. competence and capability;
iii. financial soundness.

Approval must be obtained before a person can perform a controlled function.

What are your responsibilities as an approved person?

Being an approved person brings with it a number of important responsibilities, including a duty to be aware of and comply with FCA regulatory requirements and expectations and, understand how they apply to the day to day exercise of controlled functions. Specifically, approved persons must:

- meet and comply on an ongoing basis with the FCA's Fit and Proper test for Approved Persons;
- comply with the Statements of Principle and the Code of Practice for Approved Persons. These Statements of Principle describe the conduct that the FCA requires and expects of the individuals it approves;
- report to the authorised firm and to the FCA any matter that may impact on their ongoing fitness and propriety.

Non compliance with these regulatory requirements may result in the FCA taking enforcement action directly against the approved person.

The FCA's Firm Specific Framework, (FSF).

The FCA's approach to regulatory supervision is designed to support a judgment based and pre-emptive approach that is focused on delivering the FCA's statutory objectives. The FCA supervisors are focused on conducting in-depth and structured supervision work on those firms with the greatest potential to cause risks to consumers or market integrity. We understand this means that, in the debt management sector many firms will experience a highly intensive level of contact with supervisors over months or even years, whereas others may only be contacted once every four years.

The model involves building FCA supervision around three clear pillars, each of which has a distinct purpose. The 3 pillars are:

1. Firm Systematic Framework (FSF)
2. Event Driven Work
3. Issues and Product Work

[1] **http://fshandbook.info/FS/html/handbook/SUP/10A**

The most important of these pillars is Pillar 1.

Pillar 1 - Firm Systematic Framework (FSF) is a core component of the FCA's approach to supervision – the FSF in conjunction with the Business Model and Strategy Analysis (BMSA) is where the FCA will consider the way in which each firm is run.

The FCA is seeking to ensure that firms have the fair treatment of their customers at the heart of everything they do, and the ultimate question the FCA will ask itself is: "*does the firm have the interests of its customers and the integrity of the market at the heart of how the business is run?*"

The key questions that the FSF is designed to answer are:

- Is the firm run in a way that results in the fair treatment of its customers?
- What are the causes of any deficiencies in its fair treatment of its customers?
- What does the firm need to do to rectify these underlying causes and deficiencies?

FSF is applied within the broader supervision framework to deliver systematic supervision that identifies potential and emerging risks, including their drivers, to enable earlier intervention (i.e. stopping risks from crystallizing and causing detriment to customers).

The framework is designed to assess a firm's conduct, aimed at ensuring the interests of the customers are paramount and that market integrity is not overlooked. The FCA aims to do this using the following framework:

- Business model and strategy analysis – how sustainable is the business model. This will be tied in to the Business Model Threshold Condition which will now form part of the authorisation process.
- Assessment of how the firm embeds fair treatment of customers and ensures market integrity – the FCA wants to understand how a firm assesses risk at the present time and also how it will be reviewed as the business evolves and develops its future. In addition the FCA wants to understand how the board is involved in the process and is kept appraised of developments.