

FAQs on Fair Treatment of Financial Consumers

Paragraph and requirement	Question	Answer
2.1 This policy document is applicable to a FSP as defined in paragraph 5.2.	Does the policy document apply to permitted capital activities (i.e. dealing with securities)?	The policy document is not applicable to any capital market services or products as defined in subsection 2(1) of the Capital Markets and Services Act 2007 (incorporating latest amendment up to 2018).
5.2 “Conduct risk” refers to risk arising from a FSP’s business conduct and practices that could result in poor financial consumer outcomes and have a negative reputational and/or financial impact on the FSP.	What does “poor financial consumer outcomes” mean?	Examples of poor financial consumer outcomes include the recommendation and sale of financial products: (i) which are not suited to the financial circumstances of financial consumers; (ii) that do not deliver what financial consumers were led to believe or expect; or (iii) which leads to financial consumers making bad financial decisions or choices due to poor disclosure of the financial product risks, charges, features and/or exemptions.
5.2 “Financial consumer” refers to any person- (a) who uses, has used or may be intending to use, any financial service or product- (i) for personal, domestic or household purposes; or (ii) in connection with a micro or small business...	Does the policy document cover sophisticated and high net worth individuals?	Yes, the policy document is applicable to all financial consumers as defined in paragraph 5.2 which would include sophisticated and high net worth individuals.

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<p>10.3 Senior management is primarily responsible for driving the FTFC agenda and embedding FTFC into the FSP's corporate culture and core values. This includes-</p> <ul style="list-style-type: none"> (a) (b) integrating FTFC into the business model, business strategy and business practices; (c) ensuring that decision making processes give adequate consideration to financial consumer interests; 	<p>How can a FSP demonstrate compliance with this requirement?</p>	<p>FSPs should record and retain relevant assessments, reports or documentations to demonstrate that the senior management has integrated FTFC into business processes, which include both quantitative and qualitative information. These may include training materials to raise staff awareness and knowledge on FTFC, staff surveys to gauge understanding on internal policies, procedures and controls on FTFC, product development procedures that require analysis and identification of appropriate target markets, marketing and distribution procedures to ensure that financial products are sold to the identified target market, pre-sales testing of new financial products with focus groups, minutes of management meetings on FTFC matters (such as discussion on customer feedback and effectiveness in addressing sales-related complaints) and internal audit reports on effectiveness of implementation of FTFC policies, procedures and controls.</p>
<p>10.5 A FSP shall ensure its staff, representatives and agents are trained on the core values and desired behaviour to deliver fair outcomes to financial consumers.</p>	<p>Does the requirement apply to staff undertaking functions that are not directly related to financial consumers, e.g. internal audit?</p>	<p>The requirement would apply to all staff with roles and responsibilities that may directly or indirectly have an impact on financial consumers' interests or experiences in dealing with the FSP, regardless whether the staff has direct contact with financial consumers. For example, staff involved in the design, development and testing of new financial products and promotional materials as well as internal auditors, in view of their role in providing independent assurance to the FSP on effectiveness of FTFC requirements. The objective is to ensure that relevant staff understand their respective roles</p>

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		and accountabilities in delivering fair outcomes to financial consumers.
<p>10.10 Where the remuneration policy allows for variable remuneration, a FSP shall ensure that-</p> <p>(a)</p> <p>(b) the ratio between fixed and variable components are appropriately balanced;</p>	<p>What would be a balanced ratio between the fixed and variable components?</p>	<p>FSPs are given the flexibility to determine the appropriate ratio between the fixed and variable components of remuneration. The variable component must not be excessively high or tied solely to the achievement of sales volumes, revenue or targets. Sufficient weight should be placed on qualitative factors to serve as effective incentives for staff to deliver fair outcomes to financial consumers.</p>
<p>11.4 A FSP must ensure that terms in its standard contracts are fair to financial consumers.</p>	<p>Does the requirement apply to:</p> <p>(a) Contracts with SME customers?</p> <p>(b) Terms for products campaign?</p> <p>(c) Distributed products such as bancassurance and unit trust?</p>	<p>The requirement is applicable to all financial services and products developed by FSPs for financial consumers as defined under paragraph 5.2 of the policy document.</p>
<p>11.4 ...A term is regarded as unfair if it has a tendency to create a significant imbalance, whereby it shifts the rights and obligations significantly in favour of the FSP to the detriment of financial consumers.</p>	<p>How will the assessment be carried out in determining whether the FSP has caused detriment to financial consumers or the term is detrimental to financial consumers?</p>	<p>In assessing whether a term is unfair, FSPs should consider whether the term imposed is adversely biased in favour of the FSP or disproportionately disadvantageous to financial consumers. An unfair term accords the FSP with sole discretion or power to improve benefits to the FSP or to impose disadvantageous obligations on financial consumers. FSPs should always consider the potential detriment to financial consumers if the term were to be applied or relied on. Detriment to financial consumers includes non-financial</p>

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	<p>If certain actions can be taken against financial consumers due to default or breach of contract terms by the financial consumers, is it deemed as causing detriment to financial consumers?</p>	<p>detriment such as undue delay or distress likely to be suffered by financial consumers as a result of the unfair term.</p> <p>This would depend on how the term is drafted, presented and effected by the FSP. A term that allows a FSP to take specific action against financial consumers due to breach of terms by the financial consumers is not unfair, provided that the term is set out in a clear and comprehensible way and is properly explained and disclosed to allow financial consumers to understand its implications prior to entering into the contract. Further, the actions that can be taken by the FSP must not be excessive, oppressive or unconscionable.</p>
<p>11.6(a) Terms are expressed in plain language.</p>	<p>Certain insurance jargon is required in the policy contract. How to ensure they are drafted in plain language?</p>	<p>Plain language should be used as much as possible. The use of technical jargon (if necessary) should be accompanied with explanations in layman terms. For example, a simple explanation on the meaning of a technical or legal term should be provided in the glossary.</p>

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11.6(c) Terms that impose obligations on financial consumers are given appropriate prominence.	Contracts would have obligations on the financial consumer throughout the contract. How can prominence be achieved?	Contracts should be organised and written in a manner that helps financial consumers to clearly identify and understand their obligations. FSPs are also expected to enhance their product disclosure sheets to include key contract terms relating to financial consumers' rights and obligations, and these should be highlighted and explained prior to financial consumers entering into the contract.
13.2 A FSP shall establish policies which require staff, representatives and agents to carry out their duties and responsibilities with due care, skill and diligence in accordance with professional ethical standards.	What is meant by professional ethical standards?	Professional ethical standards are minimum levels of quality, moral, personal and/or work values and conduct expected of FSPs' staff, representatives and agents. These may include the professional code for the financial services industry published by the Financial Services Professional Board and code of ethics established by the FSP's board and senior management.
13.5 Before appointing representatives and agents to market or sell financial services or products or to recover payment from financial consumers, a FSP shall conduct proper due diligence on the representatives and agents.	What would be an acceptable scope of "proper due diligence"?	Due diligence checks on prospective representatives or agents should include assessing the individual or firm's reputation, competence, performance track record, financial standing and fitness and propriety of the individual or the firm's senior management.

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<p>14.3 Staff, representatives and agents must ensure that any advice or recommendation on a financial service or product provided to financial consumers have a reasonable basis and are provided in the best interests of financial consumers.</p>	<p>Would the requirement be applicable to products other than investment related products?</p>	<p>The requirement applies to any financial service or product which involve the provision of advice or recommendations to financial consumers. FSPs must observe the requirements under paragraph 14 to the extent they are relevant to the type of financial service or product offered.</p>
<p>14.5 A FSP shall have controls in place to ensure that its staff, representatives and agents preserve the confidentiality of the information disclosed by financial consumers. The information shall only be used for purposes of providing advice on or recommending a financial service or product to the financial consumers.</p>	<p>Is the information obtained from financial consumers restricted to recommending one financial product? Could FSPs reuse the information for other financial products?</p>	<p>Information collected from financial consumers can be used for recommending more than one financial service or product which the FSP offers. However, the FSP must take reasonable steps to ensure that the information remains relevant and up-to-date.</p>
<p>14.8 In determining the suitability of a financial service or product for a financial consumer, where relevant, staff, representatives and agents, shall assess whether-</p> <p>(a) the financial service or product is suitable to the</p>	<p>Would this requirement be limited to financial products which are of high risk (e.g. non-capital protected) or apply to plain vanilla financial products?</p>	<p>The requirement applies to any financial service or product which involve the provision of advice or recommendations to financial consumers. FSPs must apply the requirements in the subparagraphs to the extent such are relevant to the nature of the financial service or product.</p>

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<p>financial consumer's financial objectives, needs, personal circumstances, financial situation, risk appetite and investment horizon;</p>		
<p>14.12 A FSP shall disclose to financial consumers the quantum of any commission, prior to providing any advice or recommendation on the financial service or product.</p>	<p>Commission or other benefits are part of a FSP's business arrangement and the information is confidential. What is the intention of this requirement?</p>	<p>The disclosure of commission is important for financial consumers to make informed decisions when a financial service or product is marketed by the staff of the FSP and to facilitate comparison shopping, which in turn promotes healthy competition. The FSP should refer to paragraph 14.13 for further elaboration on the quantum of commission.</p>
<p>15.8 A FSP must establish effective monitoring and evaluation mechanisms for all complaints and claims received. This shall include analysing the nature and trends of complaints and claims received and undertaking effective root cause analysis. A FSP shall take adequate measures to rectify the weakness identified and establish a mechanism for appropriate escalation of</p>	<p>What is the Bank's expectation on the analysis to be performed (i.e. what areas to be included and the measures involved)?</p>	<p>FSPs are given the flexibility to determine how such analysis should be conducted, so long as it is conducted in accordance with the requirement, whereby areas of weaknesses or lapses can be identified and appropriate measures can be taken to address such weaknesses effectively.</p>

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significant complaints and claims to senior management.		
Appendix 5 - Contract terms which may be regarded as unfair.	Is the list of unfair contract terms applicable to insurers and takaful operators?	Yes, the list of terms that may be regarded as unfair is applicable to insurance contracts and takaful certificates.
Clause 1 - A term which requires the financial consumer to pay a disproportionately high sum in compensation or permit the FSP to retain entire sums paid by the financial consumer where the financial consumer terminates the contract before its maturity.	Can insurers impose surrender charge for certain investment-linked products? Such surrender charge is determined in line with the Investment-linked Product Guidelines.	Yes, insurers/takaful operators may levy surrender charge for the cancellation of a policy/certificate provided that the surrender charge is reasonable and reflects the expected expenses to be incurred by the FSP. The onus lies with the FSP to demonstrate that the change is reasonable and reflective of expenses incurred. Insurers/takaful operators must not seek to profit from the surrender charge.
	Structured investments will incur unwinding fees if the financial consumer terminates the contract early. Does the clause apply to structured investment products?	<p>Clause 1 is relevant to all financial services and products. The term is unfair if it allows the FSP excessive discretion to decide the level of compensation or penalty and the manner in which the penalty is determined is unclear to financial consumers. Any penalty on the early termination of a contract must be clearly communicated to the financial consumers at the point of entering into the contract.</p> <p>If the unwinding fee allows the FSP to recover more than the costs the FSP is likely to incur as a result of early termination by financial consumers, the term is likely to be deemed as unfair.</p>

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	Does this clause apply to life policies and family certificates where there is minimal or no returns given should the client terminate the policy/certificate within the first 3 years of policy/certificate inception?	No, this clause does not apply to the query raised. The determination of surrender value would depend on the product features of a life policy or family certificate. However, FSPs must clearly disclose to financial consumers the consequences of terminating the life policy or family certificate in the early years, e.g. customers will receive less than the amount paid, with clear reasons on why this is the case.
Clause 2 - A term which requires the financial consumer to pay a disproportionately high sum in penalty as a consequence of a breach of contract by the financial consumer.	What would be the relevant factors that FSPs can take into account to ascertain whether the penalty is proportionate to the consequences of a breach of contract by the financial consumer?	A requirement for financial consumers to pay penalties for a breach which exceeds reasonable estimates of the costs to be incurred by the FSP as a result of the breach will be considered as disproportionate or excessive. A penalty for breach of contract must reasonably commensurate with the costs or loss likely to be suffered by the FSP as a result of the breach of contract by financial consumers. In other words, the penalty must not be arbitrarily determined.
Clause 3 - A term which makes the financial consumer fully liable for matters or losses incurred by the FSP that are not caused by the financial consumer.	FSPs should be entitled to be indemnified by the financial consumer for loss that is incurred as a result of the FSPs executing the financial consumer's instruction, or acting as an agent of the financial consumer.	As a rule of thumb, a term will not be deemed unfair if financial consumers are charged or held accountable for losses or damages (e.g. to the financial consumer's property) caused by the financial consumers' own actions, inactions or instructions. However, financial consumers should not be required to compensate the FSP for losses which are not due to the financial consumers' actions, inactions or instructions.
	Is this intended to include situations where a financial consumer remains fully liable for	No, the financial consumers remain liable for the debt owed to the FSP.

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	<p>a debt when the collateral is destroyed by events outside of the financial consumer's control?</p>	
	<p>Does investment risk fall under clause 3 because it is outside of the financial consumer's control?</p>	<p>This clause is not applicable to investment products where financial losses are due to market fluctuations even though the losses are beyond the financial consumer's control.</p>
<p>Clause 6 - A term which excludes or limits the FSP's liability for breach of contract or non-performance of obligations by the FSP.</p>	<p>Generally, FSPs exclude liability for indirect losses and events beyond their control such as payment system failure, or a correspondence bank's acts or omissions. Would this be acceptable?</p>	<p>No. The rights and obligations under a contract cannot be considered evenly balanced unless both the FSP and financial consumers are equally bound by their obligations under the contract. A term that allows the FSP to exclude liability for indirect losses and events beyond their control is likely to upset the balance of the contract to the financial consumers' disadvantage. This includes disclaiming losses caused by the FSP's correspondent bank or service providers. The FSP has chosen to enter into agreements with them and the financial consumers have no contractual rights against them. Hence, the FSP must not seek to disclaim responsibility for its failure to perform its obligations. Instead, the FSP should include liability clauses in its contract or service level agreement with its corresponding banks or service providers to recoup such losses from them, rather than passing such costs on to financial consumers.</p>

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<p>Clause 8 - A term which excludes or limits the financial consumer's rights to take legal action or access to legal remedy in the event of total or partial non-performance of the FSP's contractual obligations.</p>	<p>If the insurance contract states that parties can only bring disputes to court for resolution because the proceedings in an arbitration setting are costly to both the insurer and policyholder. Is such a clause regarded as unfair?</p>	<p>Clause 8 applies to a term which has the object or effect of preventing or hindering financial consumers from enforcing their rights against the FSP in the event the FSP fails to perform its contractual obligations. Such term may have the effect of allowing the FSP to act unreasonably towards the financial consumers without any legal recourse, and this upsets the balance of the contractual rights to the financial consumers' disadvantage.</p>
<p>Clause 9 - A term which provides the FSP a right to vary the terms of the contract at its discretion without a valid reason and reasonable notice to the financial consumer.</p>	<p>What would be considered as a valid reason? FSPs may have good basis for not disclosing the reason for variation to the terms, e.g. relating to business confidentiality, risk of financial crime.</p>	<p>A unilateral variation clause may cause a significant imbalance in the rights and obligations of the parties to the contract. A variation clause is acceptable only if it permits the FSP to vary the terms for legitimate reasons described in the contract which are specific enough to ensure the power to vary cannot be used by the FSP at will to suit its interest, or in a manner that will be detrimental to financial consumers. Valid reason refers to a cause that is no wider than is reasonably necessary to protect the legitimate interests of the FSP, without resulting in detriment to financial consumers. Examples of valid reasons include changes in legislations, regulatory requirements or technology. Vague or sweeping statements such as 'for any reason the firm sees fit' or 'for any reason a firm considers reasonable' are not acceptable due to their ambiguity and lack of specificity.</p>

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	<p>Will the requirements under fair contract terms affect variation clauses? Such variation clauses would be useful in the event there is a need to correct any operational error in the contract.</p>	<p>It is recognised that FSPs may have a legitimate need to be able to vary their contract terms. A variation clause intended solely to facilitate minor corrections to the contract is less likely to be unfair, provided it is supported by a valid reason and reasonable notice to financial consumers. A variation clause should be narrowly and clearly described, and set out the specific circumstances in which a variation may occur. Financial consumers should be given reasonable notice to consider the changes before it is effected and be accorded the right to terminate the contract without penalty.</p>
<p>Clause 11 - A term which permits the FSP to unilaterally terminate the contract without reasonable notice except where there is a valid reason for doing so.</p>	<p>For insurance and takaful, unilateral termination of contract can be due to non-payment of premiums or for anti-money laundering reasons. Does this clause apply to these scenarios?</p>	<p>No. Clause 11 applies to terms which allow the FSP to cancel a contract at will, without having any valid reason or without it being reasonably necessary to protect the FSP's legitimate interest. A right for the FSP to cancel a contract without notice may be fair if its use is effectively restricted to situations in which there are serious grounds for immediate termination of the contract. There may be circumstances in which there is a real risk of loss or harm to the FSP, e.g. where there is a reasonable suspicion of criminality or due to non-payment of premiums or interests that are due. The grounds for cancellation of the contract without notice must be clearly indicated in the contract.</p>

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<p>Clause 12 - A term which gives the FSP the discretion to refuse the financial consumer's request to terminate the contract without any valid reason.</p>	<p>There are certain products which the FSP cannot allow the financial consumer to terminate the contract as this may result in the FSP committing a breach on its agreement with a third party, which is entered as a result of the contract between the FSP and the financial consumer.</p>	<p>Generally, a term which states that financial consumers are not allowed to cancel the contract 'under any circumstances' or 'only with the FSP's agreement' is likely to be considered unfair as it undermines the financial consumers' right to end the contract. However, if there are circumstances which make it impossible or impractical to end the contract prematurely, those circumstances must be specifically described and clearly communicated to the financial consumer at the point of entering into the contract.</p>
<p>Clause 14 - A term which allows the FSP to assign or transfer the FSP's rights and obligations under the contract to the detriment of the financial consumer.</p>	<p>Is there a specific test to determine if assignment of the FSP's rights and obligations would be detrimental to the financial consumer?</p>	<p>Generally, an assignment clause is less likely to be unfair if it allows the FSP to assign or transfer its rights and obligations only in circumstances which ensure that financial consumers' rights under the contract will not be detrimentally affected by the assignment or transfer. There is no specific test to determine whether the assignment would be detrimental to the financial consumer as such would depend on the nature of the assignment or transfer of rights and obligations.</p>