

THE RETIREMENT BENEFITS ACT
(Cap. 197)

IN EXERCISE of the powers conferred by Section 55 (3) of the Retirement Benefits Act, the Retirement Benefits Authority issues the following guidelines;

RETIREMENT BENEFITS (TREATING CUSTOMERS FAIRLY)
GUIDELINES, 2018.

PART 1 - PRELIMINARY

Citation

1. These Guidelines may be cited as the Retirement Benefits (Treating Customers Fairly) Guidelines, 2018.

Interpretation

2. In this Guideline, unless the context otherwise requires;

'Act' means the Retirement Benefits Act (No. 3 of 1997) and/or any statutory restatement or re-enactment or amendment thereof;

"administrator" means a person appointed under a written instrument by the trustees of a scheme to manage the administrative affairs of the scheme;

"approved Issuer" means an insurer registered under the Insurance Act (Cap.487) or any other issuer approved in writing under the Capital Markets Authority Act (Cap.485A) or under any other written law;

'auditor' means a person, a firm, director or partner of a firm, as shall be appointed from time to time by Trustees with approval of the Authority; to hold office as such in accordance with such terms and conditions of service as may be specified in the instrument of appointment. Provided always that the person appointed shall be a member of the Institute of Certified Public Accountants of Kenya;

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act;

“beneficiary” means a person other than the member who is entitled to receive or is receiving a benefit under a retirement benefits scheme;

“board” means a board of directors of a service provider; -

“company” has the same meaning in this Guideline as service providers;

“custodian” means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds;

“customer” as the context requires, means a member, a beneficiary or a Trustee of a scheme;

“manager” means a Company registered by the Authority whose business includes investment and management of funds and other assets of the scheme;

“member” means a person contributing to a retirement benefits scheme and includes a person entitled to or receiving a benefit under a scheme;

“retirement benefits scheme” means any arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument;

“Regulations” means the Regulations under the Act as may be amended from time to time;

“Scheme” means a retirement benefit scheme registered under the Retirement Benefits Act;

“senior management” means a person who has the authority to directly or indirectly plan and control business operations of a company and whose absence would materially affect the performance of the company;

“**Service providers**” as the context requires, means administrator, fund manager, custodian, auditor and approved issuer of a scheme;

“Scheme Sponsor” means a person who establishes a scheme and also refers to a founder of a scheme;

“**trustee**” means a legal owner of the scheme who is appointed to manage a retirement scheme on behalf of members and beneficiaries and includes a trust corporation.

Application and Scope

3. This Guideline applies to all service providers appointed by the Trustees. The Trustees shall ensure that service level agreements are signed with service providers which shall include properly recorded processes and reporting mechanisms and the systems and controls used to monitor their implementation.

Responsibility

4. (1) The Trustees of a scheme shall be responsible for the overall the implementation of the TCF Guideline the service providers.

(2) As a general rule trustees should appoint service providers that implement the TCF principles.

Outcomes of the Guideline

5. (1) Implementation of the TCF Guideline will have the following positive outcomes for customers: -
 - a) Customers will feel comfortable that they are dealing with an institution where TCF is at the core of its culture; such an institution focuses on the needs of the customers and goes out of its way to offer the best product and/or service solutions to the customer;
 - b) Retirement benefits products and services will be designed taking due account of the needs of the customers and subsequently identified and targeted accordingly;

- c) Customers will be provided with clear, accurate and documented information and kept appropriately informed before, during and after adoption of the products and services;
- d) Service providers will give advice that is suitable and according to the customers' needs;
- e) Service providers will ensure that services offered to customers are of an acceptable standard and are delivered in a timely manner;
- f) Customers will not be faced with unreasonable rules, conditions and costs once they have taken up products and services, or when they want to change a product, switch providers, submit a claim or make a complaint.

PART II- MEMBER RIGHTS AND OBLIGATIONS

A member of a scheme is the primary and ultimate customer of a service provider with a right to be treated fairly when dealing with trustees, who have procured the services of the service provider, and with such service providers. Members will have the following rights and obligation in order to ensure TCF principles are easily applied when offering them products and/or services: -

Members' Rights

6. In the context of this Guideline, a member has the following rights:-

(1) A right to receive the following information from the scheme trustees: -

- a) A summary of the scheme trust deed & rules or the statutory instrument that set up the scheme; particular emphasis should be placed in informing a member what his role is, particularly with respect to nominees and beneficiaries;
- b) Annual membership benefits statement;

- c) An annual report from the trustees, presented at the Annual General Meeting, which shall include any changes to the scheme benefits and contribution structure;
 - d) A summary of the scheme's audited financial statements;
 - e) A report on investments;
 - f) A report on remuneration of trustees; and,
 - g) Any other information that will be stipulated from time to time in the Act, Regulations thereof and/or other legislations made.
- (2) A right to inspect the following information held by scheme trustees: -
- a) The scheme trust deed & rules or the statutory instrument that set up the scheme;
 - b) The scheme's audited financial statements;
 - c) Register with details of sponsor, members, trustees and service providers; and,
 - d) Any other information stipulated from time to time in the Act, Regulations thereof and/or other legislations made thereunder.
- (3) Additional rights to the following: -
- a) Immediate vesting of benefits;
 - b) Opt for payment, transfer or deferment of benefits upon exit from a scheme as stipulated in the scheme rules;
 - c) Transfers of accrued benefits within sixty days of issuing a written notice to transfer; or within such period as may be stipulated in the Act or Regulations from time to time;
 - d) Non assignment or attachment of benefit for any purpose not stipulated in the Act and Regulations thereof;

- e) Commutation of benefits as stipulated in the scheme rules;
- f) One year notice to select an annuity or income drawdown provider, where applicable;
- g) Nomination of beneficiaries;
- h) Election of member trustees unless a corporate trustee is appointed as the sole Trustee;
- i) Attend annual general meetings; in accordance with the scheme's approved policy; and
- j) Any other rights stipulated from time to time in the Act, Regulations thereof and/or other legislations made thereunder.

Members' Obligations

- 7. Members of schemes have an obligation to;
 - a) obtain and make every effort to clearly understand scheme documentation including the scheme's trust deed and rules or the statutory instrument that set up the scheme;
 - b) seek guidance from scheme trustees or the administrator on any matters that are not clear or on which they have a dispute;
 - c) make reasonable effort to attend information briefing sessions on invitation such as scheme annual general meetings and member education days;
 - d) always provide all necessary information, as set out in the scheme rules or the statutory instrument that set up the scheme. Such information should be accurate and timely to allow service providers carry out their functions effectively;
 - e) conduct themselves with decorum and with respect in dealing with trustees and service providers;

- f) Any other obligations stipulated from time to time in the Act and Regulations thereof and/or other legislations made thereunder.

8. Compliance with the Guideline

- (1) The Act, Regulations thereunder and this Guideline provide adequate guidance on the Authority's expectations on the minimum standards for treating customers fairly in the management of the affairs of a scheme.
- (2) Trustees and, by delegated powers, -the service providers, are responsible for ensuring compliance with this Guideline. Service providers shall be required to report annually to the Authority using the TCF self-assessment toolkit and TCF toolkit notes provided as an annex to the Guideline.
- (3) The "apply or explain" principle may be used where there is non-compliance.
- (4) The Authority shall regularly perform a comprehensive evaluation of the service provider's policies or strategies on treating customers fairly and assess the implementation of the Guideline.
- (5) The Authority may require a service provider to undertake effective and timely remedial action to address any material deficiencies in its compliance with the Guideline.

Limitations

- 9. This Guideline shall be subject to the provisions of the Act, the Regulations thereunder and any other written law. Where there is a conflict between this Guideline and the provisions of Act, the Regulation or any other written law the provisions of the Act and that other written law shall prevail.

PART III- PRINCIPLES FOR TREATING CUSTOMERS FAIRLY (TCF) FOR SERVICE PROVIDERS

Organizational Culture

10. In the context of the Guideline, this refers to the underlying beliefs, assumptions, values and ways of interacting with a service provider in dealing with its customer. Customers should be confident that they are dealing with a service provider where the fair treatment of customers is central to its corporate culture.

To incorporate fair treatment of customers in a service provider's culture the following shall be put in place:-

- a) The Board and senior management are sensitized on the requirements and importance of Organizational Culture change;
- b) The Board assigns one of its Committees the role of oversight over the implementation of the Guideline;
- c) The Guideline is adopted by the Board and a specific senior manager assigned the responsibility for ensuring adherence;
- d) Senior management conducts an initial and subsequently an annual review of the main business processes to identify areas requiring improvement to ensure conformity to the Guideline;
- e) Senior management make it clear in their practices and communication that fair treatment of customers is fundamental to the business operations;
- f) The senior management trains and maintains staff with knowledge, behaviour and values that align with TCF; and
- g) Management information and reporting frameworks to keep the Board and Senior Management informed on the continuous implementation of the Guideline are in place.

Products & Services

11. Products and services offered by a scheme include the type of retirement arrangement in place, information on how to join the scheme, ongoing information rights as stipulated in the Act, Regulations and this Guideline. These include products and services offered to a member at the time of leaving the scheme or on retirement, such as cash lump sums, pensions and annuities. Service providers shall ensure that products and services are designed to meet the needs of identified customer groups.

To achieve this, a service provider shall ensure that;-

- a) Adequate research and targeting is done when designing the product/service;
- b) Mechanisms are put in place to exhibit innovation of new products and services;
- c) Employees are appropriately and continuously sensitized and informed on the product/service design and the specific customers it is targeted to;
- d) The promotion and distribution of the product or service is appropriate for the customers' needs;
- e) Adequate information is given to the customers to ensure their understanding of the products and services on offer;
- f) The risks arising from the adoption of the products and services are mitigated ;
- g) It provides for disclaimers for the products and services on offer;
- h) Management information is collected to track the targeting of the products and services to the appropriate customers; and
- i) A process is in place to withdraw products/services that are unsuitable to the targeted customers.

Clear and Appropriate information

12. This Guideline sets out certain members rights to information. In dealing with all its customers, a service providers is required to ensure clear information is given to customers before, during, and after the time of sale / delivery of a product or service, and that the customer is kept appropriately informed at all stages.

To achieve this principle, a service provider shall ensure that:-

- a) It assesses the clarity, appropriateness and fairness of the information provided to customers;
- b) Mechanisms are put in place to ensure customers are communicated to appropriately and in good time;
- c) It provides to customers disclosures of any commissions/benefits received from the sale of products or services
- d) Mechanisms are in place to protect individual information and therefore maintain privacy of information
- e) Independent internal and external reviews of the advertising materials and other customer communications are done;
- f) Clear product/service summaries as well as frequently asked questions (FAQs) are provided to customers;
- g) Contract documents are drawn and signed in time to ensure customers' rights are protected;
- h) Feedback mechanisms are in place and information received from customers regarding a product/service is acted upon appropriately; and
- i) Information on dispute resolution mechanisms are clearly stated and provided to all customers;

Customer Advice

13. Trustees and service providers provide advice, from time to time, to sponsors and members in order to ensure they access the best retirement arrangement and the benefits under the scheme. Trustees and service provider shall ensure that the advice given to customers is both suitable and takes into account the specific circumstances in which advice is sought.

To achieve this, a trustee or service provider shall:-

- a) Put in place mechanisms to seek the information from their customers that is appropriate for assessing their needs, before giving advice or concluding a transaction;
- b) Put in place appropriate processes to ensure advice is given to customers;
- c) Train employees to provide advice to customers on an ongoing basis for the knowledge to be relevant and up to date;
- d) Specify clearly where and to whom advice is not expected to be given;
- e) Have feedback mechanisms regarding the advice given to customers; and
- f) Put in place redress mechanisms for the effect of wrong or misleading advice to customers.

Performance & Expectation

14. The service providers shall ensure that the products and services provided to customers perform as companies have led them to expect, and the associated service is both of an acceptable standard and what the customers have been led to expect. The products and services should be offered at a reasonable cost to the customer.

To achieve this, a service provider shall:-

- a) Have monitoring tools and mechanisms to track customer satisfaction with products and services;
- b) Have mechanisms that regularly update information given to customers to ensure information is relevant and up to date;

- c) Analyse management information to track reasons for termination by customers;
- d) Have awareness programs on the merits and demerits of the products and services offered; and
- e) Have clear service standards which are appropriately communicated to customers and key features are adequately displayed.

Benefits Payment and Complaints Management

15. Trustees and service providers shall ensure they have benefits payment and complaints management processes and a simple way of communicating these to customers, particularly to members. Trustees and service providers shall ensure that customers do not face unreasonable post-sale barriers where they choose to change products or services, to switch providers, to submit a claim or to make a complaint. Further, the customer will be clearly informed on the process of filing a complaint with the Authority and/or the Tribunal.

To achieve this, a service provider shall: -

- a) Have clear service standards on benefits processing and complaints management and adhere to them;
- b) Have a mechanism for regularly updating the customer on the changes to the products or services on offer;
- c) Have clear service standards on benefits processing and complaints management and adhere to them;
- d) Have a mechanism to ensure that member and scheme records are maintained and regularly updated;

- e) Keep customers informed and enable them to track the processing of their benefits or complaint, including information on the person on the team handling their benefits or complaint;
- f) Provide concise information to customers on the benefits payment and complaint management processes;
- g) Provide adequate information and evidence to the customer where the benefit is not payable; and,
- h) Advise customers of other redress options if they are dissatisfied with the handling of the benefits or complaint;

Appendix 1 - Assessment Tool for Treating Customers Fairly (TCF)

Issued on this day of 2018

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