

ATEB consulting Newsletter 8 - December 2002

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Ladies & Gentlemen

Please find enclosed the latest compliance and industry news.

As usual, site back and enjoy!

Kind Regards

ATEB consultants

Which article applies to me?

Please use the following table to decide which article applies to you, if any:

	1	2	3	4	5	6	7	8	9	10	11	12
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Money Laundering Officer												
Advisers & Trainees	✓	✓	✓		✓							✓
T&C Supervisor	✓	✓	✓	✓	✓	✓						✓
Pensions Transfer Specialist				✓								✓
Back Office					✓					✓		

1. CP 121: The Menu Option

Final score

Defined payments systemout!

Menu optionin!

More information will become available in early 2003, however it is envisaged that the menu would set out what services an adviser offers to clients and how those services could be paid for. Each IFA firm would devise its own menu to fit its own business. Advisers would have to offer a choice of payment methods. For example, an hourly fee charge; fixed fee; or commission. The adviser would indicate the sort of commission rates applicable to particular products or groups of products. The concept of the menu will need to be expressed in FSA rules but this should be done with maximum flexibility. The FSA need not involve itself in the prescriptive design of a menu; it should simply set high level principles and also rely on its existing requirements for all statements to be clear and not misleading. The FSA thinks that some sort of comparison using a range of typical market rates should be included in every menu so that the consumer can compare the commission available to that particular IFA.

ATEB view:

This is positive news and bodes well for the future of independent financial advice.

Action required by you:

None, for information only

2. Polarisation – Why try to fix something that wasn't broken?

The FSA board has made its decision on polarisation - it will be abolished. Well, no surprises there then. Companies who are currently only able to sell the products of a single company will now be able to offer their customers a greater level of ~~confusion~~, sorry, 'choice' of product and from as many providers as they wish.

Firms who wish to hold themselves out as independent can do so provided they both advise across the market and offer their customers the option to pay by fee.

The 'better than best rule' will be abolished, although there would be safeguards built in to protect the independence of IFAs.

Draft rules to give effect to the changes to the **polarisation rules will be published by the FSA in January**. It is anticipated that the draft rules on the menu option will arrive a little later in 2003.

FSA have acknowledged that consumers have to understand clearly the exact nature of the advice, which they are receiving. This will be communicated in a new initial disclosure document. Clearly, the quality and clarity of this will be essential in how well the new environment works for consumers.

ATEB view:

None, for information only

Action required by you:

None, for information only

3. Independent Financial Advisers – Greater Demands?

ATEB are aware that the Financial Services Ombudsman has given its first judgement against an IFA in relation to an income drawdown case. We understand that a compensation award in the region of £100,000 has been made. Apparently, although the adviser identified that the client had a relatively cautious attitude to risk and had placed the client's drawdown capital within a managed fund, the adviser had failed to identify that some 71 per cent of this managed fund was invested in equities.

It's worth considering the depth to which advisers are now and will be expected to analyse funds and match them exactly to the client's risk profile. With an increasing number of early drawdown cases coming up for their second triennial reviews against the precedent that this case appears to create, it is hard to believe that similar cases will not come to light in the near future.

How many advisers in pre- fact find days would have expected it to be part of their role to regularly review the underlying content of a particular fund to identify if the investments meet the fund's stated objectives? Yet, today it would appear that the ombudsman expects exactly that! The above case illustrates why a radical restructure of operating methods is not only an option, but could be considered a necessity for IFAs in the future.

Important issues to consider:

1. Use technology: software tools from fund supermarkets and platform providers enable advisers to carry out a wide range of comparisons on issues such as underlying assets, the success or otherwise of individual fund managers and other issues.
2. Analyse the client's risk profile carefully. Ensure a common understanding across the firm.
3. Build in renewal commissions, don't take maximum up front - budget for carrying out regular reviews when calculating initial charges or commission.

If advisers are prepared to adopt new ways of working and embrace technology to support them, the depth and quality of advice to clients can be significantly enhanced.

The feeling is that today, every adviser should be carrying out regular reviews of the underlying investments within a client's entire portfolio while at the same time reviewing the client's attitude to risk, making sure that the investments are and remain consistent with the client's requirements.

ATEB view:

None, for information only

Action required by you:

None, for information only

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4. Pensions Review

We have had significant involvement with the review over the past few weeks, primarily where PASS Review Limited have undertaken de-commissioning workshops.

Without going into detail, it is clear that the standards that the FSA expect firms to have attained in all aspects of the review is very, very high! We would go as far as to say that they are well above the general record standards expected today!

Therefore, if you have any concerns about any aspects of your review or would like to know more about the standards expected, please speak to Huw or email him at huw@ATEBconsulting.co.uk

ATEB view:

None, for information only

Action required by you:

None, for information only

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5. Client classification – ‘Intermediate’ customers classified as ‘Private’

The FSA 86 and FSMA 2000 as we are all probably aware were primarily aimed at giving the consumer a greater level of protection and customer care. Most of the key rules and protections, however, are aimed at ‘Private’ customers and small businesses. As such, they do not cater for larger organisations and businesses. Most IFAs can accept that most of the time they will deal with Private customers, however there may be occasions when they come in to contact with Non Private Customers (i.e. Intermediate). These are usually defined by size or status. For example, a body corporate that has, or has had at any time during the previous two years, called up share capital or net assets of at least £5 million would be defined as an intermediate customer. There are other definitions and we would ask you to check the ATEB compliance manual section 13 or the FSA handbook glossary.

In these circumstances, we would suggest that you treat these clients as you would any other Private client, i.e. issue a standard terms of business, complete a fact find and issue a suitability letter etc. However, there is a requirement to advise the client that they could lose rights to FOS and FSCS. ATEB have produced a ‘notice’ for this purpose.

If you feel you may have this type of situation or would like further information please contact your local ATEB consultant.

ATEB view:

None, for information only

Action required by you:

None, for information only

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6. Annual Reviews: Maintaining Competence - A Reminder

Normally December and January are the time to conduct adviser reviews, although this will vary among firms. The types of review will range from a basic appraisal to a more detailed assessment of skills and knowledge under examination conditions. The review is an excellent opportunity for the firm to check that its staff are meeting the requirements that their respective roles demand. The FSA gives firms flexibility in their approach. There are key FSA T&C rules which apply, in particular to ‘Investment Advisers’ and need to be considered for example: ***TC 2.6.1 R A firm must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence.***

Other FSA guidance is more general, for example the second and fourth commitments state that authorised firms should ensure that: ***'Its employees remain competent for the work they do and Its employees' competence is regularly reviewed'***. The Fit and Proper Sourcebook also explains that approved persons competence is maintained and a review would help satisfy the requirement.

ATEB recommend an annual review for all advisers and key compliance positions, we have proformas to help, please speak with your local ATEB consultant or contact steve@ATEBconsulting.co.uk if you would like assistance or further information.

ATEB view:

None, for information only

Action required by you:

None, for information only

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7. FSA to relax time bars for mortgage endowment complaints

The FSA changes its mind once again!

In its wisdom, it has approved proposals to give mortgage endowment policyholders more time to complain, because they did not realise they had to complain within a certain time. The Financial Ombudsman Service is not normally able to consider complaints that are referred to it more than three years after a complainant first became aware that they had suffered a loss (the so-called "time bar" rule). For endowments, this could be considered to be the date on which the policyholder had received the first re-projection letter from the policy provider. Some policyholders had received their first letters in early 2000, meaning that the time bar could take effect for them early next year.

The FSA has been in discussions with insurers during the year and has proposed rule changes to clarify the position for consumers.

Specifically:

a red (and not an amber or green) re-projection letter is to be regarded as notice of the potential for loss. This is needed for time to start running;

and

customers will not be held "out of time" until 6 months after a second red letter is sent, if this gives the consumer more than three years after the first, to avoid the risk that a single red letter could cause someone to be held out of time.

John Tiner, FSA managing director, commented "We have acted here on behalf of policyholders, without causing unjustified alarm or panicking consumers. These proposals will clarify the position for those that might have been affected and ensure that policyholders with complaints have enough time to pursue them."

At this stage, the FSA sees no need to make other changes, e.g. to extend the 3-year period, but will keep this under review.

ATEB view:

None, for information only

Action required by you:

None, for information only

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8. Risk Management

In many ways following on from the above article, firms should be considering carefully their risk management strategies. The 3-year rule above is therefore an important one.

For example, if you have sold in the past numerous pension policies at relatively low premiums, then good risk management would dictate that these clients should be written to periodically, say annually, and be informed that (for example) "it is important that you

regularly review your contributions towards retirement planning to ensure that you remain on target to meet your retirement objectives. This is particularly important in view of today's low inflation and investment returns" (or similar).

Should these clients complain in the future, you have at least informed them in the past (possibly annually) of the need to review their premiums. In this way, the 3 year rule may possibly be invoked. One word of caution – PI insurers don't like you doing this sort of thing because they feel it may provoke an immediate complaint. PI insurers have a short term view however, as PI insurance is renewed annually. The question to ask yourself is "will I mitigate future liabilities by by raising the issue now" – our view is that the answer to this has got to beYes!

ATEB view:

None, for information only

Action required by you:

None, for information only

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9. Mortgage Endowment Complaints

It is very important that all such complaints are investigated using a set process (as defined by the Financial Ombudsman Service). We have analysed this process and now know the requirements.

Basically, you must:

1. Establish the exact basis of the complaint (e.g. funds not matching client's risk profile, sold into retirement, etc)
2. Gather information. The FOS has questionnaires and templates for this purpose.
3. Judge the complaint i.e. was it compliant. The FOS has produced decision trees to help with this assessment.
4. If compliant, reject complaint. If not compliant, progress to redress calculation.

A great deal of information is available from www.financial-ombudsman.org.uk

Click on Publications and Technical Briefing Notes and Mortgage Endowment Assessment Guide.

For those who have or anticipating having to undertake calculations. We suggest that you register with Oxford Actuaries and Consultants for their 'free' calculation software. It will actually cost you £200 + VAT for an annual licence, plus approx £50 if you don't have Lotus Notes. Ring 08707 205080 to register. We suspect that demand will be high for this product, so you might want to consider getting in early!

ATEB has developed a standard report investigation template to record the investigation of such complaints. Please let us know if you need a copy or more information.

ATEB view:

None, for information only

Action required by you:

None , for information only

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10. Birth death & marriage certificates

In our ATEB bulletin 11 dated April 2002 we highlighted the copyright issues surrounding the use of copied documents. (Ref: HMSO's Guidance Note 7, issued on 27 October 1999) Basically, birth, death and marriage certificates are subject to Crown copyright and whilst it is fine to keep a copy of a certificate on file for the firms' own records, copies cannot be forwarded to third parties, i.e. product providers. Following lobbying the General Register Office has however agreed that it would be acceptable to communicate the details shown on a certificate to other organisations by letter.

To ease the problem of having to supply original certificates, AIFA and ABI have been working together to draw up standard verification forms on which to record the relevant information. It is hoped; the use of these forms will lead to a consistent approach and eliminate the difficulties

and delays, which might be created, particularly in circumstances where several copies of a certificate are required simultaneously.

The verification forms and guidance notes can be found on the following links:

<http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/birth1.pdf>
<http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/death1.pdf>
<http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/marriage1.pdf>

Please Note: Do not confuse the above with Money Laundering requirements.

ATEB view:

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Action required by you:

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11. FSA examination review - Investment advice

Recently published CP157 set out proposals for a new modular examination structure for the financial services industry and focuses on investment advice on packaged products and proposes eleven examination modules. All examinations currently recognised for a particular activity will continue to be recognised and investment advisers already assessed as competent will be 'grandfathered' into the new examination structure.

The Modules

- | | |
|---|---------------------------------|
| 1. UK financial services, Investment and risk | 7. Savings and investment |
| 2. Advice skills and needs identification | 8. Pension transfer specialists |
| 3. UK retail regulation and ethics | 9. Broker fund advisers |
| 4. Taxation and trusts | 10. Employee benefits |
| 5. Retirement planning | 11. Corporate business |
| 6. Protection | |

The modular approach is clearly different from the FPC approach and it is anticipated that in future IFAs will be required to hold the first three 'core' modules with additional subjects according to the nature and scope of advice being provided. The standards of the modules will be linked to levels of the National Qualifications Framework and FSA is consulting on the levels at which the modules should be set. However, it is worth noting that here is an increase in the scope and depth of knowledge covered in the investment and risk areas. There will be a transitional period in which both existing examinations and the new ones will be available. This will allow individuals to complete a course or re-sit on the old basis whilst new entrants can start the new exams.

In addition to the eleven modules, FSA has introduced a category for financial planning. FSA will be consulting separately on developing a regulatory regime (including Training and Competence requirements) for lower risk products, mortgages and general insurance.

ATEB view:

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Action required by you:

None, for information only

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12. PASS Fees Ltd - Extension of Deadline for Applications to Subsidy Schemes

PASS Fees Ltd has become aware that some eligible IFAs may have been unable to submit applications to the FSCS and FSA Fees IFA subsidy schemes by the deadline of 30 November, as they may not have received the relevant invoices from the FSA by that date.

The sponsors of the subsidy schemes have reacted to this and have agreed to

an extension of the processing deadline to 31 December 2002.

To request an application form, IFAs should contact PASS Fees by visiting www.pass-fees.com or emailing admin@pass-fees.co.uk or by telephoning 0870 902 7277 and leaving their contact details.

IFA queries should be raised with the PASS Helpdesk on 0870 900 7277, Monday to Friday, 9am - 5pm, or in writing to: Jeff Holland, Operations Manager, PASS Fees Ltd, Cathedral Court, 1 Vicar Lane, Sheffield, S1 2EX.

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None, for information only

Action required by you:

None, for information only

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Important Note:

The ATEB Newsletter is intended to provide general guidance on areas of compliance and T&C; however it is not a replacement for the main Rules and Guidance contained within the FSA Handbook.

We welcome all feedback. If you have any feedback or questions relating to any articles then please direct them to your local ATEB consultant or the newsletter editor Steve Bailey email steve@atebconsulting.co.uk

Unless you have consulted specifically (as part of a regular visit) with ATEB on a particular issue then ATEB Consulting accept no liability for any actions taken based on the information contained solely within the newsletter.

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