


# ATEB consulting Newsletter 11 - March 2003

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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
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Money Laundering Officer										
Advisers & Trainees						✓	✓			
T&C Supervisor										✓
Pensions Transfer Specialist										
Back Office	✓				✓					

## 1. Complaints Reporting - Deadline 30th April 2003

### Next Complaints Reporting Period:

1st October 2002 to 31st March 2003 (Deadline 30th April 2003)

### Two methods to report complaints data:

1. FSA electronic Complaints Reporting System – IFA firms should start by emailing the FSA on the following address (or telephone number) to obtain their password and user ID to allow access to the FSA extranet. Please note these are different passwords and user names to those used in October 2002. Email address: [E-regulation@fsa.gov.uk](mailto:E-regulation@fsa.gov.uk) or call 0845 6769966. Once user ID and passwords are received then you will be given access to the FSA extranet and the FSA electronic Complaints Reporting System.

2. Paper based reporting form – This form is located on the FSA website at: [www.fsa.gov.uk/pubs/other/disp1\\_annex1r\\_form.pdf](http://www.fsa.gov.uk/pubs/other/disp1_annex1r_form.pdf). Again, please note this is a different form to that used in October 2002. You will also need the FSA 'covering sheet'. This form is located on the purple FSA disc under 'forms' and then scroll down to SUP – Supervision Chapter 16 annex 13R Return Cover Sheet.

Send both forms to the Regulatory Events Department, FSA, 25 North Colonnade, Canary Wharf, London, E14 5HS.

## Extra Help:

A "Frequently Asked Questions" help sheet is available which gives answers to key questions such as "what constitutes a 'closed complaint'", "what is an 'outstanding complaint'", "what is an 'eligible complainant'", etc. If you would like a copy then contact ATEB and we will fax or email a copy in PDF format or visit [www.fsa.gov.uk/complaints\\_reporting/cr\\_faq.pdf](http://www.fsa.gov.uk/complaints_reporting/cr_faq.pdf)

## Further information on complaints reporting:

For further information click on: [www.fsa.gov.uk/complaints\\_reporting/](http://www.fsa.gov.uk/complaints_reporting/)

### ATEB view:

None - for information only

### Action required by you:

Decide which reporting method you will use and commence preparation of the paperwork now. If you wish to use the electronic submission, you should email the FSA for your user ID and password sooner rather than later. As always, call ATEB if you are uncertain, we are here to help.

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## 2. FSA - 'Risk Assessment Framework'

Aimed primarily at the larger financial institutions in the UK, the FSA has recently published a paper on risk assessment. The paper gives regulated firms details about one component of its overall framework – the firm '**risk assessment framework**'.

The overall framework introduces a set of strategic aims for the FSA to target its work to help it achieve its statutory objectives. The firm risk assessment framework involves a series of structured stages that are designed to focus the FSA supervisor's attention on the risks that matter and then to help them devise a '**risk mitigation programme**' to address these risks.

Most **small and medium sized IFA firms** are assessed as **Low Impact** and, therefore, **do not have an individual risk assessment or risk mitigation programme**. Low impact firms are monitored by a combination of baseline monitoring (the receipt and monitoring of returns and notifications), action in response to risks identified by this information, sample exercises to monitor compliance standards in a sector and work as part of sector- wide reviews. This monitoring will also allow the FSA to identify if a firm moves out of the Low Impact category and the need for an individual risk assessment and risk mitigation programme.

### ATEB view:

Having read the content of this paper it is definitely one for the purists and compliance specialists! Detailed models work well in the larger institutions, but we believe that common sense application of core procedures and diligent management will suffice in the smaller to medium IFA firms. We can assure you that we continue to focus on key areas of risk within firms as we conduct our regular visits.

### Action required by you:

Look carefully at areas that have been raised in your recent or previous audit and ensure that, where action has been highlighted, these are followed through. Also, you may wish to have a look at the next article.

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## 3. Risk management within IFA firms – Recurring Problems

We have conducted a number of audits recently and here are some typical problems that are still occurring within IFA firms:

	Problems	Comments
Lack of file checks	Some firms do not have any system for checking and some that do have a system do not always follow up errors.	We advocate a risk based check. However, 10% appears to be a crude estimate. You must follow up issues.

Lack of quality CPD	CPD is either not documented or not undertaken.	As you know the 50 hours no longer applies. You must however record and review CPD; this is a key regulatory requirement.
Establishment of attitude to risk	Not enough care and thought goes into this area. We found assessment of risk to be very general and not specific enough.	You must have a robust system; this area will come back and bite you in the future.
Suitability - Objectives not clearly stated	Objectives not covered, very vague, very general or hidden within the text.	Objectives should be clearly stated, ideally in the clients' own words early in any report or suitability letter.
Bulky & generic suitability reports	Bulky and generalised reports that will require a PHD to understand. Not enough personalisation goes into these reports and it's this personalisation that will provide you with protection in years hence.	We feel this is a big problem. It's not size of report that matters. Generally, you should always have a very clear summary that is <u>specific to the client</u> at the front of any report you compile.
Sparse factfinds	Name, date of birth, address are done well and then there is a dramatic decrease in relevant information. It's as if the adviser knows this client and therefore there is no need to record.	You must complete your fact find fully. If you have difficulty completing factfinds this may be the factfind document at fault.

These are just a sample, there were others.

#### **ATEB view:**

In the short term, the above are unlikely to impact on you. However, as customers become more aware of their rights the above has greater relevance. Remember, it is the weight of evidence that will settle a future dispute. Whether this is with the FOS, an arbitration service, a law court or the firm is irrelevant.

#### **Action required by you:**

Ensure that you apply the best practice standards consistently across the whole firm. Speak with ATEB if you are uncertain.

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## **4. Do IFA firms need a consumer credit licence?**

IFAs are likely to need licences to cover two broad categories: Category C - Included under this heading is the introduction of clients to sources of mortgages for house purchase for any amount and it makes no difference if no commission or charge is made for effecting the introduction. Category D - If an adviser is offering to help clients who have problems in meeting the repayments on their debts by the due dates or wishes to re-negotiate debts on behalf of clients, or if merely advising them on how to discharge specific debts, then registration under Category D will be required. Therefore, where a firm is not conducting mortgage business, but simply introducing, it should still maintain an up to date category C licence as a minimum. Firms should also check that their terms of business permit the referral of client information to a mortgage broker or similar third party where applicable (This is a data protection requirement).

#### **Further Information:**

Application forms can be obtained from OFT (Office of Fair Trading), Craven House, 40 Uxbridge Road, Ealing, London W5 2BS (phone 020 7211 8608). Forms are also available from your local trading standards department. Alternatively, contact ATEB and we should be able to guide you on the requirements.

**ATEB view:**

None - for information only

**Action required by you:**

None - for information only

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## 5. Standard compliant email signatures

As mentioned in our February Newsletter there is a new disclosure statement 'authorised and regulated by the Financial Services Authority'. IFA Firms should commence using this as soon as practicable (Subject to using up existing stocks of stationery). ATEB have noticed that some IFA firms are still not disclosing regulatory status in emails used by all its relevant members of staff. We would stress that using the correct signature is important from a regulatory as well as legal perspective. ATEB have produced a new FSA compliant suggested signature for use with 'Outlook Express' and 'Outlook'.

**ATEB view:**

None - for information only

**Action required by you:**

If you would like a copy of the template and simple easy to follow set up instructions, please email or telephone ATEB. (Details at end of newsletter).

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## 6. Contracting Out – Guidance (Practice bulletin 16)

ATEB believe that advice surrounding Contracting Out is potentially an '**accident waiting to happen**'. We believe there are three significant risks that an IFA should be aware of regarding advice on contracting clients in or out of the state scheme:

1. In hindsight, advice could turn out to be unsuitable (mainly border line cases)
2. Documentation to support the initial recommendation is poor.
3. The IFA could advise an individual to contract out of SERPS or S2P and then neglect to explain the situation surrounding future advice clearly. i.e. who will advise the client to contract back in and then out and so on.

If you look at the current FSA guidance ([www.fsa.gov.uk](http://www.fsa.gov.uk)), it still relates to SERPS.

ATEB have therefore produced some detailed guidance in 'Practice Bulletin 16'. This bulletin aims to highlight the key considerations. On page 6 of the bulletin, there is a suggested process that firms could adopt.

**ATEB view:**

None - for information only

**Action required by you:**

If you are involved with contracting clients out of the state scheme this is an essential read. If you are uncertain, contact ATEB and we should be able to guide you on the requirements.

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## 7. Group Personal Pensions – Guidance (Practice bulletin 17)

ATEB believes situations could exist currently, where group personal pension schemes are being promoted by IFAs within a 'hybrid' process i.e. one that is neither 'advisory' nor 'direct offer'. For example, scheme information packs that do not contain full disclosure and / or do not fit the 'Direct Offer' criteria are being sent to potential members. A brief interview may then follow and a specific illustration is produced and information given on funds. During this interview, the IFA is more than likely giving advice, but then fails to complete full compliance i.e. does not conduct a fact find or send a suitability letter.

ATEB have, therefore, produced some detailed guidance in 'Practice Bulletin 17'

**ATEB view:**

None - for information only

**Action required by you:**

If you are involved with promoting group personal pensions this is an essential read. If you are uncertain, contact ATEB and we should be able to guide you on the requirements.

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## 8. PI Cover – Rule Waivers

Unfortunately, many IFA firms are still finding compliant PI cover difficult or impossible to obtain. There does not appear to be any real logic behind the underwriting with some firms obtaining similar rates to previous years and others paying two times or three times the previous year. You may have read in the press about a particularly large IFA firm who managed to achieve self-insurance following a PI waiver being granted by the FSA. You may also be under the impression that rule waivers of this type are only considered for the larger firms. We have been informed by the FSA that waivers of this type do not just apply to the larger firm and that rule waivers for PI are currently being considered by FSA for much smaller firms.

It is our understanding that, broadly, where firms cannot obtain compliant cover and the PI premiums and excesses quoted are disproportionately high and the firm has a superior complaints history and sufficient resources (est. £110,000 minimum – does not have to be 100% liquid), then a rule waiver could be a potential short-term solution. **You should note that these figures are guidance only, have not been approved by FSA and do not appear in any FSA rules.**

**ATEB view:**

None - for information only

**Action required by you:**

If you are struggling to obtain compliant PI cover, then you must at the earliest possible time inform the FSA. If you are a couple of months away from renewal, start looking at your options now. Don't leave it until it is too late.

If you feel that you may qualify for a rule waiver, then contact the Regulatory Events Department on [red.cc@fsa.gov.uk](mailto:red.cc@fsa.gov.uk) for guidance. Application for rule waivers are located on the FSA website at [www.fsa.gov.uk/industry/forms](http://www.fsa.gov.uk/industry/forms)

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## 9. CP 170 - Product disclosure at the point of sale

FSA have published CP 170, which sets out their approach to product disclosure. The FSA propose replacing the current key features documents and illustrations with a key facts document and examples. The key FSA objective has been to reduce the overall volume of information and focus on suitability and costs. Incidentally, changes to product disclosure are also necessary as a result of the simplified prospectus requirements of the UCITS III Directive.

The new format will contain:

1. A question and answer format expressed in plain direct language, using non jargon and with simple sentence construction
2. Simplified illustrations giving only one projection (instead of the three offered at the moment). The new set of information will be known as an 'example'. The 'what you might get back' projections will no longer appear, except in the case of pension products. Commission disclosure will not be included in the 'example' but must be included in the suitability letter.

**ATEB view:**

The key facts document will contain a consumer targeted level of detail, highlighting where further information can be found if needed. We welcome the change, as we believe that it will help communicate the more important aspects of a sale to a particular client.

**Further Information:**

The full text of CP 170 (including examples of proposed new documentation) can be found on the FSA website: [www.fsa.gov.uk](http://www.fsa.gov.uk) the consultation requires feedback to the FSA by 2 May.

**Action required by you:**

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## 10. Supervisory Training – 2-day supervisor qualification course

Reminder: If you employ investment advisers (anyone giving advice on insurance company products to members of the public) then you must have an allocated firm supervisor (or supervisors). For fuller information on whether supervisor training applies to you please refer to ATEB practice bulletin 15 on supervision and our February newsletter article 6. ***The need to have supervisor training is a relevant and up to date issue having been remarked upon during a February FSA visit.***

### Overview:

Day 1- overview (9.30am until 4.30 pm)

- Setting field sales process standards
- Consistent and accurate assessment skills
- Using an objective observation aid
- T&C Knowledge
- Overview of general T&C requirements on regulated firms.

Day 2 - overview (9.30am until 4.30 pm)

- Theory of coaching and training
- Constructing SMARTA development plans
- Giving consistent feedback
- Structuring one to ones
- Monitoring performance and training needs analysis

### Who should attend?

- Qualified supervisors wishing to top up existing supervisor knowledge
- Newly appointed supervisors
- Supervisors who had previously been classified as 'self supervising' (under PIA)

### Do I need to attend both days?

- You may wish to attend only a single day at present; there will be other days later in the year.

### Course details:

**Dates:** Day 1 – **Thursday 15th May** and Day 2 – **Tuesday 27th May**

**Location:** Newcastle

**Cost:** £150 plus vat per day per person

#### ATEB view:

Where relevant and suitable training has not been undertaken within firms it will result in a serious breach of the regulations and the consequences may be substantial. It is more than possible that the FSA will suspend the firm from trading until this requirement is met. Although we often quote the regulatory requirements, lets not forget that quality supervisor training will almost certainly have a positive impact on your business.

#### Action required by you:

Please let us know if you would be interested in attending by email or telephone. (Details follow). We will confirm exact course location and details in joining instructions prior to the course.

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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](mailto: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.*

**Contact Us:**

ATEB Consulting  
The Old Post House  
29 Nedderton Village  
Northumberland  
NE22 6AX

T: (01670) 822984  
M: (07703) 576951  
E: [steve@atebconsulting.co.uk](mailto:steve@atebconsulting.co.uk)  
W: [www.atebconsulting.co.uk](http://www.atebconsulting.co.uk)