

## ATEB consulting Newsletter 13 - May 2003

1. What constitutes 'Mis-selling'? – Feedback on the FSA statement
2. IFAs and Product Providers – Different Agendas?
3. High Income Products
4. Mortgage and General Insurance Regulation – Are you ready?
5. Mortgage & General Insurance – Apply before 1st April 2004 and receive a discount!
6. ATEB master class on letter and report writing
7. Money Laundering – FSA to provide assistance to IFAs
8. Mortgage and General insurance have access to FOS

### 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:

<b>Investment (IFA)</b>	1	2	3	4	5	6	7	8
Directors/Partners	✓	✓	✓			✓	✓	
Compliance / A&O Function	✓	✓	✓			✓	✓	
Money Laundering Officer							✓	
Advisers & Trainees	✓	✓	✓			✓		
T&C Supervisor	✓	✓	✓			✓		
Pensions Transfer Specialist						✓		
Back Office	✓	✓				✓		
<b>*Mortgage (inc. IFAs)</b>	1	2	3	4	5	6	7	8
Director/Partner				✓	✓			✓
Compliance / A&O Function				✓	✓			✓
Sales Advisor								
T&C Supervisor								
Back Office								
<b>General Insurance</b>	1	2	3	4	5	6	7	8
Director/Partner				✓	✓			✓
Compliance / A&O Function				✓	✓			✓
Sales Advisor								
T&C Supervisor								
Back Office								

\*Includes Mortgage arms of IFA and APF firms

### 1. What constitutes 'Mis-selling'? – Feedback on the FSA statement

The FSA issued a recent statement aimed at clarifying what constitutes 'Mis-selling'

Here is a very quick summary of the statement, which was fairly lengthy and legalistic, we have cut out the waffle and high-level jargon:

1. The FSA justified the Pensions and FSAVC Review on the basis these reviews were not

retrospective and that the issues that arose were avoidable had the current guidance at the time been applied with greater care.

2. They explained that it would be difficult to instigate another such review given they would require prior approval from both Houses of Parliament.
3. They clarified where there is an allegation of 'mis-selling', it is not investment performance that matters it is whether the recommendation is suitable.
4. They confirmed their belief that it is up to regulated firms to fully understand the rules and regulations, keep complete records to prove compliance and act fairly with customers.
5. The FSA feels that it would not be practical to provide exhaustive and prescriptive guidance to firms. This would be against the ideals that the FSA promote whereby it relies on senior managers and business owners to decide what are the best systems and controls to apply to their particular business.

#### **ATEB view:**

Well nothing new there then! ATEB have always maintained 3 key elements 'Know your client' 'Suitability' and 'Record Keeping' – the statement centred on these areas.

Don't be brainwashed by all the negative vibes that filter through the industry, we can assure you that the FSA are aware that a great many IFA firms are doing an absolutely first rate job .....but do remember:

1. 'Know your customer' has to be thorough. For example, there is more to the explanation of risk than '.... pick a number from 1 to 10.....'
2. Suitability letters / Reports should contain the right level of detail (See article 6)
3. Firms should be aware that if they inadvertently or even deliberately withhold a key disadvantage(s) or do not fully explain the consequences of advice then this could always be used against the firm at a later date.
4. For 99% of the files ATEB examine the advice is fairly sound, but only a third of files we see contain the right compliant level of detail that would be required to ensure a safe harbour.

*In ATEBs opinion: "It's not the FSA or the client that IFAs need to be concerned about, it's the ability of the IFA firm to recognise the thoroughness of their own systems and controls".*

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

ATEB believe that it is important for firms to do things correctly and if there are problems with processes then they should seek help now, don't leave it until two or three years time. Invest time now, trouble shooting and improving your systems and controls so that the FSA and clients alike are not given the opportunity to allege that 'mis-selling' has occurred.

[🏠 Return to Features List](#) or [✉ Contact Us](#)

## **2. IFAs and Product Providers – Different Agendas?**

### **Q. When does your 'lowest risk' suddenly become your 'highest risk'?**

A. When you issue a 'Direct Offer' that has not been approved as a 'Direct Offer'

No fact find or suitability requirements exist for a 'Direct Offer' made by a product provider. This is because the client is invited to purchase a product based on the information contained within a Financial Promotion (usually 'communicated' by the IFA and 'approved' by the product provider). If the Financial Promotion does not contain all the information that is required by the regulations then it is simply not a 'Direct Offer'. This could leave IFAs vulnerable at some future point in time.

A major product provider local representative had recently informed an IFA that they could promote a particular product as 'Direct Offer' and that other IFAs were doing so. Luckily, ATEB were able to intercept it. Following a quick examination of the literature, we could see that it did not meet the 'Direct Offer' criteria. We telephoned the providers head office and spoke with their central compliance department. Not surprisingly, they backed up our observations and explained that they would be unwilling to accept any compliance responsibility for this, because it was not 'Direct Offer'. Happily, those IFAs promoting this (rather attractive) offer are probably reaping some short-term rewards; however sadly, little do they know that their 'lowest risk' has now become their 'highest risk'.

#### **ATEB view:**

Ensure that you have a full understanding of the financial promotion rules and that you have full documented procedures for any financial promotions; this includes 'direct offer', mail shots, adverts, seminars, newsletters etc.

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

We have said on many occasions that you need to be careful when relying on information from the providers, if you are not careful these things may come back to bite!

[Return to Features List](#) or [Contact Us](#)

### 3. High Income Products

#### Do you advise clients on corporate bonds or funds that invest in corporate bonds?

If the answer to the above is yes, you should be aware that these types of investments together with certain other income producing products such as bonds or shares linked to a particular index, are under the FSA microscope. IFAs will need to ensure that the client has been made aware of all the risks and that the investment is fully suited to their personal and financial circumstances. If you are advising in these areas and have concerns over any aspect of your sales process and disclosure please contact us and ATEB can supply you with the necessary guidance.

##### ATEB view:

If something sounds too good to be true, it probably is! The FSA are clearly concerned about the disclosure of all the facts and risk, if you do this correctly and thoroughly it will help the client determine suitability and it should in theory allow you a 'safe harbour'.

##### Action required by you:

Where possible ask the provider representative to give you a detailed breakdown of the 'downsides' to the product. Only when you fully understand these will you be able to then ensure full disclosure. We also recommend that you visit the FSA website and download a copy of their 'High Income Product' fact sheet, alternatively you may contact us and we will send you a copy.

[Return to Features List](#) or [Contact Us](#)

### 4. Mortgage and General Insurance Regulation – Are you ready?

In December 2001, the government announced that it would be extending its powers to include the regulation of mortgage advice and the sale of general insurance products.

**Key Date 1:** The new rules and guidance should be finalised by the **second half of 2003**.

**Key Date 2:** Firms that work in both the mortgage and general insurance sectors will be required to make a single application for authorisation in **early 2004**. However, ATEB believe that the application process will be ready as early as **September 2003** and we recommend that firms consider as early application as possible.

**Key Date 3:** Mortgage regulation (and that related to long-term care) will be introduced on **31 October 2004**.

**Key Date 4:** Implementation date for general insurance regulation (with the exception of long-term care) is now set for **14 January 2005**.

##### ATEB view:

No doubt many firms will have work to do in preparing for authorisation and it does not leave a great deal of time to prepare. The deadlines leave firms just over 6 months to ensure that their application is accurate and complete prior to submission.

##### Action required by you:

Now is the time to start planning for early 2004 and FSA authorisation. It seems appropriate at this point to mention that ATEB are offering a 'hands on' support service for general insurance and mortgages to compliment the life and pensions side. If you would like further information, please email or telephone ATEB.

[Return to Features List](#) or [Contact Us](#)

### 5. Mortgage & General Insurance – Apply before 1st April 2004 and receive a discount!

The FSA expect to receive 25,000 new applications in 2004. Consequently, they are encouraging firms to apply early for authorisation by offering a discount. They also want firms to apply electronically to ease their administrative burden. This means that if you are a general insurance and / or mortgage intermediary and require new authorisation you will be able to submit a single electronic application before 1st April 2004 for a fee of £500. Firms that

have annual income in excess of £1 Million will see a massive jump in application fee to £8,750. The above information is taken from CP180 located at [www.fsa.gov.uk/pubs/cp/180/](http://www.fsa.gov.uk/pubs/cp/180/). Note there is a 2-month deadline for consultation.

#### **ATEB view:**

There is no need to leave things to the last minute, send the FSA the right signals and commence your application process in the next 4 months.

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

ATEB expect the FSA to have the application process available by September 2003. If you would like assistance with understanding, the regulation and your firm's application please email or telephone ATEB or .....

#### **Why not let ATEB take care of your application for you?**

[Home](#) [Return to Features List](#) or [Contact Us](#)

## **6. ATEB master class on letter and report writing**

### **Interested in discovering what should really be in the suitability letter and or client report?**

Having had the opportunity to examine some suitability letters and reports over recent months, I thought you might be interested in some common occurrences that are still prevalent, even today.

1. Client's objectives and key disclosure lost in masses of text
2. No summary of client's circumstances
3. The words 'I recommend' are omitted
4. Weighting of content – e.g. unnecessary overkill on 'why the provider', past performance, (not always accurate) repetition of the provider key features document
5. 'Standardised' advantages and disadvantages that have not been related to the client.
6. Letters contain lots of short paragraphs 'aimed' at covering compliance rather than focusing on the needs of the reader
7. Standardised and bland computer generated letters
8. No structure and / or headings
9. Confusing content - No prominent summaries contained in reports
10. Letter still being referred to as a regulatory requirement
11. Impact the advice has had on attitude to risk omitted (note: this is not the same as simply stating the clients attitude to risk)
12. Photocopied parts
13. Poor grammar (spelling, spacing, order of words)
14. Waffle - The same issue repeated using different words
15. Too lengthy or too brief
16. Inconsistent content i.e. risk referred to as 'medium', 'balanced' and 'middle of the road'
17. Letters not signed or dated
18. Letters where it is not clear who has given advice
19. Letters that are too general - Reason 'what' letters and not enough benefit statements i.e. no link to the soft facts (Clients wants and desires stated in their own words)
20. Too much emphasis placed on colourful charts and graphs

### **Why not enrol for an ATEB master class on letter and report writing and brush up on your technique?**

1. **What?** – We will be covering the expected format and key elements, increments, style and presentation, technique and improvement, signing, timing of issue and exemptions to suitability letters.
2. **Why?** - Get this part of the sales process correct and you will seriously increase your firm's chances of a safe harbour and develop long-term value.
3. **Who?** - Aimed at para planners, sales support, back office staff, compliance staff and all those investment advisers and supervisors that produce or check letters.
4. **How?** - To reserve a place simply complete the attached booking form and return preferably by post or email. We will issue joining instructions a couple of weeks prior to the course.
5. **When and where?** – Wednesday 25th June in Newcastle and Wednesday 2nd July in Middlesbrough.

**'In House' Training Facility** – There is a minimum cost for an 'in house' course, if would like further information please call 01670 822984.

#### **ATEB view:**

None, for information only

**Action required by you:**

None, for information only

 [Return to Features List](#) or  [Contact Us](#)

## 7. Money Laundering – FSA to provide assistance to IFAs

Currently, the FSA is developing a new CD-ROM based training package (this is in addition to the one that already exists) designed to help small and large firms combat money laundering. It will also include IFA tailored case studies, details of the legal and regulatory requirements for anti money laundering and interactive areas to test understanding of anti money laundering rules. One copy per firm will be made available free of charge. We expect the CD-ROM will be available by late summer 2003.

**ATEB view:**

This is a positive move from the FSA to support IFAs in what is a very high risk area.

**Action required by you:**

You must allocate time to reviewing the CD-ROM and ensure that all staff have the opportunity to participate in its content.

 [Return to Features List](#) or  [Contact Us](#)

## 8. Mortgage and General insurance have access to FOS

1. Mortgage and General intermediaries can join the ombudsman's voluntary jurisdiction from 1 April 2003, to cover the period from then until October 2004 / January 2005, (the date when mortgages and general insurance become regulated by the FSA and firms become subject to the compulsory jurisdiction).
2. You need to apply now if you want the ombudsman to be able to handle your cases from 1 April 2003.
3. Joining the voluntary jurisdiction for the year from 1 April 2003 to 31 March 2004 involves no joining fee, and no annual levy. Instead, the case fee for firms in the voluntary jurisdiction during this period will be £600, with no VAT. This only relates to cases that become 'chargeable'. (Only 10% of cases referred to FOS actually become chargeable).

**ATEB view:**

Consideration should be given to joining. It demonstrates your faith in the service you provide, and will help you prepare for the arrangements that you are likely, in any event, to need to follow once the FSA starts to regulate mortgages and general insurance. If you act as an investment intermediary, some of your clients will already be covered by the ombudsman service, so joining should help you simplify your complaints-handling procedures. You'll also have access to a range of services including the FOS technical advice desk and their monthly publication, ombudsman news.

**Action required by you:**

Go to [www.financial-ombudsman.org.uk/publications/vj/vj-checklist.htm](http://www.financial-ombudsman.org.uk/publications/vj/vj-checklist.htm) and apply on line.

 [Return to Features List](#) or  [Contact Us](#)

**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)