

ATEB consulting Newsletter 16 - August 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?

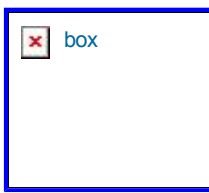
Please use the following table to decide which article applies to you, if any:

Investment (IFA)	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		✓								✓		
*Mortgage (inc. IFAs)	1	2	3	4	5	6	7	8	9	10	11	12
Director/Partner	✓											
Compliance / A&O Function	✓			✓	✓							
Sales Advisor												
T&C Supervisor												
Back Office												
General Insurance	1	2	3	4	5	6	7	8	9	10	11	12
Director/Partner	✓											
Compliance / A&O Function	✓			✓	✓							
Sales Advisor												
T&C Supervisor												
Back Office												

*Includes Mortgage arms of IFA and APF firms

1. FSA Letter - Professional indemnity Insurance and Self-Certification Form

This logo appears on the FSA website – are they having us on or what??



Some of you will have received the above letter and form. Unfortunately, it is confusing and contains errors. Additionally, some letters have been sent out to IFAs who should not have received them!!

Action required by you: It would be pointless us trying to explain in this article what you need to do, as it will depend on the terms and conditions of your individual PI policy. Therefore, if you receive one of these letters, please contact your ATEB consultant for guidance. It may take a little time to sort out exactly what you need to do, but it is important!

Some Background

The quality of the letter is a bit of a shame really, because **what the FSA is trying to achieve is at least encouraging**. They have published CP193, which proposes new rules for PII. They acknowledge that a more flexible approach is sensible and are proposing that firms can negotiate wider policy terms to cover their business needs. Policies must cover claims arising from all business, including unregulated business. The FSA compliance clause will no longer be a requirement.

FSA is proposing to allow a combination of PII and capital as a means of meeting the high level requirement to have adequate overall resources. **The baseline for an excess on a PI policy for all firms will be £5,000. Any excess higher than this will mean that firms will have to hold additional capital in a 'readily realisable form'**, i.e. those which can be realised within 90 days. The amount of extra capital required is set out in a table and is based on a firm's income and highest policy excess. Those of you who received the above letter will have seen the table in question.

The FSA letter referred to IMD and ISD

These are not, as many believe, a super-fast internet connection

*All insurance intermediaries are covered by the terms of the Insurance Mediation Directive (IMD). This directive includes a requirement for all firms to have PI cover of Euro 1.5 million in aggregate and Euro 1 million per claim. There can be no waiver or trade offs against other financial resources. **This Directive comes into force in January 2005.***

Currently being negotiated is the Investment Services Directive (ISD), covering investment advice. In the latest draft of this directive, there is scope to enable firms to have PI, or capital, or a combination of both up to a prescribed level.

A firm covered by both the ISD and the IMD - which means most IFAs - can, interestingly enough, choose which directive to follow (don't ask us why) and hence gives scope and flexibility for IFAs to tailor their PI resources to best suits their needs. Remember though that IMD is still only in draft form.

What implications do the proposals have?

The proposals put greater emphasis on senior management responsibilities. You will see that this is a regular theme throughout our newsletters - business owners must take responsibility for ensuring compliance with all rules! In this context, they will be responsible for ensuring that potential liabilities are covered one way or another. While this will provide flexibility - you will be able to assess the cost and terms of PII against holding higher levels of capital - you will have to do this systematically and your approach will have to be documented and regularly reviewed.

And finally, back to the letter

FSA has available, from 29 July 2003 a 'general modification by consent'. This means that firms can follow the proposed draft rules instead of the current rules. In other words, firms with non-compliant PI policies can make use of the proposed new rules in advance. For example, those with excesses that are non-compliant, could increase their 'own funds' in accordance with the draft rules and hence enable them to apply for a general modification to the existing rules. This is what the letter and self-certification form allow you to do. It all makes sense now doesn't it??



ATEB view:

This is another example of how Europe's influence is increasing!

Action required by you:

If you get one of these letters, call ATEB we will guide you through the process.

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2. FSA Fees / FSCS Levy Subsidies - Pass Fees Ltd

The subsidies are simply a financial support payment (that does not have to be repaid) from the sponsoring companies to IFA firms that have placed business with them. PASS Fees Ltd administers subsidy schemes for eligible IFAs on behalf of a group of IFA Product Providers. The IFA subsidy schemes are available to any IFA regulated by the Financial Services Authority (FSA), who is in FSA Fee Block/FSCS Contribution Group A.12 or A.13 and who has conducted life and pensions packaged product business with at least two sponsor companies (sponsor companies include most of the main packaged product providers) during the calendar year ending 31 December 2002.

How much subsidy is available?

1. The FSA Fees subsidy for 2003/04 is equal to 13% of the amount shown for Fees Block A.12 or A.13 on the FSA periodic fees invoice for 2003/04.
2. The FSCS Levy subsidy for 2003/04 is equal to 85% of the amount shown for Contribution Group A.12 or A.13 on the FSCS levy notice for 2003/04.

ATEB view:

None, for information only

Action required by you:

Most firms will have received an application in the post. To apply for one or both of the subsidies, you must complete and sign an application form and send it to PASS Fees Ltd in the FREEPOST envelope provided, enclosing a copy of the relevant payment request(s) from the FSA. If you have not received an application and believe that you may be eligible then you can request an application by clicking on

www.pass-fees.com/ContentPages/apply.asp

The deadline for applications is 31 October 2003. If you have any queries, please email admin@pass-fees.ltd.uk

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3. Are IFAs 'closing' complaints correctly?

This article has resulted from a series of audits that ATEB has been conducting recently.

We believe that some firms are not closing complaints correctly and as a consequence, may not only be creating extra expense for themselves but are also leaving a potential loophole for clients to complain outside the standard complaint referral time limits. The Financial Ombudsman Service (FOS) normally cannot consider a complaint if the complainant refers it to FOS more than six months after the date on which the firm, in its final response, advises the complainant that they may refer their complaint to the FOS. There may be exceptional circumstances that allow a complainant to refer a complaint to FOS after this time period has elapsed, but as long as you include the FOS reference and time period in your final response, you are closing your investigation in accordance with the rules.

It may be worth a quick recap on what constitutes a final response:

A final response is a written response from the firm which:

(a) accepts the complaint, and, where appropriate, offers redress; or

(b) offers redress without accepting the complaint; or

(c) rejects the complaint and gives reasons for doing so;

and which informs the complainant that, if he remains dissatisfied with the firm's response, he may now refer his complaint to the Financial Ombudsman Service and must do so within six

months.

ATEB view:

IFA firms should look for certainty in closing a complaint otherwise the complaint could fester for a much longer period than anticipated. It's also important from a PII, regulatory and reporting perspective that we follow the correct procedures.

Action required by you:

Always inform the client of their right to refer to the FOS and that they must do so within six months of the final response. Always ensure that you are following the correct procedure from the acknowledgement to closure. Use the ATEB templates for letters to avoid errors. Refer to ATEB procedures manual and seek guidance if necessary.

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4. Mortgage exams – FSA consulting on the content (CP194)

When mortgage regulation is implemented on 31 October 2004, new entrants will have to pass an exam before they can advise on standard mortgages. An exam will also be required for advised sales of lifetime mortgages. For non-advised sales of lifetime mortgages (equity release), those people who design scripted questions and who supervise the staff asking scripted questions will have to pass an exam. Those advisers who have already met the Mortgage Code Compliance Board's fitness and competence requirements will not be required to retake exams.

CP194 contains proposals on possible content for the mortgage modules. The lifetime mortgage exam proposes to cover home reversion schemes. The FSA will pass feedback on to the Skills Council, which will be responsible for developing an appropriate exam.

ATEB view:

None, for information only

Action required by you:

The FSA welcome comments on CP194 by 30 November 2003 www.fsa.gov.uk/pubs/cp/194

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5. Anti Money Laundering – Another wake up call

The Financial Services Authority (FSA) recently fined Northern Bank £1,250,000 for breaches of its Anti Money Laundering Rules. The size of the fine demonstrates the importance the FSA attaches to its statutory objective of reducing the chance of regulated firms being used for purposes connected to financial crime. According to the FSA, the steps Northern Bank took to satisfy itself that its customers, particularly business customers, really were who they claimed to be, were inadequate. Northern Bank had previously identified weaknesses in their customer identification procedures **but allowed them to persist**. Examples of inadequate verification of identity are where the bank only verified a client's name but not the address, or where the documents the bank obtained were not capable of verifying identity.

The FSA concluded that Northern Bank had contravened Rules 3.1.3 of the FSA's Anti Money Laundering Rules. Rule 3.1.3 provides that: *(1) A relevant firm must take reasonable steps to find out who its client is by obtaining sufficient evidence of the identity of any client who comes into contact with the relevant firm to be able to show that the client is who he claims to be.*

ATEB audits – recent findings ATEB have recently audited a number of IFA firms and have found the following weaknesses still persist:

- Evidence of address not completed on regulated intermediary certificate
- Photocopies not certified with signature and / or date
- Poor Photocopy of evidence
- Existing customer exemptions applied
- No ML Certificate present
- Home visit used on a regular basis
- New staff not receiving anti money laundering training.

ATEB view:

This an area that the FSA could look at under a themed visit by picking a number of IFA firms at random. We suspect this will happen soon and when it does will your firm be ready?

Action required by you:

Get into the habit of (or continue with) obtaining full and detailed evidence using a robust process (as detailed in the ATEB compliance procedures manual section 7) so that no mistakes are made.

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6. 89% Mis-selling complaints upheld are against tied financial advisers

A recent press release issued by Vince Cable MP, Liberal Democrat Shadow DTI Secretary (based on recent government figures) explained that 50,436 out of a total of 59,710 complaints in the last two years regarding mis-selling of financial products were made against advisers who are tied to a particular product provider - and 89% of upheld complaints are against these advisers. The figures also show in 2003, 90% of upheld complaints for endowment mortgages were against tied advisers

ATEB view:

The figures reinforce that by choosing an IFA, consumers are significantly more likely to receive advice that is suited to their individual needs. Although complaints are not a subject that we should take pride over, the recent press release is very positive for the IFA sector.

Action required by you:

None, this was a motivational message to underline the excellent job that the vast majority of IFAs do!"

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7. Supervising employees assessed as competent

These proposals affect all IFA firms. Currently, for IFA Firms where there is more than one proprietor or principal, the T&C rules require them to apply supervision requirements to one another. When the firm is a sole trader, or there is only one practitioner, director or partner engaged in the activity, the FSA now accept this is not practical. Therefore, to provide clear guidance for firms and employees in this position the FSA propose additional guidance. This guidance indicates that an employee who is engaging in an activity with or for a private customer, may supervise himself if he is a sole trader or is the only director or partner of a firm who carries out an activity with or for private customers, but that he should make appropriate arrangements, as it can become difficult to be objective about one's own performance.

ATEB view:

ATEB argued the above with the FSA back in February 2003 as detailed in ATEB bulletin 15. At the time they were adamant that these 'over the top' supervision requirements could not be removed via a waiver / modification due to the 'undue risk conditions in Section 148(4), FSMA'. Their view today appears to be that 'The amendment will cause no detriment to consumers'. The FSA seems to be listening! We also need to give some consideration as to what the FSA mean by the term 'appropriate arrangements'.

Action required by you:

Ensure that you have 'appropriate arrangements' in place so that only those with the necessary skills and qualifications supervise individuals that require supervision. Sole traders or sole directors/partners should consider 'appropriate arrangements' for their supervision, either internally or externally, for example by getting someone else to cross-check their business. As always speak to ATEB if unsure, or you could even enrol on the next ATEB supervision course, how's that for a plug?

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8. FSA propose to move from 'approved' to 'appropriate' examinations.

The FSA are currently consulting on proposals to move to an assessment of competence by reference to examinations which are 'appropriate' rather than by reference to a published list of FSA approved examinations (as currently contained in the annex of the T&C sourcebook). It is proposed that Firms will be assisted in what is 'appropriate' by referring to an examinations list maintained by * The Skills Council for Financial Services (SCFS). The T&C sourcebook examination annexes will therefore be deleted.

* The Skills Council for Financial Services

The SCFS is now in development and hopes to get its license early in the New

Year. Sector Skills Councils (SSCs) are licensed by the Secretary of State for Education and Skills. Their role is to bring together employers, trade unions and professional bodies, working with government, to develop the skills that UK businesses need.

ATEB view:

The proposals will give firms greater flexibility to choose an examination, which is appropriate to their circumstances. However, because of the lack of choice of examinations available in the market place we do not envisage the changes will impact significantly on IFAs.

Action required by you:

The FSA welcome comments on CP194 by 30 November 2003 www.fsa.gov.uk/pubs/cp/194

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9. OPRA publish IFA Guide to Occupational pension schemes

If you advise Occupational Pension Scheme Trustees, please read on.

The Occupational Pensions Regulatory Authority (OPRA) has recently published a new guide. 'OPRA and independent financial advisers' is aimed at those advisers who are or may become involved with occupational pension schemes.

The purpose of the guide is to outline:

1. the main requirements of the Pensions Act 1995;
2. the importance of a proper agreement between trustees and their IFA, stating both what duties the adviser will perform and what he or she will not be expected to do;
3. what, in OPRA 's experience, trustees often expect of their professional advisers;
4. the common problems OPRA has come across; and
5. how those problems can be avoided.

ATEB view:

Problems can occur in a pension scheme if the parties involved (the trustees, employer and advisers) are not clear about their own roles and responsibilities or the roles and responsibilities of others. This guide clearly sets out the IFA's role in relation to their employer and trustee clients. It provides a useful checklist and includes chapters on appointing a professional adviser and schemes that are winding up.

Action required by you:

A copy of 'OPRA and independent financial advisers' is available on the OPRA website www.opra.gov.uk Free hard copies and requests for alternative formats can be ordered from the OPRA helpdesk on 01273 627600.

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10. ATEB master class on letter and report writing

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

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, 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 (i.e. compliance with the FSA's Handbook) and develop long-term value (i.e. reduce potential future liabilities).
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. **When and where?** – Tuesday 7th October in Newcastle or Thursday 16th October in York

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

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.

ATEB view:

None, for information only

Action required by you:

None, for information only

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11. Simplified investment products & Sandler

The Treasury and DWP have jointly issued their response to the consultation on Sandler 'stakeholder' products. FSA has at the same time, published its feedback statement on DP 19 - "Options for regulating the sale of simplified investment products", which examines how the new products might be sold.

The Treasury paper outlines the product range to be included and some details on the investment restrictions. But the critical decision on the level and structure of a charge cap has been deferred until the end of the year.

Simplified products - 'stakeholder products'

The products will be known as 'stakeholder products'. Initially there will be three products:

1. A cash ISA
2. A medium-term investment product which can be a life fund or collective. 'Smoothed' investments will be permitted
3. A stakeholder pension which will be a modified version of the current stakeholder pension

Certain of the current CAT standard products will be affected. CAT standard cash ISAs will in effect become stakeholder cash ISAs, CAT standard equity ISAs will be replaced by the stakeholder 'medium-term investment' and the CAT standard insurance ISA will be withdrawn.

Sales regime for stakeholder products

From the three options to selling these products listed in DP19 (issued in January 2003) the FSA is to further investigate the 'filtered questions approach to guided self-help and warnings'. However, we will not know for certain until toward the end of the year if this approach will be adopted.

ATEB view:

Its unlikely these products bring anything new to the market. Obviously, following the 'overwhelming success' of stakeholder pensions, the treasury have a difficult act to follow! We envisage that the new stakeholder products will be launched in 2005 so we will just have to wait and see.

Action required by you:

You may wish to obtain further information at:

www.hm-treasury.gov.uk/media//12836/govt_response_sandler_doc.pdf

www.fsa.gov.uk/pubs/discussion/fs19.pdf

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12. Supervisor Training - Leyburn Supervisor Course

Reminder: Last orders for the Leyburn (North Yorkshire) Supervisor Course

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 – Tuesday 2nd September and Day 2 – Tuesday 23rd September
Location:	Leyburn in North Yorkshire
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 significant. 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

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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