

ATEB consulting Newsletter 17 - September 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	13	14	15	16
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	13	14	15	16
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	13	14	15	16
Director/Partner	✓	✓													✓	✓
Compliance / A&O Function	✓	✓													✓	✓
Sales Advisor																
T&C Supervisor																
Back Office																

*Includes Mortgage arms of IFA and APF firms

1. FSA proposes new reporting requirements

FSA proposes new reporting requirements for IFAs, Mortgage and General Insurance Advisory Firms.

The FSA are currently consulting on streamlining reporting. They are also consulting on making **electronic reporting mandatory**. The proposals are not intended to commence prior to April 2005, so there is some breathing space.

Here is a quick synopsis:

FSA, broadly propose that firms with less than £5m income should submit information electronically on a half-yearly basis.

Information to be submitted		
1	Standing data	Confirmation or amendment of basic standing data, such as address and contact information
2	Financial information	Including: • balance sheet; • profit and loss account (including commissions and fees); • regulatory capital; • information on the operation of any client money accounts; and • information on professional indemnity insurance cover.
3	Threshold conditions	Evidence of compliance with certain FSA threshold conditions
4	Training & Competence	Information on the number of advisers and their qualifications
5	Conduct of business information	Including data on the monitoring of any appointed representatives, details of clawed back commission and an indication of sources of business
6	Supplementary product sales data	Supplementary data on transactions where this is not collected by product sales data requirements (only applicable to firms that carry on certain general insurance or pure protection activities)
7	Complaints	Number and type of complaints received
8	Large exposures	For firms that are subject to the Investment Services Directive (ISD), information on the number and size of their 'large exposures'

Note: Larger firms should report financial information quarterly (over £5m).

ATEB view:

No surprise it's what we expected. Firms may need to look at developing systems and controls to ensure accurate submissions on time.

Action required by you:

More information available at www.fsa.gov.uk/pubs/cp/197 you can send your comments electronically using the form on the FSA's website www.fsa.gov.uk/pubs/cp/cp197_response.html Responses to the CP should reach FSA by 11 December 2003.

2. Business Continuation – Are you organised enough for the FSA?

The contents of this article are covering old ground having already been referred to in previous ATEB newsletters, however we believe that the area of *Business Continuity* is topical and still very much at the forefront of the FSAs agenda.

If I can begin by referring you to one of the most exciting of the FSA sourcebooks the '**Senior Management Arrangements, Systems and Controls Sourcebook**' or (SYSC) in short. This contains the following guidance that IFA firms need to be aware of:

SYSC 3.2.19 G - Business continuity

A firm should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of an unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness.

Now ask yourself the following questions?

Who?	Question
All firms	Do you have a written and <u>agreed</u> procedure in the event of absence, illness, disability or death of any essential member of your staff?
All firms	If key people were not available would remaining staff have a strategy?
All firms	Do key skills and decision-making rest with only a small number of individuals? If yes, why do you think this may be unwise?
Firms with only two advisers	What could happen to client service if both advisers were not available for periods of time?
Single adviser firms	What could happen to client service if the adviser were not available?
Firms with single specialist functions	As above
Firms with only one pension transfer specialist	Do you have a documented external locum?
Firms holding only paper records	What happens if documents are lost through staff error, theft, or fire?

ATEB will be discussing the above area with firms over the next few months, as part of the regular visit. We will be ensuring that the 'Regulatory and Compliance Business Plan' where this information is held is kept up to date and that all staff are aware of their obligations.

ATEB view:

The more clients you service the bigger the potential problem!

Action required by you:

If you would like to discuss these 'appropriate arrangements' individually with ATEB then feel free to call.

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3. Complaints Reporting - Deadline 31st October 2003

Next Complaints Reporting Period:

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

Two methods to report complaints data:

1. FSA electronic Complaints Reporting System
2. Paper based reporting form

For further information click on: 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. Put a date in your diary for early to mid October to deal with this and ATEB will email you a reminder with fuller details.

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4. Quarterly 'Pension Transfer' Reporting - (Deadline beginning of October)

Firms may be required to make returns to FSA every quarter.

There are no specific reporting dates, however most firms have adopted six-month returns in early January to coincide with 6 months after the end of the 'transitional period'. Thus, quarterly return dates are the beginning of January, April, July, and October. The return will need to indicate the number of cases falling into category of ***Insistent client, execution only & correspondence only*** (These three categories should also be split between transfer, opt-out and non-joiner cases). If you do not have any of these then no report is due at this stage. (Further details in CPM section 21)

Important Note: Remember 'Pension Transfer' also includes transfers from an occupational scheme **to section 32.**

ATEB view:

None - for information only

Action required by you:

If you need to send a report then ensure that your report is sent on time.

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5. Appointed Representatives – New Annual Reporting

Please read this article if you have appointed representatives.

This new annual reporting requirement will come into force on 30 September 2003. The report is due within 4 months of the principal firms (*the authorised firm) accounting reference date. Therefore, firms with an accounting reference date on or after 1 June 2003 will need to comply very soon. *Principal Firms should send an amended extract from the FSA Register, with any changes marked. The verification will be similar to that for controller and close links returns and responsibility for completion will fall on principal firms only.

The main detail for this new requirement will be in the Supervision manual section 16.9

ATEB view:

None - for information only

Action required by you:

Don't miss the deadline / diary in the usual way and speak to ATEB if you are unsure.

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6. Annual Close Links & Controllers - Reminder

No doubt, you will be aware that the 'Annual Questionnaire' needs to be submitted within 4 months of your financial year end. The penalties for late submission could result in a fine. The annual questionnaire contains key information on the firm that FSA use for monitoring. Although, we do remind firms as part of the regular visit, its worth just remembering that the most firms (except sole traders) will also need to submit an 'Annual Close Links & Controllers Report' (see ATEB newsletter January 2003 article 3 and October 2002, also article 3 for further information)

ATEB view:

None - for information only

Action required by you:

If you are unsure as to requirements please call ATEB.

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7. Investment Bonds – Age allowance reduction

This topic came up as we were doing the rounds and we thought it was worth a quick recap.

Without wanting to become embroiled in the area of giving tax advice, we would point out that the 'age allowance' for a particular status of client is reduced by the full investment bond profit encashed (without top slicing) in calculating Statutory Total Income (STI). Right, fairly straightforward but do we as firms point out the implications to our clients? The FSA rules suggest that we should. This of course will apply in particular to higher rate taxpayers and those who become (top sliced) higher rate taxpayers as a result of maybe some excellent financial planning advice! Think about clients who may become affected by the age allowance in the future.

Also, on the subject of bonds, you may be surprised as to the way in which we have seen the taxation of bonds described – quite often, we see the term 'tax free income' being used. Obviously, this is completely inaccurate.

ATEB view:

It is very important that you describe the taxation of investment bonds or any investment for that matter correctly. If you do not then the client will always be able to use the argument that the advice was misleading or inappropriate.

Action required by you:

We feel that these areas should be highlighted particularly within your suitability letter.

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8. Return of Fund or not Return of Fund – that is the question?

Did you know that some of the early Norwich Union pensions bundled up protected rights (PR) and non-PR funds into the same segment? **What this means is that, if the client dies, the non-PR fund cannot be returned to the beneficiary as a lump sum** (Inland Revenue rules). This has happened and at the moment, we don't know the full outcome of the case in question.

- Has anyone else come across anything similar?
- Are there any other similar products out there?

ATEB view:

None - for information only

Action required by you:

This is a potentially very dangerous situation and we would welcome any input that you are willing to share with others. Please email any thoughts to us - We'll keep you informed of any developments.

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9. Who supervises the Pension Transfer Specialist (PTS)?

Is there anyone out there who practices the fine art of delegation?

They say that the definition of management is 'the delegation of responsibility to others'. This theory works well if your industry is not linked to the provision of financial services, and therein lies the snag!

As we mentioned in the ATEB August newsletter, the FSA is currently clarifying the supervision rules by adding guidance for sole traders and firms where there is only one practitioner, director or partner undertaking a certain regulated activity, e.g. pension transfer specialist. The future implications appear to be that, where only one qualified person exists within a firm, this individual will now be able to self supervise. However, a warning note to all business owners and senior personnel would be unless this person is also listed, as one of the controlled functions 1 to 10 e.g. Partner, Director, Non Executive Director, Apportionment & Oversight etc then **it's not their neck that is on the FSA chopping block!**

Therefore, we suggest that before Partners and Directors place 100% faith in the ability of their investment manager, PTS and / or sole advisers they think of building in an extra layer of security into their systems and controls.

ATEB view:

If things go 'pear shaped' its no excuse for business owners to say 'I never had the chance to read the many thousands of pages of rules and guidance contained on that purple CD ROM' of course the other excuse could be 'which CD ROM was that then?'

Action required by you:

If you would like to discuss further please call ATEB

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10. New Examination Framework for IFAs

The Skills Council for Financial Services (SCFS) presented the new structure for investment advice examinations last week. Introduced were three levels of qualification:

- *Technical/foundation*
- **Professional**
- *Advanced*

IFAs will be required to pass five modules at '**Professional Level**'

- *Advice skills – (core requirement and assessed in the workplace)*
- *Investments and risks (exam based)*
- *Financial environment, regulation and ethics (exam based)*
- *Protection (exam based)*
- *Retirement planning (exam based)*

There will be other specialist subjects available (e.g. Pension Transfer Specialist) It appears that IFAs with full FPC or equivalent will not be required to sit any top-up exams to carry on the same activities. The modules will be set at a higher level than FPC. It is unclear, as yet what recognition will be given for AFPC qualifications.

ATEB view:

The new framework sets higher minimum standards for financial advisers and provides an opportunity to develop wider specialist skills.

Action required by you:

None - for information only

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11. Have all new personnel received Money Laundering Training?

Here are two questions for IFA firm principals and ML Reporting Officers:

1. Have you and all relevant staff received ML training in last 2 years?
2. Have all (including recently joined) staff received up to date ML training?

If the answer to either question is 'no' then, consider the FSA rule ML 6.3.2 (E)

6.3.2 (E) (1) In taking reasonable care for the purposes of _ ML 6.3.1 R, the relevant firm should provide training which:

(a) deals with the law on money laundering, and the responsibilities of staff under the relevant firm's arrangements;

(b) is applicable to all staff who handle, or are managerially responsible for the handling of, transactions which may involve money laundering (see _ ML 6.2.1 R); and

(c) takes place with sufficient frequency to ensure that within any period of 24 months it is given to substantially all of the staff referred to in (b).

Regulation 5 of the Money Laundering Regulations 1993 require the firm to (amongst other things) ensure staff are aware of the policies and procedures through regular training. Failure to comply with any of the requirements of the Regulations constitutes an offence punishable by a maximum of 2 years imprisonment, or a fine or both. **This is irrespective of whether money laundering has taken place.** In addition, the Financial Services and Markets Act 2000 enables the FSA to bring a criminal prosecution for a breach of Regulation 5 (systems and training) of the Money Laundering Regulations 1993.

ATEB view:

As always we will never underestimate or play down the significance of having effective ML procedures in place. Remember that you may have no Money Laundering occurring within your firm, but could still be liable to prosecution.

Action required by you:

If you are concerned about this area please call us. We may be able to arrange some in house training.

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12. 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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13. Complaints Windows - Welshman, a Scotsman and an Englishman

There was a Welshman, a Scotsman and an Englishman.

The Englishman and the Scotsman met in a pub in Edinburgh in 1992, after a rugby international. It was a highly entertaining match with England snatching a draw with a last minute, mis-hit Rob Andrew drop goal, which Bill McLaren famously described as 'hardly got off the ground, a bit like one of my 3-irons'. They had plenty to talk about therefore and a few drams were exchanged.

They discovered that they both lived in Newcastle. The smooth talking Englishman, who was an IFA with an eye for an opportunity, invited the Scotsman to a meeting where he would review his finances 'for free'. Reluctantly, but under the influence of fine malt, the Scotsman agreed.

They met the next week and the Englishman arranged a pension with a selected retirement age of 60, for the 25 year old Scotsman. The premium was £50 per month.

Although they continued to go to rugby internationals, they never met again. Over the years, the Scotsman became increasingly disillusioned with the standard of Scottish rugby and infuriated by the increasingly high standards of the English game.

He often thought about the Englishman and had considered on many occasions, complaining about his pension, just to spite the old Sassenach!

Questions:

- How long does the Scotsman have to complain about the advice?
- What happened to the Welshman?

[\(Click to reveal answers\)](#)

ATEB view:

None - for information only

Action required by you:

None - for information only

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14. Risk Management

Apologies for going on about this, but this is I'm afraid, what it's all about – manage the risk with good process and your compliance will be a by-product! So, following on from article 13 above, what if we could bring forward the 'event'?

A letter to the client along the lines of:

"Dear Client,

Our records indicate that we sold you a personal pension in 1992, to which you are contributing £50 per month.

As I'm sure you know, the investment markets and economy as a whole have gone through some turbulent times over the past few years. As such, it is generally expected that investment returns over the coming years will be far lower than in the past.

You should note therefore that, at your current level of contribution, your pension is highly unlikely to produce a sufficient income in retirement to meet your objectives.

Now, you may well have made other provision for our retirement, but if you haven't, we would strongly recommend that you contact ourselves, or another financial adviser, to review your retirement planning as soon as possible.

Further delay could seriously damage your retirement!"

Or words to that effect!

ATEB view:

We have learnt from the pensions review that a well recorded mailing is essential, this forms part of practical and proactive risk management.

Action required by you:

Any such mailing should be logged and if there is no response send a follow up letter in 3 months. Ensure that copies are maintained and 'gone away' clients traced wherever possible.

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15. Mortgages and General Insurance – FSA Application ready in November

Application packs will be available in November for Mortgage and General Insurance Intermediaries wishing to apply for FSA authorisation.

The Financial Services Authority has just published two documents, which will enable firms in the mortgage and general insurance sectors to make key business decisions as regulation approaches. The recent statements set out the standards that firms must meet and the resources they must have to become authorised by the FSA. They also finalise the details for *Appointed Representatives* status, which is an alternative to becoming directly authorised by the FSA.

1. In the light of feedback received, the **FSA has modified its proposals for CP 174** (*Prudential and other requirements for mortgage firms and insurance intermediaries*) in a few key areas.

These are:

- For some firms - reduced PII requirements and the conditions have been simplified
- Introduction of a 'non-statutory' trust for segregating client money
- Revised and simplified regulatory capital requirements

2. Following consultation in CP159 Appointed Representatives – extending the current regime, the rules on investment and mortgage business are essentially unchanged. ARs are allowed one principal for all investment business and two for mortgages – one for regulated mortgages other than lifetime mortgages and one for lifetime mortgages. However, the **rules for general insurance have been substantially revised** in the recent policy statement.

They are:

- no limit on the number of principals an AR can have;
- principals must establish "multiple principal agreements." These are arrangements setting out how principals will share responsibility for ensuring that an AR complies with FSA rules; and
- a 'lead' principal must take responsibility for customers' complaints.

The FSA's new regulatory regime comes into force for mortgages in October 2004 and for insurance mediation in January 2005.

ATEB view:

None - for information only

Action required by you:

If you would like more information go to <http://www.fsa.gov.uk/pubs/press/2003/092.html>
Why not let ATEB guide you through the authorisation process for more information contact info@ATEBconsulting.co.uk

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16. General Insurance & Mortgage Compliance - Varying your Permissions

Many of you will have received a pamphlet from the FSA about "varying your Permissions" if your firm is involved in General Insurance and or Mortgages. This pamphlet is a forerunner for further detail later when you will be expected to apply for the "Permissions" that are relevant to your General Insurance and or mortgage operation. **ATEB Consulting is currently monitoring all developments concerning the regulation of General Insurance in January 2005 and of Mortgages in October 2004.**

If your firm is directly regulated by the FSA then you will need to apply for these Permissions when required by the FSA. Care needs to be taken to ensure that you apply for the correct ones (so you are operating legally) and not applying for those that are irrelevant (otherwise even though you are not using them you would still have to have systems in place and will thus create additional compliance requirements).

For those IFA's who are **not directly regulated** but are an appointed agent of a Network then there may be a complication. If the Network itself is going to apply for the General Insurance Permissions and or the Mortgage permissions then there is not a problem. **However, ATEB are aware that some Networks have decided or are considering not applying for the General Insurance Permissions in particular.** This would mean that the IFA wishing to continue General Insurance business would need to be authorised another way. As an IFA cannot be both an appointed representative and directly regulated then this could be a major problem. We already know of a number of firms that have split the General and the Investment arms of the business into separate companies for this reason.

General Insurance (Insurance mediation activity) - The Permissions

There are six permissions that apply to general insurance operations. They can be found in a document called the "Regulated Activities Order (RAO)" and also in CP 174 www.fsa.gov.uk/pubs/cp/cp174 - Which ones will your firm require?

(a) *dealing in investments as agent (RAO article 21);*

(b) *arranging (bringing about) deals in investments (RAO article 25(1));*

(c) *making arrangements with a view to transactions in investments (RAO article 25(2));*

(d) *managing investments (RAO article 37);*

(e) *advising on investments (RAO article 53);*

(f) *agreeing to carry on a regulated activity in (a) to (e) (RAO article 64).*

You will notice the use of the word "Investments" Don't worry this is legal jargon and includes general insurance.

Lets just have a look at these in a little more detail:

Dealing in investments as an agent

This is for firms who will arrange or underwrite contracts on behalf of another. For example, some Insurance brokers have the power to commit an insurance company (their principal where they are the agent) to provide an insurance. These are called "binders" or "delegated authority". If your firm has any agency agreements with an insurance company or product provider then this needs looking in to.

Arranging (bringing about) deals in investments

This is the main permission to be considered for those who sell insurance. If without the firms involvement in the process the insurance would not materialise then this is necessary. Even the task of forwarding a proposal form to an insurer is included in this. Most of you dealing with general insurance will need to consider the relevance of this one.

Making arrangements with a view to transactions in investments

This appears to cover most situations in that if the firm helps someone fill in a proposal or even just introducing the customer to an insurer or intermediary. There are some exclusions on this in that it is possible to display information or just provide information or where the referral is from a person/firm **not** involved in other regulated activities without having this permission. However, you are probably all involved in other regulated activities! (and don't we know it!)

Managing investments

This one covers a very fine point in that it covers two basic activities where if you only deal with one or the other then you do not need the permission but if you do both you do need the permission. Simple isn't it?

The distinction is between the "administration" of a policy and the "performance" of a policy. Administration is just the running of the policy – for example: collection of premiums whereas "performance" is involvement when the policy is activated. For example, when a claim arises.

Advising on investments

This one is a bit clearer in that it distinguishes between just giving information and advising. If you advise on the suitability of a particular insurer or their agent or advise on taking out a specific form of insurance, then this may apply

Agreeing to carry on any of the above regulated activities

This is really the "catchall" in that the firm or person is agreeing to carry out whichever of the previous permissions apply to their situation.

We hope this helps you follow a bit more of what is happening. If you have any concerns and feel that you need some further information please contact us and we will be pleased to help.

Mortgage business (Mortgage mediation activity) - The Permissions

Similarly, there are four permissions that apply to Mortgage mediation activity. Again, they can be found in a document called the "Regulated Activities Order (RAO)" and also in CP 174 www.fsa.gov.uk/pubs/cp/cp174- Which ones will your firm require?

(a) *arranging (bringing about) regulated mortgage contracts (RAO article 25A(1));*

(b) *making arrangements with a view to regulated mortgage contracts (RAO article 25A(2));*

(c) *advising on regulated mortgage contracts (RAO article 53A);*

(d) *agreeing to carry on a regulated activity in (a) to (c) (RAO article 64).*

ATEB view:

None - for information only

Action required by you:

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?](#)

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Complaints Windows - Welshman, a Scotsman and an Englishman

Answer:

The Statute of Limitations allows an individual up to 3 years (or 6 years for breach of contract) to make a complaint after an event. That event, when it occurs, can reasonably be expected to have alerted the individual to the problem or potential problem.

The trouble with financial services is that the 'event' could well be maturity.

- Breach of contracts are highly unusual in this scenario, so if the pension in the question runs to maturity, the individual will have the term plus 3 years i.e. **a 38 year complaint window!**
- The Welshman worked in FOS and had the task of writing to the Scotsman (following a referred complaint) to inform him that because the Englishman had alerted the Scotsman to potential problems more than three years earlier there was nothing FOS could do.

Now read the next article on ['Risk Management'](#)

Note: ATEB suggest that you take legal guidance if unsure as to the position surrounding complaints. ATEB are not a legal firm and we cannot give legal advice. No legal advice was intended with this article.

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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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