

ATEB consulting Newsletter 20 - December 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
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
Director/Partner							✓	✓	
Compliance / A&O Function					✓		✓	✓	
Sales Advisor									
T&C Supervisor									
Back Office									
General Insurance	1	2	3	4	5	6	7	8	9
Director/Partner							✓	✓	
Compliance / A&O Function					✓		✓	✓	
Sales Advisor									
T&C Supervisor									
Back Office									

*Includes Mortgage arms of IFA and APF firms

1. Authorised Firms – Example 'variation of permissions' Form now released

Relevant IFA and Professional firms must think about this NOW!!!!

As rules stand presently, IFAs and professional firms arranging 'Pure Protection' contracts will need to apply for a variation in their permission to include **insurance mediation activities**.

For more information, please refer to ATEB newsletter November 2003 article 1. An example application for variation of permission is now available on the FSA website at www.fsa.gov.uk/mgi The FSA has also commenced writing to all authorised firms individually giving them the opportunity to vary their permissions. Please note this is a different approach to firms not currently authorised.

Firms should note that it is a criminal offence to carry out intermediation activities without authorisation (or exemption). Contracts entered into by a person who should be authorised may be unenforceable.

Don't delay your application:

You will need to have applied before the **31st March 2004** (mortgages) and **31st May 2004** (general insurance) in order to get the cheaper rate.

ATEB view:

If you have decided to do this without outside help then now is the time to research in detail how this affects your business and what you need to do.

Action required by you:

Read the FSA correspondence and information in ATEB bulletin 21 (accompanies this newsletter) carefully. Contact ATEB if you are unsure.

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2. Transfer & Opt Outs Reporting – A reminder

Don't forget that your Transfer & Opt out statistics are due to be reported soon.

There are no specific reporting dates, however many firms have adopted the following:

Return dates:

Beginning of Month	Report Type	What is required?
January	Six monthly	All Transfers & Opt Outs <u>including</u> insistent client, execution only & correspondence
April	Quarterly	<u>Only</u> insistent client, execution only & correspondence
July	Six monthly	All Transfers & Opt Outs <u>including</u> insistent client, execution only & correspondence
October	Quarterly	<u>Only</u> insistent client, execution only & correspondence

Don't forget:

- The return should also be split between transfer, opt-out and non-joiner cases.
- Nil Returns are not required.

ATEB view:

None, for information only

Action required by you:

If you are still uncertain as to the requirements, please call ATEB consulting. We have produced a proforma for reporting in this area; it also doubles up as a register. If you would like a copy we can email or send a copy in the post.

3. FSA themed visits – Feedback

The FSA recently completed a project on conduct of business and T&C in authorised professional firms (APF) (APF - Generally, Accountants and Solicitors who give independent financial advice and are authorised by the FSA). This involved visiting APFs and looking at client files and systems and processes.

We have bulleted the feedback which the FSA issued following the visits. IFAs and APFs should take note of the following:

- * Granfathered Advisers will not be required to pass an approved exam.
- FSA accept that T&C systems and approach will differ between large and small firms
- Firms should have recruitment procedures in place regardless of whether they intend to recruit
- Firms should have suitable systems in place to monitor and maintain competence
- 'Low activity' Advisers should still receive training on focussed areas.
- Review and assessment of work should be high on the firm's agenda
- Terms of business should be up to date and relevant for all clients
- Firms should take reasonable care when classifying private clients as intermediate
- Ongoing clients information (Fact Finds) should be kept under careful review
- Suitability letters examined were not tailored or personalised enough
- All of the above should be well documented

*** Broadly, those individuals who are advising clients without an approved exam but are deemed by the firm to be competent by experience. Since November 2001, the FSA had been thinking about whether to require these individuals to pass an approved exam such as FPC.**

ATEB view:

We feel that the FSA were quite diplomatic in their feedback. Reading between the lines, they have issues with firms keeping up to date with the regulations, although they will always counter balance this with the fact that most small firms are lower risk. The interesting point, however, is that the FSA may not be the authorised firms biggest concern. If a client decides to complain, then firms could be leaving themselves open to attack if they have not followed the regulations closely enough. ***Don't forget that good compliance reduces the risk and lessens the chance of a PI claim or client excess payment.***

Action required by you:

Don't leave things to chance. Allocate sufficient resource, so that all your compliance and regulatory responsibilities are achieved and maintained. This is likely to have significant benefits in the longer term.

4. Requirement for Authorised Limited Companies to produce audited accounts

There is often confusion around whether a small IFA firm, which is also a limited company, is required to have audited accounts. This confusion arises because under Companies House rules small firms are not required to produce audited accounts.

However, Section 249B of the Companies Act prevents a person who had permission under Part IV of FSMA 2000 (i.e. an authorised firm) to carry on a regulated activity from taking advantage of the audit exemption. As such, all authorised limited companies are required to produce audited accounts for Companies House.

ATEB view:

None, for information only

Action required by you:

If you would like further guidance please contact ATEB or companies house.

5. Mortgage Code – 'Amendments Form'

This applies to all firms advising and arranging mortgages.

Just a reminder but ... you are probably familiar with the MCCB 'Amendments Form'. This form is required if you:

- Change registered name / add trading name
- Wish to notify MCCB of a change to legal status
- Transfer sales staff between firms within a group
- Appoint sales staff
- Change address
- Appoint a new code compliance officer / director
- Cancel your MCCB registration

Don't forget that for most firms, which appoint additional sales staff, the code requires firms to notify the MCCB at the end of the relevant quarter (April, July, October, January). There is a cost of £100 per new adviser which needs to be submitted with the form.

There are other areas where the MCCB requires notification and these are contained in the code located under 5.1.9 at [MCCB Registration Rules May 2003](#)

ATEB view:

FSA authorisation is just under a year away and we suggest firms ensure that they have at least met the requirements of the MCCB if they are to experience a smooth transition.

Action required by you:

For the amendment form please go to '[MCCB Amendment Form](#)' or alternatively ATEB will forward a form via email.

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6. PII Modification – Practical Considerations

Many firms have by now successfully applied for a modification to the FSA rules and guidance on PII.

The waiver has allowed firms to obtain compliant PII cover usually on the basis that they have additional capital resources which are in 'readily realisable' form (within 90 days).

We would suggest that firm principals arrange for regular checks, say quarterly, to verify the firm continues to meet the modification requirements.

Remember the modification requirements are published on the FSA website within 10 days of the self-certification form being received by the FSA. Firms should check that the modification is correct and / or if it is not published contact the FSA to establish the reason.

ATEB view:

None, for information only

Action required by you:

Please contact ATEB for more information if you are unsure.

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7. Know your Customer - Soft (Facts) in the head?

Here are a few observations:

- Many advisers' dislike completing Fact Finds mainly because there appears to be no short-term benefit.
- Many Fact Finds can contain up to 30 pages and, as a result, are completed inconsistently by advisers.
- Most Fact Find documents request only the 'Hard facts' (Items such as name, address, NI number, existing policies, categorised attitude to risk etc)

Now, if there was a requirement to conduct an investigation into for, example, standard of advice, much of the basic 'know your customer' information can usually be found quite easily from the client file or could probably be located at a push from other sources. We would refer to this category of information as '**hard facts**'.

However, you may be surprised to know that the information that will offer most protection to the IFA firm from future complaints and sanction from the Regulator are emotive and record how a person felt about the subjects discussed. These are often referred to as the '**soft facts**'.

Ironically, it is this vital information that is not recorded well and, frustratingly, in our experience the 'soft facts' are usually stored in the adviser's head! Think about the following 'soft fact' questions where the adviser addresses the client:

Having already discussed and visualised the need for life cover.

Q. Can you express in your own words Fiona how important this life cover is to you and your family?

Having already discussed and visualised risk and reward with examples.

Q. Sarah, can you explain to me your feelings and understanding of risk and reward based on my explanations?

Interestingly many questions do not get the right response because the client does not have sufficient understanding prior to the question; therefore, the lead in process is essential. Although, many experienced advisers ask the above types of questions they invariably fail to record the answers – why? Well probably because there isn't a box on the Fact Find!

Why are the 'soft facts' so important?

- They are the link between the client need and your solution.
- The argument for the advice becomes stronger with client input and there is less chance of the advice being challenged at a later stage.
- Most importantly, the letter will change from being a 'reasons what' to a 'reasons why' (sorry I mean suitability letter)

OK, this is just a superficial view of the issues, there is great deal more to it, but next time you visit a client don't just keep this information (their feelings) in your head, write them down in the Fact Find and play them back in the Suitability Letter.

ATEB view:

The importance of soft facts in the process has been talked about for years. The first training material I recall writing on this subject dates back to 1995. However, the majority of client files that we audit still contain only 'hard facts'.

Action required by you:

Business owners should consider introducing incentives to encourage the recording of clients' attitudes and feelings i.e. soft facts. Advisers, paraplanners and compliance officers can always enrol for an ATEB master class on effective Fact Finding and or Suitability Letter writing, more information in 2004.

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8. FSA Improving Communication

This article is relevant to firms new to FSA authorisation or applying to vary permissions in order to transact Mortgage and General Insurance business.#

The FSA now have a dedicated part of their website which gives a great deal of help at this stage for all concerned with applying to the FSA or varying their permissions. We strongly advise everyone to look at this. To help you here is an overview of what is available from www.fsa.gov.uk/mgi/index.html

Mortgage and General Insurance (MGI) Home Page

Firstly, this gives you the opportunity to register for an application pack if you are **not** already authorised or in an authorised network.

There are then four main pages that you can link to:

1. Keeping you informed

This page provides a copy of the final Mortgage Conduct of Business Rules. There are also details of several Workshops that the FSA are running to help firms who are either simply applying for Authorisation or are Networks applying for Authorisation.

2. Publications

For the purists this contains (in one easily accessible place) **all** the publications (Consultation

papers (CP's) and Policy Statement papers (PS's) (the response of the FSA following consultation) to do with General Insurance and Mortgage regulation.

3. Getting Help

This contains a set of useful frequently asked questions.

4. Authorisation

This has very useful sections for either firms who are not yet authorised (General & Mortgage brokers) and for firms who are already authorised (IFA's) but are varying their permissions. This section is a **must**. For firms needing to become authorised there are the following hyperlinks for detailed information including a copy of the actual application form. For Firms that are just **varying their Permissions** there is also lots of useful information. (The actual form to be used is not available as yet)

- A Fact sheet: Mortgage and general insurance business: what it means for authorised firms
- How do I vary my permission?

There are also another series of the unavoidable "Frequently Asked Questions". Who is it that keeps asking these, is our most frequently asked question! The answers are very useful though.

So, in summary, the FSA are trying very hard to improve their (previously poor) communication

ATEB view:

As most IFA's will be "varying their permissions" in some form, it is well worth your valuable time having a look.

Action required by you:

Your ATEB consultant will be familiar with all the above so although we recommend that you explore this site don't forget you can always ask us.

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9. FSA fees, FSCS levies and FOS levies 2004/5 – Cut off date 31.12.03

The FSA use the number of approved persons in the customer functions on the FSA Register as at the 31st December in order to calculate individual IFA levies and fees due, for the following year. (April 2004/05 levies and fees are payable in July 2004).

Firms should check their records and ensure that the number approved persons in the customer functions (e.g. investment advisers) displayed on the FSA register are an accurate reflection of where the firm will be as at 31st December 2003. You can check the Register for Approved Persons on the FSA web site at www.fsa.gov.uk/register

Any discrepancies must be with the FSA by 31st December 2003 at the latest. **The FSA does not make any fee rebates for changes after this date.**

ATEB view:

You can do something now to ensure you do not incur any unnecessary expenditure on regulation next July. ATEB guess that for most firms no action will be necessary.

Action required by you:

If you need to make changes to update the Register, please contact the Enquires and Applications Departments at the FSA:

E-mail: IVA@fsa.gov.uk
Telephone: (020) 7066 0019

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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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