

# ATEB consulting 27 - Newsletter July 2004

## 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	9	10	11	12
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	9	10	11	12
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	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. Mortgage and General Insurance key deadlines for authorisation

The FSA deadline to process applications for general insurance prior to authorisation in January 2005 has now passed. Firms applying after this date cannot be guaranteed an approval in time for authorisation.

	Mortgages	Mortgage & General (Includes Variation of permission)	General Only
First deadline			

31 March 2004	Apply by the <del>31 March 2004</del> to qualify for an <del>early application fee discount</del>	Apply by the <del>31 March 2004</del> to qualify for an <del>early application fee discount</del>
	-	-
Second deadline		-
30 April 2004	<del>This is the deadline for submitting applications if you want to be certain that the FSA will process it for 31 October 2004 start date*</del>	<b><i>This is the deadline for submitting applications if you want to be certain that the FSA will process it for 31 October 2004 start date*</i></b>
		-
First deadline		
31 May 2004		Apply by the <del>31 May 2004</del> to qualify for an <del>early application fee discount</del>
		-
Second deadline	-	
13 July 2004		<del>This is the deadline for submitting applications if you want to be certain that the FSA will process it for 14 January 2005 start date*</del>
		-

\* Under the Financial Services and Markets Act 2000 the FSA has six months from the date the application is received to make a decision on a complete application (where no information is missing) and 12 months to decide on an incomplete application (where information is missing).

**ATEB view:**

None

**Action required by you:**

None, for information only

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

## 2. A new PII Captive is launched – The Gauntlet Club

We are pleased to announce that 14 months of hard work have finally paid off and we are currently quoting terms to a number of firms for membership to the Gauntlet Club.

Gauntlet Club is an association of IFAs who have grouped together to meet the challenges posed by the current regulated market. Each of the member IFAs has to demonstrate their commitment to trading effectively, providing customer satisfaction and reducing complaints and claims by adopting appropriate risk management processes.

The main benefit of Club membership is the ability to apply for professional indemnity insurance from a specialist scheme, which benefits from Gauntlet Club members' commitment to manage risk effectively.

Gauntlet Club is open to any IFA who shares its objectives and who can demonstrate that they operate sound risk management processes and have a sound compliance regime in operation.

That compliance regime will be subject of appraisal by independent audit.

Gauntlet Club, as a selective facility, does not have as its main aim a very large membership. It is seeking **quality**, not quantity. The success of Gauntlet will depend upon the stringent compliance tests for all new members, ensuring that the structure and reserves created by the original members is not dissipated by lowering standards. It will be limited to IFAs only and thus reflect experience of the preferred risks in that profession.

**ATEB view:**

None

**Action required by you:**

Some firms have already requested information on the scheme, which we will be sending out soon. If you didn't respond to our initial notification then please let us know if you would like information and / or a quotation.

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### 3. Disclosure in letters (and electronic equivalents) of the firm's status under the FSMA

As detailed in ATEB newsletter February 2003, new rules came into force on 1 March 2003, which included a transitional period until **30 September 2004** for firms already subject to the statutory status disclosure requirements of the Conduct of Business sourcebook [i.e. IFAs and Authorised Professional Firms]

After this date, the new disclosure is required. For example, for IFA firms this will mean the use of the words "authorised and regulated by". Professional firms can add to this if it makes the disclosure clearer.

**ATEB view:**

We are still observing emails / websites without any disclosure or an out of date disclosure.

**Key Tip: This is an extremely cost effective method of bringing unwanted attention to oneself!**

**Action required by you:**

Check your next order of stationery. FSA will expect the change to take place promptly, given the 19-month transitional period to use up old stocks. Make sure that you make the changes prior to the 30th September 2004.

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

### 4. T&C Questionnaire - Retail Intelligence & Regulatory Themes

Another questionnaire from the FSA has been doing the rounds, this time on T&C practices. Interestingly, it highlighted a number of important areas which the FSA is obviously keen to receive information on. Here are a few selected areas.

Amongst other issues, the questionnaire asked...

- How Training & Competence procedures for staff advising on general insurance and/or mortgage products would be applied.
- If the firm's Training & Competence arrangements cover those responsible for production, approval or distribution of direct offer financial promotions.
- How much information firms request about an individual's previous relevant activities and training as part of the recruitment process.
- How training courses are identified for competent individuals and the amount of the annual training budget.
- What criteria, methods or measures are used to assess whether an employee has maintained competence.
- If the firm has any specific procedures for identifying and communicating information obtained from trade material, e.g. articles on new products.
- How the firm ensures that information on changes to a product or to relevant legislation is cascaded to relevant employees (e.g. changes to the tax situation of a product or to an insurance company's financial situation).
- If an adviser's available product range depends on their experience.
- How the firm ensures appropriate sales of more complicated products.
- What additional training was provided for supervisors.

**ATEB view:**

Please feel free to draw your own conclusions as to what the FSA were looking for. In particular, linking to point 6&9, we often see self employed advisers "doing their own thing" within firms – we really don't agree with this approach. Firms should impose controls for self employed and employed advisers equally. Point 5 is extremely weak in many IFA firms. Thankfully, the vast majority of IFAs appear to be doing a fantastic job, but documented proof is what the FSA are looking for.

**Action required by you:**

Firm principals should revisit their T&C scheme and think about how well it is applied. If your firm received a themed visit on T&C, the FSA would have no option other than to benchmark the firm against the documented scheme.

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

## 5. Use of past performance data in advertisements

As indicated in article 10 of ATEB Newsletter January 2004, the FSA has now published a press release noting the introduction of new rules (with effect from 1 June 2004) on the use of historic fund performance data in advertisements. The new rules are designed to prevent firms from "cherry picking" data, which shows only favourable past performance. Instead, standardised information must now be included in advertisements which refer to past performance.

- **Standard data** - The new rules require past performance information to be accompanied by standardised data set out in a table and presented as annual returns for the previous five years expressed as percentages.
- **Less than 5 years** - Where less than five years performance is available, then a firm should give information for as many 12-month periods as possible, updated to the previous quarter. Firms should indicate (using dashes or an explanation) where there is no information available for the 'missing years'.
- **Less than 12 months** - Where data is available for less than one twelve month period, past performance information **may not be included**. This is because a period of less than a year will not give a 'clear, fair and not misleading' impression of long term performance.

**ATEB view:**

IFA firms need to be careful; we quite often see reference in isolation to performance in suitability letters. We have never considered 'headlining' as good practice and the new rules highlight that communication should be balanced and fair.

**Action required by you:**

Always ensure that you have a strict sign off process for any type of financial promotion, where the person holding the Compliance Oversight Function signs that they have approved the Promotion and checked it against the Financial Promotion rules.

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

## 6. Accuracy of the key facts illustration (KFI) – Who takes responsibility?

This depends on who produces the KFI and who gives it to the consumer:

	Who gives it to the customer?	
	Lender	Intermediary
Who produces the KFI?		
Lender	<b>Lender</b> <b>Responsible</b>	<b>Lender</b> <b>Responsible</b>
Intermediary		<b>Intermediary</b>

Third Party Sourcing System

**Responsible**

**Intermediary**

**Responsible**

Generally, mortgage intermediaries must take reasonable steps to ensure that any key facts illustration (KFI) which it issues, or which is issued on its behalf, other than that provided by a mortgage lender is accurate within no more than one percent or £1, whichever is the greater.

**ATEB view:**

FSA Principle 2 requires a firm to conduct its business with due skill, care and diligence. As such, an intermediary must not simply assume that a KFI provided to them by a sourcing system provider is accurate and fit for their purpose. From their knowledge of the market and products, the FSA would expect an intermediary to reassure themselves that the details on the KFI appear reasonable and accurate.

**Action required by you:**

Where firms obtain a KFI through a sourcing system, it will probably be able to obtain some guarantee of accuracy, or some other protection under the commercial contract with the sourcing system provider. **We strongly advise that intermediary firms check this with their sourcing providers prior to "Mortgage Day".**

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

## 7. Property managing agents (PMA) - FSA Consultation to reduce duplication

### *Landlord and Tenant Act (LTA) 1987 [Section 42]*

The LTA '87 requires the segregation on trust of service charge monies (of which insurance monies may be part) collected by landlords and PMAs from the tenants of two or more dwellings.

If a PMA is carrying on a regulated activity as an authorised person and handles client money it will be subject to FSA rules governing the way in which such money is handled.

If PMAs were to comply with the LTA and FSA client money rules, there would be a duplication of protection.

So, at the end of this month the FSA will consult on a proposal that a PMA that is an authorised firm complying with section 42 of the LTA **will be deemed to comply with FSA client money rules too.**

If the proposals go ahead, the FSA in these situations will still expect that PMAs open the bank account in line with FSA rules. PMAs will also need to ensure that they have the FSA permission allowing them to hold client money. The situation is different in Scotland and Northern Ireland and the FSA will consult on related issues to ensure all PMAs in the UK could comply with FSA regulations in the same way and without unnecessary duplication.

**ATEB view:**

Overly burdensome regulation is crippling British industry. Sensible pragmatic approach to consumer protection is called for. For PMAs to suffer one set of regulations is problem enough, but two maybe is pushing the boundaries too far! Glad to see the FSA appear to be acting reasonably here, lets hope for a sensible outcome to the consultation. More information on how the IMD impacts on property managing agents is available at [http://www.fsa.gov.uk/mgi/property\\_guidance\\_note.pdf](http://www.fsa.gov.uk/mgi/property_guidance_note.pdf)

**Action required by you:**

Ensure that any secondary agents with whom you are dealing are aware of their responsibilities under both legislations and are kept aware of the consultation and outcome.

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

## 8. Financial Services Skills Council - "Approved" to "Appropriate"

As detailed in previous newsletters the FSA has delegated its responsibility for examination standards to the FSSC. From 1st July exams changed from being "Approved" to "Appropriate"

### *Look out for new exams:*

The Skills Council is beginning to publish Standards for Appropriate Examinations. As these Standards are published, awarding bodies will bring forward proposals for appropriate examinations which meet the standards. When these proposals are accepted, the new examinations will be added to the List, which will continue to be updated as the Examination Review goes forward.

For further information click on <http://www.fssc.org.uk/cgi-bin/go.pl/exams/index.html>

This list contains those examinations which are designated by the Skills Council as 'appropriate' examinations as from 1 July 2004.

#### **ATEB view:**

None

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

None, for information only

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

## 9. Have you seen the RMAR? – We think you should!

We are starting to receive a number of questions on the RMAR. This stands for Retail Mediation Activities Return.

Having read the initial consultation issues you may have been mistaken for thinking it would be a relatively straightforward task for firms to organise submissions of these reports. Please read on ....

Here are a few bullets on RMAR

- IFAs, Mortgage and GI Brokers will all need to submit
- First reporting figures need to be collated from 1st April 2005
- RMAR submission will depend on your firm's year end
- Earliest RMAR due in early August 2005
- Initial reports will take quite a lot of resource not only to complete, but also to prepare.
- Half yearly reporting - You will be reporting before you have received your accounts, therefore your financial management information needs to be up to date, accessible and accurate. There is no requirement that the RMAR is audited before submission
- The FSA asks for some extremely obscure information. On section H of the new report an IFA firm also advising on mortgages could be looking at **77 inputs** of data.

RMAR Section H asks for all sorts of additional and intricate data, for example, information on: marketing lists, referrals from non-authorized introducers, referrals from intermediaries, telephone sales, cold calling, sales visits, postal sales, clawed back commission, direct offer financial promotions, repeat customers, internet sales, use of panels and whether they are reviewed etc

#### **ATEB view:**

We doubt that the back office systems available in the market will be able to cope with the massive increase in information supply. We suspect that most data gathering will be down to firm's manual records initially.

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

We suggest that you should go to the FSA website and click on [http://www.fsa.gov.uk/pubs/policy/ps04\\_09.pdf](http://www.fsa.gov.uk/pubs/policy/ps04_09.pdf) Print pages 125 to 138 (screen inputs) and print pages 139 to 170 (notes) and have a look at the type of information which the FSA will require. The first set of reports [for small to medium firms] will be due in August 2005 and we recommend that firms start making changes gradually, to cater for the increased information.

Remember also that Mandatory Electronic Reporting (MER) takes effect April 2005 - You will need to have up to date software to access. ATEB are aware of firms that are still operating their business on Windows 95 and similar.

If you want your IT systems reviewed, remember that we can now offer an IT audit – some free slots are still available!

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

## 10. Insurance Mediation Directive (IMD) compliant PII cover from 15 January 2005

ATEB are aware of IFA firms (Personal Investment Firms) being offered 'non IMD compliant cover'.

The majority of IFA firms will become IMD firms from 15th January 2005. Until that date, they are classed as 'non IMD firms'. ATEB believe that Firms should aim for PII cover which meets the full IMD minimum requirements today, rather than leave it until January next year to obtain an amendment or top up.

The FSA will work with firms which cannot obtain compliant cover from 15 January 2005. If it is not possible to secure compliant PII then firms will need to take action to remedy the situation. If a firm is unwilling, or unable, to take action then ultimately the FSA will have to consider taking steps to remove the firm's permission. This is because the directive requires all IMD firms to have PII at specified minimum levels. Here are some key features that you should check on your policy:

### FSA Ombudsman

Your policy should refer to a £100,000 ombudsman maximum award figure (previously this had been £50,000 under the PIA).

### Excluded business lines

This refers to where a firm has not, and does not intend to, do business in the future. Alternatively, a policy can exclude a business line where a firm has done or is continuing to do business in that line. Firms should calculate a reasonable extra capital add-on. Check that this is reasonable because it is an additional drain on resources and is on top of provision made for higher excesses and own funds.

### Limits of indemnity

The IMD will require all firms to have €1,000,000 for each single claim and €1,500,000 in the aggregate. Note that these limits are in euros and not pounds. The new rules go further than this for firms with a relevant income of above £6,000,000. Firms need to be careful, as the exchange rate will fluctuate.

IPRU 13.1.4(3) R If a policy is denominated in any currency other than euros, an IMD insurance Intermediary must take **reasonable steps** to ensure that the limits of indemnity are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those required in 13.1.4(2)(b) (Broadly speaking €1,000,000 for each single claim and €1,500,000 in the aggregate)

### ATEB view:

As ever, the EU commission drives this. Forgive me, but did I hear Tony Blair mention a referendum on Europe soon??

### Action required by you:

Go for certainty - Check you PI policy and make sure that you have fully compliant cover, don't wait until December and January and find that the market is overloaded and you cannot get cover. You may also wish to receive information on the 'Gauntlet Scheme' which ATEB has been involved in developing over the previous 14 months. See article 2 for further information.

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

## 11. Correction: Section 155 of the Consumer Credit Act 1974 and the £5 Cap

Referring to our [March newsletter article 10](#) we indicated that the £5 Cap on charging fees where a mortgage does not complete would be removed pre "Mortgage day". Back in March, in our conversation with the MCCB helpdesk, they explained that this restriction would not apply providing that the customer was forewarned, for example, in the firm's terms of business.

A further conversation with the MCCB compliance section this month has confirmed that our information received from the MCCB helpdesk was incorrect. The compliance section confirmed that the £5 cap would be removed but only following "Mortgage day".

**ATEB view:**

At the time of our conversation, we were mildly sceptical about the validity and hence our instruction for firms to contact MCCB direct before taking any action.

**Action required by you:**

The original article content is broadly unchanged, but please now regard the changes as taking effect from "Mortgage day", rather than immediately.

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

## 12. Supervisor Skills Workshop

**Reminder:** The need to have supervisor training is a relevant and up to date issue having been remarked upon during a recent FSA visit and the FSA compliance conference

**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, let's 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 a course by email, telephone or [here](#).

[🏠 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)*

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