

# ATEB consulting Newsletter 29 - September 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. FSA takes action against firms falling short of the minimum standards

Work by the Financial Services Authority over the past year to maintain standards among **smaller financial firms** has resulted in **19 firms losing their authorisation** to do business.

The Regulator's Threshold Conditions Team (TCT) deals mainly with small regulated firms which are not meeting the FSA's minimum requirements (or "threshold conditions"). The TCT generally takes action against such firms when co-operation has not been forthcoming. In the year to 30 June 2004, 19 firms had their permission to conduct investment business cancelled for breaches of the threshold conditions and two individuals with convictions for financial crime were prohibited. Here were the key reasons as to why firms were closed down:

		Comments	ATEB View
1.	<i>Lack of professional Indemnity Insurance</i>	A small minority of firms had refused to obtain cover because of the premium costs, or they submitted waiver applications, but could not satisfy the FSA that they had adequate capital.	Sadly, the cost for PI in the past two years has been disproportionately high although there are strong signs of the PI market easing. <b><i>If you are struggling with PI cover, ATEB may be able to assist.</i></b>
2.	<i>Financial Deficits</i>	FSA will take action to cancel firms' permissions where, for example, they have been in financial deficit for sustained periods or where they appear to be insolvent and they will not cease trading voluntarily.	No different to any business in this respect. However, because of the over regulation of our industry, companies and businesses which are not carefully run will risk having their permissions cancelled. Remember financial adequacy is 'all year' not just at your year end.
3.	<i>Failure to comply with Ombudsman awards</i>	Firms must co-operate with Ombudsman investigations and comply promptly with awards made by the Ombudsman. These are regulatory requirements.	There are strong signs that these are getting fairer and appear to be less biased toward the complainant – Good to see common sense prevailing.
4.	<i>Non co-operation with the FSA</i>	For example, the FSA were concerned with firms which failed to submit their quarterly, bi-annual or annual returns.	Umm...not a particularly good sign to send to Canary Wharf. It equates roughly, to "Why don't you come and pay us a visit?"
5.	<i>Non payment of FSA fees</i>	A failure to pay fees will result in action to cancel firms' permissions to conduct regulated activities and debt recovery action.	We think this one is always the "give away", if you haven't fallen at 1 to 4 then 5 will get you, although it might even take three years!!

**ATEB view:**

None, for information only

**Action required by you:**

Stay organised, allocate tasks to individuals and run regular checks on them, run your finances carefully, don't bring any unwanted attention to your firm, financial promotions and communication items should always be fully approved, ensure staff are trained sufficiently, pay your fees and levies promptly, oh and if you have sufficient time left after all this, don't forget to write some business!

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## 2. Stationery – A Final Reminder

As detailed in ATEB newsletter February 2003, new disclosure rules came into force on 1 March 2003, which included a transitional period until **30 September 2004**. After this date, the new disclosure is required. This will mean the use of the words "authorised and regulated by".

**ATEB view:**

None, for information only

**Action required by you:**

Make sure that you make the changes prior to the 30th September 2004.

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### 3. Stationery – Transitional rules for Mortgage and General Brokers

You should not state that you are authorised and regulated by the Financial Services Authority before the date of regulation

You may continue to use materials that refer to the previous self-regulatory organisation without being in breach of the ICOB / MCOB clear, fair and not misleading communication rules **until 15 July 2005**.

Broadly speaking, the Financial Services Authority is giving firms until the above date before they need to comply with the new wording.

**ATEB view:**

None, for information only

**Action required by you:**

Ensure that you are aware of the new requirements for disclosure and approval of stationery.

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### 4. Stock and use of MCCB and/or Mortgage Code logo

On 31 October 2004, new FSA Rules and requirements for information disclosure will apply. On and after this date, firms should not issue any new material to customers, which might indicate that the mortgage being discussed would be covered under the Mortgage Code or MCCB Rules.

Material in this category would include the 'You and your mortgage' leaflet, the Mortgage Code booklet and also, possibly, tailored firm specific information such as a Terms of Business letter referring to the Code or a firm's MCCB registration.

**ATEB view:**

None, for information only

**Action required by you:**

Be careful to ensure that all old stationery is withdrawn and only compliant documentation issued from the commencement of FSA regulation.

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### 5. Have you claimed your PASS Subsidies?

Reminder - PASS Fees Ltd has completed mailing IFA firm with details of the FSA fees and FSCS subsidies that are still available.

**ATEB view:**

None, for information only

**Action required by you:**

If you have not received an application pack please visit the PASS website for full details at [www.pass-fees.com](http://www.pass-fees.com)

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### 6. Monitoring competence of mortgage advisers

The ongoing competence of mortgage advisers (as with all other client facing advisers) should be monitored. One product that can help is "mortgage ASSESS" – a product developed in partnership with CII, LIA and SoFA. It is a cheap and effective method of testing knowledge as well as being kept up to date.

**ATEB view:**

None, for information only

### Action required by you:

For details go to: <http://www.ed.cii.co.uk/mortgageASSESS/default.asp>

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## 7. Product Providers have hidden agendas:

Apparently, a local rep of a reputable provider has been advising his IFA clients that they can advise on transfers from CIMPs to S32 with no requirement for a pension transfer specialist and / or additional FSA permissions. Thankfully the IFA smelled a rat and contacted us. ATEB have very politely asked the IFA to convey back to the local rep that he should "consider more carefully next time the wider implications, before releasing his nether regions in this misleading and badly informed way" **Remember: Transfers from Money Purchase and or Defined benefits to PP, Stakeholder or S32 are additional high risk activities that require permissions and sign off processes.**

### ATEB view:

We have never changed our opinion on "hidden agendas" and you should not rely on the product providers to get it right. Remember, it is your neck on the block most of the time.

### Action required by you:

If in doubt, speak with ATEB.

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## 8. Data Protection Act – Requests by complainants for information

Complainants are increasingly using the Data Protection Act to gain access to their records held by firms, but their right to do so has now been curtailed a little by the recent case of Durant v Financial Services Authority. The Court of Appeal expressed some views about the extent to which hard copy files (as distinct from material on computer) are covered by the Data Protection Act 1998 and subject to access requests from the individuals to whom they may relate. The Office of the Information Commissioner has now revised its own position on these matters and has issued a guidance note to explain its new approach. (See below)

Background:

- Mr Durant was involved in litigation with Barclays Bank.
- After the litigation Mr Durant asked the FSA to investigate whether Barclays had properly disclosed to him records in connection with the dispute. Following its investigation into Mr Durant's complaint against Barclays, the FSA closed its file without informing Mr Durant of the outcome of the investigation (which is something the FSA is entitled to do).
- Mr Durant made a subject access request to the FSA under the Data Protection Act. The main purpose of Mr Durant's request was to seek the disclosure of documents held by the FSA **relating to the investigation of his complaint.**
- The FSA disclosed all the documents relating to Mr Durant that it held on computer. However, it refused to disclose copies of documents held on manual files. The FSA recognised that information about Mr Durant's complaint was contained in documents within the files, that some files had dividers within identifying Mr Durant and that a sub file marked "Mr Durant" contained documents relating to his complaint, but it considered that the information involved was not "personal" and did not form part of a "relevant filing system".

This case means that individuals are now only able to guarantee access to data where that access is **necessary to protect their privacy**. They do not have the right to demand access to data for any other purpose (for example to assist in a complaint against the firm). However, if the customer has a Terms of Business or agreement, which gave this right at the relevant time, the terms of this document could override the DPA position and the customer could still have rights of access.

### ATEB view:

As most data requests to financial services firms are made in respect of complaints (where the protection of privacy is hardly likely to be an issue), it would appear that most requests of this nature can now be safely denied, quoting the above case as a precedent if necessary.

### Action required by you:

This article was for information purposes. ATEB do not purport to give legal guidance and firms should take a view depending on individual circumstances. It may help to consider the commissioners guidance which can be found at

<http://www.informationcommissioner.gov.uk/eventual.aspx?id=5152> so that you have a

better understanding of what may or may not constitute "personal" and "relevant filing system".

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## 9. Quarterly Consultation (No. 1) 04/13 - close of consultation 30th September

FSA have been consulting in Consultation Paper (CP04/13) on some further amendments to the **client money rules** - [http://www.fsa.gov.uk/pubs/cp/cp04\\_13.pdf](http://www.fsa.gov.uk/pubs/cp/cp04_13.pdf)

In particular, the FSA have proposed to amend the rules to permit a firm to hold in a client bank account, client money and money it holds as agent of an insurer (i.e. so-called co-mingling of these monies). For this to apply the insurer will have to give his consent in writing and accept that his claim to such monies should be subordinated to actual clients' claims.

Other proposed amendment of the rules relate to:

- Property managing agents
- Client money accounting requirements
- Sub-delegation of authority to hold money as agent
- Clearance of cheques into client bank accounts
- Withdrawing commission
- Mixed remittances

### ATEB view:

None, for information only

### Action required by you:

You can send comments by electronic submission using the form on the FSA website at [www.fsa.gov.uk/pubs/cp/cp04\\_13\\_response.html](http://www.fsa.gov.uk/pubs/cp/cp04_13_response.html)

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## 10. Depolarisation Update – Expect some news mid November

As you know the consultation closed on 1st June 2004. All is quiet on the FSA home front in this respect although ATEB were informed in a phone call with the FSA that they are expecting to release a policy statement with the final rules included mid to end of November. Firms will then have six months to adopt the new rules.

### ATEB view:

None - for information only

### Action required by you:

Have a look at ATEB newsletter March 2004 article 5 and click on the menu links and start thinking about how you will position yourself early to mid 2005.

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## 11. Mortgage regulation – Check your sales process is ready for November

November and mortgage regulation are approaching fast. Most firms have received their "minded to approve" letter and some have received their confirmation letters.

Still having trouble with your KFIs, IDD, CIDDs, Suitability Requirements, Key Facts Logos, etc then let ATEB take the stress way, we have the various documents available that will allow a smooth transition from MCCB to FSA regulation. We aim to discuss these with relevant firms over the next few weeks in preparation of FSA regulation.

### ATEB view:

None, for information only

### Action required by you:

None, for information only

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## 12. FSA Roadshows for IFAs

### "Helping adviser firms to raise their standards of compliance"

The FSA are continuing a series of regional roadshows aimed at IFAs to raise key areas of non-compliance that they see through their supervisory work and flag important issues that are coming up, including the reforms of the retail market. The roadshows consist of a series of presentations on relevant issues and how they affect firms, with the opportunity to question members of FSA staff. ATEB heard of some excellent independent feedback from the Gloucester roadshow.

#### Aims:

- To highlight key areas of non compliance and related best practice
- To detail changes to regulation that will affect firms in the short term

#### Dates:

<del>13</del> September	Gloucestershire	<del>1:30 pm</del>
16 November	Portsmouth	1:30 pm
07 December	Belfast	1:30 pm
11 January	Leeds	1:30 pm
08 February	London	9:30 am /1:30 pm
01 March	Edinburgh	1:30 pm

#### ATEB view:

None, for information only

#### Action required by you:

We strongly recommend that firms make the effort to attend these roadshows; a representative from ATEB will attend if you are unable to make it though. To book a place, see [http://www.fsa.gov.uk/industry/ifd\\_roadshows.pdf](http://www.fsa.gov.uk/industry/ifd_roadshows.pdf)

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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](mailto:steve@atebconsulting.co.uk)*

*Unless you have consulted specifically (as part of a regular visit) with ATEB on a particular issue then ATEB Consulting accept no liability for any actions taken based on the information contained solely within the newsletter.*

#### Contact Us:

ATEB Consulting  
The Old Post House  
29 Nedderton Village  
Northumberland  
NE22 6AX

T: (01670) 822984  
M: (07703) 576951  
E: [steve@atebconsulting.co.uk](mailto:steve@atebconsulting.co.uk)  
W: [www.atebconsulting.co.uk](http://www.atebconsulting.co.uk)