

# ATEB consulting Newsletter 30 - October 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	13	14	15	16
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	13	14	15	16
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	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. Mortgage Regulation – “On or after 31st October 2004”

On the morning of the 31st October 2004 statutory regulation commences.

### “Quick Check” - Are you prepared?

- ✓ Check you have the correct scopes of permission confirmed
- ✓ Compliant PI and capital adequacy in place (Includes IMD requirements for January where relevant)
- ✓ Staff have been made aware of procedural changes i.e. Telephone calls, complaints handling
- ✓ Systems in place refer to FSA and not MCCB

- ✓ Old literature has been destroyed i.e. "You and your mortgage"
- ✓ Stationery changes have been made (Although firms can rely on transitional rule to use up old stocks)
- ✓ Any new adverts comply with MCOB standards
- ✓ Competent Advisers have been assessed
- ✓ Exam timescales / deadlines noted re Trainee advisers
- ✓ Training & Monitoring plans are in place
- ✓ The firm is clear about what the FSA define as 'handling client money'
- ✓ The firm has ceased "Cold Calling" if relevant
- ✓ Introducers are aware of any obligations regarding disclosure and limitations of activities

This is not a comprehensive list but will act as a guide to fundamental areas of change.

**ATEB view:**

None, for information only

**Action required by you:**

Make sure that you are ready.

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

## 2. Mortgage Regulation – Complete Disclosure / Inducements

One of the fundamental changes to occur from October 31st is the need to ensure that you have given a complete and clear disclosure. What we often see on our travels is confusing and often contradictory disclosure in recommendation letters.

Disclosure will now occur within the IDD and KFI. The FSA have prescribed the rules so that you cannot avoid disclosing fees that are material to the mortgage sale. All fees will need to be accurately disclosed before you commit a client to a mortgage.

***A procurement fee must include a cash value for any material non-cash inducements that the mortgage lender provides to a mortgage intermediary or third party, whether directly or indirectly. The rules also require that any material inducements provided to a mortgage intermediary (or any other third party, such as a packager, whether authorised or not), by a mortgage lender, whether directly or indirectly, to be quantified to enable the cash values to be included in the KFI***

**ATEB view:**

Where disclosure (of fees and costs) is not complete this will lead to an inaccurate KFI, which will, in our opinion, serve only one purpose. It will leave the firm open to attack from both the regulator and the client.

**Action required by you:**

Firm Principals should ensure that full and clear disclosure is made within the KFI and that staff preparing KFIs are made fully aware of their responsibilities. We would strongly advise monitoring and checking of files to oversee this area.

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

## 3. Implementation of the Distance Marketing Directive

*What is the Distance Marketing Directive?* In simple terms this is a piece of European legislation which affects the way in which certain types of insurance sales (Distance Sales) are conducted.

*What is a Distance Sale?* In simple terms this would be an insurance sale where you don't meet the client and the transaction is completed usually via the post and telephone.

The Distance Marketing Directive Regulations will come into force on 31 October 2004 and intermediaries must comply with these for all distance sales from then until the commencement of FSA regulation on 14 January 2005.

Unfortunately to understand the regulations many brokers will also need a degree in Astro Physics. The regulation is also, of course, open to interpretation. In fact the regulations are so mind numbingly unclear that many of the insurance providers have completely missed this one!

**Here is a practical solution to help you understand what is required:**

1. Intermediaries should make their best efforts to comply with the FSA's Insurance Conduct of Business (ICOB) rules (effective 14th January 2005) in respect of all non face-to-face sales from 31 October 2004. [See ATEB General Insurance Compliance Manual section (11.3) Scenarios 2&3 for treatment of non face to face sales]

2. Consider page 26 of Part III "Guide to FSA Handbook for small Mortgage and insurance Intermediaries" located at <http://www.fsa.gov.uk/mgi>. The table highlights the issues that would be required for Distance Sales.

3. Now have a look at the following link  
[http://www.fsa.gov.uk/pubs/policy/ps04\\_01.pdf](http://www.fsa.gov.uk/pubs/policy/ps04_01.pdf)

(Page 40 table 8.1) which examines aspects of the FSA (ICOB) rules that could be implemented early. You will see from table 8.1 that some of the issues can be implemented early by the intermediary **and others will rely on the insurers input, and therein lies the snag!**

**Further Information:**

Implementation of the Distance Marketing [of Consumer Financial Services] Directive can be downloaded from [http://www.hm-treasury.gov.uk/media/43283/Implementation\\_dmd.pdf](http://www.hm-treasury.gov.uk/media/43283/Implementation_dmd.pdf)

Annex D of the document contains the text of the Statutory Instrument 2004 No. 2095, The Financial Services (Distance Marketing) Regulations 2004.

**ATEB view:**

A wise old compliance chief once said "Why say something in a few simple words when you can destroy a rain forest and create a thousand jobs instead"

**Action required by you:**

Discuss these issues with your ATEB consultant if you are unsure.

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

## 4. Suitability Letters - Penalties for Late Retirement

Some firms are now levying penalties for LATE retirement. As many people are not sure when they will retire, it will be important that you state whether there is or may be a penalty.

**ATEB view:**

None, for information only

**Action required by you:**

One more item to consider for your Suitability Letter!

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

## 5. FSA to Implement Basic Advice

The FSA announced on the 21 October 2004 that it will implement the "basic advice" regime in support of the Government's proposed stakeholder products initiative, with effect from April 2005. However, the FSA's consultation and consumer testing of basic advice has highlighted some concerns regarding the proposed Smoothed Investment Fund (You don't say!) and consequently the FSA will not include it in the basic advice regime at this stage.

**ATEB view:**

Looks like soon you will be able to purchase a newspaper, fizzy drink, bar of chocolate and your financial future all under one roof! – Hopefully, someone is going to nudge me awake and then tell me I've been dreaming all of this 'basic advice' nonsense.

**Action required by you:**

None, for information only

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

## 6. Post Depolarisation - Client Referral From Professional Bodies

Currently professional bodies make provision in their rules for referrals to be made only to independent advisers. The ICAEW and Law Society have indicated that they see no reason to change their current policy, assuming that there is still a wide availability of IFAs after depolarisation starts.

**ATEB view:**

None, for information only

**Action required by you:**

None, for information only

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

## 7. New Publication From the Financial Ombudsman Service

The Financial Ombudsman Service has launched a new publication produced specifically for financial services firms which generally have little direct contact with the Ombudsman Service. 80% of firms covered by the Financial Ombudsman Service actually have no complaints referred to the ombudsman; and of those firms where the ombudsman receives complaints, most only have one or two cases referred each year.

However, all firms still need to understand the role of the ombudsman as part of the consumer protection and regulatory framework. The booklet published this month, an introduction to the Financial Ombudsman Service, gives a brief overview of the complaints procedures that all authorised financial firms need to have in place. It also explains how the ombudsman fits in to the complaints procedures and outlines the procedures and general approach of the ombudsman.

**ATEB view:**

None, for information only

**Action required by you:**

An introduction to the Financial Ombudsman Service is on the ombudsman website and hard copies are also available on request (phone 020 7964 0092) <http://www.financial-ombudsman.org.uk/publications/intro-for-firms.htm>

Over the next few months, the ombudsman service will be sending copies of the booklet and welcome packs to all newly regulated general insurance and mortgage intermediaries who will be covered by the ombudsman service by law once they become FSA authorised.

There is more information and resources for firms on the special section of the ombudsman service website at <http://www.financial-ombudsman.org.uk/faq/firms.htm>

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

## 8. FSCS Fees – Next Year Payment by Instalments?

The FSA were quoted in the trade press recently as saying that they are likely to propose payment of FSCS fees by instalment as an option for next year. FSA has also announced that next year's consultation on fees (January 2005) will include an estimate of the FSCS levy per fee block and, for IFAs, per approved person. This should give firms a much earlier indication of how much they are likely to pay next year. For more information on fees for IFAs, click on: [www.fsa.gov.uk/fees/fees\\_ifas.html](http://www.fsa.gov.uk/fees/fees_ifas.html).

**ATEB view:**

None, for information only

**Action required by you:**

None, for information only

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

## 9. Review of the Financial Ombudsman Service – Consultation Closed 1st October

AIFA have submitted a response to the consultation on FOS. They raise some very valid points majoring on issues with wider implications and the need for better input on industry practice before judgments are made, so that the effect of hindsight is minimised.

### **ATEB view:**

None, for information only

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

A copy of the submission is available on:

[http://www.aifa.net/publicnews/consultation/html/cp04\\_sept.htm](http://www.aifa.net/publicnews/consultation/html/cp04_sept.htm)

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

## 10. Contracting out of the State Second Pension

Thankfully many firms recognised the potential problems re contracting out and have already taken decisive action, which involved writing to clients and warning them of issues. More recently, however, the subject of contracting out has gathered momentum and many industry experts believe that the problem must be tackled now, as delay will only increase confusion and potential pressure for retrospective action.

The overwhelming aim is to ensure that all individuals who are contracted out via the personal pension route receive sufficient information to enable them to decide what is right for them, or to seek advice if unsure.

The ABI has joined forces with the Association of Independent Financial Advisers (AIFA) to produce two fact sheets, one for policyholders and another for IFAs. The policy holder fact sheet is supported by the DWP and has been seen and commented on by the FSA.

### ***Policyholder Fact sheet***

All policyholders who are currently contracted out through an APP/PPP/GPP will receive a fact sheet directly from providers. It refers the policyholder to their IFA or product provider should they want advice.

### ***IFA Technical Fact sheet***

This explains the assumptions used by the GAD in setting the level of rebates, the assumptions used by FSA in projections and the investment growth rate required to match S2P, based on set assumptions.

### **ATEB view:**

Our view remains the same. We have always envisaged this as a potential “next review” area and welcome the action taken.

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

Mailing to policyholders will commence this week and should be completed by the end of this year. You will need to be prepared to deal with queries and any requests for advice that are bound to arise from existing clients. There may also be clients you want to approach proactively. Copies of the fact sheets can be accessed by clicking on the link below:

[http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/Final IFA fact sheet. PDF](http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/Final%20IFA%20fact%20sheet.pdf)

<http://www.aifa.net/membersarea/membersnews/newsflashes/PDF/consumer%20fact%20sheet.pdf>

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

## 11. ‘Which? Magazine’ on Contracting Out

Just so you are aware, not everyone shares our view of the positive and pragmatic action taken by the ABI in issuing the above fact sheets.

‘Which? Magazine’ has published an article that will definitely raise your blood pressure.

They recommend customers go back to the original firm or financial adviser and **demand help** in making the right decision. They state that the wrong decision will mean some people may be heading for a pension worth 60 per cent less than they would have received if they hadn't opted out of the state scheme.

They are calling upon the FSA to '**conduct a full market analysis to determine if there has been significant market failure in this area.**'

**ATEB view:**

We shouldn't really give those wise people at 'Which?' any real consideration. However, they obviously have the benefit of hindsight, which is a wonderful quality that unfortunately most of us do not possess.

**Action required by you:**

None for information only. The full press release can be found on [http://www.which.net/press/releases/personalfinance/041004\\_serps\\_nr.html](http://www.which.net/press/releases/personalfinance/041004_serps_nr.html)

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

## 12. Dispute Resolution - New Regulations for all Firms From 1 October 2004

The Employment Act 2002 (Dispute Resolution) Regulations come into force on 1 October 2004 and impact on both employers and employees. All employers (regardless of their size) have to have in place minimum statutory procedures for dealing with dismissal, disciplinary action and grievances in the workplace. There is a legal requirement for employers to inform their employees.

**ATEB view:**

None, for information only

**Action required by you:**

The DTI site: [www.dti.gov.uk/er/resolvingdisputes.htm](http://www.dti.gov.uk/er/resolvingdisputes.htm) provides you with what you need to know about the changes, guidance, training materials and details of the awareness activities being run by the DTI and other stakeholders.

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

## 13. Distance Learning - CD ROMs Available From the FSA

The FSA has produced a series of CDs, which cover various regulatory topics.

1. Introduction to the FSA £20 (+VAT)
2. Training and Competence for Investment Firms £25 (+VAT)
3. Training and Competence for Mortgage Intermediaries £25 (+VAT)
4. Training and Competence for General Insurance Intermediaries £25 (+VAT)

Effective Complaints Handling 2004 (this has been updated) £25 (+VAT)

**ATEB view:**

Economical way to demonstrate to the regulator that you are proactive in this area.

**Action required by you:**

Ordering a copy will not do you any harm.

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

## 14. Anti Money Laundering – Simplification of ID requirements

The FSA has been working on a project to simplify the money laundering requirements for establishing and recording identification. They have been working with other stakeholders (such as JMLSG) in seeking to 'defuse the ID issue'. In revising the JMLSG Guidance Notes - the JMLSG has been looking in particular at:

- allowing for greater reliance on a single document;
- encouraging the use of electronic verification;
- promoting greater acceptance by one firm of ID done by another;
- developing a more tailored approach for non-personal customers;

**ATEB view:**

The overall review project is not expected to finish until the end of 2005, but the FSA has issued a progress report: "ID – Defusing the issue", which would be useful CPD for the firms MLRO. It can be found on: [http://www.fsa.gov.uk/pubs/other/id\\_report.pdf](http://www.fsa.gov.uk/pubs/other/id_report.pdf)

**Action required by you:**

None – for information unless you are an MLRO and then you should read the report.

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

## 15. Money Laundering – Wider Ranging Regulation

"Not again" I hear you groan, but this subject will not go away. It is high profile and is likely to remain so until financial crime is beaten (that will give you a clue to the time scales!) All FAs are aware of the need to obtain money-laundering information from clients regarding identity and address, but this is a reminder that the anti-Money Laundering regulations are much wider than that and you all have a key role to play.

In addition to obvious criminal activities such as drug dealing, the regulations also cover such activities as:

- Immigration
- Tobacco/alcohol excise fraud
- Personal tax fraud
- Corporate tax fraud
- Benefit fraud

If you have any suspicion at all that your client may be involved in any kind of irregularity, which is covered by the legislation, our advice to you is to report it to your Money Laundering Reporting Officer (Or the apportionment & oversight for General and Mortgage firms). The relevant individual can then decide whether or not to report it to the NCIS.

**ATEB view:**

None, for information only

**Action required by you:**

If in doubt, please speak to your ATEB consultant.

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

## 16. Requirement for a Consumer Credit Licence Under FSA

The continuing need to have a Consumer Credit Licence depends on the business you do. If you arrange unsecured, second charge mortgages and other loans not within the FSA regime, these are still covered by the Consumer Credit Act (CCA); therefore it is likely that you will continue to need a Consumer Credit Licence. Although there are some circumstances in which a licence may not be required, ATEB believe that the provision of financial advice on mortgages is likely to involve areas covered by the CCA and we would encourage firms to maintain their licence. Licences can be obtained from the Office of Fair Trading (OFT) details and guidance can be found here [www.oft.gov.uk](http://www.oft.gov.uk)

**ATEB view:**

None, for information only

**Action required by you:**

None, for information only

[Home](#) [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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