

ATEB consulting Newsletter 34 - June 2005

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	17	18	19	20	21	22
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	17	18	19	20	21	22
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	17	18	19	20	21	22
Director/Partner			✓	✓	✓		✓	✓			✓		✓									✓
Compliance / A&O Function			✓	✓	✓		✓	✓			✓		✓									✓
Sales Advisor			✓																			
T&C Supervisor			✓																			
Back Office			✓																			

*Includes Mortgage arms of IFA and APF firms

1. FOS decisions beggar's belief

The following are extracts and summaries of a recent FOS decision; quite frankly we find it hugely worrying that these extremely subjective decisions are being made.

There were two recent cases where we looked at feedback from FOS (both completely outrageous) and here are the overall bullets of one of them:

- Nature of complaint: (submitted via an ambulance chaser) - Clients assured the endowment policy would repay loan and provide surplus
- Fund advised: 50% Managed / 50% WP

- Firm investigates and answers the complaint by providing Insurance company literature and signed declarations which demonstrated clearly that the client was given all the warnings of a potential shortfall and the policy was without guarantee.
- FOS investigates circumstances of clients and determines that when the advice was given they were in their late twenties with children, he was a builder and she was a shop assistant with no other savings. They had two existing low cost endowments and two further advances on repayment basis.
- FOS agrees that the clients were wrong in their accusation against the firm and agrees with the firm's outcome. They state: "I am not persuaded the complainants were entirely unaware of the risks of the policy..". **At this point the firm is quite relieved!!**

But wait a minute the letter goes on ..."I must therefore consider the suitability of the product."

Their overall method:

- The adjudicator dismisses the fact that the clients had existing endowments and focuses on the two previous further advances on repayment.
- He then refers to a signed statement by the client and explains that the he feels the signed declaration in itself does not prove the client had "...a good understanding of what the statement meant.." or "...what risk meant in financial terms.."

This seems to contradict his statement earlier. However, reading between the lines I think what he is saying is the clients knew there was a risk but he believes that they were somehow unable to connect this risk to the fact it would mean a potential shortfall on their mortgage.

Now this is the really worrying part (you need to be sitting down before you read this) the adjudicator at FOS states:

"...their occupations did not provide specific knowledge of the workings of a unitised endowment policy"

Is he implying all builders and shop assistants are stupid?? Or that only certain types of occupation understand the merits of financial advice (answers on a post card please)

In the case above, we all know why the clients chose 50% Managed don't we?

Answer (and reality check): The managed fund at the time was fairly steady and there was always a chance that the mortgage could be repaid early or an excess amount would be provided. For this particular firm this investment split was not the "norm", therefore something specific (likely to have been client driven) must have occurred at interview for this advice to have progressed in this manner. The overall problem the firm had was lack of evidence on the file. Interestingly, if the FOS had stuck to the specific complaint instead of introducing the suitability aspect then the overall complaint would have been rejected.

ATEB view:

We are speechless; we think these types of adjudications are absolutely disgraceful. The FOS is in danger of opening a can of worms here. You only need to look at the Pensions Review (Cost £300 Million) and the number of people transferred back into final salary schemes which are now in serious deficit. The FOS need to stop playing GOD based on hindsight; we are always wiser after the event!

In our view the insurance companies are the major guilty parties for over egging the sale and marketing of endowments, not reviewing the policies early enough, making excessive charges and not delivering on performance!

Action required by you:

Ensure you double check suitability - ***If the policy or risk isn't suitable for the client then all the paperwork in the world will not save you from an upheld complaint.***

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2. Regulatory Fees

By mid July you should have received an invoice for the fees payable through the FSA.

Any savings you have made on PII will probably be wiped out by a hike in FSCS fees.

You will however be given the option of paying the fees by instalments.

ATEB view:

None, for information only.

Action required by you:

None, for information only.

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3. Recent FSA Visits in Newcastle

The FSA were recently in Newcastle as part of their "Geographical Tour". ATEB were able to participate in 10 visits with the FSA during the week. To be truthful there were no shocks, but the usual compliance faux pas reared their heads yet again.

Investments

- Conflicting information in suitability letters
- No mention of downsides and disadvantages of the advice in the suitability letters
- Lack of reasons for advice in the suitability letter
- No link between recommendations and attitude to risk
- Non disclosure of commission
- TOB issued post FF & KFD
- Poor fact-finding
- Lack of documented research

Mortgages

- No recorded audit trail
- Lack of information on file to justify suitability (Mortgage sourcing systems that are used tend to produce "bland" and "wooden" suitability letters).
- Insufficient evidence to show that all consequences and disadvantages of a particular recommendation had been explained.
- FSA regulatory documents (IDD) being issued for non regulated areas (e.g. Buy to Let)

The FSA are acutely aware of the problems with some sourcing systems. This will be addressed by the FSA soon and we should expect more accurate systems going forward.

General Insurance

- Lack of documented research for both new policies and renewals
- D&N not being issued for commercial customers
- Client accounts balancing but not quite within the remit of the FSA rules.

Needless to say, we will be focusing on these issues as part of our regular visits.

ATEB view:

Improvements to systems and controls will help reduce these types of omissions.

Action required by you:

None, for information only.

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4. Co-Mingling & Insurer Subordination Consent

The transitional period for "written consent from insurers to the subordination" comes to an end on 14th July 2005. Most insurers have now amended their TOBAs to cover this change. It's still worth checking your records to ensure that all is in order.

Following another fascinating FSA consultation late last year, you will recall that the FSA amended the rules to permit firms to "Co-Mingle" on a permanent basis. However, if a firm co-mingles (and ATEB are not aware of any firms who do not) it must be careful to ensure that any money it holds as agent of an insurer is treated as client money and, therefore, it is subject to all of the client money rules.

End of the transitional

The FSA introduced a six-month transitional period. This allowed intermediary firms until 14 July 2005 to secure the new requirement under CASS 5.1.5AR for written consent from insurers to the subordination of their interest to any client's claim.

Until they secure such consent, intermediary firms have still been permitted to co-mingle. But the subordination has not been effective and must in any event be implemented by 14 July 2005 at the latest.

Remember that "Co-mingling" will not alter the position of insurers who will continue to bear the risk of money being lost while in the control of any intermediary firms they authorise to hold their money as agent. Nor does it alter the fact that intermediary firms must not agree to hold money as an insurer's agent without establishing a written agency agreement with the insurer which formalises the arrangement (CASS 5.2.3R)

ATEB view:

None, for information only.

Action required by you:

Firms should check that their agreements with insurers covers the issues mentioned above. Placing Brokers may also need to ensure that their written arrangements with the lead broker have covered this area. This can be detailed in their TOBA or separately in, say, a covering letter.

A firm operating a non-statutory trust should ensure that the trust deed required under CASS 5.4.7R makes provision the position after 14 July 2005.

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5. Happy Many (Standing data, RMAR & Complaint) Returns

The first batch of returns is now due for period ending 30th June.

A Firm with a year end of either the 30th June or 31st December will be required to submit returns within 30 business days of the 30th June (ie by August 2005)

The consolidated (Longer) version of the RMAR will be made available on the 1st July to these firms and the FSA have promised to e-mail reminders to firms. Also, firms will need to access their complaints return which is a separate submission. Standing data notification is also required at the firm's year end.

ATEB view:

None, for information only

Action required by you:

Access the forms ASAP. Managers should establish what needs to be done, who needs to be involved and set an internal deadline. Involve ATEB on the process.

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6. Client Money or Firm Money?

A small number of firms which charge fees will retain the excess amounts of commission as held on account against fees for future work. According to current FSA rules these monies are the property of the client until such time as they become due and payable to the firm i.e. following completion of some contractual task or work by the firm.

Fee agreements have, in the past, been constructed in such a way that these excess commissions have been treated as the property of the firm rather than the client and, therefore, have been seen as being outside the client money regime.

Firms which currently operate these arrangements are, therefore, not strictly acting within the FSA rules. FSA are offering a concession, however, as they believe that to apply the full rules at this time would not impact greatly on consumer protection and could create unnecessary compliance problems for advisory firms.

Refunds Policy

Don't forget that if the client subsequently asks for money held against future services to be refunded, for example, if he ends his agreement with the firm, then the firm should do so for the reasons given in the first paragraph above.

Changes in 2007

A certain European Directive is expected to come into force in 2007 and will prevent commission held against future fees to be treated as belonging to the firm. This is likely to bring these firms squarely into the client money regime.

ATEB view:

Keep your systems simple and consider changing your methods if it will mean greater compliance issues going forward.

Action required by you:

Ensure your fee agreements are explicit and fair.

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7. Complaints Returns (Referred Complaints)

Don't forget the changes that were made to the complaints rules on 14 January 2005. The complaints rules now say that if you receive a complaint which is the responsibility of another party you cannot simply reject it.

You must have procedures in place to refer it onwards. Such complaints need to be included in your complaints return.

ATEB view:

Sadly, this may distort your figures but unfortunately there is nothing you can do about it.

Action required by you:

Ensure that you have kept clear records so that you can report more effectively.

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8. Can "Experience" be a Risk?

Having worked as an AXA training manager running induction courses for a number of years, I recall how the "less experienced" recruits always received higher grades than the "experienced" ones. I put this down to the fact that the less experienced had no baggage and were able to follow our instruction clearly and, although the experienced members were always there to offer support to the less experienced, they never quite managed to follow our instruction insisting that they had a better way.

I watched this documentary the other day and it made me think about parallels with the financial services industry, here is a brief recap:

The incident

With no prior warning a British Airways captain was sucked out of his cockpit window at altitude. The plane was eventually landed by the co pilot. Miraculously the pilot survived.

Initial investigation

An investigation team was assigned to find out the reasons behind the accident. They quickly discovered that the bolts used to hold the window in place were not the right diameter size. They interviewed the servicing engineer responsible. He was amazed because he had just replaced the bolts the night before. The investigating officer, however, found many "used" bolts in a waste bin, most of which were in fact the correct bolt sizes for the window.

So why did the window blow out?

The window bolts were due for a periodic replacement. The work was scheduled for the night before the flight. Unbeknown to the engineer, a couple of the bolts he removed that night were the wrong size. He was out of supply of new bolts so he had to travel to another supply depot that night, where he matched all the other new replacement bolts by eye with one of the wrong size bolts removed that night. There was very little difference in the diameters of the correct and wrong size. It was also later discovered that when he came to fit the new bolts, because the engineer's reach was slightly restricted he couldn't see if they were totally secure.

The airline brought in a psychologist to assess the engineer and other engineers. They discovered that although a detailed engineer's procedures manual existed this was seldom referred to by the "more experienced" engineers as it was time consuming and did not appear to add any real value. The psychologist discovered that this philosophy was endemic within the airline. **The investigators also discovered that if the manual had been followed to the**

letter the mistake would never have occurred.

At the time, this incident and investigation led to the largest unprecedented overhaul in aviation history of safety procedures and radically changed the way in which aircraft equipment was maintained. It was also accepted by all senior managers within airlines that experience could no longer be relied upon in isolation and that going forward **things had to be done by the book.**

Drawing the comparison with what we do

Getting it wrong about an adviser will probably not mean life and death, however it can mean a potential claim some years down the line and usually the adviser has left by this time. It can mean unwanted attention is brought on the firm or breaches discovered during FSA visits.

When FSA first came into power in November 2001, most IFA firms were recruiting new advisers on a trainee basis (CF22) and were only signing them off once a fairly thorough process had been followed and the firm was certain about the individuals' capabilities. ATEB have seen more than a few situations recently where firms have experienced problems with recruiting advisers who do not quite fulfil the promises and expectations made at interview or a lack of skills is identified after the event. Quite often these advisers have been "experienced" and the firm has almost assumed that they have the skills and knowledge to perform the job with little monitoring.

The recent FSA visits have highlighted that some experienced advisers simply do not follow procedures. The question senior managers need to ask is whether these individuals have received documented training and actually understand the procedures in the first place. If they have and they still fail to follow procedures, then the firm needs to address the situation through retraining and/or disciplinary action sooner rather than later.

ATEB view:

"Experience" can mean many things – I would say that an "experienced" person doesn't just talk about following procedures they actually understand the importance of procedures and follow them to the letter!

Action required by you:

Have a robust recruitment and training programme. Aim for consistency in your firm and work to eradicate lazy sales processes.

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9. FSA Alert: Equity Release Schemes and Follow-on Investments

The results of a recent FSA mystery shop revealed that more than 70 per cent of advisers in the firms surveyed did not gather enough relevant information about their customers to assess their suitability for the product, and more than 60 per cent of the mystery shoppers reported that their adviser had not explained the downsides of equity release.

Where investments were made following the equity release, 100 per cent of advisers failed to explain the link between this type of borrowing and subsequent investments. The FSA is concerned that advisers are recommending consumers to borrow to invest without properly explaining the implications of this.

The investment advice given fits into three key areas:

- **Investing for growth:** the FSA identified that, in some firms, advisers are encouraging customers to release more than they require and reinvest the surplus cash in products such as investment bonds and unit trusts
- **Investing for income:** Some advisers are recommending that consumers release a lump sum and reinvest it in, for example, an investment bond and take 5% withdrawals to provide a regular income stream.
- **Inheritance tax (IHT) mitigation:** Using equity release for IHT mitigation is a very finely balanced arrangement. In many cases reviewed, customers were zero-rate tax payers and did not have any existing investments, and the FSA is not satisfied that recommending a complicated strategy was suitable for these consumers.

As well as being more expensive for the consumer, reinvesting capital in equity-backed investments unnecessarily exposes the consumer to risk.

The FSA are quoted as follows:

"Our work has found another disappointing instance of many advisers giving poor quality advice. For example, some people releasing equity from their homes are

being advised to borrow more than they need, and to invest these additional funds, which can be a high risk strategy. What makes matters worse is that these consumers tend to be elderly and vulnerable people who can ill-afford to be unnecessarily exposed to risk”.

ATEB view:

If firms are involved in these areas and they are not following strict written and disciplined procedures, undoubtedly mistakes will be made. We expect the FSA to come down very heavily on these firms if they find that there has been widespread promotion without a very carefully considered strategy.

Action required by you:

Have a written strategy in this area having identified suitable client profiles; impose strict guidance and penalties for non compliance.

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10. FSA review of 'Higher Risk' Small Mortgage Firms

The FSA visited 51 higher risk small mortgage firms from across the country looking at selling practices and training and competence. As a result, it has put three firms into enforcement for non disclosure. The FSA did find good practice, however, in over 50% of the firms visited. Some examples were:

- Senior management have a strong understanding of their requirements
- Ongoing training activity is being undertaken and recorded
- Firms are retaining sufficient evidence to demonstrate suitability of recommended mortgage contracts
- Evidence of product research is being conducted

The FSA are planning a further review of post authorisation issues for the end of the year.

ATEB view:

Firms should continue to improve standards and ensure they are treating customers fairly.

Action required by you:

None, for information only.

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11. FSA Launch RMAR On Line Training Package

The FSA has launched an online training package to help give firms the understanding needed to complete and submit the RMAR using the Firms Online system.

How is the information presented?

The course is taken via the web. Its features include:

- interactive demonstrations of the Firms Online system functionality including screenshots of the generic RMAR and Complaints Returns, helping the user to become familiar with the look and feel of the system;
- questions to assist users in their understanding of the topics covered;
- a 'reporting period calculator' that allows firms to determine their individual reporting periods; and
- links to relevant parts of the FSA website and the Handbook.

Duration & Cost: Approximately 1 hour / £5.

Minimum Computer Specification for Web-based training

1. Pentium 3® processor or higher
2. Windows 2000® or higher
3. 256Mb of RAM
4. Internet Explorer® 5.5 or later. Netscape 7.0
5. Sound enabled with speakers or headphones for commentary – optional

ATEB view:

Worth pursuing at £5 and it counts towards CPD!

Action required by you:

More information can be found at: <http://www.fsa.gov.uk/pages/doing/events/learning/>

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12. Calculation of Endowment Mortgage Redress

Oxford Actuaries and Consultants have a system which would normally cost £2400 plus £400 per month. However, they are currently offering the software FREE subject to an annual registration fee of £200 + VAT. The system requires Lotus Notes which can be supplied for a one off charge of £100 + VAT.

ATEB view:

This system could prove cost effective to those firms who are looking at potential redress payments.

Action required by you:

Contact: Tel: 08707 205080, E-mail: enquiries@oac.co.uk, www.oac.co.uk

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13. FSA Introduce Tailored "On-Line" Handbooks

The FSA has introduced tailored on-line handbooks, but don't build your hopes up. There are 14 shortened handbooks (although "epics" would be a better description)

1. Authorised professional firms
2. Asset managers
3. Corporate finance advisory firms
4. Fund managers (collective investment scheme operators)
5. General insurance brokers
6. General insurers with sales arms
7. Intermediaries selling non-investment insurance, investments and mortgages
8. Intermediaries selling investments only
9. Intermediaries selling insurance and investments, but not mortgages
10. Intermediaries selling investments and mortgages, but not general insurance
11. Life insurers with sales arms
12. Mortgage and general insurance brokers
13. Mortgage brokers
14. Small friendly societies

ATEB view:

If you were looking a "pocket guide", you will be disappointed. These shortened handbooks certainly make a life a little easier, however, as you will see, you still have thousands of pages of rules left to wade through!!

Action required by you:

If you would like to explore further: <http://fsahandbook.info/FSA/TailoredHandbooks.jsp>

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14. Complex Products - Venture Capital Trusts (VCTs)

The income tax, dividend and capital gains tax relief offered by VCTs make them an attractive proposition, especially for high net worth customers. However, these are complex products with **features that vary from issue to issue**. The differing structure and investment plans of trust managers invariably impact on the risk of the trust that you are recommending. Here is a reminder of some of the key points and responsibilities (in bullet) that you need to consider when recommending a VCT.

- How does a VCT fit in with your customer's attitude to risk? – not just in terms of the

underlying assets of the VCT, but also about how this potentially new investment fits in with your customer's overall portfolio.

- Not all customers are financially sophisticated enough to understand the full implications of your advice – always document alternatives
- Have you considered the illiquid nature of VCTs?
- Make sure you and your client are aware of the future specific plan to wind up
- Have you presented the many and varied potential downsides to your client?
- Have you explained the specific risks of the VCT as there is a difference between Generalist, AIM and Specialist VCTs?
- Are you fully aware of the assets being used and the investment strategy of the VCT manager?

Finally, remember that your firm is responsible for the advice it provides. VCTs are listed, but not regulated. It is your responsibility to ensure the risks and benefits you present to the client are correct and in line with the Financial Promotion rules. Basically, that all the essential risks are clear and that all aspects are presented in a clear, fair and not misleading manner.

More information can be found at:

www.fsa.gov.uk/pages/about/media/notes/bn002.shtml

ATEB view:

Smaller firms should not “dabble” in this area. You should have fully documented CPD for all advisers “qualified” to give advice. Firm principals need to have tight control on who is giving advice in this area. Our overall advice is to apply a “sign off” system similar to Pension Transfers & Opt outs.

Action required by you:

Significant changes were made to VCTs, which will take effect through to 2006/07. Check that you are aware of and up-to-date with the changes in the market – see www.inlandrevenue.gov.uk/budget2004/revbn10.htm for more information.

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15. Preparing for A day

The new regime presents the industry with some challenges, particularly during the transitional period between now and A-day. The FSA has stressed that advisers need to maintain high standards of advice, **particularly when they make recommendations to their customers during the transitional period.** The FSA have identified a number of potentially difficult advice areas and others where there are risks of poor quality advice being given. The following list is by no means exhaustive, but does highlight areas where the FSA expect advisers to exercise particular care to ensure their recommendations are suitable:

- the increased maximum limits on ‘income withdrawals’/ ‘income drawdown’, and the need for frequent reviews of the continued suitability of these arrangements for those customers already using them;
- the introduction of a new form of income withdrawal for those over the age of 75, called an Alternatively Secured Pension;
- the introduction of Short-Term Annuities, which can have similar risks to income withdrawals;
- the risks associated with ‘Pensions Unlocking’, and the potential for unsuitable recommendations to customers to retire prematurely (to avoid the increase in the minimum age for taking pension benefits from 50 to 55);
- the choice of primary or enhanced protection for those customers with pension funds around or over the £1.5 million lifetime allowance;
- transfers to S32 contracts to preserve levels of tax-free cash; and
- the need to avoid unnecessary switches from occupational pension schemes or Group Personal Pensions into new commission-bearing schemes.

ATEB view:

The proposed changes bring a number of opportunities, however we would urge advisers to ensure that all advice is carefully researched and only a ‘balanced’ presentation is given to the customer.

Action required by you:

Document a strategy that involves the firm’s stance on key issues, which clients will be approached and why, research all technical issues, ensure full CPD in place and ensure that no “maverick” advice is being given. You may wish to consider an exam as part of the CPD requirements. The CII are promoting an update for A-Day more information available at http://www.cii.co.uk/competence/pensions_simplification/pdf/pension_simplification_2005.pdf

16. Equity Release Survey – FSA not Happy!

The FSA identified equity release as one of its priority areas before it became responsible for mortgage regulation on 31 October 2004. In order to assess the standards within this market, a mystery shopping exercise was undertaken: The exercise which took place between December 2004 and March 2005 was conducted by telephone or at face-to-face meetings in the shopper's home. The FSA found the results quite alarming and here is a quick summary in bullet form. Many advisers failed to ask:

- the shopper about their state of health and life expectancy
- about the shoppers' preferences for their estate;
- the shopper whether they had existing savings and/or investments;
- what the shoppers' monthly outgoings were; and
- whether the shopper needed to generate a stable income from the equity released.

The FSA is concerned that its mystery shoppers weren't provided with enough information about lifetime mortgages to make an informed decision. In particular, many shoppers reported that:

- the adviser did not explain the downsides of equity release schemes;
- the adviser did not explain what would happen if they wanted to move home in the future;
- they were not told that they would have to pay an arrangement fee to apply for a lifetime mortgage; and
- they were not given information about how the loan is repaid.

Overall, the FSA has serious concerns about the standard of fact finding and the quality of information and advice being given to consumers. Senior management at firms will also be held responsible for making sure that advisers are properly trained and give suitable advice to consumers.

A report is available which breaks down the results of the mystery shopping by scenario and by distribution channel (mortgage brokers, IFA and product providers). This report is available at: www.fsa.gov.uk/pages/about/media/pdf/equity_release_results.pdf

ATEB view:

You can't afford to get this wrong, a robust process and fact find needs to be established.

Action required by you:

Fine tune your process as required if you are operating in this area.

17. Money Laundering - An Update from the Financial Crime Sector Team

Below are links to news letters from the Financial Crime Sector Team. They will be of interest in particular to those holding the MLRO function and senior management. The May edition can be found at: www.fsa.gov.uk/pubs/newsletters/fc_newsletter2.pdf

ATEB view:

They do not take too long to read and offer excellent CPD, information and contacts for the MLRO.

Action required by you:

MLRO should read and record in his or her CPD diary. December addition can be found at www.fsa.gov.uk/pubs/other/fc_newsletter1.pdf

18. Financial Promotions: Mortgage & General Insurance Bulletin

Below are links to newsletters from the Financial Promotions Team. They will be of interest in particular to the compliance function (advertising) and senior management. The 2nd Quartet edition can be found at: www.fsa.gov.uk/pubs/newsletters/fp_bulletin2.pdf

ATEB view:

They do not take too long to read and offer excellent CPD and information to complement the firm's procedures.

Action required by you:

The compliance function (advertising) should read and record in his or her CPD diary. The February edition can be found at www.fsa.gov.uk/pubs/other/fp_bulletin1.pdf

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19. De-Polarisation – Post 1st June Check

Based on our feedback during visits, most firms appear to have adapted to the de-polarisation changes without any hitches. Here is a quick reminder of some key areas:

- 'Independent' status means you must provide whole-of-market advice and offer clients the option of paying by fee.
- Your fee structure should be clearly documented
- You should have a written fee agreement in place
- Where it applies, you should have arrangements for rebating commission in place
- At the start of your sales process, you should be issuing your 'keyfacts about our services' & 'keyfacts: about the cost of our services' documents and they should be an accurate reflection of your firm's services
- You may wish to amend your remaining Terms of Business
- Your staff should have been trained to use the new disclosure documents
- Version numbers of the new documents should be kept and records showing which documents were issued to whom and when. This should cater for situations where the firm is operating with more than one 'keyfacts: about the cost of our services' document.

ATEB view:

None, for information only.

Action required by you:

Speak to ATEB if you are unsure about any depolarisation aspects

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20. Mortgage & General Insurance Bulletin

Below is a link to a newsletter from the team dealing with small firms. It will be of interest in particular to the compliance function and senior management. The 1st edition can be found at: www.fsa.gov.uk/pubs/newsletters/mgi_newsletter1.pdf

In particular the FSA highlight areas that their supervision team will focus on over coming months:

Insurance	Mortgages
Systems and controls issues in firms which have appointed representatives.	Financial promotions
Claim and complaint handling in general insurance intermediaries.	
Payment protection insurance – in particular, sales practices, poor value or unsuitable products, small print and complex terms.	High-risk products such as lifetime mortgages, including sales process, product suitability, and documentation for customers.
Disclosure documentation – the standard and length, and points at which they are given to the customer during the sales process.	Disclosure documentation – the standard and length, and points at which they are given to the customer during the sales process.
Regulatory returns – making sure these are accurate and following up late and non submissions.	Regulatory returns – making sure these are accurate and following up late and non submissions.

ATEB view:

It does not take too long to read and offers excellent CPD and information to complement the firm's procedures.

Action required by you:

The compliance function should read and record in his or her CPD diary. Speak to ATEB about any deficiencies that may be highlighted.

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21. FSA Pushing “Treating Customers Fairly” (TCF) Initiative

The FSA are not short of things to do are they? – We now have the “Treating customers fairly” project to consider. The FSA have been working behind the scenes for a while, looking closely at how firms treat customers’ and its not just advisory firms, much of their work has focused on the insurers themselves. What “fairness” means for a firm will vary, depending on its business and its customers.

At this point you may argue, “well, I’m polite to my customers and regard most as friends” - is this not enough? – Seemingly not. I won’t bore you with all the models and concepts that the FSA come up with, let’s cut to the chase. The table below gives you a taster of the types of issue which the FSA will be looking for advisory firms to address.

Potential areas	How? - Suggestions
Know your customers in detail, have a clearer understanding of their financial needs and be proactive in meeting those needs.	Strategic approach - A –Day (Pensions) is just one example of where firms could target groups of individuals based on a careful analysis of their client base and legislative changes
Provide clear, fair and not misleading communications during promotions, advice, sales and after-sales activity.	Ensure all promotions go through a detailed and documented sign off process and the person(s) checking are sufficiently skilled..
Make charges more transparent.	Improve staff education and training - Build better explanations and communications into sales process and documents.
Balance the commercial objective of increasing sales with the objective of TCF.	Introduce pay and bonus related directly to aspects of TCF
Identify common underlying causes of complaints	Produce a written policy that analyses why the problem occurred and deal with the root cause.
Introduce management information to measure the firm’s TCF performance.	Considering what management information is needed to measure the firm’s TCF performance, for example, summarised results of consumer questionnaires

Firms should consider building TCF issues into their business plans (or similar document). We suggest a set of written standards and measures that can be used to compare evidence against. Don’t try to think of the FSA rules at this stage. Simple common sense and business acumen will probably drive this one.

ATEB view:

To meet the TCF requirements, a firm may have to enhance systems, controls and management reporting across all its activities. Firms will need to demonstrate to the FSA that they have embedded the principle of fairness into their strategy and culture. They will also need to show that this has led to fair treatment of their customers. These firms will benefit from less intrusive supervision.

Action required by you:

The FSA are publishing a paper on TCF soon and we will need to monitor the situation to gain a better understanding of how it impacts on advisory firms. More information is currently available at: www.fsa.gov.uk/pages/Doing/Regulated/tcf/index.shtml

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22. Discussion: Hedge Funds & Unregulated Collective Investment Schemes (UCIS)

The Financial Services Authority (FSA) has published two discussion papers which focus on related but separate aspects of hedge funds and retail investment products.

The papers look, respectively, at the impact of hedge funds on the UK's wholesale markets:

- **Hedge Funds:** A Discussion of Risk and Regulatory Engagement and at the regulatory

regime that applies to retail investment products

- **Wider Range of Retail Investment Products:** Consumer Protection in a Rapidly Changing World

ATEB view:

In a nutshell the FSA seems keen to introduce wider access to hedge funds and certain unregulated schemes, but only in such a way that will minimise the risk to potential investors.

Action required by you:

More information is available at:

www.fsa.gov.uk/pages/Library/Communication/PR/2005/068.shtml

For discussion papers go to: www.fsa.gov.uk/Pages/Library/Policy/DP/2005/

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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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