

ATEB consulting Newsletter 37 - January 2006

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
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓							✓	✓				
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓							✓	✓				
Money Laundering Officer	✓																			
Advisers & Trainees	✓		✓	✓	✓	✓														
T&C Supervisor	✓		✓	✓	✓	✓														
Pensions Transfer Specialist	✓			✓	✓	✓														
Back Office	✓		✓	✓	✓	✓														
Investment (IFA)	21	22	23	24	25	26	27	28	29	30										
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
Director/Partner	✓						✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Compliance / A&O Function	✓						✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Sales Advisor	✓								✓	✓	✓					✓	✓		✓	✓
T&C Supervisor	✓								✓	✓	✓					✓	✓		✓	✓
Back Office	✓																			✓
*Mortgage (inc. IFAs)	21	22	23	24	25	26	27	28	29	30										
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
Director/Partner	✓						✓				✓	✓	✓	✓						
Compliance / A&O Function	✓						✓				✓	✓	✓	✓						
Sales Advisor	✓										✓									
T&C Supervisor	✓										✓									
Back Office											✓									
General Insurance	21	22	23	24	25	26	27	28	29	30										
Director/Partner	✓	✓	✓		✓		✓	✓	✓	✓										
Compliance / A&O Function	✓	✓	✓		✓		✓	✓	✓	✓										
Sales Advisor							✓		✓	✓										
T&C Supervisor							✓		✓	✓										
Back Office							✓		✓											

*Includes Mortgage arms of IFA and APF firms

1. ATEB Recruit FSA Staff – Welcome to Judith Wright

Welcome this month to Judith Wright who has joined ATEB as a senior consultant.

Judith is a law graduate with a legal background and many years varied experience in financial services, including regulatory compliance and retail financial sales. She also has strong technical knowledge of FSA and European requirements, risk based compliance monitoring and policy development.

Some of you may have met Judith last year, in particular during her travels as part of the FSA Geographical Team visiting firms nationally. Judith has relocated away from Edinburgh with her daughter Aislinn and husband Richard. The only disappointing aspect, that we discovered post appointment, was that she was a Sunderland Fan!

Judith has categorically assured us that she did not leave her former employer with any regulator secrets or internal documents, likely to be of use to a firm like ATEB, although we are working on this. Please watch this space.

ATEB view:

None, for information only

Action required by you:

None, for information only

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2. FSA investigates IFAs financial resources

The FSA has carried out a review of 79 firms via Companies House to establish if they were carrying sufficient financial resources. **It found that 66% of firms had a deficit.**

This appears in the most part due to a misunderstanding of how the rules apply. The FSA has issued a Good Practice Update, which is available on their website, link below. It is continuing to monitor this area and intends to carry out reviews on a random sample of firms. It also intends to produce a training package.

http://www.fsa.gov.uk/pages/Doing/small_firms/advisers/guides/resources/index.shtml

ATEB view:

We are aware of a number of accountants who were oblivious to the FSA requirements prior to submitting returns to Companies House.

Action required by you:

Involve your accountant, review your resources requirement and identify any issues early.

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3. Market averages for the menu – Deadline for changes is 1st February 2006

As reported in the last newsletter, the market average figures for use in the menu ('key facts about the cost of our services') are up for renewal. The FSA has announced the changes. The COB rules require firms to ensure that they revise their menus to take account of these changes, you will need to update your market average rates by 1st February 2006 unless, of course, you only charge fees.

The commission calculator is available on the FSA website at the link below to help firms calculate their new figures, available at:

http://www.fsa.gov.uk/pages/Doing/small_firms/advisers/calculator/index.shtml

ATEB view:

Still not convinced the market average figures are accurate!

Action required by you:

ATEB is working closely with all firms to ensure that documents are amended so that the new menu is issued to clients no later than the 1st February 2006 deadline.

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4. A-Day Again

If you haven't done so already, we would encourage firms to write to clients simply informing them of the potential impact of A-day and record this fact. It may also be worthwhile sending a follow up letter just in case the original did not reach the recipient.

ATEB view:

Approach this in the right way and you will be fine, but there is potential for things to go wrong if clients don't get timely information on the impact of A-Day.

Action required by you:

Speak to ATEB if you require guidance. We have a general A-Day letter that is available to clients upon request.

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5. Attitude to Risk – FSA issue guidance

Are you doing enough to identify, communicate and record a customer's attitude to risk?

Do you have systems and controls in place to review a customer's changing attitude over time?

The FSA seem to think that improvements can be made in this area and have released the following guidance to be found at:

www.fsa.gov.uk/pages/Doing/small_firms/advisers/guides/risk/index.shtml

ATEB view:

It's not rocket science or in any way new. We are pleased that after over 4 years of regulation they have finally decided to issue some common sense guidelines.

Action required by you:

Firms are encouraged to read the examples of good and bad practice in these areas, consider how their own practices can be improved and to make any necessary improvements.

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6. Income Withdrawal – A good practice update

The FSA recently carried out visits to a sample of small IFA firms known to be particularly active in the income withdrawal market to assess whether regulations were being met.

Their findings were not good; they saw far too many examples of bad practice including failings in a number of key areas. For example, firms failing to obtain the relevant "know your customer" information prior to the recommendation; suitability letters failed to state all the required risk warnings or clearly show that the income withdrawal plan was in line with the customer's attitude to risk.

Reminder: Post A-Day it is important for all firms to have appropriate arrangements in place in order to ensure the advice given by them meets consumers' requirements, particularly with regards to:

- the opportunity for consumers to take a higher level of income post A-Day (120% of a level single-life lifetime annuity);
- contract reviews will be required every five years, instead of every three years; and
- the risks associated with "small pot" income withdrawal contracts also increases, as there is a higher risk of fund erosion. "Small pots" are pension funds under £100,000, after any tax free cash is taken.

The FSA have said that they will continue to monitor this market as part of their risk-based supervision and will communicate with firms identified as active in this market. They will be required to review their income withdrawal arrangements and report back to us.

ATEB view:

This simply highlights the need to have robust systems in place to monitor this type of business.

Action required by you:

Double check that your Systems and Controls are adequate in this area.

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7. Compensation limits to stay

The FSA has reviewed the limits for payouts by the FSCS and FOS and is not inclined to raise the limits at the moment. It has found that most claims are well below the current maximum limits anyway and that there is no evidence of any detriment to the consumer. Also, the FSCS limits are already higher than in other EU member states.

However, the good news is that the FSA has recognised that there are some strong views in the industry about the operation of the schemes, and is consulting on some specific issues in CP 05/15 (FSA web address below). Issues being discussed are:

- Whether to raise the £100k FOS limit to £200k
- Whether there should be separate limits for distress and inconvenience
- Small business eligibility limits
- Future limits reviews

Time limit for responses to the CP is 31 March 2006.

ATEB view:

The fact that the majority of claims come in below the current limits seems a weak reason for restricting the compensation of the minority larger claims. That being said, if the limits were raised, all regulated firms would pay indirectly through fees. If you have strong views, reply to the CP and influence the policy makers.

Action required by you:

None, for information only

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8. FOS accepts investment performance claim

The rules list 17 circumstances in which the FOS can dismiss claims without considering their merits. One of these is investment performance. However, the FOS accepted a claim and will fully investigate it, despite it seemingly being based on poor performance.

The claimant went to the FOS because he had lost a significant amount of money in an unnamed investment and claimed that he had been advised that it would not fall below the amount originally invested. The firm told the claimant that as it concerned investment performance and not advice, it was not a matter that the FOS would deal with.

This riled the FOS, which said that it is for it, and not firms, to decide whether a case can be dismissed. It accepted the case on the basis that the complaint was about investment advice and not performance because it was only when the investment had failed to perform that the claimant realised he had been misled.

ATEB view:

The basis of the FOS case seem spurious and one wonders if the firm had aggravated the situation by attempting to second guess the FOS stance. FOS were clearly determined to get this one through because of the firm's attitude.

Action required by you:

This highlights the need for firms to follow a disciplined and fair process with clients at all times. It is also important for a firm to be able to distinguish between a complaint about fund performance and a complaint about investment advice.

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9. FOS finds against onerous early repayment charges

There is a trend in the FSA and FOS that show they are determined to stamp down on unclear and onerous contract terms. It feeds back to the whole "Treating Customers Fairly" theme and is a key pillar of the FSA objectives.

In a case of a commercial fixed rate mortgage, the claimant had decided to remortgage to another bank. He was advised, by his lender, of a large early redemption penalty. He claimed he had no knowledge of the charge and it had not been explained to him when he took out the mortgage (This was pre KFI). The bank claimed that it was set out in its literature and had been explained to the claimant when he applied for the loan.

The FOS found that the charge was an 'onerous term' and could only be enforced if it had been fairly and reasonably brought to his attention before he entered the contract. FOS upheld the claim on the basis that details of the charge were tucked away in the small print of the mortgage agreement and had not been given any prominence. It had also not been mentioned in any other paperwork. FOS did not accept that the charge had been explained to the claimant. It ordered the bank not to enforce the charge and to pay £300 compensation for stress and inconvenience.

ATEB view:

The layout and language of product literature is under the FSA microscope. Firms should bear this judgement in mind when reviewing any product terms. As adviser you have a duty to the client to point these issues out. Good record keeping of client meetings will prove essential for firms. In addition, when designing suitability letters, you should not omit warnings on the assumption that they are covered in the KFI. An explicit warning in a personal letter to the client should give a stronger defence.

Action required by you:

Ensure that you record key disadvantages and consequences clearly. As far as FOS is concerned, if it's not written down, it didn't happen.

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10. FSA issues results of self-certification review

The FSA carried out desk based reviews, visits to firms and mystery shopping. It found some

instances of overstating client's income, although it was not widespread or systemic. It is encouraging improvements in firm's affordability checks, investigation of the client's need and circumstances and record keeping of the advice given. The FSA wants firms to keep better records of why a self-certification product was recommended and why the product was deemed to be the most appropriate for the client.

It is placing a lot of focus on the need to demonstrate affordability. ***In 47% of cases, the adviser had not adequately assessed affordability.*** There was a clear lack of record keeping of the reason why the client could not verify their income, or why accounts were not available for self-employed clients.

It is viewed as good practice to check bank account statements and old pay slips. The FSA also likes to see income and expenditure checklists used and some evidence that the adviser has considered whether the declared income is plausible for the profession.

ATEB view:

Some clients are becoming wise to the availability of self-certification products and you should not leave yourself open to criticism. ATEB agree that firms need to be robust in their record keeping, particularly in relation to reasons for self-certification and evidence of income and retaining sufficient income and expenditure details to show affordability. Without this, you cannot evidence a suitable sale and are leaving yourself open to FSA action and FOS scrutiny.

Action required by you:

Take these factors into account when carrying out sample file checks and staff training. If necessary, review your procedures. ATEB can advise on an individual firm basis.

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11. Double-whammy for Payment Protection Insurance (PPI) sector

The OFT has announced that it will start investigating the PPI sector in early 2006 following a 'super-complaint' from Citizens Advice. It will look at the size of the market, the complexity of the product, consumer understanding and how the products are sold. It is concerned with lack of transparency and apparent difficulties in access to alternative providers, high pricing and high profit margins. The full scope of the review will be announced once the Competition Commission has completed its review of store cards and associated PPI.

FSA findings issued

This is a double-whammy for the PPI sector, as the FSA announced the results of its thematic work into the sector in November 2005. It has put the industry on notice to clean up its selling practices and compliance as a result of its mystery shopping exercise. It is particularly concerned about poor disclosure, consumers not being eligible for claims and poor consumer understanding of the terms of the products, **most notably with single premium business.** It has issued a factsheet for PPI brokers and Dear CEO letter to the insurers. The FSA will be carrying out follow up work later in 2006 to assess improvements. The Fact sheet can be found at: http://www.fsa.gov.uk/Pages/Doing/small_firms/insurance/library/index.shtml

ATEB view:

The current fallout is damaging the public perception of what is a very useful product. The outcome of the OFT investigation could mean more action or rule changes from the FSA. Make sure you are on top of its current guidance via its factsheets (see above).

Action required by you:

For PPI brokers, review your selling practices and systems and controls and use this as an opportunity for a training review.

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12. FSA keeps 600 rogue firms out of the industry

The FSA has announced the success of a robust authorisations process which claims to have kept 600 'rogue' mortgage and GI firms out of the industry since the start of regulation.

ATEB view:

This is good news for all in the industry as well as consumers. But it's no good shouting "referee" from the sidelines on this one; the FSA has to know about the rogues to do anything about them.

Action required by you:

We would therefore encourage firms to whistle blow if you observe bad practice, as follows : <http://www.fsa.gov.uk/Pages/Doing/Contact/Whistle/index.shtml>

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13. Another review of the Mortgage and GI regimes

The FSA is to conduct a review of the progress of the M&GI regimes. It will be using consumer research, regulatory returns statistics, market and economic data mystery shopping, particularly in relation to disclosure and selling practices. The mortgage firms review will report first in Summer 2006, with the findings of the general insurance review being planned for the end of this year.

ATEB view:

We should all be on our toes by now for mystery shopping and short notice visits.

Action required by you:

Now might be a good time to review and update procedures and staff training.

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14. FSA investigates PII

The FSA has been looking at whether there is any evidence of firms misleading the FSA on their PII cover, i.e. are they self-certifying their cover, only to cancel the policy thereafter or allowing them to lapse. The review found the submissions were accurate, and only 5 out of 2800 firm's had a case to answer, and these issues were resolved.

ATEB view:

This is excellent news and shows that the FSA's motives can sometimes be misjudged!

Action required by you:

None, for information only

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15. FSA investigates complaints handling in small investment firms

Having picked up discrepancies in the number of complaints recorded by IFAs and those submitted by product providers, the FSA investigated a sample of 51 firms to find out if the brokers are 'fobbing off' client complaints. Fortunately, the FSA found no evidence that this was happening and the differences in numbers were accounted for.

However, they did find a whopping 39 rule breaches in relation to the process of complaints handling. This included missing the timescales for replies laid down in the rules, failing to reply at all, not providing a complaints leaflet and failing to provide the FOS details. Quite worryingly, there were also found to be some quite underhand tactics being used to get customers to withdraw their complaints or making it difficult for them to proceed.

Further details and the FSA notes on good practice can be found on their website at http://www.fsa.gov.uk/Pages/Doing/small_firms/advisers/guides/complaints_handling.shtml

ATEB view:

This is particularly worrying and some of the tactics used are indefensible. The consumer groups must be daggers drawn. The complaints rules are not onerous and can be followed with a few simple procedures. Don't be tempted to stray off the beaten track or let sentiment get in the way of complaint handling. Make sure you handle it independently and most complaints can be resolved quickly. If a complaint reaches an impasse, ATEB can advise on the way forward. (Quick Plug) There is always the ATEB complaints handling service to fall back on.

Action required by you:

Review the FSA practice note and use it as a training aid.

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16. Mortgage KFIs – FSA Feedback following visit

On a recent client visit, the FSA raised a couple of minor issues about the KFI format:

- Do not add your firm's address at the top of the KFI, as this has the effect of lengthening the document. (Also the address appears in the Contact Details section anyway).
- In the fee disclosure section, ensure that the total fee to both the broker and packager are included. If you would prefer to disclose the amount paid to each individual party you can do so, although there is only a requirement to include the *total* figure. Also make it clear that the payment to the broker firm comes from the lender and not from the packager.

Some lenders are still refusing to re-issue a KFI to the broker where there has been a material change to a mortgage proposal and the application has already been submitted. The lender is relying on some FSA guidance rather than a specific rule. We suggest that if this situation exists, firms should record on the client file that they have requested a new KFI and that the lender has refused. We still believe that it is best practice to re-issue the KFI post application if

there has been a material change, for example, a scheme changes.

ATEB view:

The finer detail is important.

Action required by you:

Check the way you input details into your sourcing system and ensure that the KFI produced is in line with these points.

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17. IDD – FSA Feedback following visit

This feedback was following a visit to a mortgage firm, but the principles can be applied unilaterally.

In a nutshell, the FSA inspectors explained that they did not like a combined insurance and mortgage IDD being issued for a non regulated mortgage contract such as “Buy to Let”. Although, the broker anticipated advising buildings & contents and other protection areas, it felt that the mortgage element was misleading. The only solution would be to issue a single IDD for insurance. However, the broker, wanting to keep things simple, has up until now relied on the one combined document.

This feedback has wider implications and could in theory make the provision of IDD’s fairly confusing for firms. We are starting to worry that the process could become very unwieldy and are afraid it will lead to mistakes by firms leaving them open to criticism.

We await feedback from the FSA and will report back.

The FSA inspectors also picked up that the CIDD disclosed that an additional fee might be payable if the broker also packaged the mortgage. Obviously this would not apply to all clients. The FSA said that there should be a clear indication of what fees *will actually* be payable and that to say a fee *may* apply was not accurate enough. They suggested a solution of a separate IDD for these clients. However, we believe that this same issue would apply – the IDD needs to be provided at the front end of the process and it is often not known at that stage whether the broker will need to package the case. Therefore, the adviser would not know initially whether the separate IDD would be needed. A bit confusing! We have asked the FSA to clarify this point.

ATEB view:

Unfortunately the views of the FSA Policy team often don’t filter down to firm level and the rules cannot account for all practicalities. We will share the FSA’s views when we receive them.

Action required by you:

Check your process for non-regulated business and make sure that you don’t hand out a mortgage IDD to these clients (where it is possible to ascertain at an early stage that it is a “buy to let” case). If you have a combined insurance and mortgage IDD then we suggest that you continue to use it with these clients for insurance purposes, but we will confirm the FSA’s position on this as soon as we hear from them. Ensure that your fees disclosure is clear and accurate in your CIDD.

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18. Mortgages & Client Money

When is money received and held by mortgage intermediaries considered to be client money?

Client money would include, for example, money received and held to pay a valuation or survey fee to a valuer or surveyor. However, if an intermediary simply receives a cheque made payable to a third party valuer or surveyor that will not be client money.

Money that is due and payable to an intermediary - for example, an administration or brokerage fee - is not client money.

A mortgage intermediary that wants to hold client money must:

- have permission from the FSA to hold client money as part of its 'Part IV Permission' as set out in AUTH 3.14;
- meet the higher capital requirements set out in the Prudential Sourcebook (PRU) and
- hold the higher PII excess required by PRU

However, there are no separate client money segregation rules for mortgage business.

ATEB view:

An area that is often overlooked and we suspect that many firms will be holding client money not knowing that they are breaching the rules.

Action required by you:

If this article affects you, then, speak to ATEB and we will guide you on the process.

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19. Equity Release “Grandfathering” – Be careful

The Temptation

While new advisers need to obtain a qualification, FSA rules broadly state that those who were deemed competent under the MCCB rules to sell these products can take advantage of a ‘grandfathering’ arrangement.

The Problem

For an existing adviser to demonstrate competence to sell lifetime mortgages under the FSA regime, this would require several things: evidence of experience of selling the product types for a period prior to the introduction of FSA regulation that the volume of sales now is comparable and that sales under the MCCB regime were of an acceptable quality.

The Solution

Having a detailed process and individuals holding the new tailored qualification will not only demonstrate to the FSA that the rule requirement is being met in full, but will also be a powerful tool in building customer confidence.

ATEB view:

The danger is that firms will leave themselves exposed to claims for inadequate or misleading advice if they do not set high standards.

Action required by you:

Suggested Exams:

Chartered Institute of Insurance - “Lifetime mortgage activities” (CF7)
The Institute of Financial Services - “Certificate in Lifetime Mortgages” (CeLM)

ATEB have established a detailed process for advising in this area, which we will discuss with firms on our rounds.

Don’t forget to inform your PI insurers if this is a new market for your firm, failure to obtain cover is a notifiable offence.

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20. CIDD & Lifetime Mortgages – Changes

In a nutshell, the FSA have now decided in their wisdom that it will be confusing to customers to have both standard mortgages and lifetime mortgages on the same IDD (which is not what their rules state, by the way!)

A firm wanting to issue a combined initial disclosure document (CIDD) will need to have two versions, one for standard mortgages and one for lifetime mortgages. It must then give out the CIDD appropriate to the service, which it expects to provide to the customer concerned.

ATEB view:

If clients can understand the Menu then surely they can understand a CIDD that contains information on standard and lifetime mortgages!

Its simply extra hassle for firms, which will lead to mistakes.

Action required by you:

None, we will update your CIDDs on our travels. More information available at:

http://www.fsa.gov.uk/pages/Doing/small_firms/mortgage/faqs/mcob.shtml#lifetime

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21. Financial Promotions & Web Links

The financial promotions rules, as we all know, are rarely black and white and are open to a great deal of interpretation as to what is meant by clear, fair, misleading, prominent, etc.

The area of web sites and hypertext links (where two different websites can be connected by clicking on a link) could be particularly problematic as we basically need to follow the same

rules that are laid down for paper based promotions, but technology moves quicker than the regulations! The FSA gives some guidance on the use of hypertext links:

1) A hypertext link may or may not be a [financial promotion](#) in itself. This will depend on the nature of the hypertext link and the context in which it is placed. However, taken in isolation, a hypertext link, which is purely the name or logo of the destination will not be a [financial promotion](#) in its own right. More sophisticated links, such as banners or changeable text, may be [financial promotions](#).

(2) The material on a host website which contains the hypertext link may in itself be a [financial promotion](#). For example, it may contain text which seeks to encourage readers to activate the link with a view to [engaging in investment activity](#).

(3) The destination website (that is, the one that is reached through the hypertext link) may or may not be a [financial promotion](#). This will depend upon the content of that website.

So, the key points are:

- Keep it simple! The more generic and simple the hypertext links, then generally speaking, the fewer the compliance hurdles to jump over. Preferably keep the links as name only. This will also help avoid responsibility for the content of other sites you are linking to. If you are seen to promote another website or encourage the reader to take up the services of another firm, it can be construed as a promotion on behalf of that other firm.
- Make sure that risk warnings are visible on the screen without the need for the reader to scroll horizontally or vertically to find the key compliance or legal information. **You could consider preventing access beyond the home page unless the reader has accepted your terms and conditions.** This would be best practice.
- Use warnings that hyperlinks are taking the reader to another website.

ATEB view:

The simpler the website, then the easier it is to ensure compliance! However, everyone wants to have a unique website and to use it to capture new business. This is a problematic and ever-changing area of compliance, with regular new guidance coming from the FSA. It can be difficult to see the wood for the trees. ATEB can provide guidance on website content at an early stage of development to help prevent costly design mistakes and to keep you on the right track with the FSA. Don't forget, the FSA has a whole team of staff dedicated to picking up non-compliant sites!

Action required by you:

If you have a website already in place, then ensure you keep it under review, and consider the issues discussed above. If you are in design stage, think about the compliance issues early to save you a lot of time, and potentially money, later on.

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22. Time Bars

The FOS reports that consumers are continuing to find it difficult to understand the time bar rules and how they apply to their claim, which is not surprising. A clear explanation in the final letter of response to the client can help minimise the probability of a complaint to FOS. If the final letter is set out well, then it makes it easier for the FOS to decide whether the firm is acting correctly in dismissing the case. If it is not immediately clear to FOS that the case is time barred, then it will carry out investigations with the firm and client, at which time the case will become chargeable and a case fee will be raised with the firm. Therefore, it is in your interests to make sure you set out a clear case to the client and include any supporting documentation. It will save you time and money in the long run.

ATEB view:

If you intend to dismiss a complaint and consider it time barred, then it is important that you do it in the right way, understand the rules and understand the exceptions to the rules.

Action required by you:

Read the article in the Ombudsman News issue number 50 (www.financial-ombudsman.org.uk)

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23. FOS Fees

The Ombudsman has published its plan and budget for 2006/7. It particularly looks at:

- The extension of its remit to cover consumer credit complaints
- A review of how it shares information with firms, consumer groups and industry groups
- How its fees are apportioned amongst firms

The FOS intends to keep the same case fees, but the annual levy will be adjusted. The FSA will consult on the fee levy in due course, but the FOS has given estimates on the increases. The changes are mixed, depending on the firm's fee block. The levy for small mortgage or

insurance intermediaries is expected to remain unchanged at £50. The levy on a 3 partner firm of IFAs will go from £75 to £105. The levy on an investment adviser who holds client money and has 50 ARs could go from £4,500 to £7,500.

The Ombudsman is inviting views by 17th February, so if you feel strongly, now is your chance to be heard.

ATEB view:

A 10% increase in levy does not seem to be too over the top considering the level of increased claims, and the life offices are bearing the brunt of the fee increases.

Action required by you:

Check out the plan and budget at:

http://www.financial-ombudsman.org.uk/news/updates/corporate_plan_06-07_budget.htm

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24. Markets in Financial Instruments Directive

The FSA recently issued a notice to firms on how to plan for MiFID which gives a good background to the Directive. Basically, it is the replacement for the Investment Services Directive. It is part of the European Union's Financial Services Action Plan (FSAP) designed to create **a single market in financial services**. It will impact on most regulated firms in the UK. The Directive requires implementation across Europe, and there are still major issues to be agreed at European level. During 2006, the FSA will consult on the final requirements and the cost-benefit analysis, in the usual way. However, it is already clear that several areas of the Handbook will be heavily impacted and the FSA is keen to give the industry a 'heads-up' to the potential implications. The FSA is also consulting with the various trade associations.

The impact on many smaller firms not holding client money will be limited. However, the implementation will require a few changes to various Sourcebooks, including the conduct of business rules. This will include changes to:

- Client classification (different definitions of customer type)
- Information about the firm (what data must be given and when)
- Customer agreements (changes to terms of business)
- Fact finding and suitability (changes to KYC requirements)
- Execution only (restrictions on where this can apply)
- Financial promotions (new definitions of clear, fair and not misleading)
- Record keeping (potential changes to requirements across the board)

This list is not exhaustive and the extent of changes will depend on the final European rules and the consultation process.

ATEB view:

There does not seem to be anything to be alarmed about at the moment. We will know more when the Consultation Papers start coming through from the FSA, with the first expected in March 2006. You are likely to need to make some changes to systems and controls and processes. We will keep you informed.

Action required by you:

None at present.

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25. Treating Customers Fairly (TCF)

TCF has been high on the FSA's agenda for some time and all firms should be considering what it means for them in their business. As the concept of TCF flows from the FSA's high level Principles, there is not one rule that covers this issue.

Firms need an action plan for reviewing their business processes and ensuring that they have identified what their TCF strategy is and how they can demonstrate that it is effective in their business processes.

It is easy to see how TCF can be applied to your advice and sales process and complaints procedure, but you need to look to other areas of your business such as staff training, communication with customers, documentation and literature, record keeping and disaster recovery to ensure that your processes in these areas are compatible with treating customers fairly.

ATEB view:

You should look at your TCF strategy and give it some serious consideration as it forms a key part of the FSA's plan. It should not mean complex processes or change; it may only be a case of documenting what you already do!

Action required by you:

ATEB can provide guidance on how to document your TCF processes and has already developed action plans and templates, which we will be discussing with you on our rounds.

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26. Mortgage issues uncovered on recent check

As the FSA continues on its track to keep areas of disclosure, sub-prime mortgages and self-certification under review, it is worth giving an update on issues from recent file checks

- Interest only mortgages. This could be a potential risk area with more clients opting for interest only to keep initial payments down, particularly in the sub-prime market. Make sure you have the reasons for this recommendation well documented, including highlighting the risks, e.g. the need for repayment of the loan, the need to review at set intervals, the reduced number of years available with which to repay via an investment or capital and interest. The FSA is concerned that this might be the next mis-selling scandal.
- Debt consolidation. Again, it is about record keeping. Ensure that you record clearly the reasons for the recommendation, showing how the client will be better off. Highlight the risk warnings, such as unsecured to secured debt, the extended payment term and higher level of interest paid over the term. The FSA expects an approach to be made to the existing creditor to find out if better arrangements are available, including with the existing mortgage lender.
- Adding fees. This is most common in sub-prime cases, where there is no cash available. Explain why this is recommended, or why the customer insists that they would prefer to do this. Include warnings about the added long-term costs.
- Early repayment charges. There should be clear justification for re-mortgaging, taking into account all fees including early repayment charges. If these are substantial and being added to the new loan, you must document why it is in the best interests of the client to proceed to re-mortgage and why it was not possible to wait until the end of any overhang period.
- Sub-prime market. You should document clearly the existing debt and missed payments, etc, as far as possible from what is disclosed. Ensure that you can show that the high street lenders were considered first and ensure that the case is reviewed in the future to get the client back onto mainstream rates. Include a statement to this effect in the suitability letter.
- Jargon. Ensure that you explain all industry terms and keep it as simple as possible. In a complaint situation, the client could claim that they did not understand the advice because it was too complicated for them.
- Self certification. Always make a judgement call on whether the disclosed income 'looks right' for the occupation. If it looks inflated, challenge the client and consider if you want to proceed. Always ask the client to prove their income wherever possible, asking for sight of accounts, bank statements etc. If the client is employed, there must be a strong reason why they cannot produce salary slips or P60s. Document why the client cannot produce the data, which you have requested. It would be prudent to include some statements in the suitability letter about the necessity to disclose all data and the reasons for self-certification. Also explain that a lower rate of interest may have been obtainable if the client had proved their income and that this had been explained to them.

ATEB view:

As always, it is all down to good record keeping and data recording. Make records of conversations and meetings with clients and reiterate the reasons for the recommendation and key product risks in the suitability letter.

Action required by you:

Review your record keeping and client file structure. Ask yourself if the reason for the recommendation is clear and if you can prove that the client was made aware of all key product features and risks.

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27. Money Laundering – Verification of Identity

We have enclosed a bulletin with this newsletter, which is designed purely as a reminder of the rules surrounding production of intermediary certificates. Although the risk of money laundering in a small to medium sized firm is arguably low, the authorities have asked firms to be on a raised alert mainly due to the increased threat of terrorism.

ATEB view:

None, for information only

Action required by you:

Please read and discuss with ATEB if you are unsure

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28. CII online tool and use of designatory letters

The Chartered Insurance Institute's CPD scheme is not obligatory, but it is presented as a condition of membership for all qualified members of the CII, the Personal Finance Society (PFS) and the Society of Mortgage Professionals. ***Non-compliance with the CPD requirements will affect a member's rights to use a designatory or Chartered title which they have been granted.***

To coincide with this development the CII have launched their online tool, which has been designed to provide members with the support to effectively plan their programme of development throughout your CPD year. There is also support available to help members through the process and case studies, which can be used as reference guides.

Duplication?

The facility prescribes the way in which CPD should be recorded. Some firms will see this as duplication. The CII accept that firms can continue to run their own systems providing their records cover the following key areas:

- a) Development need
- b) Planned/completed activity
- c) Explanation for activity and objective
- d) Confirmation on whether objective met and, if not, why not
- e) Credits allocated to activity from the CII's authorised list

The last point will, of course, be new to all schemes. Therefore, if you wish to continue using your designatory letters you will need to be aware of the credit system and that the minimum number of credits in a 12 month period is 100 credits.

ATEB view:

Remember, this adherence to CII policy only relates to your rights to continue using the designatory letters. Certainly with less good quality CPD available today, it may help firms meet requirements, however it's a heavy-handed approach, which I suspect will be met with some resistance in certain quarters.

Action required by you:

Speak to ATEB on our rounds and we will discuss the pros and cons of using the current suggested CPD format or moving to the on line CII set up.

Further information is available at:

Telephone: 020 8989 8464. Fax: 020 8530 3052. E-mail customer.serv@cii.co.uk

www.cii.co.uk/images/cpd_guidancenotes.pdf

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29. Do you require an Auditor?

We have raised this issue on more than one occasion, but there is still some confusion.

So the attached bulletin with this newsletter contains (hopefully) a simple guide.

There are two (2) types of independent financial audit that may apply, namely:

1. Financial audit of business accounts
2. FSA Client Assets Sourcebook (CASS) specific audit of client money trust accounts (for those of you who hold and handle client money).

ATEB view:

None, for information only

Action required by you:

Please read the attached bulletin and discuss with ATEB if you are unsure.

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30. Supervisor Skills Workshop

Overview:

Setting field sales process standards	SMARTA development plans
Consistent and accurate assessment skills	Giving consistent feedback
Using an objective observation aid	Structuring one to ones
T&C Knowledge	Monitoring performance and training needs analysis
Theory of coaching and training	

Who should attend?

- Qualified supervisors wishing to top up existing supervisory knowledge
- Newly appointed supervisors
- Supervisors who had previously been classified as ‘self supervising’ (under PIA)

Timings:

9.30am until 4.30 pm on each day

Course details:

<u>Investment Firms (IFAs)</u>	<u>General Insurance Brokers</u>	<u>Mortgage Firms</u>
Newcastle Upon Tyne	York	Newcastle Upon Tyne
Aberdeen	Aberdeen	

Dates:

Before we announce dates can you first respond as below identifying your interest in attendance and dates that will **not** be possible, this way we can maximise numbers. Please aim to respond within 7 days of this newsletter if possible, following your response we will confirm definite dates.

Cost: £175 plus vat per day per person

ATEB view:

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 by email or telephone or by completing the [on-line booking form](#).

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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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