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# Taking the stress out of compliance

## ATEB Consulting Newsletter 53 - June 2009

### Mortgage Advisers

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#### Ladies & Gentlemen

*Please find enclosed the latest compliance and industry news.*

*As usual, sit 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:

	1	2	3	4	5	6	7	8	9	10	11	12	13
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advisers & Trainees	✓	✓	✓	✓	✓				✓	✓	✓	✓	
T&C Supervisor	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	
Back Office	✓	✓	✓	✓				✓					

### 1. FSA TCF Assessments

For most of you reading this newsletter, the FSA TCF Assessments will take place in September (covering the North East, Cumbria and Scotland). Hopefully you will have attended the FSA road shows and some of you also participated in ATEB's TCF workshops.

The key messages are:

1. Understand the 6 consumer outcomes and be able to discuss and demonstrate how they relate to your day-to-day activities. Ensure that you understand what an 'outcome' is – processes and procedures are not outcomes, but a means of achieving an outcome.

2. Questioning in the assessments will concentrate on consumer outcome 1 – Culture.

3. Embedded in outcome 1 are 5 key drivers, namely:

3.1 Leadership

TCF is a top-down initiative; business principals must buy into the concept and drive implementation

3.2 Business Decisions & Strategy

You should be able to demonstrate that your strategic decisions have been influenced by TCF thinking

3.3 Controls

Be able to talk confidently about the controls you have in place to maximise TCF. Examples would be file checking, client questionnaires, defined T&C programmes, etc

3.4 Recruitment & T&C

A defined recruitment and T&C process is essential. Know what your procedures are – application form, references (what do you ask for), vetting (checking data supplied by the applicant against documentary proof e.g. credit card balances), induction programme, how advisers attain competence, how advisers maintain competence, etc

3.5 Reward & Recognition

What is your remuneration structure? Commission only – why? Is good compliance rewarded?

4. Documentation required by the FSA pre-assessment:

4.1 TCF Gap Analysis – no prescribed format, but should show TCF gaps you have identified, which ones have been addressed, which ones have not been addressed.

4.2 Compliance audit report. Be conversant with it and be able to demonstrate that deficiencies identified have been addressed.

4.3 Disclosure Documentation. Remember that by 31 August, you must have implemented the new Key Facts about our Services & Costs document.

4.4 Structure Chart. This should show reporting lines and roles & responsibilities. Each role should nevertheless be supported by a job description.

4.5 Website address. This means that the FSA are likely to check your website before the assessment. Has it been vetted, signed off and logged in your financial promotions log?

4.6 New Business Register.

5. Other documentation that is essential to demonstrate TCF:

5.1 Management Information (MI) / Key Performance Indicators (KPI). MI is any form of data that can be used by managers / principals to make important decisions, including reading, discussions, assessments, etc. For example information from the FSA pensions switching review, or from compliance consultants meetings or from one-2-one meetings with staff. KPI tend to be statistical and measured against a benchmark e.g. persistency.

5.2 File checking results and follow through – Completing the cycle is essential.

5.3 T&C documentation – one-2-ones, accompanied visits, development plans, CPD records, etc

### **ATEB Preparation Days**

ATEB is offering assistance to help firms prepare for TCF assessments.

Half day preparation involves a thorough role play and coaching session that will identify potential issues. You will also be provided with any necessary templates that you can use e.g. TCF gap analysis.

Full day preparation, will be as for the half day, but will also include assistance with hands-on implementation e.g. TCF gap analysis.

### Costs

½ Day (3.5 hours)	- £300 ATEB Clients; £375 non-ATEB clients
Full Day (6.5 hours)	- £550 ATEB Clients; £700 non-ATEB clients

#### ATEB view:

You don't see the FSA that often, so this is your chance to keep them away from your door for the foreseeable future.

#### Action required by you:

To achieve this, prepare thoroughly!

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## 2. TCF Client Surveys / Questionnaires

Under the Leadership driver (Consumer Outcome 1, see previous article), the FSA highlights client questionnaires as one method of ascertaining feedback from clients about the quality of your service.

There are some important points to consider when undertaking such surveys.

1. Don't focus purely on client satisfaction. The client might think you have the manners of Tim Henman, the looks of Michelle Pfeiffer and are funnier than Eric Morecambe; but do they understand what the heck you've set up for them?

Ensure that your questionnaires obtain information about the clarity of information provided (written and verbal) and the level of understanding the client has.

2. Are your response rates low? If so ask yourself why and consider changing the process. Do you send out with masses of other paperwork, hence making the questionnaire easy to ignore? Are there incentives for returning e.g. charitable gift for each questionnaire returned? Would you be better sending out en masse or monthly? Would a mixture of postal and telephone surveys increase feedback?

There is no right or wrong answer, but you should be aiming to maximise the benefits of the surveys by maximising the number of returns.

3. Are the results always 'excellent'? If so, you're probably not getting a good cross-section – there will always be a few clients who will want things done better and there should be some genuine comments that will help you to improve your processes and service.

4. Who evaluates the responses? Ideally, this should be done by a third party so that full objectivity is achieved.

#### ATEB view:

Surveys that focus purely on satisfaction are of little use. You need to gather information that helps you evaluate the quality of your service.

#### Action required by you:

To achieve this, prepare thoroughly!

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## 3. TCF – Follow up Visits after Assessments

As you know, 1 in 4 firms will receive follow up visits after the initial (telephone or surgery based) assessments.

For your information, file checks will be carried out by the FSA inspectors and there is a recurring theme arising from these checks – 'inadequate customer information'.

Now, for those of you who are avid and long standing readers of our immensely popular newsletter, the FSA findings will come as no surprise. At least annually, we highlight the generally very mediocre standard of fact finding that we observe. Please don't get us wrong here, but most of you have good quality fact find documents, some of which have been lovingly designed and have cost a quid or two to print. So the obvious question is, I'm afraid, why the

heck don't you use them properly?

In all seriousness, we have seen the quality of fact finding decrease over the past few years. It is the one area we would suggest where the tied sector out-performs the IFA sector. Yes, this is because tied advisers will usually be subject to more stringent controls and yes, collecting a great deal of information does not necessarily equate to good quality advice. But it's a damn good start!

It is also a regulatory requirement!

Some tips:

1. Use an agenda for all client meetings.
2. Always undertake a full fact find for new clients.
3. Take notes from all meetings (even if you are completing a fact find) – formalise the format of these meetings notes.
4. At subsequent client meetings, use a fact find update form to check if any client details have changed – make sure you cover personal circumstances, objectives, risk profile, and affordability.
5. Periodically, re-complete a full fact find. There is no hard or fast rule for how often you need to do this; it will depend on client circumstances.
6. And remember, every sale should be supported by a fact find that is a 'snapshot in the client's financial history' – overwriting fact finds is a definite no, no.

**ATEB view:**

You can't say you haven't been warned!

**Action required by you:**

If your file checks are identifying poor standards, do something about it, before it's too late.

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#### 4. FSA Fact Sheet

Our recent newsletters have pointed you towards various FSA fact sheets, covering such diverse and interesting topics as 'Start thinking about your money', 'Do your suitability reports tell the right story' and 'Build your own fact find using only matchsticks and sticky back plastic'.

The full list can be found at <http://www.fsa.gov.uk/smallfirms/resources/factsheets/index.shtml>

and in all truth, there is some very useful information contained in these fact sheets (although for optimising matchsticks and sticky back plastic, we recommend Blue Peter archives).

For principals, reading these fact sheets provides good quality, compliance related CPD activity.

The most recent publication in this list, and the last apparently in the 'Improving the quality of your advice process' series, concerns post sale activity. It can be found at

[http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/post\\_sale.pdf](http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/post_sale.pdf)

It deals with the consideration that firms should give to undertaking customer reviews.

**ATEB view:**

As above.

**Action required by you:**

At 2 pages long, it is definitely worth a read and ties in with TCF and RDR requirements.

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#### 5. Critical Illness Cover – Important CPD

There are some new requirements, covered by the rules that govern insurance selling (ICOBS 6.4.2), that state that during a sales dialogue with a consumer on a main characteristic of a policy, the firm must also provide oral information on all the policy's main characteristics. In

doing so, the firm must ensure that the oral information is sufficient to enable the consumer to make an informed decision, without overloading them or obscuring other parts of the information.

The FSA has conducted research and produced this report  
<http://www.fsa.gov.uk/pubs/consumer-research/crpr77.pdf>

Their results demonstrate a lack of understanding by consumers and identify some areas for firms to focus on.

Although this focuses mainly on oral disclosure i.e. what should be explained to the client, it naturally follows that this information should also be disclosed in suitability letters.

Repeated below from the FSA report, are some of the key implications:

- It is not sufficiently clear to consumers whether they have been provided with information only or a personal recommendation
- The quality of explanation of CIC does not enable consumers to understand the key features of the product, for example, 68% of policyholders believed that they can claim for any illness that means they cannot work
- The explanation of the exclusions and limitations of the product has not been sufficient to enable the consumer to understand under which circumstances their policy is valid
- Consumers have not appreciated from the sales discussion the importance of disclosing material facts, both when entering the contract and as and when circumstances change.

This research findings show that consumers place a great deal of reliance and trust in what they are told by advisors and they often do not have sufficient prior knowledge of the product nor the confidence to ask questions for clarification. The research findings also indicate that reliance cannot be placed on consumers gaining a fuller understanding of the product from the policy documentation, as only 26% read the documentation fully.

**ATEB view:**

The volume of critical illness policies have dropped off dramatically over the past few years as premiums have soared. However, they form a very important part of protection planning and should therefore be integral to your holistic financial planning. Once the need for CIC has been identified and the client has agreed to proceed, then you have a duty to ensure that the client fully understands the product recommended.

**Action required by you:**

This is important CPD for anyone writing critical illness cover.

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## 6. PI Insurance – Compensation Arrangements & Research

The recent collapse of various financial institutions has highlighted three important points.

1. The fact that most PI policies contain a clause similar to this:

“The insurer shall not indemnify the insured in respect of any loss arising out of any claim by or against it directly or indirectly arising out of the financial failure of any insurer unless the loss arises directly from a claim for civil liability arising from the insured’s placing of business with that insurer”

2. The need for you to fully research the financial stability of product providers and any counterparty underwriting the policy. We fully appreciate that very few of the rating agencies anticipated the problems we have seen recently, but you should make sure that you undertake full due diligence.

3. The need for you to fully understand the compensation arrangements available to clients. Are they covered by the FSCS? What is the level of the FSCS cover? Are they covered by a third party compensation arrangement e.g. offshore?

**ATEB view:**

It’s important to know that professional indemnity insurance is primarily a protection against negligence; it is not designed to protect against such things as institutional failure or market crashes.

**Action required by you:**

Firstly, understand the implications. Secondly, be careful when you (and your advisers) choose providers. Thirdly, if unsure, check the compensation arrangements prior to making recommendations. Lastly, consider if your wider insurance cover; for example, do you need/have directors and officers insurance?

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## 7. Complaints and Compensation arrangements for smaller firms

Certain kinds of small businesses, including FSA authorised small businesses, are eligible to seek redress through the Financial Ombudsman Scheme (FOS) or claim compensation through the Financial Services Compensation Scheme (FSCS).

Firms which are eligible to seek redress through the FOS include FSA authorised businesses which have a group annual turnover of less than £1 million. This definition will change from November 1st 2009. The new definition of a small business adopts the European Commission's definition of a micro-enterprise. This is an enterprise which employs fewer than ten persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million.

FSCS was set up mainly to assist private individuals, although some smaller businesses are also covered. Larger businesses are generally excluded.

For claims made under an insurance contract, small businesses are protected. A small business under FSA rules is one that has an annual turnover of less than £1m. The same levels of compensation apply whether the claimant is a private individual, small business, or a small company.

Firms often hold the same FSA permission as other FSA authorised firms they do business with. For example, the majority of financial advisers and mortgage brokers also hold the relevant FSA permission to conduct insurance mediation activities (e.g. term assurance), which is often the same permission as that held by their insurance broker who they use to purchase their own commercial insurance policies, such as professional indemnity insurance.

Please note that where a firm making the claim holds the relevant FSA permission to transact the business themselves (and hence the same FSA permission as the firm against which they are making the complaint or from whom they are seeking compensation), the firm making the claim will not normally be eligible to seek redress through the FOS or claim compensation through the FSCS.

Whilst firms may not be eligible to seek redress through the FOS or claim compensation through the FSCS in the above circumstances, firms are still entitled to pursue a claim through the Courts.

### **ATEB view:**

You probably don't know that if you have a dispute with your insurance broker, you may not be eligible to take this to FOS or FSCS.

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

For information only.

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## 8. Financial Ombudsman Service

Frequently Asked Questions put to the Financial Ombudsman regarding Complaints can now be accessed via their website. This information provides "common sense" information regarding the procedures a firm should adopt when dealing with a complaint and the type of information you would be expected to provide. This well documented publication gives you an insight into the types of activity the Ombudsman service cover, recommended procedures your business must have in place and how to deal with your complaints.

### **ATEB view:**

This is an informative guide which can provide a foundation to your own procedures taking into account the areas FOS will look at.

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

We recommend that FOS's small business guide is saved in its PDF format and attached to your Firms Complaints procedure. You may wish to consider implementing some of their recommendations, feel free to discuss this with your local ATEB consultant.

Complaints FAQ:

<http://www.financial-ombudsman.org.uk/publications/ombudsman-news/77/77-about-us.htm>

Also check out the small business guide at:

<http://www.financial-ombudsman.org.uk/publications/pdf/intro-to-the-service.pdf>

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## 9. Equity Release Tips

The FSA is currently examining the standard of advice being given in relation to Equity Release schemes. They have targeted mortgage brokers remotely and requested various pieces of information on sales. Some feedback so far has pointed towards the following:

- Clients should always be given the choice of paying fees up front and this decision should be recorded (as an alternative to having them added to the loan).
- Where the purpose of the loan is for home improvements, it would be good practice to record in the suitability letter that you have asked the client to check with his local council to see if a grant is available.
- It is also good practice to show in the suitability letter the implications if another someone else moves into the property in the future.

### **ATEB view:**

None for information only

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

Ensure that you include the above in your process. You may wish to order some updated guides for Equity Release available at:

[http://www.moneymadeclear.fsa.gov.uk/products/equity\\_release/equity\\_release.html](http://www.moneymadeclear.fsa.gov.uk/products/equity_release/equity_release.html)

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## 10. Lifetime Mortgage Exams

We are still receiving questions around the correct qualifications for advising on lifetime mortgages. The answers are held within article 9 ATEB news on January 2007. The qualifications you need depend upon when you started to advise as well as what you advise on.

### **ATEB view:**

Even if your firm does not have Home Reversion (HR) permissions, please remember to at least consider HR as an alternative to a Lifetime Mortgage (LM) at a generic level. This reflects the fact that those advising on LM's are required under FSA rules to consider whether there are more suitable alternative means of raising the required funding before making a recommendation. Although you should also remember that you cannot advise on SPECIFIC HR products without HR permissions.

Providing that you are comfortable with your understanding of HR plans in a generic sense then we see no immediate need to study for the new qualification, although it would however form good quality CPD for most.

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

More information is available at: [http://www.fssc.org.uk/exam\\_faqs.html](http://www.fssc.org.uk/exam_faqs.html) Then click on FAQ number 27.

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## 11. Mortgages - Affordability

As we are experiencing unusually low interest rates at present, it's worth considering client affordability if rates were to go back up, purely for example, to 6% say.

Although, the KFI shows the cost if interest rates go up, we suggest that practically the firm should satisfy themselves that the client will be able to afford the mortgage if this happens. It's difficult to predict exactly where interest rates will go but we recommend that some practical checks are done here.

This point actually came up during an FSA interview with a mortgage firm.

### **ATEB view:**

None for information only

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

Consider building in a check of the nature described above within your process.

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## 12. Interest-only mortgages and debt consolidation

On our travels we are still finding that this area is not documented well enough. Here are some tips:

1. We suggest all firms carry out a thorough fact-find to establish details of their customers' debts and their payment record and record how good customers are at controlling their spending and paying off their debts. Firms should consider this information before making a recommendation.

2. Before firms recommend an interest-only mortgage, you should ensure that customers:

- think about the consequences of taking out an interest-only mortgage;
- have a repayment strategy in place; and
- understand the need to review their repayment strategy to ensure it will cover their mortgage debt.

We suggest this should all be documented clearly in a suitability letter.

**ATEB view:**

None for information only

**Action required by you:**

The FSA have issued a fact sheet with the above title and it's a 'must read' for all mortgage advisers.

[http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/mortgage\\_interest\\_only.pdf](http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/mortgage_interest_only.pdf)

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### 13. Sale and Rent Back (SRB)

A recent FSA survey of 2,006 adults aged 18 and over interviewed across Great Britain found that:

- only 42% of those surveyed knew that SRB is currently unregulated (meaning that people who currently take part in these schemes do not benefit from the protection afforded by the Financial Ombudsman Service if needed);
- the majority thought they would be entitled to stay in their home for more than five years (whereas the typical contract is six to 12 months); and
- the majority (58%) surveyed thought SRB should be regulated.

**What is sale and rent back?**

Sale and rent back schemes involve individuals selling their home, usually at a discount, and obtaining an agreement to remain in the property for a set period – typically through an assured shorthold tenancy of six to 12 months.

**Applying for permission to conduct sale and rent back**

An interim regulatory regime will commence from 1st July 2009 and the full regime scheduled to start on 30 June 2010.

Current FSA authorised firms will be able to seek permission to undertake SRB transactions even if they have not previously been operating in this market. This is because these firms will already be subject to a full FSA regulatory regime, and so will already be meeting the threshold conditions regarding their business. These firms therefore can apply for an 'Interim Variation of Permission'. Firms will need to pay a non-refundable application fee (£250 for firms currently undertaking other home finance activities, or 50% of the relevant interim authorisation application fee, for firms not currently active in the home finance market).

It's worth noting a different and more thorough approach is taken for firms who are not currently FSA authorised.

**ATEB view:**

This could be seen as a good business opportunity in these current turbulent times, however ensure Due diligence is carried out with the Property Companies you are dealing with prior to recommendations.

**Action required by you:**

If you are considering diversifying your business to sell Sale and Rent Back packages, ensure you apply before the FSA deadlines. Firms must have applied for an 'interim variation of permission' by 1 August 2009.

More information is available at: [http://www.fsa.gov.uk/pages/Doing/How/rent\\_back/index.shtml](http://www.fsa.gov.uk/pages/Doing/How/rent_back/index.shtml)

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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 Huw Reynolds email [info@atebconsulting.co.uk](mailto:info@atebconsulting.co.uk).*

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