




Taking the stress out of compliance



ATEB Consulting Newsletter 55 - December 2009

Investment Firms

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I'm sure you will agree that:

"sage and onion"

"mistletoe and wine"

"ho, ho, ho and compliance"

are all synonymous with the festive season and that you look forward to our Christmas newsletter with the same gusto reserved for Delia's delightful stuffing recipes and Sir Cliff's dulcet tones.

Welcome to the Christmas 2009 edition of our newsletter

Since first launch, we have issued nearly 200 newsletters and bulletins and readership continues to grow. The feedback from readers is that they appreciate the short, sharp nature of the articles and in particular the 'Action Required' box. So, no apologies therefore for leaving the format exactly as it is – as the saying goes, "if it ain't broke, don't fix it!"

Within each article this month, there is a (pretty blatant) Christmas reference – see how many you can spot!

A very Merry Christmas to you all

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	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sales Adviser		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
T&C Supervisor	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
MLRO									✓	✓	✓		✓
Back Office			✓	✓		✓		✓	✓	✓	✓	✓	✓
Mortgage Related (M)				✓				✓	✓	✓	✓		✓

1. FSA Christmas Present – Minimise FSA Fees – Approved Persons as at December 31st

Reminder!

FSA brings good tidings to ye and all your kind.

The FSA uses the number of Approved Persons registered in Control Function 30 as at the 31st December to calculate the following year's fees and levies (due April).

Amendments made to the Register after 31 December will not affect tariff data for 2010/11.

ATEB view:

If you have people 'moving on', submit your forms to the FSA well before December.

If you are recruiting and it is feasible, you may want to delay the appointment.

Action required by you:

To review the number of Approved Persons registered for your firm, please check the FSA Register.

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2. Changes to the Financial Services Compensation Scheme

Rudolph's slay this year contains changes to the FSCS, effective from 1st January. The main changes are:

- Investments: Provision and mediation of investments
Protection for 100% of £50,000
(Currently 100% of the first £30,000 and 90% of the next £20,000)
- Home finance mediation: Advising on or arranging house purchase finance
Protection for 100% of £50,000
(Currently 100% of the first £30,000 and 90% of the next £20,000)
- Insurance: Non-compulsory insurance provision (both general and life insurance)
Protection for 90% of the claim, with no upper limits
(Currently 100% of the first £2,000 and 90% of the remainder, with no upper limit)
- Mediation of non-compulsory general insurance and pure protection contracts (term, critical illness and income protection insurance)
Protection for 90% of the claim, with no upper limit
(Currently 100% of the first £2,000 and 90% of the remainder, with no upper limit)

There will be no change to compulsory insurance, such as motor third party and employers' liability insurance, including mediation. This will remain at 100% protection with no upper limit.

The details will be documented in the FSA's Compensation Handbook (COMP) from Jan 2010 and can also be seen in the Policy Statement (PS09/7) which can be seen at http://www.fsa.gov.uk/pubs/policy/ps09_07.pdf

ATEB view:

You are likely to need to change your disclosure documents.

Action required by you:

Discuss with your ATEB consultant who will assist you in making any required changes to your documentation

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3. Unpaid Life Policy Claims – Non Disclosure

We spotted a staggering statistic the other day – 5% of life claims are not paid!

The reason is simply non-disclosure of material facts. It is extremely important therefore that the need to accurately and honestly disclose all facts at application is made abundantly clear to clients and that you highlight the relevant disclosure statements to the client prior to signing. You cannot afford to be away in a minger at this stage of the process.

Of course, clients will invariably attempt to blame the adviser, so you need to be thorough. General insurance brokers insert a prominent 'Duty of Disclosure' paragraph in their customer documentation and ATEB's standard suitability letter templates contain a similar paragraph.

ATEB view:

Pretty obvious stuff, but this is this is a pretty frightening statistic.

Action required by you:

As above.

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4. Noel your Client (KYC) – assessing their knowledge and experience

We have mentioned this previously, but it is worth re-iterating.

During the KYC data gathering process (fact finding), you should question your client about their level of knowledge and experience. This will be particularly important for investment and pension related business.

These discussions must be documented in the fact find and we recommend that you 'play back' your understanding to the client in the suitability letter/report, where possible using the client's own words.

FOS takes into account the sophistication when assessing complaints and the more information you have about the client's risk tolerance and importantly their understanding of that risk, the better.

By the way, this is not simply an ATEB recommendation – this is a specific FSA Rule, as detailed in COBS 9.2.

ATEB view:

Important.

Action required by you:

Review your fact finding process to make sure this information is gathered.

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5. Increase in Capital Adequacy Requirements

The FSA has recently decided that the capital adequacy requirements proposed in the initial RDR proposals are to go ahead as planned.

This will have a significant impact on all IFA firms.

All personal investment firms (PIFs) will have to hold capital resources worth three months of their annual fixed expenditure (called the Expenditure Based Requirement (EBR)).

It was thought that the regulator would loosen its rules on the EBR, dropping the three months requirement and putting in place more lenient guidelines, but the FSA has opted to stick with its original proposals. All firms will be required to hold the fixed costs in "realisable assets"

such as cash. The minimum capital resources threshold for any firm has been set at £20,000.

Following feedback from the industry, ***the transition to the new regime has been extended by a year to 31 December 2013***, allowing firms more time to comply with the requirements. Firms will also be able to take into account any changes arising from the RDR. Under the new regime, firms will have to hold capital worth a month of their annual expenditure by 31 December 2011. This will increase to two months in 2012 and three months by 31 December 2013.

The regulator says it considers the EBR requirement as the best method to reflect operational risk and adds that requiring firms to hold more capital resources will enable them to provide redress for consumers and limit the compensation due from the Financial Services Compensation Scheme (FSCS) in the event that they are wound up.

Exactly what will and will not be included in the EBR is yet to be fully defined, but don't expect any easy 'work around'

ATEB view:

While we have long believed that the current £10,000 requirement was pretty meaningless, this is a huge jump and we believe an unnecessary one. It will require you to tie up capital that can no longer be used for development. So you better start saving your chestnuts!

Action required by you:

You need to plan for this **NOW!**

ATEB will be running RDR workshops from 2010 and strategic planning towards this requirement will be a key component.

We await clarification of what counts as EBR and what doesn't and firms should assess the situation again once this is clarified.

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6. Pension Transfers and Pension Switches

We are continually answering questions about what is, and what is not, a pension transfer i.e. a transfer requiring sign-off by a pension transfer specialist (PTS). In fairness to you, it is not always straightforward to work it out.

Anyway, the FSA seems to have adopted the tag 'pension switch' for non-occupational pension transfers, mostly PPP to PPP/SHP/SIPP.

This leaves the 'pension transfer' tag to cover all transfers that require PTS sign-off.

The FSA produce fact sheets these days every time Santa comes down the chimney and indeed, there is a snappily entitled little number called 'Pension Transfers – who can do what and when', available at:

http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/pension_transfers.pdf

It provides guidance on definitions, rule requirements, permissions, different types of scheme transfer, pension switching order and when PTS permission is required.

ATEB view:

While it could not be described as a riveting read, it is pretty essential CPD material for most IFAs.

Action required by you:

Undertake pension transfers or pension switches? If yes, then read this Fact Sheet.

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7. Pension Unlocking

With the increase in the retirement age to 55 in 2010, there has been an increase in the volume of pension unlocking transactions.

It is therefore prudent to remind you that the FSA takes a dim view of such transactions in general. Indeed they have fined numerous firms over the past few years for poor practices,

misleading financial promotion and inadequate systems and controls.

There is an argument to say that unlocking the tax free cash only, without taking income, is not such an issue – we would beg to differ, as the client cannot have his/her Christmas cake and eat it!. While there is no specific definition issued by the FSA, many commentators agree that unlocking the pension pot in any way is a risky transaction that should only be recommended in rare circumstances.

Certainly, from a TCF perspective, any such transaction, be it full vesting or only release of TFC, must be fully and very carefully considered. This would include:

- very detailed fact find, including all other savings, investments, mortgages, etc, so that all alternatives can be considered and documented
- full medical analysis
- spouse/partner's details to be included
- all disadvantages and risk warnings made abundantly clear
- client signature to confirm understanding.

There are now also Accelerated Pension Withdrawal products available, which allow withdrawal of up to 24.9% of the pension fund, even if the annual GAD limit had been hit. While within HMRC rules and arguably can help customers to avoid big tax charges on death, customers still face a 55% charge for exceeding GAD limits.

Such products are highly controversial and have been criticised by both providers and advisers. Indeed, the FSA's manager of pensions and other products policy, Milton Cartwright, says the regulator will be keeping a close eye on the practice.

"Advisers and SIPP operators need to think very carefully before offering these products to consumers, as it is very unlikely an investor will benefit from having their pension fund run down to nothing," he says.

Some useful reading can be found at:

<http://www.fsa.gov.uk/Pages/Library/Communication/PR/2003/014.shtml>

http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/pdf/update1_jul09.pdf

There are also numerous references generally available on the internet.

ATEB view:

These are high risk transactions and should be added to your high risk business category.

Action required by you:

Specific procedures should be in place and all such transactions should be approved by senior management prior to recommendation. Don't use the accelerated withdrawal products and be very careful about all pensions unlocking business.

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8. CPD – Taxation

We recently attended one of the series of professional development seminars run by ViiCo Ltd (see next article). One of the topics covered was an update on the current taxation regime and the forthcoming changes. The consensus across the attendees was that the session was an extremely useful way to refresh and update understanding and was delivered professionally by someone with an in-depth knowledge. One attendee described the session as a 'real cracker'.

The presentation covered several issues, such as:

- The different forms of taxation and how they are changing
- The obligation of trustees (Nestle versus Natwest Bank)
- The obligations of professional advisers (Hurlingham Estates versus Wilde & Partners)
- Bonds or collectives (not as straightforward as you might think)
- The best way to make use of previous capital loss
- Tax efficient withdrawal tools.

Now, while this newsletter is not a technical forum, and it is not within our remit to provide technical briefings, it is our responsibility to highlight the need for all advisers to maintain good quality, ongoing, 'top-up', CPD. Taxation in this country is an ever changing phenomenon and government upon government see it as their duty (indeed some would argue that it is pre-

programmed) to ever increasing tax complexity. It therefore provides a good example of how an adviser must maintain up to date knowledge in order to provide full and comprehensive financial advice. (Incidentally, it also highlights the need for in-depth Know Your Client information).

We hear a lot of advisers declare that their CPD requirements are taken care of by professional qualification studies, but you should note that this does not negate the need to undertake the type of CPD described here.

ATEB view:

Common sense but very important.

Action required by you:

Don't rely solely on your studies for professional qualifications to cover your CPD requirements.

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9. CPD – ViiCo Ltd

ViiCo is a collaboration between ATEB and some IFA firms based in the North-East of England. It has been in operation now for 3 years and provides two services:

- The ViiCo Professional Development Programme (PDP)
- The ViiCo Academy

The PDP provides ongoing CPD to a number of IFAs. The content and quality is of an excellent standard and the feedback from IFAs that attend is extremely positive. The PDP runs 6 times a year for ½ a day. During 2009 an additional ½ day workshop was run for firm principals on developing a firm brand and proposition.

The Academy runs 2 courses per annum to prepare advisers for the professional qualification examinations. The courses are run by a very experienced CII trainer. Again, the feedback is excellent and pass rates are high (well above the national average).

The cost of attending is low when compared to other similar facilities. All training takes place in Newcastle upon Tyne.

The 2010 PDP programme, will include:

- Investment update 3 times a year by Invesco Perpetual
- Regular technical briefings (taxation and trusts) from Skandia
- Regular pension updates from Winterthur
- Technical product specific training (e.g. EIS, ETF, EBT, etc)
- Business development
- Marketing

The Academy has a J06 Investment Principles course booked for the first part of 2010; the topic for the second half of the year is yet to be finalised.

Due to the success of the project, ViiCo now intends to expand the number of participants and invitations are sought from those wishing to attend.

ATEB view:

The ViiCo programmes have been very well received and we would recommend you consider attendance (if you do already do so) as they provide focus for your training activity. Indeed, why not ask your boss for a ViiCo stocking filler this Christmas!

Action required by you:

If you would like more information, please email info@atebconsulting.co.uk quoting 'ViiCo'

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10. HM Treasury Sanctions List

The FSA has recently undertaken a thematic review to assess firms' use of the HM Treasury's sanctions list, and in true FSA tradition, have produced a Fact Sheet on the matter, which can be viewed at:

<http://www.fsa.gov.uk/smallfirms/resources/pdfs/Sanctions.pdf>

The full HM Treasury's sanctions list can be accessed at:

<http://www.hm-treasury.gov.uk/financialsanctions>

The Fact Sheet explains what a sanction is, what they found during the review, what you should be doing and what to do if you discover someone on the list. The gist of the message from the FSA is that firms should be using the sanctions list as part of their anti-money laundering verification and state that it is good practice to check:

- Existing clients against the sanctions list
- All new customers prior to providing any services
- Updates to the sanctions list
- Any changes to client details.

ATEB view:

While we fully appreciate that financial crime is a huge problem for society, the FSA's message seems to be a blanket check of the sanctions list, which we feel is a 'bit over the top'. They seem to think that every other transaction is some form of partridge in a pear tree, whereas in reality the instances of financial crime that IFAs will come across are very rare.

Most certainly, you should be building the use of the sanctions list into your AML procedures, but our view is that a risk based approach, whereby you use increased vetting when deemed necessary, would be sufficient.

Action required by you:

Don't just skim over this one, it needs careful consideration.

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11. Instructions by Fax, Email and Post

Fax

Do you sometimes fax instructions to providers?

If so, do you have an agreement that this is an accepted form of instruction and do you keep confirmation records of receipt and follow up with written instruction e.g. 'As per our fax message of

If you don't have an agreed procedure with the provider, then you could be at risk. This has been highlighted by a recent complaint received by an IFA who faxed a switch instruction to a provider (moving funds into cash prior to retirement), kept the fax receipts, phoned the provider to confirm receipt immediately, but did not follow up in writing.

Two weeks later, the IFA received a letter from the provider (from some bloke called Ebenezer Scrooge) stating that they do not accept fax instruction. Inevitably, the funds dropped significantly in value and a complaint has been raised.

Email

The situation described above for fax is theoretically equally relevant for email.

Post

Slightly different, but when you have to send important documentation by post, do you send recorded delivery? We have witnessed cases where such documentation has gone 'missing' causing problems for the IFA and anxiety and mistrust for the client.

ATEB view:

You could be at risk if you don't have an agreed procedure.

We now know that Abbey Life and Windsor Life do not accept faxes. If you know of any others, please let us know info@atebconsulting.co.uk.

Action required by you:

We would recommend that where you provide fax/email instruction:

- Get written agreement with the provider that this is acceptable
- Keep receipts
- Follow up any fax/email instruction with written instruction.

If sending important documentation by post:

- Send by recorded delivery

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12. Clients Abroad?

If you have clients who live in other EEA (European Economic Area) countries, and you provide investment advice for those clients, either by meeting them abroad or by simply corresponding with them in their country of residence, then you will require a MiFID passport. By implication, this brings you under the MiFID regime and hence all the stipulations that go with it, for example different capital adequacy and reporting requirements.

This applies even if you only have one such client.

If you are only providing insurance mediation advice to such clients, then you require an Insurance Mediation Directive (IMD) passport. This can be done relatively easily under current FSA authorisations i.e. it does not bring you into MiFID.

ATEB view:

The IMD passport is a 'no-brainer',

Becoming a MiFID firm however has considerable consequences, so before you start shouting 'O come all ye faithful' through the streets of Paris (or whatever the French equivalent is), you need to think carefully.

If you deal with only a small number of overseas investment clients, you may want to consider how the relationship can be changed to avoid the need for a passport, for example, if you agree to see the client in the UK, this could in theory mean that no passport is required.

Action required by you:

If you have clients abroad you must consider the passporting requirements.

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13. Annual Knowledge Tests

One piece of recurring feedback from the recent TCF assessments was the FSA's fondness for annual knowledge tests. Most of you now undertake an annual competence assessment, but how many of you actually require your advisers to undertake a written assessment of knowledge?

While we might not necessarily concur with the FSA's high regard for such testing, we do agree that it should form part of the annual competence assessment.

For newer qualified and less experienced advisers, then generic testing, using example CF papers makes sense, while for specialists, more specific testing (example 'J' papers) can be used.

Remember that you should also ensure that anti-money laundering and financial crime knowledge should be tested regularly, ideally annually.

ATEB view:

If you don't want to get into a ding dong merrily on high with the FSA, you should carefully consider the above.

Action required by you:

Knowledge tests should form part of your annual competence assessments.

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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.

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