



Taking the stress out of compliance

ATEB Consulting Newsletter 58 - September 2010

General Insurance Brokers

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1. Anti-bribery and Corruption
2. Client Money - yet again!
3. Threshold Condition 4
4. Proposed Changes to Section A (Balance Sheet) of RMAR
5. Are you a partner in the firm but not taking an active part – potential breach of FSA rules?
6. ONA - Online Notifications & Application
7. Contract Terms
8. Treating Customers Fairly
9. Small Firms Financial Crime Review
10. New Consumer Credit Application Process
11. FOS Launches Video Guide

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
Directors/Partners	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Compliance / A&O Function	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Client Money Function		✓	✓	✓		✓	✓	✓		✓	✓
Broker/Account Executive						✓	✓	✓			✓
T&C Supervisor						✓	✓	✓	✓		✓
Back Office						✓		✓			✓

1. Anti-bribery and Corruption

The FSA has published a report on how commercial insurance broker firms in the UK are addressing the risks of becoming involved in corrupt practices, such as bribery, particularly where third parties are used to win business.

Although this work focuses on commercial insurance brokers, many of the issues covered are relevant to firms in other sectors who use third parties to win business. Firms within all sectors should take note that the Bribery Act has now received Royal Assent and is likely to come into effect in October 2010. The Act is applicable to all sectors and makes adequate systems and controls to prevent bribery and corruption a legal requirement and introduces a new offence in commercial organisations negligently failing to prevent bribery.

The FSA's thematic work found that overall, brokers have approached higher risk business involving third parties far too informally and that many firms are still not operating at acceptable standards. The FSA states that firms need to do more to ensure that they minimise the risk of becoming involved in bribery or corruption, unwittingly or otherwise. They go on to state that currently, they consider that the serious weaknesses identified in some broker firms' systems and controls means there is a significant risk of illicit payments or inducements being made to, or on behalf of, third parties to win business, and that they believe that many firms are not currently in a position to demonstrate adequate procedures to prevent bribery. They identified a number of serious concerns, particularly around due diligence of third party relationships.

As a result, the FSA have commissioned a skilled persons report on one firm and issued a formal private warning to another. They are considering whether further regulatory action is required in relation to other individuals and firms and it is likely that there will be referrals to either enforcement or the police.

They did however identify some examples of good practice and were encouraged by the progress of some brokers over the past year in correcting the weaknesses in their systems and controls, particularly through gap analysis against their interim findings and the Final Notice they issued to Aon Ltd in January 2009. It is important for firms to take note of the FSA's key findings and read the guidance including the examples of good and poor practice, which focussed requirements in the following areas:

- Management information
- Risk assessment
- Due diligence
- Payment Controls
- Staff recruitment
- Training and awareness
- Remuneration structures
- Incident reporting
- Compliance and internal audit

The full anti-bribery and corruption report can be found here at:
http://www.fsa.gov.uk/pubs/anti_bribery.pdf

ATEB view:

You may not think that this applies to you, and certainly, the findings are based on investigations at larger insurance brokers.

Action required by you:

Nevertheless, you should analyse the report and assess how much it affects your firm and what you potentially need to do in light of the FSA's findings.

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

2. Client Money - yet again!

As we have repeatedly highlighted in our newsletters, one of the FSA's highest regulatory priorities for the insurance sector is firms' adherence with the client money rules in CASS 5.

Earlier this year, the FSA published another 'Dear CEO' letter that detailed findings from supervisory activity and more recently, action has been taken against two insurance brokers, Delwyn Way of Shield Insurance Consultancy Ltd (fined £77, 957 and banned) Adrian Shillaker of Griffiths McAlister Insurance Brokers Ltd (banned), for failing to adequately protect clients' money and assets.

The key issue we'd like to stress here is that it is the principals of the firm that will get sanctioned. Very often, the client money function is delegated, so it is important that adequate supervision is in place to monitor and oversee the activity of the person(s) responsible for the client money function.

More supervisory work is planned by the FSA for 2010.

ATEB view:

Principals must give this area high priority and ensure that CASS rules are being adhered to stringently. Where work is delegated to in-house accountants or similar, principals should ensure that work is overseen by a competent individual and ideally audited.

Action required by you:

Consider these comments carefully.

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

3. Threshold Condition 4

The FSA requires firms to meet certain threshold conditions in order to become and remain authorised. The conditions detail minimum requirements. There are 5 main conditions,

together with 'additional conditions'. These can be found at <http://fsahandbook.info/FSA/html/handbook/COND/2>

Recently, the FSA has focussed on Threshold Condition 4: Adequate Resources and has published a one minute guide that aims to clarify what exactly 'adequate resources' means. The focus was primarily on insurance intermediaries, but the principles apply across all sectors.

In this respect, the FSA has referred to 'adequate' as being sufficient in terms of quality, quantity and availability. With regards to 'resources' the FSA includes both financial and non-financial under this definition.

In their 'Dear CEO' letter in February 2010, the FSA has required firms to perform a TC4 assessment. So what does this mean?

We would suggest that an internal review should be undertaken by senior management / principals. Considerations would include:

- Do all members of staff have the requisite skills, knowledge and experience for their jobs?
- Are there enough members of staff to undertake all the necessary work to a good quality?
- Are they available at the right times?
- Future personnel requirements
- IT infrastructure and requirements
- Premises requirements
- Do you have detailed management accounts / forecasts and management information that provides ongoing information on client money, cashflow, credit control, liabilities, inter-company provisions, capital adequacy, provision for future expenditure, risk analysis and stress testing
- etc

Now, much of this is core business planning. In our experience, most firms do not have adequate business plans. The business objectives are normally reasonably well defined, but kept secure inside principals' brains.

We highlight the lack of business plans (where appropriate) in our audits. However, we cannot force firms to document formal plans. This requirement to review TC4 may well now give firms the incentive to create business plans.

The FSA's one minute guide provides useful information and links, and can be found at

http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/85_threshold.shtml

ATEB view:

It is important that you understand the FSA's requirements in this respect. While firms will argue that such requirements do not apply to smaller firms, you are all caught by the threshold conditions.

Action required by you:

Consider this article carefully.

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

4. Proposed Changes to Section A (Balance Sheet) of RMAR

The FSA is proposing to add extras fields to the Balance Sheet section of RMAR for insurance intermediaries, in relation to inter-company debt.

Two new fields are proposed. The changes will only affect firms which have a group structure.

ATEB view:

Information Only

Action required by you:

If you would like more information, go to section 9 of:

http://www.fsa.gov.uk/pubs/cp/cp10_10.pdf

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

5. Are you a partner in the firm but not taking an active part – potential breach of FSA rules?

Following on from newsletter 56 section 3 "feedback from TCF follow up verification visits", we have concerns that some firms may be unintentionally breaching FSA rules.

The issue revolves around spouses that are set up as partners in businesses for tax purposes, where the spouse does not actively get involved in the day to day running of the regulated business. We asked the FSA for clarity and whether there is anything preventing the firm from resigning the "tax spouse" from CF4 (Partner) but maintaining their partner status for revenue/tax purposes.

The FSA have stated that it is unlikely a firm will be able to justify appointing an individual as a partner if they are not carrying on the Approved Person's role. They have reminded us of SYSC 2.1.1 R where it states that

"a firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that:"

- (1) It is clear who has which of those responsibilities; and*
- (2) The business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.*

Please note that if the principal purpose of the firm is other than to carry on regulated activities (for example FSA authorised accountancy practices) different rules apply.

So, if you are a partnership and your main or only activity is regulated business, all partners who are not acting as such in the FSA's opinion, should be advised to resign as CF4 partner for both FSA and tax/revenue purposes.

Notes

If the resignation of a partner means that the firm's legal entity changes e.g. from partnership to sole trader, this will require a Change of Entity application to the FSA – not insignificant work and cost.

ATEB view:

There could well be quite a few firms that are affected by this.

Please note that there was an enforcement notice issued in December 2009 by the FSA against one Nighat Mizra, who was fined and banned by the FSA for not fulfilling the CF4 partner role adequately. You can read this notice at:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/174.shtml>

Action required by you:

If you believe that this scenario affects you and the person in question is not actively involved in the regulated side of the firm, then you should consider the content of this article very carefully.

What a partner needs to do to fulfil the requirements of the CF4 Partner role is a little ambiguous and therefore we would recommend you take professional guidance and indeed speak directly to the FSA.

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

6. ONA - Online Notifications & Application

In June 2010, the FSA launched ONA.

This system replaces much of the current paper based processes and will be mandatory from September.

Feedback so far on its use has been positive.

You will need to register, which you can do at

<http://www.fsa.gov.uk/Pages/Doing/Regulated/ona/index.shtml>

ATEB view:

Information Only

Action required by you:

You will need to familiarise with the system and register.

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

7. Contract Terms

There has been significant coverage of 'unfair contract terms' over the last couple of years, both within and without the financial services industry. With this in mind, the FSA has asked firms to revisit any client contracts that contain 'I have read and understood' declarations (or similar) to ensure they are fair on consumers.

The regulator says the law requires consumers to be given an opportunity to examine all the terms in a contract, but says some do not offer this.

We would suggest that this issue will be of most concern for distance (telephone/postal) advice – **general insurance brokers issuing postal renewals – take note!**

The issue has been highlighted by action taken against national IFA The On-Line Partnership, when the FSA argued that the firm's use of the statement: 'I confirm that I have received, read

and understood this agreement and agree to the terms set out within' was unfair because it did not give clients an opportunity to read and ask questions about the contract before signing.

The On-Line Partnership has since changed its declaration to: 'This is our standard client agreement upon which we intend to rely. For your own benefit and protection you should read these terms carefully before signing them. If you do not understand any point please ask for further information.'

You need to consider whether any 'read and understood' declarations that you make are therefore fair on clients.

ATEB view:

Information Only

Action required by you:

Review all your client contracts and agreements.

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

8. Treating Customers Fairly

Whilst some of you lucky firms are only now going through your TCF assessments and could currently be in for a "random" visit from those lovely people at the FSA. The rest of you will already "be wearing the T-Shirt".

This is just a gentle reminder to those of you who think it's now ok to breathe out and file away those TCF documents. Sadly it isn't. TCF should be seen as an ongoing commitment by all firms and should appear regularly on the agendas of all monthly, quarterly meetings.

The 6 TCF Consumer Outcomes should form the core of your customer facing compliance objectives and as such your TCF meetings should now incorporate the whole of the firms MI (Management Information) and you should be able to clearly demonstrate (to the FSA if required) information such as, business coming into the firm, trends in business received, NTU's, Product Providers, etc. You would also be expected to demonstrate that you regularly review your firm's internal processes and that customer satisfaction is high on your agenda.

ATEB view:

TCF is how your firm operates as an organisation and should now form part of your firm's culture. Many of you will already have been invited to the FSA's next round of TCF workshops where they will be re-iterating the above.

Action required by you:

ATEB recommend that if you haven't already done so, you make a start on reviewing your firms Gap Analysis, alternatively this should form an integral part of your annual compliance plan.

Here is a useful reference to the FSA website:

<http://www.fsa.gov.uk/smallfirms/tcf/index.shtml>

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

9. Small Firms Financial Crime Review

The FSA have published their findings on "small firms financial crime systems and controls" following a detailed review of 159 firms
http://www.fsa.gov.uk/smallfirms/pdf/financial_crime_report.pdf

The aim of the review was to assess firms' awareness of the requirements under current legislation taking into account:

- Proceeds of Crime Act 2002 (POCA),
- Terrorism Act
- Money Laundering Regulations 2007
- And where applicable, the role of the Money Laundering Reporting Officer (MLRO).

Whilst the FSA were encouraged to see that small firms appeared to have paid attention to financial crime issues they still considered firms to be weak in its assessment and mitigation of financial crime risks.

ATEB view:

Firms need to ensure that their firm has a written process in place to cover the issues covered in this review.

Action required by you:

Ensure the firm reads the review posted on the FSA website. This can be accessed on the above link. The FSA are also encouraging firms to refer to their Fact Sheet on Approaches to Financial Sanctions. This link can be located at <http://www.fsa.gov.uk/smallfirms/resources/pdfs/Sanctions.pdf>

Please ensure this forms part of the firms Money Laundering and Proceeds of Crime refresher training.

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

10. New Consumer Credit Application Process

We have recently seen one firm complete a renewal application for a Consumer Credit Licence. Those of you who have already done so, will know that the process is now a tortuous and cumbersome one, involving a long application and supplementary questionnaires, running to 50 + pages.

You will also have noticed that the application fee has risen astronomically and is now not far off £1,000 for most firms (albeit that this lasts for 5 years).

Notwithstanding the increased time and effort required to complete the form, firms should be very careful when completing it, to ensure that the categories you apply for are correct.

Firms should also note the compliance requirements detailed throughout the application for competence assessments, systems and procedures, training, etc.

ATEB view:

Information Only

Action required by you:

Information Only

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

11. FOS Launches Video Guide

FOS has launched a video to help smaller firms understand the complaints handling process, which can be found at:

http://www.financialombudsman.org.uk/faq/smaller_businesses.html

ATEB view:

Useful CPD for all staff.

Action required by you:

Build into staff training programmes.

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

Important Note:

The ATEB Newsletter is intended to provide general guidance on areas of compliance and T&C; however it is not a replacement for the main Rules and Guidance contained within the FSA Handbook.

We welcome all feedback. If you have any feedback or questions relating to any articles then please direct them to your local ATEB consultant or the newsletter editor Huw Reynolds email info@atebconsulting.co.uk.

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