



COMPLIANCE NEWSLETTER

The Big Issue: **THE BRIBERY ACT 2010**

**AR, IAR or Introducers?
Poaching Staff & Customers
Consumer Complaints
GABRIEL Returns
Agency Reduction
Twitter**



MORE THAN JUST COMPLIANCE IN A BOX...

June 2011

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If you would like to comment on these articles or have any questions then please go to our blog where you can view and comment on them online.

www.brokerbureau.com/blog

From The Chairman

By Robin Wood

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“Well it does seem that at long last the industry is beginning to listen to us.”



Agency Reduction

Well it does seem that at long last the industry is beginning to listen to us.

I repeat again....if you have too many agencies with too many insurers and in tough times you are not maximising good favour with insurers, you could be acting to the detriment of your customer.

Only recently, one of our clients established that they had nearly 500 agencies.

The cost of managing that is phenomenal, the insurers at the not very well supported end have been pretty nasty with claims recently and even at the top end the 'clout' with insurers is not what it should be.

But watch out....consolidation of business with fewer insurers has to be accompanied with a sophisticated TCF review and the amount of money that can be made must not, in our opinion, just go into the back pockets of directors and shareholders.

If you want to take advantage of the RWA expertise in this area then contact me personally (robin.wood@rwagroup.co.uk) and you have my assurance that discussions will only be shared between myself and Ian Ritchie (RWA Managing Director) in the first instance.

There are three types of consolidation:

Housekeeping: A general tidy up to increase efficiency, cut costs and improve customer service

Acquisition: acquisition often means acquiring new agencies. It is a good time to consider whether they are actually needed

Going forward: If the terms are right for customers, consolidation can be addressed with future business only.

Don't forget the customer must come first and you must also consider your other stakeholders including the FSA. Careful planning is required but if insurers are being horrible on claims, tight with wording, sloppy on service and rubbish on contract certainty or risk transfer, then perhaps now is the time for a controlled and well thought out boot into touch for the worst offenders.

Continued...

The RWA Insurance Broker PI Survey

My advice is that every broker should now consider this service. RWA experts have well over 300 cases under their belts and most of those never reach the public domain being settled before Court proceedings start.

There are many tub thumpers out there at the moment following the Environcom case exploiting the situation and claiming to be experts on broker market practice.

The fact is that the actual expert on the Environcom case has worked on over a hundred broker negligence cases and is not tub thumping! Those of you who have been on the RWA/AVIVA master-classes will know that Environcom was actually about a well known quality broker getting things terribly wrong. It seems unlikely that either they or indeed any reasonable broker will get such a horrible combination of circumstances in one place again (or we hope not). One broker at the BIBA conference described it as 'The Perfect Storm'. That about sums it up.

Reducing the risk of PI claims is working with a combination of perhaps a hundred cases and RWA has access to that sort of experience. The solutions can be simple. Everything starts with a good look at what you are doing now.

Via the PI survey, you can understand what needs to be done to reduce the risk of a PI claim and our major clients such as AVIVA and Westinsure are standing up to help you.

Robin

RWA Experts

Would you like one to one Director Support?

Would your firm like an in house Masterclass on The Duty of a Broker?

Would you like a compliance & business mentor?

Looking to acquire a business?

RWA Experts can provide the high level confidential support that you may be looking for.

For an informal chat with Robin please feel free to contact him at robin.wood@rwagroup.co.uk

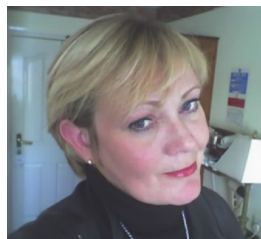




Another Great BIBA Conference

"What really stood out this year was that not one person came up to me and was negative about compliance..."

Once again, RWA were the only compliance consultancy with a stand at this year's BIBA Conference in Manchester and we found it to be one of the best yet. We have asked the management team who were present to let us have their feedback.



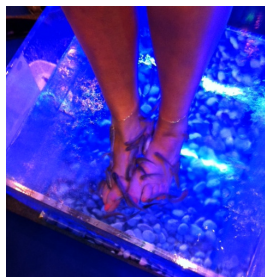
"Well, another BIBA Conference come and gone. It seems that the past 12 months have really cemented some great business relationships between our key partners and our clients.

I also noticed a new focus and awareness of HR issues – and this has certainly been the trend over the past few months judging by the hits on our website and the interest in training. With the biggest change being the removal of the default retirement age, now is the time to ensure that you have made your staff fully aware of what this means to them. If you're not sure what to do, get in touch with us.

On an entirely different note: when are exhibitors at the conference finally going to realise that we are living in the 21st century? Yes, it's the scantily clad teenagers issue. Every single person I canvassed, without exception, could not recall who these girls were representing; so on the name awareness ticket alone the exercise fails. But aside from that, not one person (male and female) I discussed this with thought it was appropriate – everyone agrees that it's old fashioned and does nothing to boost the image of professionalism that both BIBA and the CII profess to want to foster.

It's not big and it's not clever and it detracts from all the imaginative effort put in by other exhibitors. It's time we lost the fly-boy image once and for all.

As for the feet-eating fish...they'll do for me every time!"



"By my calculations, this was my umpteenth (well probably about 20th) visit to the BIBA Conference. After all these years, it is a bit like how they describe dying – your life passes before you! When I looked at the attendee list and saw all the 'usual suspects' there and I wondered who might have looked at their list and thought "bloody hell, not Ritchie again!"

Mind you, having just used the word 'bloody', this year may be the year that is remembered for Insurance Times using the 'F' word in an article for the first time in print – you had to be there!

Placing my caricature alongside my last one from 10 years ago, I don't think I will want to see the one in 10 years' time!

From an RWA perspective, everything went really well. Our 'more than just compliance in a box' promotion went very well. We had interesting conversations with various organisations about future developments and whilst some will fall by the wayside, I suspect that by this time next year, others will have come to fruition.

Finally, a big thanks to the insurers for their early morning bacon rolls. A real life saver both mornings.

Onwards and upwards, looking forward to Manchester again in 2012."

RWA BIBA 2011 Competition Winners



Well done to Ravenhall Risk Solutions for winning our BIBA 2011 business card draw. The firm have won a free RWA 2011 compliance healthcheck.



"To me, the real credit lay with Peter Staddon and the BIBA team for not thrusting BIBA down our throats. Other trade bodies in the past have used their conferences to sell themselves, but BIBA as ever have just done what they do

so well... create an environment (and dare I say one of the best ever) for their members and supporters to improve their skills and develop business opportunities.

No better a way for a trade association or institute to sell itself.

I particularly liked the way they used their brains rather than be wafted along on political clap trap and chose Manchester again for the 2012 conference. It is, by far, the best venue we have seen."



"Well, all over again for another year and we can all take the weight off our feet for a few minutes!

Until you actually spend time manning a stand, you don't realise how much hard work it is. You certainly have to keep your eyes and ears attuned to what is going on around you as it soon gets very busy, people stopping to ask about your services and trying to keep an eye open for the one person you must catch that day.

This year there was a noticeable increase in other exhibitors and non insurance broker firms stopping by, sometimes just for a chat, but on many occasions exploring if there was any common ground where we could share ideas and maybe work together. It is becoming a real business to business event.

Good to see it back in Manchester for 2012, although I must declare an interest being a resident Mancunian! Having said that most of the 'non local' attendees that I spoke to felt it was a much better venue than London; more central with easier access to hotels and the transport network.

Roll on 2012!"



"As a 'Manchester lad' I was asked to assist on the RWA stand at the BIBA conference this year held in Manchester Central.

For the first time in many years I joined the commuting society into Manchester, which reminded me why I chose to be a compliance consultant working from home. When I entered the exhibition hall I was also reminded that at the start of my insurance career in Manchester, this was the station that I used to commute into - funny old world.

Manchester itself was buzzing and most of the talk was not about Insurance but the fact that both our premier league teams were up for major honours and they could both achieve part of their ambitions that weekend.

Although it is a few years since I visited the centre of Manchester there were still a few faces that seemed familiar, in fact one esteemed colleague whilst reminiscing over old times, was bemoaning the fact that the insurance industry was dull and that there were no longer any "Characters" around anymore. I pointed out that when you can no longer see the "Characters", you probably are one. That didn't seem to cheer him up either.

It was good to renew old acquaintances and just as enjoyable to make new ones, especially as I am no longer tied to Manchester and the North West but meet brokers from all over the country.

Yes, all in all an excellent conference."



"It takes a couple of months to prepare for an event of this size and our experience shows that it's the simple things that delegates appreciate. Being on hand to answer questions and communicate with brokers is all they want to see. For some reason having pens on your stand is always a great ice breaker.

I always enjoy the BIBA Conference as it's an opportunity for me to meet more brokers and clients face to face and have a chat about what they want from a compliance consultancy. People are happy to stop and chat and the feedback they give us means I can go away and look at how we might develop those services.

What really stood out this year was that not one person came up to me and was negative about compliance, and there was a greater understanding of the variety of services that we provide. It shows that we must be doing something right!"

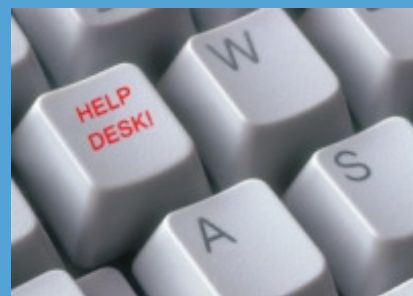
RWA Helpdesk Update

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Erika Dredge
Broker Services Manager

"Welcome to RWA Helpdesk, my role is to ensure that the Helpdesk is run smoothly, that contracts are issued and set-up and also to make sure that our brokers get the service they expect.

If you have any queries about your service then please give me a call via the Helpdesk."

New Website!

By the time you read this our new RWA website will be live and the changes we have implemented will showcase all the services that we offer including:

- Compliance
- HR Support
- Online Assessment & Learning
- Financial Services
- RWA Experts
- Training & Competence
- London Markets
- Online Templates for Compliance Club Members

We also have an open news section for **all brokers** to view where they can keep up to date on compliance news through bulletins, newsletters, RWA blogs and Twitter.

Have a look: www.rwagroup.co.uk

New Compliance Manuals

We have taken the opportunity to review the compliance manual on the RWA website and this has been updated to reflect changes and has been tidied up to remove obsolete references and dates.

Please take the opportunity to download and review with your staff as appropriate.

The Bribery Act 2010

We have updated the two templates in the RWA documents area of the website for staff and management and have taken the opportunity to re-title the section for this as "Financial Crime" rather than "Money Laundering" as this better reflects the content.

Websites now regulated by the ASA

On the 1st March 2011, the Advertising Standards Authority was given powers to regulate website promotions.

This is in addition to the FSA rules regarding Non Real Time Financial Promotions of which a broker's website is one. So, please check your websites to ensure that they comply with the ASA and details can be found on <http://www.asa.org.uk/>



The RWACompliance Guide To Twitter

Several RWA Brokers have asked us recently about the use of Twitter and social network sites to promote their business to the general public. We have therefore put together this handy little guide...

Twitter is an effective online marketing and networking tool if used in the right way. You can use it to follow other people's news or to share your own. It works by giving you the opportunity to read small bites of information that you choose are relevant to you by selecting who you follow. That may be insurers, local businesses, customers, trade associations or compliance providers.

Every time someone that you follow tweets a message it will appear on your Twitter timeline. The more people that you follow the more information that you will get at any one time.

If you want to start tweeting then you will first of all need to set-up a profile - it's free. Personalise your profile so that others know quickly who you are, where you are based and what you do.

You then need followers and the best way to build up your list of followers is to find and follow people who have similar interests to you. By the nature of Twitter those people may or may not follow you back (increase this chance by getting your profile right).

The other way to increase your followers is to tweet regularly and tweet items that will interest people. You can only type 140 characters at a time. If they like what you tweet then they are more likely to follow you, and more likely to share your tweets (a 'retweet') with their network of followers who in turn may choose to follow you as well.

So what use is this to an insurance broker?

Lots of people now use Twitter and this includes both businesses and individuals. How many of these people would consider using an insurance broker? How many would even know what value you can bring to them when they are choosing their insurance policies? Twitter is an effective, low cost solution to educating people on why they should choose you rather than a DIY insurance solution.

There are plenty of free guides on the internet that will give you more detail on Twitter etiquette and it is worth giving these a read as well.

RWA are now on Twitter and by following us you can keep up to date on compliance news as it happens. Simply follow us by clicking on the following link:

www.twitter.com/RWACompliance

We also offer a new Twitter service for our clients. If you have a Twitter account and follow us we will be able to follow you back and our online team will keep an eye out for any Tweets that your company makes which we consider to be non-compliant or breaks financial promotions rules. Obviously we can't follow every tweet, but any we do see we will let you know immediately.

Twitter Ye Not...

By Terence Clark

Terence.Clark@rwagroup.co.uk



ABCInsurance - Cheap Insurance

We will save you lots on your insurance

3 minutes ago ☆ Favorite ↻ Retweet ↩ Reply

Twitter ye not....

...without checking it off as a financial promotion!

Strange as it may seem, a few innocuous lines on a twitter feed (or your firm's Facebook page) will be seen as a Non Real Time Financial Promotion, so you cannot issue anything without it being approved by the relevant person in the brokerage.

It is unlikely that anything of real substance in this respect is likely to be included, but in today's age of social media and multifaceted communication it is very easy to overlook the Financial Promotion rules. Particularly when they were first drawn up many years ago, the concept of much of what we take for granted now was never even imagined.

This is very true particularly with regard to internet based advertising; even your website must be regarded as a financial promotion, even though it may be just used to provide information about the firm and its services, with no transactional capability.

Also, do not forget that the Advertising Standards Authority now also have a say your online advertising.

So, if you are a tweeter or active on Facebook with your firm, don't forget to ensure that any posts are signed off within your financial promotions procedure and hard copies kept.

Please speak to your consultant or the Helpdesk if you have any questions.



There is a new online presentation for users of The OBELISK on Financial Promotions. If you are an OBELISK subscriber you will have access when you next log in.

RWA Compliance Newsletter **June 2011**

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The RWA Broker Bureau Blog

WALTHAM PITGLOW'S HIGHLIGHTS

A Summary Of The Most Read Blogs

Financial sanctions – a general insurance issue?

General business insurance brokers may have thought themselves safe from the reach of the Treasury's sanctions list, but as Terence Clark explains, that comfort may not be entirely valid...

"... No-one need worry about compliance."

Sometimes I read something that is meant to be taken seriously and it makes me chuckle...

A Broker's Duty...

One thing I find fascinating is how some so called experts and those representing brokers keep harping on about how hard done by the broker is when an insurer has so many rights to avoid policies for non-disclosure...

"It was only a bit of fun..."

I'm sure it hasn't escaped your notice that an AXA PPP Healthcare employee, Brazilian Licia Faithful has been awarded £141,990 by an Employment Tribunal for the racial abuse and harassment she suffered over an 18 month period at the hands of colleagues. Mrs Faithful received the award after a campaign of harassment that saw her dubbed 'SpongeBob Squarepants' by colleagues because of her nasal voice...

Paternity Leave

Did you realise that your employees now have the right to additional Paternity Leave? Could you cope with 'losing' an employee for 6 months? Did you know that this also applies to adoptive parents?...



Due Diligence on Your Introducers

By Terence Clark
Terence.clark@rwagroup.co.uk

The Bribery Act 2010 has placed an increased onus on those firms looking to appoint introducers, whether they are "ordinary" introducers, Introducer Appointed Representatives or Appointed Representatives.

The FSA are taking an increased interest in the subject and in particular the appointment process of the latter two above.

The regulator will expect all firms to be able to demonstrate that they have done a certain degree of pre-appointment Due Diligence and that post appointment; they should have a formal, written monitoring plan.

Pre Appointment

Such due diligence could take the form of –

- Evidence of Identity (e.g. premises visits, Companies House extract)
- Financial Checks (3 years accounts)
- Professional References
- Formal contract
- CRB / Credit Checks (if an individual or on directors / partners)
- Detailed Fit & Proper checks on Approved Persons (AR Only)

This is not exhaustive but gives a general idea.

The file should also contain statements detailing why the firm wish to make such an appointment and what are the potential benefits and risks (some form of SWOT analysis would be useful)

In addition, the file should also contain a detailed note as to the remuneration structure and how this has been determined.

Do not forget that the FSA should be advised of all IAR/AR appointments prior to the start date. The application to the FSA must be made via the ONA system.

Also, the AR should have appropriate PI cover (not really an issue for IAR's / Introducers)

Post Appointment

You must be able to demonstrate to the FSA that you are monitoring the introducer and that you have a formal mechanism for doing so.

Therefore, you should have a written plan setting out –

- Who in the firm has overall responsibility
- Who will, in effect carry out the monitoring
- The frequency (FSA would like to see monthly, but it should be proportionate)
- What monitoring will take place (e.g. Files reviews, T&C, Fit & Proper, staff training, Financial promotions, TCF, Complaints etc)
- How this is recorded and fed back
- What MI is given to the senior management of the Principal?

This is not exhaustive but gives a general idea.

Due Diligence on Your Introducers

Also, you must be able to demonstrate that you have regular documented meetings with the Approved Person or the senior person at the introducer to ensure that they are aware of what is required and are kept informed of all changes.

In effect, you must treat an AR like you would your own employees.

Don't forget that you will need to keep a central register of all these appointments, even if there is only one.

Obviously, an IAR has a much lower risk profile and a much less onerous regime can apply, this will be dependent of the specific circumstances.

Whilst most of this has concentrated on the AR /IAR model, the FSA will expect to see something similar for those passive or infrequent introducers who are not either IAR or AR's.

The pre appointment regime will be similar, but the ongoing monitoring is not such an issue.

Previously, such appointment did not involve so much work for the broker, but with the advent of new legislation and the new much more "questioning! Approach from the regulator, it is important that you have all the "i's" dotted and "t's" crossed.

If you have or are thinking of appointing any form of introducer, you RWA consultant or the help desk can give further advice.

**DO YOU TRUST
YOUR
INTRODUCERS?**



AR, IAR or Introducer?

Whilst there are a number of similarities between them, it is important to be aware of the important differences and how the FSA view each of these.

Introducers

These are people who may well be already directly authorised and pass introductions to you in a professional capacity. E.g. Solicitors or accountants, or even an IFA firm. Or, they may be just companies who have no insurance connection and pass on leads.

Generally, to avoid the need for regulation, an introducer should only pass out any marketing material of your firm or pass your contact details to a prospect. The matter of any financial reward is not of any consequence here.

Occasionally, an introducer may pass the contact details to you, and here is where you have to be careful not to stray into the area of regulated activities. If there is no expectation of remuneration, either directly or indirectly, and the passing of such details is infrequent, then this may solve the problem. Further guidance is available in the FSA's Perimeter Guidance Manual (PERG) in the "By way of business" test.

There is no need to register an Introducer with the FSA

Appointed Representatives (AR)

In effect, these can do whatever you do and like IARs, must appear on the FSA website and be subject to pre appointment due diligence, formal contract and regular recorded monitoring. Also, they must have sufficient PII.

There is also the need for at least one person in the AR to be an Approved Person (not applicable to sole traders)

Whichever route you follow, you must ensure that pre appointment due diligence is carried out, which includes, references, financial checks, evidence of identity, fit & proper checks, and consider CRB and credit checks if in any doubt. Also, your files must show a reason for the appointment, the reason for the remuneration structure and a formal agreement with the firm you are appointing.

On appointment, you should tell the FSA prior to commencement, and submit through the ONA system or by paper, again deepening which route has been chosen and what submissions are required. For an AR, there will need to be a completed Form A for the approved person.

Post appointment, you must have a written formal monitoring plan setting out how you will monitor and supervise. The levels will vary dependent on which route you have chosen.

You will need to include the IAR or AR in your own procedures, such as T&C and TCF etc and will in effect be treating them as another division of your firm for compliance purposes.

Finally, remember that you as the Principal are totally responsible for all their activities, so this will present a risk to your firm and will inevitably attract greater interest from the FSA.

Introducer Appointed Representative (IAR)

IARs are limited to two activities – Passing out your literature and passing prospective client contact details only to you. It is this activity of passing client details to you that makes it a regulated activity.

IARs must appear on the FSA website and be subject to pre appointment due diligence, formal contract and regular recorded monitoring.

Poaching Staff and Customers: What Would You Do?

By Kate Foreman
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The case:

Tween v Progressive
Publishing Ltd
ET/1100056/10

I am often asked for advice in relation to dealing with an employee who has resigned and is setting up a rival business. This can (and often does) include poaching staff and customers and the case in question clearly demonstrates the value of having a garden leave clause in the employee's contract and some post termination undertakings. When you have stopped laughing about the fact that there really *is* a magazine called 'Tunnels and Tunnelling' – and yes, they do have conferences – ask yourself if your firm's contracts give you the protection you would need if this situation was to occur.

Mr Tween was the sales manager for a magazine called "Tunnels and Tunnelling International" (T&TI), earning just over £50,000. In August 2009, Mr Tween handed in his notice – the expiry date was 30 October 2009. He informed the chief executive, Mr Millburn, that he had no plans to take a post that would place him in competition with T&TI. The editor of the magazine, Mr Thomas, subsequently tendered his resignation on 5 October 2009.

On 6 October 2009, Ms Palmer, who had been recruited to replace Mr Tween as the sales manager, informed Mr Millburn that she had received information suggesting that Mr Tween may have been soliciting T&TI's employees and sales agents to poach them for a rival magazine that was being set up. On investigation, Mr Millburn received confirmation from Ms Palmer and a sales agent, that confirmed these suspicions. The sales agent, who contributed about €200,000 per annum to T&TI's revenue, said that Mr Tween had approached him at a tunnelling conference in June 2008 to ask him to become a sales agent for Mr Tween's new tunnelling magazine. The offer was declined.

Mr Millburn formed the view that Mr Tween may have breached his **duty of fidelity and good faith** to the company, his **confidentiality obligations** and the **implied term of trust and confidence**. He decided that Mr Tween's laptop should be confiscated and, in a letter dated 8 October 2009, Mr Tween was invited to attend a disciplinary meeting in the London office. Mr Tween declined to attend the meeting, which took place in his absence.

Mr Millburn, who was assisted by the company's head of HR, decided that he had to make the decision, as he was the only person with sufficient knowledge of the publication and the circumstances surrounding the issue. He decided that Mr Tween had been involved in setting up a competing publication and had, in the course of his employment, solicited T&TI's employees and sales agents to poach them for the new venture. Mr Tween was summarily dismissed and his appeal, which was conducted in November 2009 at a rehearing by Mr Pyper, the group chief executive, was also dismissed. Mr Tween claimed unfair dismissal.

The employment tribunal concluded that Mr Millburn had carried out a reasonable investigation. The sales agent's evidence in particular had raised a prima facie case against Mr Tween and Mr Millburn was entitled to expect Mr Tween to provide some answers to the accusations. Mr Tween did not have a reasonable excuse for failing to attend the disciplinary hearing and, bearing in mind Mr Tween's senior position, summary dismissal was a reasonable sanction.

The tribunal went on to consider whether or not Mr Tween had been wrongfully dismissed. It noted that, since the date of dismissal, evidence had come to light that Mr Tween had indeed been in discussions with the company's American sales agent, about setting up a rival publication. In fact, both Mr Tween and Mr Thomas (the editor of TT&I who had resigned around the same time as Mr Tween) were working for the competing publication at the time of the tribunal.

The tribunal held that Mr Tween had been "in flagrant breach" of his duties of fidelity and confidentiality and in breach of the implied term of trust and confidence at the time of his dismissal. His claim for breach of contract therefore failed.

THE RWA COMPLIANCE HEALTHCHECK 2011 HAS LAUNCHED



New For 2011:

- Corporate Governance
- Concepts From The Environcom Judgement
- More Questions

Over 480 Questions across 13 Topics to Help You Assess The Risks to Your Business

The Comprehensive Compliance Healthcheck Designed for UK General Insurance Brokers

The 2011 Healthcheck will give you an independent overview of your firm with a list of actions and checks that you will need to cover over the next 12 months. An RWA consultant will visit you on site to complete the Healthcheck in the morning and the instant results will enable that consultant to spend the rest of the day with you helping you understand those key risks identified and mapping out a plan that you can work with over the coming year. Once back at their desk your consultant will write a thorough report for your records outlining our recommendations.

The report generated by the system will be clear and provide graphical results helping you understand the weaknesses and risks to your business without scaring you with jargon or leaving you feeling like you have a mountain to climb.

RWA Club Members will obtain the RWA Compliance Healthcheck as part of their RWA Compliance Plan.

**Please contact us for details and pricing
helpdesk@rwagroup.co.uk**

Bribery Act 2010

By Terence Clark
terence.clark@rwagroup.co.uk

The Ministry of Justice (MoJ) has recently closed its consultation on the 2010 Bribery Act and copies can be found on -

<http://www.justice.gov.uk/consultations/briberyactconsultation.htm>

The consultation sets out six principles under which firms should work to ensure that they comply with the law and these are repeated below.

The consultation also gives some practical examples of how a firm may do this.

The act will come into effect on 1 July 2011.

PRINCIPLE 1: Risk Assessment

The commercial organisation regularly and comprehensively assesses the nature and extent of the risks relating to bribery to which it is exposed.

This is about knowing and keeping up to date with the bribery risks you face in your sector and market;

PRINCIPLE 2: Top level commitment

The top level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery. They establish a culture within the organisation in which bribery is never acceptable. They take steps to ensure that the organisation's policy to operate without bribery is clearly communicated to all levels of management, the workforce and any relevant external actors.

This concerns establishing a culture across the organisation in which bribery is unacceptable. If your business is small or medium sized this may not require much sophistication but the theme is making the message clear, unambiguous and regularly made to all staff and business partners;

The Act was created to replace the existing law which was a complicated and confusing combination of statutory and common law offences that is the result of piecemeal development over more than 100 years.

PRINCIPLE 3 - Due diligence

The commercial organisation has due diligence policies and procedures which cover all parties to a business relationship, including the organisation's supply chain, agents and intermediaries, all forms of joint venture and similar relationships and all markets in which the commercial organisation does business.

This is about knowing who you do business with; knowing why, when and to whom you are releasing funds and seeking reciprocal anti-bribery agreements; and being in a position to feel confident that business relationships are transparent and ethical;

PRINCIPLE 4: Clear, Practical and Accessible Policies and Procedures

The commercial organisation's policies and procedures to prevent bribery being committed on its behalf are clear, practical, accessible and enforceable. Policies and procedures take account of the roles of the whole work force from the owners or board of directors to all employees, and all people and entities over which the commercial organisation has control.

This concerns applying them to everyone you employ and business partners under your effective control and covering all relevant risks such as political and charitable contributions, gifts and hospitality, promotional expenses, and responding to demands for facilitation demands or when an allegation of bribery comes to light.

Bribery Act 2010

PRINCIPLE 5: Effective implementation

The commercial organisation effectively implements its anti-bribery policies and procedures and ensures they are embedded throughout the organisation. This process ensures that the development of policies and procedures reflects the practical business issues that an organisation's management and workforce face when seeking to conduct business without bribery.

This is about going beyond 'paper compliance' to embedding anti-bribery in your organisation's internal controls, recruitment and remuneration policies, operations, communications and training on practical business issues.

PRINCIPLE 6 - Monitoring and review

The commercial organisation institutes monitoring and review mechanisms to ensure compliance with relevant policies and procedures and identifies any issues as they arise. The organisation implements improvements where appropriate.

This relates to auditing and financial controls that are sensitive to bribery and are transparent, considering how regularly you need to review your policies and procedures, and whether external verification would help.

What does a broker need to consider?

All firms, not just Insurance Brokers are covered by this legislation, and initially, it seems that there are two areas that brokers need to address.

1. Hospitality / Gifts received from Suppliers (Insurers/Wholesalers)
2. Hospitality / Gifts they give out. (i.e. to Clients or Prospects)

Gifts Received

Under one, we are looking at Corporate Hospitality from Insurers, Free Training, General gifts (Pens, Mugs, Mouse mats etc) and Entertaining.

The hospitality received must be reasonable and there must be evidence this is monitored, hence the Gifts & Hospitality policy and register.

A firm should adopt a policy where all gifts and offers of hospitality should be notified to a senior person, approval sought and then the matter recorded on a Gifts & Hospitality Register.

This is not designed to stop the tin of toffees at Christmas, or the odd bottle of wine or golf umbrella and a firm may wish to consider some form of "De Minimis limit" where anything up to a certain value, say £25 does not have to be recorded. It would be up to each firm to consider how this would work.

The more "generous" gifts such as theatre or sporting trips (Wimbledon, Cowes, Premiership football for example) would need to be scrutinised in more detail. A firm needs to be able to spot any "trend" such as the same people receiving hospitality or business transacted with a certain party rising for no specific reason.

Corporate Hospitality must be reasonable, but like most things is not defined.

Also, other things could be seen as a "gift".

Bribery Act 2010

Insurer Training

What about training provided by insurers at little or no cost?

First of all, is the training offered, relevant, useful, needed and measurable for your firm?

If so, you should record this with your reasons and then you can proceed.

Remember – All of these are potential Conflicts of Interest and should be considered as part of a firm's Conflicts of Interest Policy and also included within the latest Treating Customers Fairly GAP analysis.

There is sometimes no issue with having a conflict, it is how it is recorded, managed and reported that is the significant part.

Gifts Given

Under the second point above, it is all about what a broker gives to their clients and potential clients.

Where expense is reasonable, and by that it could be suggested that things like a goodish bottle of wine or bottle of whisky or even box of chocolates for some small clients would not be an issue as long as it was all recorded with receipts and reasons for the gift.

Larger items, maybe a crate of wine or an expensive malt need to be considered more carefully. These may be given to more important or larger clients.

Internal Controls

Also, firms need to be looking at expenses and their systems here. Do all expenses claims have to have a receipt or is there some form of "De Minimis" limit, e.g. anything under £10 is ok, covers a pie and

a pint at lunch etc.

Where more lavish entertaining takes place meals at restaurants etc, this should be fully itemised and receipted. Some firms adopt a "lifestyle accounting" approach and not only do they need a receipt, say credit card stub, but also want to see the original bill so that they can see exactly what has been spent on food and drink.

A Brokers Defence

One of the main defences is if that the corporate body can show that it had in place "adequate procedures" designed to prevent bribery on its behalf. This brings Corporate Governance into play, so it is up to all firms to show that they know what is going on. Ensure everything is recorded and that all your Corporate Governance processes will pass muster.

The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure.

In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act. So you can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for

Bribery Act 2010

reasonable travel expenses in order to demonstrate your goods or services to clients if that is reasonable and proportionate for your firm.

During the Bill's journey through Parliament, the Government said: *"Corporate hospitality will invariably be provided to make potential customers, whether foreign public officials or anyone else, more favourably disposed to the provider of the hospitality in the hope that that will lead to a future commercial opportunity*

or advantage. To the extent that reasonable hospitality is a normal part of business, we are not seeking to discourage such practices... If a case involving corporate hospitality came to the attention of the investigating and prosecuting authorities the public interest might not be best served by a prosecution unless... the hospitality was excessive or unreasonable" (Claire Ward, Hansard, 23 March 2010, Column 189 – 190)

So, nobody is saying hospitality is a bad or undesirable thing; just that it must be controlled.

There are two very easy to follow guides on the MOJ website, these can be found on – <http://www.justice.gov.uk/guidance/bribery.htm>

What should an insurance broker do?

There are some simple fixes for the insurance broker.

- Have a policy for gifts and hospitality.
- Look at De Minimis limits etc.
- Ensure all staff are "trained".
- Have a process to review the register regularly (Monthly/Quarterly).
- Review Conflicts of Interest Policy.
- Where free training is received make sure this is documented.
- Review their accounting practice for

expenses.

- Make sure all is receipted.
- Set guidelines / limits on what can be spent on entertaining etc.
- For those firms who are involved in larger corporate entertaining, review what they consider to be reasonable and be able to justify it.

Ensure all staff (incl Directors/Partners) are trained and are fully aware of the implications.

In addition, the Serious Fraud Office has an informative video about this subject.

<http://www.sfo.gov.uk/bribery--corruption/bribery-act---what-does-it-all-mean.aspx>

It is now important that all brokers review their anticorruption procedures and policies to ensure they will be effective in preventing corruption from being committed on their behalf and to be able to rely on the "adequate procedures" defence in appropriate circumstances.

Please speak to the help desk or your RWA compliance consultant if you have any questions.



Griffiths & Armour



Club 110 Brokers PI: Discounted Professional Indemnity insurance

Griffiths & Armour have been working with Aviva and their existing Club 110 compliance provider RWA Compliance Services Limited (RWA), to offer Aviva Club 110 Brokers an opportunity to gain discounts of up to 15% off your PI premium by obtaining a subsidised Professional Indemnity Risk Survey from RWA.

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Why choose the PI Risk Survey?

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The less risk you pose, the greater the discount you will receive

Helping to reduce your risk exposure

This subsidised PI Risk Survey gives you and your clients the reassurance that you are practicing to a high standard, gives credibility and ultimately should lead to the avoidance of risk and negligence. This could, therefore, potentially reduce your PI premium over time and allow you to receive the maximum discount.

Next Step:

Contact us if you would like a quote from Aviva and explore the potential discounts available. Alternatively, if you already have a PI policy with Griffiths & Armour you can still take advantage of these discounts. Once you have been certified by RWA, your discount will be applied pro-rata for the rest of your policy term.

Please contact:

Matt MacLaren

mmaclaren@griffithsandarmour.com

+44 (0) 151 600 2272

If you are some time off your renewal, we would like to record your renewal date so we can contact you at the appropriate time, please contact us for more information.

Please note this offer is only available to Aviva Club 110 Brokers.



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RWA's Supervisor Online learning & assessment course is the solution that will meet these needs. For the last 5 years RWA have taken our face to face 3 day supervision workshop all over the country and have successfully signed off hundreds of supervisors as competent. However, we are fully aware of the strains that a course such as this can put on your firm. Time out of the office, expenses and course costs can all affect the decision making process when choosing a course and

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CP11/10: Consumer complaints: The ombudsman award limit and changes to complaints-handling rules

However, do not let the title confuse you, this is also months. A firm **must** appoint formally an individual to oversee and have responsibility for complaints. This **must** be a holder of a Governing function (i.e. CF1-6)

This paper contains the final policy and rules and guidance, and consults on a proposed change to the definition of 'eligible complainant' in response to feedback received to CP10/21. This change aims to ensure that individuals can take a complaint to the ombudsman service about the actions of a debt-owning business in attempting to collect a debt, where they are the victims of identity theft or mistaken identity.

The main 'new' areas are –

From 1/7/11

- A firm **must** publish appropriate information relating to its internal procedures for dealing with complaints.
- A firm **must** refer Eligible complainants to the availability of this information.
- A firm **cannot** charge for any complaints handling (to deter for example frivolous complaints)

From 1/11/11

- A firm **must** introduce measure to undertake root cause analyses of all complaints, identify trends and report on this as part of its MI.
- The *respondent* **must**, by the end of eight weeks after its receipt of the *complaint*, send the complainant:
 - (1) a *final response* a 'final response', being a written response from the *respondent* which:
 - (a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or
 - (b) offers redress or remedial action without accepting the *complaint*; or
 - (c) rejects the *complaint* and gives reasons for doing so; and which:
 - (d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and
 - (e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service* and **must** do so within six

From 1/1/12

The FOS limit increases to £150,000

From 1/7/12

Details of FOS **must** be included **prominently**, in all response letters.

In GABRIEL reporting, where a complaint has been accepted but compensation has yet to be paid, this is classed as "Accepted", where rejected, but a goodwill payment is to be paid, this is classed as "Rejected"

Please speak to your RWA consultant or the Helpdesk if you have any questions.



Client Money Audits

By Terence Clark

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This matter is certainly one which does cause some "uncertainty" amongst many brokers, and I have discussed the matter direct with the FSA on previous occasions to try and obtain some clarification ourselves and for our clients.

Many brokers, within their Trust accounts hold a mixture of what is initially "Client" Money and "Insurer" money, and as virtually all insurers and many wholesalers now cascade risk transfer, "Client" money in many cases represents only a small amount of the total trust account balance. In your Insurer TOBAs, you will have been granted Risk Transfer and the insurer will have agreed to co-mingling and subordination of their rights so enabling you to hold both types of money in the same account. However, once you do this, "Insurer" money becomes "Client" money as set out in CASS 5.2.4 and so is subject to the Audit rules.

This is why the FSA say that it is the total of the account balance which is the trigger for an audit not a split between "Client" and "Insurer" balances. Insurers by agreeing to co-mingle and subordinate are effectively saying that their money is to be treated as client money for accounting purposes although it still enjoys the protection of the Risk transfer. It is to a degree a matter of terminology.

The alternatives are to have separate bank accounts for "Client" money, subject to either a Statutory or Non Statutory trust and a operate "Insurer" money account subject to a non statutory Insurer Trust account. The greater proportion of the money will sit in the latter and the balance on the former should be less than £30,000 so not triggering the need for an audit; or if you have written risk transfer agreements from all providers cancel client money permissions and operate a Non Statutory Insurer Trust account. As you do not hold client

money, there will be no requirement for an audit.

So I would confirm that it is a requirement to obtain a client money audit if the balance on the Statutory trust account exceeds £30,000 at any time during the year, such a report being completed within 4 months of the firm's year end. Failure to do so would be breach of the Supervision rules (Sup 3.10). The split of the money is not relevant to the FSA

I would like to clarify what s required in an audit.

A comment sometimes made is – *"The cost of having all transactions under the client account audited would be quite considerable..."* I would agree that not only would this be costly, but very time consuming. However, such an audit is an audit of process not each transaction. Your auditor or accountant is looking at your client money processes and checking to see if the firm is adhering to the rules. This usually involves looking at a small sample of transactions and the auditor would typically be looking at the following –

- Client money paid into the client account not office account
- Reconciliations done at least every 25 working days
- Commissions removed from the client account in the correct timescales
- Mixed remittances dealt with in correct timescales
- Refunds not paid to clients unless cleared funds received from insurer
- Items on Insurer accounts only settled when you have received cleared funds from clients.

Continued...

Client Money Audits

Typically, we find that auditors can complete this reasonable quickly and at the same time as they audit a firms year end. There is of course an additional cost, but the fact that this can all be done at the same time, by the same people does mitigate this. One point to bear in mind, is to ensure that the person you engage to carry out the Client Money audit has experience in this specific role, if not, you will need to look elsewhere for this audit. The FSA are very clear on this matter and it is your responsibility to ensure that the person engaged has sufficient experience and skill to carry out the task instructed.

The actual report then produced is typically one or two pages long, as the ICAEW have issued specific guidelines and standard reporting wordings to accountants to ensure that it meets with the Supervision rule book.

So to sum up, you need an audit if the **total** balance exceeds £30,000, your accountant should be able to do this at the same time as the firm audit, there will be an additional fee, but it is not a full audit of every transaction, just a process audit and uses a random sample of transactions and It should not be too time consuming for most firms.

If you need any further information, the FSA client Money guide is a useful, clearly written document and can be found at –

[http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/Client Money Guide.pdf](http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/Client%20Money%20Guide.pdf)

Alternatively, please feel free to speak to your RWA consultant.



Ever Wondered What Happens...

... to your GABRIEL return when you press submit?

Well, it's a question we often get asked, so to finally satisfy your curiosity, here's what happens.

When you submit the return, it is compared by computer programmes against a series of benchmark standards, called Alert Risk Indicators (15 in all) and each area is measured against one or more standards and scored out of 10.

If any area scores 4 or below in any standard, the return is flagged for individual scrutiny by a real person.

However, it is not just the current return that is scrutinised, having a return flagged means that all previous returns are examined and if necessary, the financial details are compared with those returns which you make to Companies House. (Therefore, it is important that both your FSA returns and Companies House returns match, although minor differences are allowed)

If the system detects minor inconsistencies, these result in a computer generated email/letter, and I know many of you have had such missives. The problem is that, and this is admitted by the regulator, such computer programmes often produce correspondence which is sometimes not necessary and is too isolated from the bigger picture. I know many brokers have received notices of potential breaches in PI rules because they have cover which is each and every claim, and there is not a box on GABRIEL for this.

We have noted your concerns, and in a recent meeting with the FSA we have reported these issues so that they can be investigated.

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We look forward to working with you.

The RWA Team



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