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He's Back...

WALTHAM PITGLOW

January 2011

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From The Chairman

By Robin Wood

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Well it is a New Year and might I take this opportunity to wish you all a prosperous one!



It could well be tough and the biggest piece of advice I can give you from the experience of at least three major recessions is don't be too quick to embrace major changes. In times like this it is often better to stick with what you know rather than spend time and money looking for new answers.

The great advantage of the GI insurance broker over other businesses is that we have renewal income. We might have reservations about where we are at the moment but being cost effective and looking for small but sustainable additions to existing business is likely to be the name of the game for many brokers.

There are quite a number of additional types of business that a client might consider and one little tip that I found most interesting on the recent series of Environcom Master Classes around the country was to talk to clients about additional covers mid-term rather than at renewal. This seems to fit in quite nicely with TCF. At renewal the customer is bombarded with paper and things to update and think about. The relative calm of a six month review is a good idea and perhaps good for the customer.

Blog

New Additions to the RWA Team

I am delighted to announce that Mac Eddey is joining RWA from the 4th January within our Broker Support team helping deliver Financial Services Compliance, General Insurance Compliance and T&C Support. Mac has worked with RWA for 15 years and we are delighted that he is taking up a senior consultancy role.

Extension of RWA IFA support to formal Compliance Club Membership status

RWA has supplied an on demand Financial Services Compliance and T&C Service for 20 years and our research shows a growing need for a cost effective service that gives support in key areas but which does not produce a list as long as your arm, much of which is just not used by the good professional IFA business. The RWA service provides the following:

1. An annual Health-Check and planning day (on-site)
2. General Compliance Support (distant or on site...you choose)
3. Supervision training/coaching
4. TCF Gap Analysis
5. Suitability Assessments
6. Document Templates
7. On-line competence assessments (via OBELISK membership)

We will also offer other services on an as requested basis:

- Business development consultancy (Preparing for RDR)
- GI 'Partnerships'.
- M&A service for those buying/selling practices.

Get in touch if you want to know more. We aim for a basic price of about £200 per month plus VAT.

Waltham and Petrina are back!

After a five year absence the worst kept secret of 2010 is that Waltham Pitglow and Petrina Oxshott are back to the RWA team. Waltham will be producing regular CPD pages for those of you who want readily accessible and broker relevant learning bites and for those of you in charge of T&C in

Continued...

your firm, a regular supply of exercises and tips for your T&C scheme. Petrina will be heading up our new online Supervisor's Course, which all our clients will be hearing about over the next month.

We have also asked Waltham to compile a regular Blog (www.brokerbureau.com/blog) with the instruction that it is to be suitably irreverent and hard hitting where needed. Most of all it is going to be 100% on the side of the professional insurance broker and that does not mean just the ones that take exams! Waltham reported to me a case recently with a Scottish client of a high street Club Member who set aside an area in reception for clients to come in for hot tea and coffee (with biscuits) and to put their feet up and have a break while Christmas shopping in the snow.....Nice one. That to me is what true insurance broking is all about. You don't get that from online comparison websites.

In 2011 please think seriously about the following:

- Insurers are now turning down claims for lack of insurable interest. Do you explain insurable interest to your clients?
- There will be many PI claims this year because the client did not understand how to calculate gross profit
- As many because the indemnity period was too short
- When you explain things to your client do you make a note that you have done this?
- Do you make a file note each year that when you explain something you believe the client understood it?
- Does your PI policy cover the maximum possible risk or the minimum the FSA requires?
- Do you really have a robust T&C scheme? Contact Kate Foreman at RWA if you have doubts (she wrote the Insurance Brokers T&C Toolkit in case you have any doubts kate.foreman@rwagroup.co.uk).
- Does your online assessment tool cost you more than £75 per head or are you facing or about to face extraordinary increases in your overheads there?
- Know ye not Environcom? admit. (with due respect to 1066 And All That!)
- Are you an HR (Human Resources) Luddite? I personally admit to that failing, but I have learned to ignore the subject at my peril. If you have not looked at the subject closely (or at all) then set yourself the target of an RWA HR Heath Check this year.
- Be very careful about informality with clients in emails (and insurers as well). In a recent case, a broker was writing to an age old client about a Business Interruption renewal and having explained the manner in which gross profit should be calculated added the line "to be honest George, even I find this complicated: you would have to be a specialist to understand this". Funny at the time, but not too impressive to a barrister and judge considering a claim of negligence.
- Beware the examination trap. Nice idea which might be supported for the long term benefit to a firm, but do you have the resources to allow the 100 plus hours study (three man weeks) required for the typical exam subject (and often much more)? Unless you complete a competent Cost vs Benefit analysis you could be sacrificing the quality of customer service and putting customers at risk.

It seems that those promoting the concept that qualification is the route to proving professional standards (and they might be right) are getting a bit carried away with their sales campaign. We believe that a small to medium sized firm of brokers asking three members of staff to take three ACII subjects in a year could be losing 36 man weeks of time. On the normal 50/50 split that is 18 man weeks of customer service gone. Add to that the stress of exams and pressure around the office and you can see the need for Good Corporate Governance. Have a word with your RWA consultant and don't just sign up without sensible thought and planning. We think those selling examinations and qualifications might be accused of hard selling and breaching TCF standards if they do not recommend a cost benefit analysis! RWA will be happy to help you with this exercise. Should there not be some sort of regulation and control over qualification sellers?

Blog

That is enough for now but just remember that transparency of income works both ways. Next time someone high up in the industry promotes the idea that a broker should disclose all, write them a note and ask them to do the same.....salary, bonus, profit share, fringe benefits, expenses and pension pot. It doesn't change the fact that perhaps disclosure is unavoidable but brokers are their customers. Don't we have a right to know?

The FSA – more likely to go out with a bang than a whimper

By Ian Ritchie

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Q – I know that a number of our procedures are not compliant but I see little point in doing anything about it now, as the FSA will soon be gone. What is the point?

A small minority of clients have asked if there is any point in keeping up with compliance functions now that the FSA will soon be gone. The answer is a resounding yes and let me give you some reasons why.

First, a cautionary tale. It concerns a small firm who asked us to carry out a health check, whilst saying that they were probably non-compliant in a few areas, as in the words of the owner/director, they had done very little since 2005. The day after that conversation the firm were coincidentally contacted by the FSA who summoned them to a TCF interview, calling in the meantime for certain of their regulatory documents to be submitted within 4 weeks.

Squeaky bum time, in the words of Sir Alex Ferguson and a client whose full and undivided attention we now have!

Again paraphrasing, this time Mark Twain, rumours of the demise of the FSA have been exaggerated, although the regulator is set to be replaced next year. If you think they have withdrawn to Canary Wharf and are counting the days and applying for jobs elsewhere, think again. Just take a look at some of their actions in the last few months, all of which have been covered in the industry press.

- Insurance Broking Director fined £89,000 and firm's permissions cancelled for overcharging a client. (October 2010)
- 3 individuals banned for Mortgage Fraud, with fines in excess of £400,000 (October 2010)
- An Investment broker fined in excess of £252,000 for "acting without integrity" September 2010)
- A GI Broker banned for client money failures (September 2010)
- An IFA banned for Corporate Governance failings (September 2010)
- A Mortgage Broker fined £14,000 and firm's Part IV permissions cancelled for failing to be open and honest with FSA (September 2010)
- 4 individual GI brokers banned for fraud and also one fined £50,000 (August 2010)

The reality is that FSA staff continue to do their job. Quite rightly, they take the view that if after five years firms are still wilfully paying scant attention to regulation, their patience will be exhausted. Not only have firms had sufficient time to implement and embed the rules into their daily routines, but also any instances where the FSA's statutory objective of Consumer Protection has been endangered will be hit particularly hard. Just look again at the examples above.

These fines were levied on individuals, not on the firm. Remember that when you signed up as an Approved Person, you gave an undertaking to the FSA that you would ensure that your firm would comply with the rules, so the buck stops with you.

Having said all of that, it should be borne in mind that the FSA do not take a firm into enforcement lightly. It is not only a time consuming process for all parties, but also expensive. It can sometimes take years before any enforcement action is made public, following investigations, tribunal hearings and the appeals process. The FSA want to work with firms to ensure that any areas of concern are corrected and will give errant firms every chance to work with them in partnership to get back on the correct regulatory path.

Again, the FSA can differentiate between a firm that has given it their best shot and not quite got it right, and a firm that has just buried their corporate head in the sand and hoped that regulation might go away.

Do not forget that enforcement action is in the public domain if your firm was held to account, coverage of the FSA's action in your local paper would not exactly enhance your firm's reputation in your own back yard.

So, may I suggest that your belated New Year's resolution might be to take some positive action to ensure that you are up to speed with current regulation and ready to embrace whatever changes the new regulator will bring along in 2012 or beyond.

A happy and prosperous new year to you!

Client Money Audit Seminar (with guest speakers from The FSA) - 26th January 2011 - London

Client money continues to be an area of focus for the FSA. There have been a number of direct communications stating the FSA continue to be unhappy with firms' compliance with the CASS regime and recently the FSA have also commented that audit firms are not doing a robust enough job in their client money audits.

The FSA are taking a tough stance on this with increased levels of s166 expert reports being forecast, enforcement action being taken and some audit firms being reported to the ICAEW.

RWA, Linn Maggs Goldwin and Littlejohn, together with guest speakers from the FSA, are delighted to invite you to this seminar, aimed at those who are responsible within insurance intermediaries for client money and auditors carrying out client money audits. The seminar will cover a number of areas, including:

- Setting the scene – the FSA's perspective
- Overview of the legal framework and CASS environment
- Whistle blowing / what and when to report / CASS 5 refresher / pitfalls & best practice

There will also be a panel Q & A session and an opportunity to meet members of the FSA's CASS sector team in a post seminar drinks reception.

Places at the seminar will be limited but we suggest that firms send the Director responsible for client money together with his auditor. The seminar is open to all firms, not just RWA, Linn Maggs Goldwin or Littlejohn clients, at a cost of £95 + VAT per person.

Date: Wednesday 26 January 2011

Time: 14:00 for 14:30 start – 16:30 followed by drinks reception

Venue: ICAEW Hall, One Moorgate Place, London, EC2R 6EA

This is now FULLY BOOKED. To register your interest in another Client Money Audit Seminar please send an email to Ian.Ritchie@rwagroup.co.uk

Internal Audit and Risk Management for Regulated Firms.

By Terence Clark

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In September 2010, The FSA published new rules following the Walker Review into Corporate Governance. This continues the current FA thinking and developing practice towards good Corporate Governance.

Much of the Policy Statement is concerned with the enhancements and alterations relating to the revised Approval Person regime and Significant Influence functions, effective from 1 May 2011.

This will mean some individuals being brought into the scope of the regime for the first time, such as Chairs of the Board, where they are not already directors, parent or holding companies and chairs' of various committees such as Risk, Internal Audit and remuneration.

Other current Controlled Functions will have their roles and purpose redefined.

The following extract from the Policy Statement sums up the position on the Risk function, although it may well equally apply to other "committees"

Extract from FSA statement PS10/15 - Effective corporate governance - Significant influence controlled functions and the Walker Review

As can be seen from the above, it is incumbent on each firm to consider its position in this matter.

"It is for each individual firm to determine, based on its nature, scale and complexity, as well as its attitude and exposure to risk, whether or not to establish a risk committee of the governing body. Where no risk committee has been established, we would expect the firm to keep this situation under regular review (e.g. as part of the firm's business strategy review) and to create such a committee should circumstances change and/or, for relationship managed firms, on the advice of their supervisor. Moreover, even where no risk committee exists, the firm should consider appointing someone to be accountable for risk at the firm, with the governing body retaining responsibility for risk oversight.

There is no requirement on small firms to establish a board risk committee and, on the basis of proportionality (i.e. nature, scale and complexity); it is unlikely that credit unions, for example, would require one. There should, however, still be someone accountable for risk at the firm and the governing body will retain responsibility for risk oversight."

<http://bit.ly/g7200y>

What it is not saying is that all firms now need to extend their Approved Persons and set up new committees as these would not serve any real useful purpose for most small brokers. However, it is important that each firm looks at its corporate governance, which in very simple terms is the ability to demonstrate that you run a well oiled business and know what is happening.

You need to consider this and appoint somebody within the firm to take charge of the risk function and help review the business to see if it is exposed to any unnecessary risks and then do something to resolve this issue.

Disaster Recovery or Business Continuity planning is a good example. No doubt you could come up with a number of areas where a risk audit could be applicable.

How about HR risk – do you have an HR function or do you have a facility to obtain this help when needed? Data Security – a subject very dear to the FSA's heart.

So, in summary, review documents and make sure that the appointee has enough information to perform the task. Your RWA consultant can assist with this, so please speak to them for guidance.

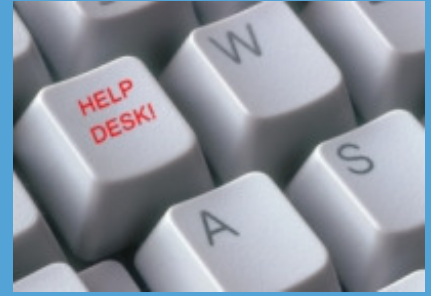
RWA Helpdesk Update

Email: helpdesk@rwagroup.co.uk

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Web: www.rwagroup.co.uk



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."

VAT Increase

RWA were the first compliance consultancy to include VAT in all our pricing. We've been brokers ourselves and understand that brokers cannot claim back VAT, so it seemed obvious to make it easy for our clients knowing that every price we quoted was the price you paid.

As such, we are now having to update our pricing to take into account the new 20% VAT rate and we have written to all our clients affected by this.

This also explains why our new pricing may look a little strange!

BREAKING NEWS: Beat the VAT Increase with Aviva! The Aviva Compliance Deal pricing has been held at last year's price until further notice - please contact us for pricing.

The 2010 Financial services Act brought in some changes to the FSA's Statutory Objectives which mean that the existing five have now been reduced to four. These are –

- Market confidence: maintaining confidence in the financial system;
- Financial stability - contributing to the protection and enhancement of the UK financial system
- Consumer protection: securing the appropriate degree of protection for consumers; and
- Reduction of financial crime: reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

The Objective relating to Consumer education has now been removed and this is the responsibility of the new Consumer Finance and Education Body.

New Direct Debit Payments

RWA are pleased to announce that from 1st January we have implemented a new Direct Debit system for monthly payments on our Compliance Club and OBELISK accounts. This will be replacing the old system of standing order.

If you are currently paying by standing order then you will have had an email in December with details


of the new arrangements. If you have not seen this email then we will be in touch with you to discuss.

This new Direct Debit system will make adding RWA services to your compliance plan easier and of course all our clients will be protected by the Direct Debit scheme guarantee.

If you have any questions please ask the Helpdesk.

The RWA Broker Bureau Blog

RWA have launched their Broker Bureau Blog, focusing on the key compliance issues as we hear of them. You will also find articles from this newsletter

uploaded to the site for those of you who would like to comment on any of them. Look out for the blog symbol within the newsletter to find those articles which are on the blog. 

Every month we will be discussing the key compliance, regulation, HR and Training & Competence news and chat.

For access please go to:

www.brokerbureau.com/blog

RWA Template Updates:

We have updated some of our Money laundering documents for our compliance club members, please refer to the RWA website or speak to your consultant.

RWA in the Community

At RWA we have our own Corporate Social Responsibility Policy where we commit to providing our services not only within the financial services industry, but also within the communities that we work.

We are very proud of the work that we do in the Community to help raise the profile of not only RWA but the insurance industry as a whole.



My youngest son attends a specialist Business and Enterprise college in Manchester (St. Antony's) and they have always been very keen to develop links with the local business community, and already have forged relationships with some large local firms whom you will recognise such as Kellogg's and Proctor and Gamble, as well as a close relationship with the local football team, Manchester United.

I was approached by the head teacher to see if I would be interested in joining their Business Link initiative which aims to help show students approaching their GCSEs how businesses function in reality.

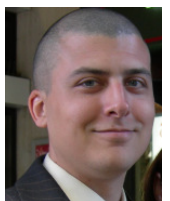
In a business such as RWA, we are very technology driven, working remotely and using the latest technology to keep in touch and up to date with current events. In a specialist Business and Enterprise college, this facet helps demonstrate how a number of GCSE courses, such as ICT, Business and Communications, and Enterprise fit into and

benefit the student in a modern business environment.

I have been and will be continuing to assist students in areas such as Presentations (Powerpoint), structuring business correspondence and report preparation. I will also be helping students understand how businesses use everyday technology such as Blackberry, Smartphones, and tablets.

This will, I hope prove beneficial to the students by seeing how what they are being taught by their teachers can have real practical applications in the modern workplace environment.

RWA Group are very happy to have sponsored the Event Insurance at the Blaenavon Winter Wonderland in December. We run the Operations and The OBELISK from our office in Blaenavon, South Wales and play a very active part in the local business community.



The local traders committee add, "The help that RWA provided enabled us to ensure that our public liability was covered and also that we were able to include employers liability as well for our volunteers. With visitor numbers increasing four fold this year, RWA were able to help give us peace of mind that there was a safety net should the worst happen."

Insurance Mediation Directive Mark II

The European Commission has published its Consultation paper on the revision to the current Insurance mediation Directive. The consultation period ends on 31 January 2011.

The full consultation can be found on the European Commission website –

<http://bit.ly/ecYauV>

and more detail on –

<http://bit.ly/gK3t5d>

Some important elements under discussion include:

Possible increased remuneration transparency. Additional requirements on the demonstration of knowledge and capability.

Whilst at this stage, the consultation gives no precise or clear guidelines on what the final directive may look like, it does pose some interesting questions and all brokers should review this and take part in the consultation process.

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



Broker Director Fined and Banned

The FSA have recently fined a director of a general insurance broker £25,000 and banned him from the industry for his part in a £2M fraud of

Margaret Cole, FSA director of enforcement and financial crime, said: **“In believing that he could be a ‘sleeping director’ without incurring any responsibility, he did not take his accountability as an approved person seriously. He recklessly abused the trust and confidence placed in him by London market insurers and by doing so enabled secret profits to be made from the fraud by his colleagues.”**

insurers.

The regulator said that while he was not a participant in the fraud, as a director of the firm he deliberately ignored his responsibilities as an approved person and turned a blind eye despite clear warnings about the true nature of the scheme.

This case again demonstrates how seriously the FSA view the role of Approved Persons and that they expect all individuals holding such a position to take responsibility for the actions of the firm and that it is no longer acceptable for those individuals who are not directly employed in the day to day running of the business to abrogate responsibility for the firms actions just because they do not take any active daily role.

The full text of the case can be found at

<http://bit.ly/gVSS4r>

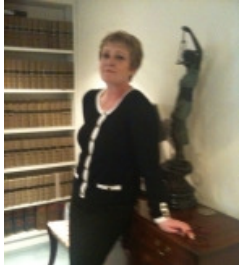
Please speak to your RWA consultant or the help desk if you have any question.

[Blog](#)

Key Employment Law Changes For 2011...

By Kate Foreman

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FEBRUARY

New tribunal award limits come into force

The limit on the amount of the compensatory award for unfair dismissal increases from £65,300 to £68,400 on 1 February 2011.

...the abolition of the default retirement age with its repeal in October, with transitional arrangements from April.....the introduction of additional paternity leave and pay.....the extension of the right to request flexible working to parents of children under 18..... new offences under the Bribery Act 2010..... the enactment of further parts of the Equality Act 2010...

APRIL

Transitional provisions for abolition of default retirement age

From 6 April 2011, employers will not be able to issue new notifications of retirement using the statutory retirement procedure and notifications issued before this date must relate only to employees whose retirement dates fall before 1 October 2011.

Right to request flexible working extended to parents of children aged under 18

On 6 April 2011, the right to request flexible working will be extended to parents of children aged under 18 (it currently applies to parents of children aged under 17, or 18 if the child is disabled).

'Positive action' provisions in the Equality Act 2010 are enacted

From 6 April 2011, the Equality Act 2010 will allow employers, in defined circumstances, to recruit or promote a person with one protected characteristic in preference to another person who does not have the protected characteristic, provided that they are equally qualified for the post.

Right to make a request in relation to training may be extended to all employees

The right for employees to make a request in relation to study or training, which currently applies to employees in organisations with 250 or more employees, is due to be extended to all employees from 6 April 2011. However, the Government is reviewing the legislation so this extension may not happen.

Additional paternity leave and pay

Additional paternity leave and pay allows fathers to benefit from up to 26 weeks' additional paternity leave if the mother returns to work before using her full entitlement to statutory maternity leave. The new right is available to parents of children with an expected week of childbirth beginning on or after 3 April 2011.

New corporate offence of failing to prevent bribery

The Bribery Act 2010 will introduce a corporate offence of failing to prevent bribery by persons working on behalf of a business, which comes into force in April 2011.

Maternity, paternity and adoption pay increases

The standard rates of statutory maternity, paternity and adoption pay will increase from £124.88 to £128.73 per week from 3 April 2011.

Statutory Sick Pay increases

Statutory sick pay will also increase from £79.15 to £81.60 per week from 6 April 2011.

Key Employment Law Changes For 2011...

OCTOBER

Default retirement age is completely abolished

The default retirement age will be abolished completely following the six-month transitional period, and employers will no longer be allowed to retire employees by relying on the default retirement age from 1 October 2011.

New rules on equal treatment for agency workers

The Agency Workers Regulations 2010 will entitle agency workers to equal treatment on basic employment conditions after 12 calendar weeks in a given job, including pay and holidays, from 1 October 2011.

National minimum wage may rise

The national minimum wage may rise on 1 October 2011, subject to the prevailing economic conditions and the Low Pay Commission's recommendations to be delivered to the Government in February 2011.

Consultations 2011

Directors' remuneration.....the removal of legal aid for employment claims.....the reform of the PAYE system.....extending the right to request flexible working and increasing the flexibility of parental leave.....

Directors' remuneration

The Government is consulting on arrangements to address the conflict faced by directors in setting their own pay. Shareholders have the power to influence directors' remuneration, but directors' pay does not match company performance.

Withdrawal of legal aid for employment claims

The Government is consulting on proposals to remove legal aid for most employment claims in England and Wales.

Reform of the PAYE system

The Government is consulting on the reform of the PAYE system. It is introducing "real time information", a scheme that will enable HM Revenue and Customs to collect information about tax and other deductions each time an employer pays its employees.

CONSULTATIONS EXPECTED IN 2011

Flexible parental leave

The Government has announced that it intends to introduce a new system of flexible parental leave because leave options for families are currently too rigid.

Extending the scope of flexible working

The Government has announced that it intends to extend the right to request flexible working, because it considers that treating employees equally intrinsically means dealing with them as individuals, rather than on the basis of their caring responsibilities.

Blog



www.BrokerHR.com

New Consumer Credit Rules

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

On 1 February 2011, The Consumer Credit Directive (CCD) comes into force.

The Consumer Credit Directive (CCD) was adopted by the European Council in May 2008, and legislation implementing its provisions will come into force on 1 February 2011 (although lenders can start complying earlier), and whilst this may at first seem to have little impact on the broking fraternity, those brokers who use a third party premium finance provider or who offer their own short term credit schemes may well be affected.

To give just a few examples:

If you only use one premium finance company, you must ensure that you make the client aware of the fact.

If you offer a short term credit facility, usually allowing a client to pay you over several months, you may need to apply for or amend your Consumer Credit licence.

Certain pre contract information must be given to the client in a prescribed form.

We would recommend that you speak to your premium finance provider for more specific information or contact the Office of fair trading for guidance. They can be contacted at the OFT Enquiries and Reporting Centre on 08457 22 44 99

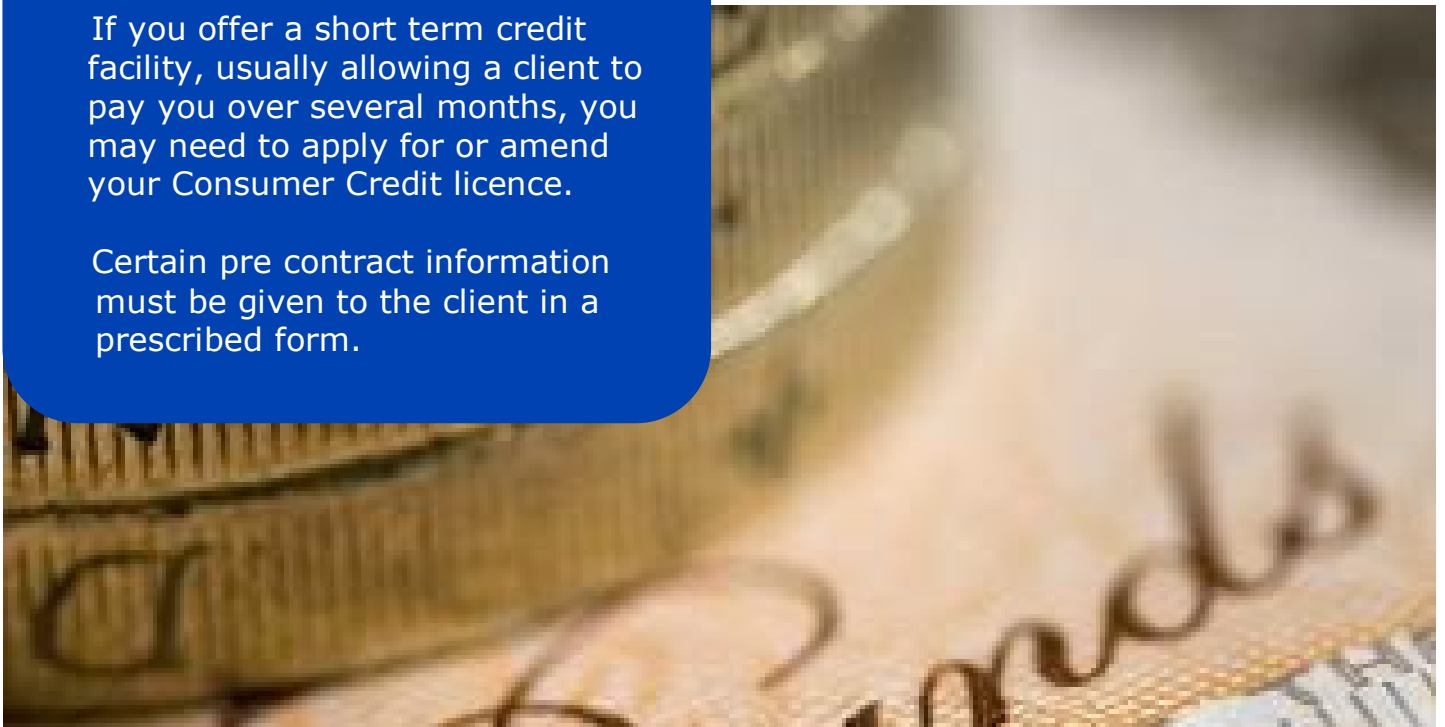
Their website has some useful up to date information –

<http://bit.ly/e3Mwws>

Also, the Department for Business, Innovation and Skills has produced a guide which can be downloaded from –

<http://bit.ly/egfUfe>

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



Waltham's Blog

Paying for Workshops & Seminars

It has come to my attention that there are a lot of compliance and training firms out there looking to take advantage of the current uncertainty of regulation. We have seen companies charging £150 - £350 + VAT per day for a compliance seminar and a cup of tea. Although we cannot comment on the quality or content of some of these seminars, we do see the marketing that is used to promote them. It does seem that there is an awful lot of scaremongering going on by firms to get brokers to attend and to part with their money.



RWA are BIBA Partners and with our relationship with Aviva we have access to one of the largest portfolios of brokers in the UK. We therefore actively encourage brokers to tell us what seminars and workshops would help them. If we can get 8 - 10 brokers in a room wanting the same workshop then we can offer these sessions at a fraction of the cost that other companies might charge. So, next time you get a mail shot from a firm or an industry body offering a seminar, shop around a little and drop us a line. We may be able to save you some money.

And another tip, watch out for those "One Day Workshops" which start at 11.00 and finish at 3.30pm. Include your 45 minute lunch and that "One Day" looks sneakily like a half day to me.

Blog

PI Claims

I am becoming concerned. So many of our clients have a PI sum insured that bears no relation to the maximum probable loss (a large commercial premises fully loaded with machinery and stock and a 3 year indemnity period under the BI section of the policy).

On the face of it the incidence of PI claims should be no different if the level of competence has not changed but the reality is very different.

I was talking to a specialist lawyer the other day who told me of an insurer who had declined a claim of some magnitude for non-disclosure or breach of warranty or something like that, and offered an ex gratia settlement that would just put the insured in funds to sue their insurance broker for the balance.

How much primary and excess cover has your firm taken out and how does that compare with your largest sum insured. And don't forget that after the Arbory case (<http://bit.ly/epxEnx>), your firm could be liable for the loss occasioned by the insured company and not just the amount of under insurance.

Blog

MD's who pay lip service to Compliance

I don't know if you have anyone in mind, but we had two cases reported to us this month by compliance staff in provincial Firms who reported that they had had instructions from the MD to play the game publicly but to ignore RWA's advice once we had left the premises!

Ok, that is fine but it is worth noting that in both cases there was a staff redundancy (or there is about to be) of employees that were treated rather roughly by the MD and they are going straight to the FSA.

The moral of the story is that if you think you are cleverer than the FSA then make sure your staff buy into your philosophies. You might at least then have a chance of a quiet retirement.

Blog

Solvency II

You may have seen either in the trade press or on the recent FSA Newsletters or the General Insurance Sector, some comment about Solvency II.

It is probably helpful to very briefly explain what this is all about.

Solvency 2 is a fundamental review of the capital adequacy regime for the European insurance industry. It aims to establish a revised set of EU-wide capital requirements and risk management standards that will replace the current Solvency 1 requirements.

Solvency 2 will set out new, strengthened EU-wide requirements on capital adequacy and risk management for insurers with a view to reducing the likelihood of an insurer failing and this strengthened regime should reduce the possibility of consumer loss or market disruption in insurance

Key elements of the new requirements will be that firms can:

- Demonstrate adequate Financial Resources
- Demonstrate an adequate System of Governance

In addition, there will be new

- Supervisory Review Processes
- Public Disclosure and Regulatory Reporting Requirements

So, as can be seen, these fit very well with the FSA's statutory objectives.

This all sounds very complicated and somewhat technical to say the least, but, the good news is that this is aimed first and foremost at the insurers, not the broker, so we can all breathe easily!

That is not to say that the regulator is not watching what is happening to the broking community, hence we saw the issue of the "Dear CEO" letter recently reminding firms of their duties under Principle Four in having sufficient resources at all times, not just the twice a year when GABRIEL is completed.

All of this will come fully into being on 31 October 2012.

If you need further information, the FSA have dedicated web pages -

<http://bit.ly/i3ctqW>

or speak to your RWA consultant.

"We expect firms to treat customers fairly and that consumers can be confident that their complaints will be dealt with properly. The failure of these two high street banks to deal adequately with complaints put consumers at unacceptable risk and the fine of £2.8m reflects this.

"The poor complaints procedure of RBS and NatWest came to light during our review of complaint handling in major banks. The review showed that banks need to make major changes to handle consumer complaints fairly and the FSA will continue to take appropriate action to ensure these changes are put in place." - Margaret Cole, the FSA's managing director of enforcement and financial crime

FSA fines RBS and NatWest £2.8m for poor complaint handling

The Financial Services Authority (FSA) has fined Royal Bank of Scotland (RBS) and National Westminster Bank (NatWest) £2.8m for multiple failings in the way they handled customers' complaints, responding inadequately to more than half the complaints reviewed by the FSA.

The FSA's investigation found that there was an unacceptably high risk that customers may not have been treated fairly due to a number of failings within the banks' approach to routine complaint handling, including:

- delays in responding to customers;
- poor quality investigations into complaints, with complaint handlers failing to obtain and consider all the appropriate information when making their decision;
- issuing correspondence that failed to fully address all of the concerns raised by customers and failed to explain why complaints had been upheld or rejected; and
- customers not receiving their Financial Ombudsman Service (Ombudsman) referral rights within the appropriate time period.

Of the complaint files reviewed by the FSA, 53% showed deficient complaint handling; 62% showed a failure to comply with FSA requirements on timeliness and disclosure of Ombudsman referral rights; and 31% failed to demonstrate fair outcomes for consumers.

How long should I keep old client files?...

By Roy McClurg

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Each successive regulatory body has its own ideas on this matter, and it is worth looking at what the current requirements are.

The FSA in ICOBS 2.4 sets out record keeping requirements and in line with the Principles Based attitude to many regulatory issues, a lot of flexibility is given to each firm.

In essence, it is for a firm to determine how long it retains "old" files. The only specific here is that copies of Demand and Needs statements must be kept for three years. However, like many things, once you delve into this, there are some other issues for a broker to consider.

ICOBS make the point that firms should bear in mind the need to deal with requests for information, such as how claims have been settled and why, what documentation has been provided and reasons for recommendations. So, you need to consider how you are going to meet any specific requests.

The vast majority of firms that we speak to are keeping files for at least 3 years (The old ICOB requirement).

Another very important point to bear in mind is any potential exposure to litigation over a dispute over a claim. Our view is that it would be safe to destroy claim files that are over 3 years old, unless the claim has been a contentious one in any way, was decreased or declined, or otherwise potentially open to

further comeback. Personal injury may be an example of this. Such files should be kept for 7 years to get over the line as far as litigation is concerned. So when reviewing files prior to destruction, someone sufficiently experienced should have a quick look file by file and retain any that fall into that last category.

A final thought...

Much of this falls within the purview of the Information Commissioner. The Data Protection Act does not specify minima or maxima, but state's **"Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes"**

This is the fifth data protection principle. In practice, it means that you will need to:

- review the length of time you keep personal data;
- consider the purpose or purposes you hold the information for in deciding whether (and for how long) to retain it;
- securely delete information that is no longer needed for this purpose or these purposes; update, archive or securely delete information if it goes out of date.

We have no doubt that a broker might be safer keeping well kept files for the 6 years provided by the statute of limitations for

litigation plus one year and don't forget the special rules for EL insurance.

The Data Protection area of the ICO website, has much useful plain English guidance –

<http://bit.ly/fAl7tV>

Please also feel free to contact your RWA consultant if you have any questions.



Individuals and Entities Subject to Financial Sanctions

It is a criminal offence to make funds or financial services available to individuals or entities on the financial sanctions list maintained by HM Treasury. Firms will therefore need to ensure they do not provide **any** financial services to such persons.

It can be quite easy (and somewhat understandable) to think that this is an issue which relates to IFA's and investment advice. However, the FSA have made it very clear that this applies to **all** firms.

The FSA have previously produced a fact sheet (in 2009) and this can be found on –

<http://bit.ly/eRx4eu>

As said above, all firms have an obligation under the financial sanctions regime not just banks. All firms to whom the Money Laundering Guidance (<http://bit.ly/hrHaF7>) applies, therefore, whether or not they are FSA-regulated or subject to the ML Regulations, should register with the HM Treasury update service.

Once a firm has subscribed, it will receive updates of individuals and entities added to the sanctions list, which can then be checked against a firm's customer list. To subscribe to the HM Treasury service, please follow–

<http://bit.ly/i2rIgj>

H M Treasury maintain a list of all entities to whom financial sanctions apply and includes all individuals and entities that are subject to financial sanctions in the UK. This list can be found at:

<http://bit.ly/f17UtB>

The list in various formats (Excel, PDF etc) can currently be found about two-thirds of the way down the page under the heading of –

"Consolidated list of financial sanctions targets (full list)"

Use of the sanctions list

To reduce the risk of breaching its obligations under the regime, a firm should take into account the following:

Be aware of businesses or transactions that carry a greater likelihood of involvement with individuals on the list – e.g. overseas parties

Check new clients against the list

Regularly check your client data with the Treasury List to ensure that clients are not subject to a sanction.

If that a firm identifies a match of a client against the sanctions list, which then gives rise to a suspicion of money laundering or terrorist financing, it must make a report to HM Treasury or SOCA.

A report under the financial sanctions requirements should be made to HM Treasury as follows:

in writing to – The Asset Freezing Unit, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ; or

by email at –

assetassetfreezingunit@hm-treasury.gsi.gov.uk

There are alternative services such as "Sanctions Search", which a firm may wish to use, to conduct manual searches of the sanctions list. If you decide to use this service, you should take a copy of the search results for each client and retain this on the relevant client file, as evidence that the search was carried out using this method.

<https://www.sanctionssearch.com/>

You should also be aware that this system does not currently try different variations of the name(s) input, for example, if a client's name is 'Philip', the system will not automatically check against 'Phillip'. You should bear this in mind if there are any discrepancies in the spelling of a customer's name in different documents, or where a relatively common name is spelled in an unusual way.

Please note this is not a Government body and is an independent firm which charges for its services. (Inclusion in this article should not be taken as to a recommendation by RWA. It is included for information and each firm will have to make its own judgement regarding the services offered.)

Suspicious and reporting

It is recommended that you keep comprehensive records of suspicions and disclosures because disclosure of a suspicious activity is a defence to criminal proceedings. Records in this regard must be kept for 5 years from the creation of the record. Such records may include notes of:

- ongoing monitoring undertaken and concerns raised by staff;
 - discussions with the Nominated Person at your firm regarding concerns;
 - advice sought and received regarding concerns;
 - why the concerns did not amount to a suspicion and a disclosure was not made;
 - copies of any disclosures made (i.e. to SOCA);
 - conversations with SOCA, law enforcement, insurers, supervisory authorities etc regarding disclosures made;
- any decision not to make a report to SOCA (i.e. Information not acted upon) which may be important for the Nominated Person to justify his position to law enforcement.

You should ensure records are not inappropriately disclosed to the client or third parties to avoid offences of tipping off and prejudicing an investigation.

You must ensure that all your staff receive regular training on their responsibilities in the matter and that it is documented accordingly.

It should also be included in your annual SYSC reports and as part of your Corporate Governance Procedures.

[Blog](#)

Changes to the Approved Person Regime

The FSA have published a new Policy Statement - "Effective corporate governance - Significant influence controlled functions and the Walker Review"

This brings a number of amendments to the Approved Persons regime, much of which will not have significant effect on firms. However, some firms may need to carry out some additional work.

Briefly, the paper brings into play some new Controlled Functions (CF) following the Walker Report and is in line with the FSA's focus on Corporate Governance. For example, CF2a is a new function which for the first time means a Chairman/woman is now an Approved Person. It also brings in CF13, 14 & 15 (Finance, Risk and Internal Audit), which are all aimed at risk management. The paper makes it clear that while it accepts that not all firms will need each of these roles, all firms should review this and ensure that at least they have somebody responsible for the job at hand.

One thing to consider, a number of firms currently have on their Approved Persons list, CF28 (Systems & Controls) and CF29 (Significant management). There is no requirement for the traditional high Street broker to have these positions and many were no doubt applied for when the original authorisation application was made in 2004.

This new regime does make it necessary to review these.

CF28 is being abolished and CF29 will have its scope widened. So it is important that all people with these roles are aware of the changes, i.e. they do not have the role (CF28) or for CF29, they now have more work to do.

As said, there is no specific requirement for these, so it is now a good time to review these and ask

[Blog](#)



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helpdesk@rwagroup.co.uk

Out of Date Software

We covered this topic in an old RWA Newsletter and because it is something that we still hear regularly we have decided to re-print the article as a reminder:

Nov 2009:

Treating Customers Fairly – Is your IT up to date?

It may not be apparent that IT is a central part of TCF, we are more used to thinking about TCF as a customer focused issue – are our documents clear, plain English etc. However, The FSA have made it very plain that they regard certain facets of IT as a central issue and expect all firms to include this in their TCF planning and monitoring.

The FSA have carried out a number of visits and subsequently produced a report and factsheet detailing good and bad practices. They were looking at how current was a brokers IT and what security was built in to these. Areas covered included how passwords were dealt with, how often they changed, firewall and virus protection and how secure were networks. The focus was on how up to date were systems and how were they maintained.

RWA are championing this issue with brokers and embarking on a program of Data Security audits and ensuring that this is a part of the annual healthcheck. Indeed many of you will have already seen this.

For example, Microsoft Office 2003 is widely used, but as time passes, many firms (including ourselves) will use later versions and this can lead to difficulty in downloading and viewing documents for those on earlier versions.

So really this issue is also part of your risk management and business continuity planning. By ensuring that your software is as current as possible you will be able to work with any documents available from your suppliers and third parties. The more up to date your technology is, the more secure it is likely to be. The FSA expect risk management and business planning to form part of the compliance process, and up to date IT certainly forms part of this.

However, you will be thinking yet more expense!

It is something that we still hear all of the time, "Can you resend the file as an Office 2003 file as we cannot open it?" Sound familiar? Well, if it is you that has said it then you are non-compliant!

The good news is that many updates are available free from Microsoft. If you follow the link below, you will be taken direct to the download site where you can obtain a compatibility pack for Office 2003 which will enable you to access 2007 versions of documents.

<http://www.microsoft.com/downloads/details.aspx?FamilyID=941b3470-3ae9-4aee-8f43-c6bb74cd1466&displayLang=en>

There are many other updates available via the internet, so you can equip yourselves with some of the latest software for no cost.



We're now in 2011, which makes Microsoft Office 2003 very old (I came across a client the other day who still used Office 2000!). If you cannot yet open newer versions of MS Office files then what would you do in the situation where a client emails you an important file at 4:55 on a Friday afternoon that you cannot open? Can you afford to take the risk of leaving it until Monday morning to contact the client to ask them to send you the file again? Probably not, so now is the time to do something about it, even if it is to download the Microsoft patch so that you can read files from later software versions.

You may even be surprised to note that there is now a 2010 version of MS Office and I have been trialing that for a number of months. Software moves and changes very quickly so it can be difficult to keep up to speed on version numbers particularly when software isn't hosted or managed under a service contract.

If you still need to download the compatibility file or upgrade your software please make sure you speak to your IT department, Supervisor or IT provider first.

Tom Wood

Blog

Top Tips for 2011



1. Make sure you have arranged for your client money accounts to be audited as needed. – [Client Money is still top of the FSA agenda](#)
2. Have you reviewed your documents and processes to ensure that you have fully embraced the Industry guidance on commission and capacity disclosure? – [The FSA are carrying out further work as they said they would](#)
3. Contract Certainty – have you a robust method for recording this? – [The FSA are carrying out further work](#)
4. The Bribery Act 2010 – Have you prepared for this – [Make you sure start by having a “Gifts & Hospitality” register](#)
5. Staff Cases – Have you reviewed how these are dealt with, ideally by an independent person – [Possible conflict of interest](#)
6. Have you reviewed your provider list for Risk Transfer and if cascaded from all, look at cancelling Client Money permissions. – [The FSA do encourage this](#)
7. From 2011, you will need to have somebody specifically responsible for the Internal Audit function and this may need to be a Controlled function, so this needs to be on your agenda to review – [This will come into effect in May 2011 following a recent FSA Policy Statement.](#)
8. IPT changes at 4/1/11 – [Have you updated your processes?](#)
9. Have you carried out refresher training on POCA 2002, Data Protection and Complaints handling – [The FSA will expect you to evidence this.](#)
10. Review all your TCF processes and make sure that you happy with your firm’s TCF regime. – [The FSA have carried out thematic work in 2010 and they will be back in 2011.](#)

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