



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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## From AC

### Next RE exam deadline

30 June 2015 sees the next deadline by which first level RE exams must be completed. This deadline will be applicable to all representatives who were first appointed between 30 June 2012 & 29 June 2013. Please double check your representative registers to ensure all concerned have booked and will be ready.



ASSOCIATED COMPLIANCE

### 2015 FSB annual compliance reports

June will see us starting to compile the annual FSB compliance reports. Given that there are no changes from the 2014 report there will be little value add to our client's compliance management process with the possible exception of:

- FSPs with a poor 2014 report who have made progress and
- FSPs where this will be their first report.

The reports will be submitted to you during the month. There should be no need for specific meetings to discuss the results of this report as we have addressed all variables during the year.

Where we have not had copies of documents/specific





dates needed for inclusion with the report e.g.

- PI/FG/IGF insurance schedules,
- Representative supervision agreements,
- Date and results of your last IT backup restore test,
- FICA manual where you have made changes during the year, or
- Conflict of interest policy where you have made changes during the year,

we will ask for these along with the page that needs to be signed by the key individual.

For those of you that would like to review the report format beforehand [click here](#) to download a copy.

### **Letter of appointment disclaimer – can it be used?**

During a recent monitoring visit an FSP advised us of an approach they were taking with clients when obtaining Short-term business on a letter of appointment. The “disclaimer” effectively said that the incoming broker could not be held responsible for any errors in the clients cover. Section 21 of the general code of conduct states:

*“no provider may request or induce in any manner a client to waive any right or benefit conferred on the client .....*”

The proposed disclaimer breaches this requirement as the client is entitled to an analysis of their needs and a recommendation be made which would include assessing the effectiveness of the current insurances and ensuring understanding by the client.

However, Part 8 (4) of the code states that:

*“where a client has not provided all information requested by a provider.....or where the provider has been unable to conduct such analysis...the provider must fully inform*



*the client thereof and ensure the client clearly understands that;*

*(i) A full analysis ...could not be undertaken*

*(ii) There may be limitations on the appropriateness of the advice provided*

*(iii) The client should take particular care to consider on its own whether the advice is appropriate considering the clients objectives, financial situation and particular needs”*

So where does that leave our FSP?

In a situation where they get appointed to an existing account they must look to complete a full analysis as though it were complete new business. Where this is not initially possible and a letter of appointment is signed with a view to the analysis being conducted later then the client needs to be made aware of the risks that may exist – as per part 8(4) and in this warning the risk of previous poor advice can - and maybe should – be highlighted in which case the “disclaimer” would not be seen as such.

It should be noted that managing any client within the requirements of 8 (4) is not an on-going “get out of jail” card that can be relied upon forever. The FSP has to ensure that such cases are followed up and an attempt made to rectify the shortfall in advice. The renewal process should also seek to identify which clients have never had a full analysis so that the gap can be closed.

Should a complaint arise where the lack of analysis is a relevant issue we are sure the Ombud’s office would look to see what the FSP had done to provide appropriate advice and a lack of effort would be detrimental to the FSP’s defence that they had warned the client via their 8 (4) letter.

## **Lloyd’s binder holders and FSP status**

We were recently assisting a new client with a licence application and hit a snag on the proof of PI insurance. There was a policy in place however it had been sourced via a Lloyds binder holder who was not FAIS licenced. We queried the status of the provider; which opened a can of worms around the debate that has been around since the early days of FAIS. How do you regulate foreign providers selling their wares in SA?

We took the matter up with the FSB via the following mail:

*“During your attendance at the last FAIS Compliance Officer meetings, Craig briefly mentioned to you an issue that has arisen and you asked him to provide details. A brief outline follows (redacted for obvious reasons):*

- 1. We have been asked by a prospective FSP to assist them with their application for a license;*
- 2. As a matter of course, we asked to see their PI insurance policy;*
- 3. We received the policy (copy attached) which we noticed was underwritten by certain Lloyds Syndicates and administered by a company called X;*
- 4. We could not find X on the FSB’s website so we asked to be supplied with the FSP number under which the company operates;*
- 5. We were informed that the X are based in the UK and are governed by the UK’s FCA. In this regard see the comments below which were received from the X*

*“Hi all!*

*Comments from my Compliance Manager below;*

*X are the Lloyd’s Broker operating exclusively in the United Kingdom. A Lloyd’s broker is usually needed to access Lloyd’s insurance products. A Lloyd’s broker based outside of South Africa is only required to register under the FAIS Act if the Lloyd’s broker does business in South Africa. If all the broker’s business is done in London (marketing, selling, collecting premiums and handling claims) the FAIS Act does not govern the activities of the Lloyd’s broker.*

*I hope this helps to address the concerns raised, but if there is any further information required, please let me know.*

*\*\*\*\*\* \*\*\*\*\**

*Managing Director”*

**6. *There is no indication that a local broker is involved.***

*We have always been under the impression that this type of arrangement must be intermediated by a company registered as an FSP, but we could be wrong having never encountered this type of arrangement in the past.*

*Can you please shed some light on this?”*

The response we receive stated;

*“Dear Peter and Craig*

*I had a discussion with Loraine about your query – and we are basing this feedback on the assumption that the prospective FSP is not based in SA (which is the case). If the FSP is not based in SA, and the PI cover is for them, then it is correct as described below. If the FSP is based in SA (which it is), then the broker that helps them with the PI cover will have to be a FSP”*

*Clearly in this case the local soon to be FSP has purchased PI cover from an entity that is not licenced in terms of FAIS. The Lloyds broker believes there is no need to be licenced – which is incorrect.”*

Where to from here? Another example of where we need to see decisive decisions and actions from the FSB. We can't be the policeman for everything we see. Sometimes, as in this case, the client saw us as being difficult by placing obstacles in the way that they believed were not there given the input they had from the UK.

## **Non Insurance product supplier's incentives**

We recently came across a supplier of so called 'non-insurance' products to the motor sector who were incentivising representatives to sell their products. This supplier has recently taken 84 representatives on an all-expense paid one week trip to Turkey – including flights and accommodation. This was estimated at an overall cost of R2M

(at least). This cost is obviously built into the cost of the product and thus paid for by the client. It was accepted that true non-financial products and services do have similar incentives (whether the sheer extravagance is matched is unknown). To us it is clear that it is necessary for the Regulator to decide once and for all where the line is in these products as such obvious manipulation of the regulations cannot be seen as falling within the objectives of TCF nor does it give support to the standards we try and instil in clients.

We feel so strongly about this matter that we have reported the details to both the FAIS and Insurance divisions of the FSB.

We have also recently reported an FSP, also operating in the motor retail sector that is openly promoting a competition for the best sellers of their product to win a trip to the Rugby World Cup.

Don't get us wrong, we don't have a problem with the principal of such competitions but we need a level playing field. Promoting the standards demanded by FAIS is often difficult enough, but when these practices are pointed out clients justifiably ask why they must be the good guys when such apparent transgressions happen with no visible policing.

Watch this space: the FSB need to be seen to be taking action where action is required.


## **From AC HAS**

December 2013 started off as one of the best months for Justine Sacco, 30 years old and the Senior Director of Corporate Communications for a well-known media and Internet Company in New York. She was on her way to South Africa to visit family for a well-deserved break and started the long journey to SA. After



**AC HUMAN ASSETS SERVICES**





sending various tweets of her experiences during each leg of her trip, as we do, her final tweet before boarding her plane for Cape Town, **“Going to Africa. Hope I don’t get AIDS. Just kidding. I’m white!”** was also the tweet that changed her life forever... Justine was blissfully sleeping away the 11 hour flight, oblivious of the ruckus that her tweet was causing on an international basis, ranking the no. 1 worldwide trending tweet within hours of her posting it. A hashtag started trending worldwide, #HasJustineLandedYet as the whole world was aware that she was on an 11-hour flight and not able to switch on her phone. A Twitter follower even went to the airport to tweet a picture of her on arrival in SA.

In South Africa, Justine switched her phone on to a thousand messages from her best friends, sympathetic posts on Facebook from old friends and a Twitter feed that had become a horror show... and, of course, various messages from her employer.

The trauma after such a public humiliation can only be imagined. Or can it? Justine reported that she “cried out my body weight in the first 24 hours”. She said that there is no sleep, erratic sleep and countless nightmares. Hotel staff even threatened to strike should she show up at the hotels she was booked at to stay. Even her family was affected. Being African National Congress supporters and longtime activists for racial equality, the first thing they said to Justine was that “by association, you’ve almost tarnished the family.” She also lost her job.

Lindsey Stone posted an inappropriate photo on Facebook, where she was mocking a sign at a National Cemetery’s Tomb of the Unknowns as part of a running joke that she had with her co-worker about “disobeying signs”. Of course, the photo was taken out of context, and to the public appeared not to be a joke about a sign, but rather about the war dead. She barely left her home for a year and was tormented by depression, insomnia and PTSD. She also lost her job.

*[The above excerpts were taken from an article “How one tweet blew up Justine Sacco’s life” in the “Fairlady, May 2015” issue. The article is adapted from the book that was written by Jon Ronson - “So you’ve been publicly shamed”]*

Social media is therefore a very big reality in our daily lives. Listen to the people around

you: we are “tweeting” this, “tagging” that and “posting” this. Emma Sadleir, Media Law Consultant with a particular focus on Social Media, and well-known to all of us, was quoted on Carte Blanche as saying: *“I think that the facelessness of cyberspace gives people ‘license’ to say things they would never say in the real world.”*




Emma Sadleir aims to do a lot of work with schools and universities to educate them on “the responsible use of social media” and in essence, that needs to be the employer’s main undertaking – to clarify: **What role does Social Media play in my business and how will my business use social media responsibly?**

And of course, we also have to remember the advantages of Social Media! How many lost people/animals have been found as a result of live ‘tweeting’, how many of us rely on loadshedding updates via tweets, traffic and accident updates, live soccer/rugby/tennis scores. An employer cannot simply ignore the advantages either!

- Recruitment via social media can be very effective
- Launching new products
- Regulatory updates and/or news and views (I follow @INSETA for reminders on deadlines!)
- Posting pictures of your Corporate Social Responsibility events
- Posting positive feedback from customers/clients
- Free publicity on training and/or achievements of awards

However, for a company to minimise its risks you have to have a Social Media policy in place. In addition, you have to talk about Social Media - do not hesitate to talk about



Facebook, Twitter, LinkedIn etc. in meetings, conversations and/or strategy sessions and make it absolutely clear as to what your employees can/can't do in terms of Social Media in the workplace. Every employee remains a brand advocate of your business. Whether you (or they) like it or not.

### **HAS Services – a reminder!**

Mail any quick queries and questions to [has@associatedcompliance.co.za](mailto:has@associatedcompliance.co.za)

For e-mail assistance on any queries that involves some research and extends beyond quick guidance or assistance, a fee of R300 (excl. VAT) per hour will be charged.

For onsite assistance, a fee of R600 (excl. VAT) per hour will be charged.

Fees can be charged in increments of a half an hour or an hour.

Any work that requires additional fees will be confirmed in writing with you, prior to commencement of the work.

### **Some of the queries that Human Assets Services (HAS) received to date and the assistance offered:**

- Dishonesty and unauthorised leave (e-mail assistance and research)
- Inappropriate language used in e-mail correspondence (e-mail assistance and research)
- Assistance with Fixed Term Contracts (e-mail assistance)
- Implementation of a Performance Management system (onsite including presentation/training of staff)
- Poor Performance and employment alternatives (e-mail assistance)
- Employment contracts - various (e-mail assistance)
- Assistance with a Debarment Policy (e-mail assistance and research)
- Employment Equity query (e-mail assistance)
- Abscondment (e-mail assistance and research)
- Occupational Health and Safety query (e-mail assistance)



## **New documents uploaded into the HAS Manual on the website**

[Draft Social Media policy](#)

[Questions and Answers: Social Media](#)

## **From the FSB**

### **New FSB website**

An upgraded site has been launched. WE feel that it is easier to use and navigate around; so well done to the FSB. The changes, in the main, relate to the look and feel rather than functionality although there are some signs that this is also improving. The first change is detailed below:

### **Information circular 3/2015 – Introduction of pre populated Form FSP4**

Up until now where a previously or currently registered Key Individual needed to be approved on a new licence or added as a Key Individual to another licence all the basic paperwork had to be completed as well as provide new copies of the qualifications and updated reference and experience supporting documents.

The on-line system now allows for existing FSB records to be downloaded into a KI application form (FSP4). The data then needs to be verified and changes noted. Any new qualifications would require certified copies to be provided, additional experience noted and the Fit & Proper declaration needs to be completed and the form signed.

What may be useful is that where a Key Individual has left a particular FSP the individual concerned can access their past records and have the data downloaded into the new FSP4.

Also useful is that a compliance officer or practice can also access this information, even where they were not the appointed practice for the FSP provide they have written authority from the KI concerned.



## **On line licence application**

The FSB also recently introduced an on-line new licence application process that can (not yet compulsory) allow a full licence application and all related supporting documents to be submitted via their system. There seem to have been some teething problems but we have been assured these have been addressed and it should be plain sailing from here on in. From our recent experience there's still some way to go.

We can only hope that other similar practical processes be introduced by the FSB going forward.

## **Information circular 2/2015 – clarification of application of the ‘five year rule’**


This circular was released on 12 May. It seeks to correct past practices in the re-licencing of representatives who had either left the industry or had ceased to be licenced for any particular sub-category e.g. short-term commercial lines, in both scenarios for more than five years. The Fit & Proper standards stipulate that in such circumstances any past experience is treated as “null and void” and the representative must start again.

What has been happening is that such people were being treated as having a new date of first appointment (DOFA) and totally ignoring their past status, experience and qualification status. The new rules on educational standards were thus being applied.

For those that had attained the previous standards, e.g. in 2004 only credits were demanded, plus their RE5 would now be required to do a full qualification and work under supervision whilst doing so.

For those that had not attained the applicable minimum standards, be it credits, qualification and/or RE5 exam and thus had been forcibly removed from a licence would now start with a clean slate and get the benefit of a further two years for the Regulatory Exams and six years for a qualification.

This practice has now been stopped. The FSB admit to incorrectly applying the five year



rule (unusual in itself). We have asked the FSB to confirm our understanding is correct but as at the release date of this newsletter we had not received their confirmation. If we get anything to the contrary we will advise you. What should have been happening is as follows:

- The rule applies to ALL gaps of five years or more in any one sub-category and/or advice or intermediary services within that sub-category. This could be as a result of leaving the industry totally or not having been licenced for any particular sub-category even if trading in another during that period.
- The educational standards that applied at the time of the DOFA apply; thus when wishing to be licenced once again it is those standards that need to be in place upon ‘re-approval’.
- Should those standards not be met the person is prevented from being licenced until such time as they have been attained. Thus:
  - For a representative with a 2004 - 2007 DOFA the minimum educational standard would be the credit requirements applicable in that period e.g. 30 credits @ NQF4 for Personal Lines or 60 credits @ NQF 5 for Long-term sub-category C as well as the RE5.
  - For a representative with a 2008 – 2009 DOFA the minimum would be the credits if they had been attained before 31 January 2011 or an approved qualification as this was the requirement had credits not been attained by 31 December 2011 as well as the RE5.
  - For a representative with a 2010 and later DOFA an approved qualification is needed as well as the RE5.
- Based on a recent case we handled it would appear that where re-approval is not possible due to a shortfall it is possible that the representative can make an application for exemption that would allow them to be added to the representative register and act as a representative, presumably under supervision, for whatever period the registrar allows to complete the required educational standards. This approach seems to be fair as otherwise that person is prevented from re-joining the industry until the educational standards have been met.
- If the minimum educational standards are in place then the only additional requirement is the applicable minimum supervision period.

## Cell Captives – status

It seems we will have to wait another three to four months before the FSB will release its position paper on Cell captive arrangements and their future. FANews reported on this following a statement made by Jonathan Dixon at a recent Zurich hosted event. [Click here](#) to read the full article which continues on our website.

## FSB Bulletin

The latest edition of this newsletter is available, click the banner below to view.



The banner features the FSB Bulletin logo on the left, with 'Financial Services Board Newsletter' in small text above 'bulletin'. Below the logo, it says 'Latest issue now available!' in a script font, followed by 'Click here...' in a blue script font with a red underline. On the right is a thumbnail of the bulletin cover, which includes a speedometer graphic with 'FAIR TREATMENT OF CUSTOMERS' written across it, and the text 'SUPERVISORY approach to conduct of business' and 'by Leanne Jackson'.

The article dealing with the supervisory approach to market conduct demands a read as this is the future of the role of the FSB.

## Annual FSP levies

The levies for 2015 have been released and surprisingly reflect a low increase over 2014: only around 1% for the FSB portion although inflation related for the Ombuds portion at around 6%. [Click here](#) to download the Board Notice with the full details plus go to the Moonstone levy calculator – a useful tool to work out what you will be paying [Levy Calculator for FSPs](#)

The fees are based on the FSP's representative profile as at 31 August 2015 and will be payable by no later than 31 October 2015.



## Reinsurance

A discussion paper on the future regulatory framework for this sector: [Click here](#) to download a copy.

## From the Registrar of Collective Investment Schemes

### Enhanced disclosures

The required enhanced disclosures around advertising, marketing and general information about collective investment schemes as governed by the Collective Investment Schemes Control Act came into effect on 1 May. They were originally detailed in Board Notice 92 of 2014. [Click here](#) to download a copy. Clients involved in the sale of such products should be aware of the standards that the various schemes have to comply with. We also came across (courtesy of Moonstone) a practice note issued by Allan Gray on the subject which you will find useful. [Click here](#) to download it.

## From the FAIS Ombud

### Bezuidenhout V Mogentale & Introvest 2000CC

Another case where out and out bad advice to invest in entities offering inflated returns. In the investigation Mogentale/Introvest did not even bother to respond to enquiries from the Ombud. FA News has a good summary of the case.

## From the Long-term Ombud

The 2014 annual report has just been released and shows a reduction in the number of complaints lodged from the previous year – a fact attributed to the introduction of TCF. FA News carries a good article dealing with basics of the report. [Click here](#) to read the full article which continues on their website. And [here](#) to get a copy of the report.



## From the Short-term Ombud

By contrast the report from the Short-term Ombud reflects an increase of over 9% in the number of complaints. Is the Short-term industry not as proactive on their TCF process? Or is the decline in the Long-term just a coincidence?

Some key information from the report:

- Complaints unresolved after six months totalled only 54 at year end.
- The turnover rate (the total number of complaints resolved with some additional benefit to the insured expressed as a percentage of the total number of complaints closed) was 31% which shows a continuing decline in the turnover rate over the last few years.
- The average turnaround time i.e. the period taken to resolve a dispute, was 89 days which continues to show a pleasing declining trend.
- The amount “recovered” for consumers was R 116,249,665.

[Click here](#) to download a copy of the full report.

## Interesting things we have read

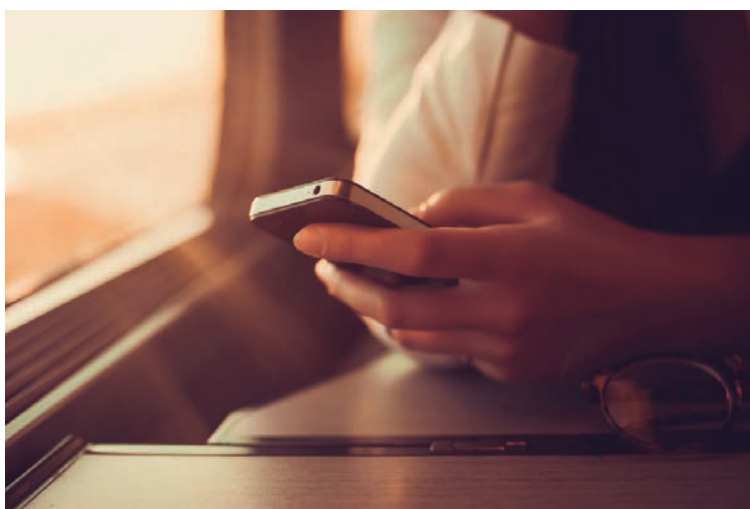
### Insurance Gateway


Has TCF made FAIS superfluous?  
An article by Richard Rattue of  
Compliserve

[Click here](#) to read more.

### RDR Paradox

An article by Philip Tomlinson of  
Different Life about the lack of  
recognition of the use of technology in the RDR proposals. Interesting but from our





point of view we don't see that RDR proposals on advice delivery in the Life or any other sector prevent the use of technology and if an FSP wishes to use this to achieve both FAIS compliance at a cost that reduces or even eliminates the need to charge a client for the advice provided then they would be free to do so.

[Click here](#) to read more.

## **Directorship – the magazine of the Institute of Directors Southern Africa – April/May/June edition.**

### **King IV**

This a paper magazine so reproducing it here is not possible but you can obtain a good overview of the subject on the IOD website even if you are not a member.

Go to [www.iodsa.co.za](http://www.iodsa.co.za)

For the more “corporate” amongst you where you may be appointed as a director we would recommend membership of this organisation as it gives lots of guidance and study channels for directors.

A related article from Geoffrey de Pinchart on the fiduciary duties of a director picked up from Insurance Gateway.

[Click here](#) to read more.

### **Appeal Board decision Moore and Bluezone**

If you are a supervisor you need to read this. Moore was a supervisee of the FSP and in the original Ombud ruling was found to be responsible for the client's loss. He appealed the ruling on the basis he was under supervision and that the supervisor should be liable and not him. The FSB appeal board disagreed and found that both the supervisor and supervisee were responsible. It clearly shows that the role of supervisor should not be taken lightly. You are not only responsible for the development of an individual, important enough itself, but you are also partly responsible for all errors and omissions your supervisee makes. Not paying attention to what they do and how they do it may come back to haunt you.



## FA News

Where do duties begin and end? This article deals with a case involving the provision of benefit statements of a pension fund to clients and whether it was acceptable to send these to the broker of the employer client for onward transmission to the member of the fund. The Pension Funds Adjudicator made it clear that the communication should go direct to the member and not via a third party. This makes us consider whether such logic should be or will be applied in other sectors thus forcing insurers to communicate with clients' directly on key issues rather than via brokers. Cancelling books of business is an area that immediately springs to mind.

[Click here](#) to read the full article which continues on our website.

## What is the problem with the Short-term insurance industry?

A sobering article from Gareth Beaver of Centriq on the state of the local Short-term market. [Click here](#) to read the full article which continues on their website.

## Economic viability of Financial Planning practices

Whilst this article tends towards the life & investment broker the basic theme of what a broker needs to be doing to survive in the post RDR and TCF environment applies equally to all brokers. [Click here](#) to read the full article which continues on their website.

## Guardrisk

A useful article on the changes and impact of the new Insurance Bill that we spoke of in last month's Newsletter. [Click here](#) to download the documents.

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