MLBCompliance

BEST INTERESTS DUTY POLICY

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Best Interests Duty - Policy Expectations

All mortgage brokers that engage in credit assistance and credit activities as defined by the NCCP Act will need to abide by this Best Interests Duty Policy. This policy does not replace or modify any existing obligations that mortgage brokers have with ASIC, SFG, relevant industry bodies or lenders. This policy offers guidance on SFG's expectations with regards to Best Interests Duty and the standards required to meet the obligations.

Regulatory Guide 273 has been used extensively in the development of this policy. RG273 sets principles that specify the intention of regulation, rather than setting rules that specifically list the actions required of a mortgage broker to meet the regulatory requirements.

Similarly, this policy does not cover every possible attribute or circumstance in how you should engage in credit activities and offer credit assistance to meet the Best Interests Duty. Rather, this policy describes standards of conduct that will assist you in meeting the BID expectations and lists guidance that you should follow to assist you to comply with obligations. The BID obligations and BID policy operate alongside other commitments that mortgage brokers need to apply in providing credit assistance to clients / consumers.

STOP : You will need to acknowledge that you have read this policy and have an understanding of the content of the policy as a condition of your membership or association with SFG.

Safe Harbour vs Principles Based

The Regulatory Guidance (RG 273) has expressly stated that nothing in the Guide is intended to create a 'safe harbour' for mortgage brokers in meeting their new obligations.
This differs to the financial advisers' best interests duty. Financial advisers can rely on the 'safe harbour' steps in the Corporations Act. If they comply with them, they are taken to have discharged their best interests duty.

Part 3.24 of the Amended Explanatory Memorandum to the Bill says that the conduct required to satisfy the duty will depend on the individual circumstances in which credit assistance is provided to a customer in relation to a credit contract. It is the responsibility of mortgage brokers to ensure that their conduct meets the standard of 'acting in the best interests of customers'.

When Does Best Interests Duty Apply?

From 1 January 2021, Best Interests Duty (BID) applies to any regulated loan as defined under the NCCP Act (the Credit Act). This means BID covers any loan where the credit is provided wholly or predominantly for personal, domestic or household purposes, or to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose.

Best Interests Duty Overview

Best Interests History

November 2017	March 2018	Feb 2019	Jan 2020
Royal Commission Proposed	**Royal Commission Conducted**	**Royal Commission Recommendations**	**Best Interests Duty Legislation Passed**
In response to growing concerns, the Government announces a Royal Commission to address misconduct in the Banking, Financial Services and Superannuation industry.	The Royal Commission investigates the credit and financial services industry. Commission scrutinises residential and business lending practices, responsible lending obligations, and remuneration structures.	RC Report listed 76 recommendations. Key aspects for mortgage brokers was the establishment of Best Interests Duty in addition to responsible lending obligations. Broker and review of remuneration.	A new duty is applicable for mortgage brokers to act in the best interest of their clients, and where conflict exists, to priorities client's needs. ASIC releases subsequent Regulatory Guidance (RG273) eased.

The Intention Of Best Interests Duty

The obligations are designed to achieve better consumer outcomes and align consumers' interests with the interests of mortgage brokers by ensuring that credit licensees and their representatives act in the best interests of their consumers in providing them with credit assistance.

Key Points Of Best Interests Duty Regulations

- Mortgage brokers must act in the best interests of consumers in relation to credit assistance in relation to credit contracts;
- Where there is a conflict of interest, mortgage brokers must give priority to consumers in providing credit assistance in relation to credit contracts;
- Mortgage brokers and mortgage intermediaries must not accept conflicted remuneration.

Who Is Covered Under Best Interests Duty?

The best interests obligations will apply to a 'mortgage broker', a term which is now defined in the National Consumer Credit Protection Act 2009 (Cth) (Credit Act) as:

- A credit licensee or credit representative who carries on a business of providing credit assistance in relation to credit contracts offered by more than one credit provider that are secured by mortgages over residential property,
- And does not perform the obligations or exercise the rights of a credit provider in relation to the majority of those credit contracts.

Carrying on a business is intended to take its general legal meaning.

When Does Best Interest Duty Apply?

Best Interests duty applies when you engage in credit assistance. Credit assistance is defined as :

- Suggesting that the consumer apply for a particular credit contract with a particular credit provider;
- Suggesting that the consumer apply for an increase to the credit limit of a particular credit contract with a particular credit provider;
- Suggesting that the consumer remain in a particular credit contract with a particular credit provider;
- Assisting the consumer to apply for a particular credit contract with a particular credit provider; and
- Assisting the consumer to apply for an increase to the credit limit of a particular credit contract with a particular credit provider.

What Outcomes Does ASIC Expect?

ASIC has stated that it will be guided by the following outcomes in the administration of these obligations:

- Aligning mortgage broker practices with customers' expectations;
- Improving the support, guidance and communication provided to customers throughout the credit assistance process;
- A higher quality of credit assistance being provided overall;
- The reasons for the options recommended to customers by mortgage brokers – and why the product is in the customer's best interests – should be recorded and explained to the customer;
- Credit assistance which is in the interest of the broker or a third party, may only be provided if it is also in the customer's best interests; and
- The best interests duty and the conflict priority rule are separate obligations that operate alongside each other and apply each time a mortgage broker provides credit assistance.

Best Interests Duty And Responsible Lending

The Best Interests Duty does not affect the existing Responsible Lending obligations. They are separate obligations, but share a similar purpose in ensuring mortgage brokers provide clients with a loan that meets their requirements and objectives.

Responsible Lending has a key focus on investigation and verification of a client's financial position to ensure the loan not only meets their requirements, but is also affordable (being not unsuitable). Best Interests Duty requires the broker to ensure the loan is in the best interests of the client based on the investigation and consultation with the client.

Conflict Priority Rule

Identify Any Possible Conflicts

To comply with the conflict priority rule, BEFORE YOU ENGAGE IN CREDIT ASSISTANCE, you must first identify what interests you or your related parties have. If the mortgage broker Licensee knows, or reasonably ought to know, that there is a conflict between the interests of the customer and the interests of the mortgage broker licensee, they, their associate, a representative of the licensee, or a representative or an associate must give priority to the customer's interests when giving the credit assistance.

Resolving Conflicts In The interest Of The Consumer

The conflict priority rule is an additional requirement in the best interests obligation, which requires mortgage brokers to resolve conflicts of interests in the consumer's favour.
The conflict priority rule means that you must not recommend a product or service of a related party that would create extra revenue for yourself, your credit licensee or another related party, unless doing so would also be in the consumer's best interests.

STOP: If there's a conflict of interest, and the broker is unable to prioritise the consumer's interests over their own, then the broker must not provide the credit assistance.

When assessing whether a conflict exists, you should consider what a mortgage broker in your position, but without a conflict of interest, would do.

Examples Of Conflict Priority

Ownership Structures

You must inform clients where ownership structures or other commercial ties have potential to affect the credit assistance provided, however compliance is not merely met by disclosure of the conflict or having the consumer consent to the conflict.

Role Conflicts

You must not act to further your interests in situations where you may have multiple roles on the same or related transactions (you are a broker and also operate as a real estate agent / financial planner/ accountant etc). In situations where you may earning of two or more income streams, dependent on the transaction.

Tiered Servicing

Tiered servicing models and situations where preferential treatment is provided to a broker by a specific lender may result in a favorable bias toward that lender. If that bias results in the selection of that lender's product appearing in a comparison table or as the product selected, the broker must be able to categorically demonstrate that the selection of that lender's product was selected in the clients best interest.

Refinancing And Clawbacks

In a situation where a customer has approached you to investigate refinancing options within 2 years of the original loan settlement date, you must, in your analysis and subsequent comparisons, act in the client's best interest. Encouraging a client to stay in a loan that is not in their best interests is a breach of SFG's policy and a breach of the regulations. The potential activation of a clawback is not to be considered in how you make the selection. SFG encourages brokers to conduct periodic reviews of a clients loan facility and expects that consumers will receive credit assistance that demonstrates you will be acting in their best interests.

Recommendation Of Products Associated With Your Entity

If you are in a situation where the product you recommend is available though you or your business relationship, through a related third party association, or through a business that you have associations with, this would indicate that there is likely to be a conflict based on potential benefits, profits or incentives flowing back to you or the related entity. In this situation you must disclose your interests and manage the conflict appropriately.

The conflict priority rule will not always prohibit you from recommending a credit product provided by a related party. However, if there is a conflict, you should keep records of your reasoning behind any recommendation you make regarding the product and why the product was in the best interest of the client when compared with other similar products.

This is particularly important where there is a relationship between the product issuer and:

- you or your business, a
- a related business where you have a financial association
- a related third party with who you have a financial or business interest

Disclosure Is Not Enough To Manage A Conflict Of Interst

You cannot comply with the conflict priority rule merely by disclosing a conflict of interest or having the consumer consent to a conflict.

You will need to manage the conflict to ensure the priority of the consumer can be demonstrated. You must be able to articulate the benefit to the consumer by being able to record why the actions you have taken will prioritise the interests of the consumer over your own or those of a related party. If you are unable to demonstrate and record how the customers bests interests will be upheld by you, you should avoid the provision of credit services to the consumer.

Breaches Of The Conflict Priority Rule

If you prioritise your benefits (including but not limited to financial incentives) over the interests of the consumer you will be in breach of the conflict priority rule.

5000 penalty units apply = $1,050,000 fine

Lender Spread And Lender Usage

Before you start offering credit assistance, you should be confident that you have access to a range of products that would meet the needs, objectives, preferences and priorities of your regular client.

Having an awareness of the products and features that are available in the market, and periodically comparing them to those you can access and recommend, may help you to determine whether your panel and accreditations are sufficient for you to act in your consumers' best interests.

We expect that the composition of your lender accreditations will allow you facilitate loan applications for the vast majority of consumers that approach you. However, SFG do not encourage brokers from applying for accreditations that they will have no intention of using and utilisation rates of lenders will ultimately be monitored as part of the Combined Industry Forum recommendations.

Minimum standards would require that brokers hold at least 10 accreditations with a minimum of 2 of the major banks in the lender spread. Best practice would suggest that brokers have a higher spread of accreditations across the lender panel (including the major banks and the second tier spread).

SFG expect a reasonable spread of lender accreditations and lender utlisation. However, you should never recommend a specific product from outside your accreditation panel, even if it available through SFG. If a consumer is interested in a product from a lender that is available through SFG panel, but you do not have access to that lender, you should tell the consumer this.

If you are not satisfied that the products and credit providers you can access and recommend will allow you to act in a consumer's best interests, you must not provide credit assistance to that consumer.

STOP: Ensure that the top 6 lenders are correctly displayed in your Credit Guide and are being updated every 93 days (on a moving annual total basis).

Steps To Meet Best Interests Duty

What Process Should Be Followed?

Essentially, meeting Best Interest Duty is a 3 step process. Each of these steps will require numerous actions and this policy will expand on each of the steps outlined below. In all situations, the key aspect in demonstrating that you have met the Best Interest Duty for your clients will be reflected in the records you keep and how they support your actions throughout the process.

1. Gathering Information

This step may involve investigating the consumer's circumstances, objectives and financial situation by obtaining information about the consumer, what they are attempting to achieve and what features they value.

2. Making An Individual Assessment

This step may involve: considering a range of relevant products to identify options that are available to the consumer to meet their goals and objectives; and assessing what is in that particular consumer's best interests.

3. Presenting Information And Recommendations

This step may involve making recommendations that reflect the broker's consideration of the range of options that align with the consumer's circumstances.

Note: Making recommendations would typically involve suggesting that a consumer apply for a particular credit contract, and therefore involve credit assistance.

- Presenting recommendations and information to the consumer in a manner that is consistent with acting in their best interests;
- Educating and equipping the consumer to make informed decisions, including whether to apply the product(s) recommended with the broker's assistance; and
- Following appropriate processes for engaging and communicating with the consumer, and assisting them to apply for the credit product they have selected.

Note: Assisting a consumer to apply for a particular credit contract is also providing credit assistance. This includes making recommendations or assisting a consumer to refinance an existing loan.

Step 1 - Gathering Information

The Best Interests Duty does not prescribe how you should gather information about the consumer or their circumstances. However, good communication and consultation—which ensures that your role and the broader application process are understood—are generally indicative of acting in the consumer's best interests.

Note: Gathering information under Best Interests Duty shares similar obligations with the data collection required under Responsible Lending, but they remain separate obligations. Any changes in legislation on Responsible Lending Obligations will not necessarily impact on Best Interests Duty.

How Can information Be Collected?

Information may be shared or provided through a face-to-face meeting, telephone or email, video conferencing, or by entering information on an online platform. SFGconnect should be used as the key source of information collection. Data is permissible to be collected from the consumer through the client portal feature, or you can collect the information via the interview function.

Inconsistent Information

Consumers may sometimes provide information that is ambiguous or unclear. Sometimes the information provided by the client may appear inconsistent with their circumstances. In these situations, you should make further inquiries to identify the consumer's circumstances to inform your product recommendation.

STOP: If critical information is not obtained when inquiring about a consumer's circumstances, you should refrain from making a recommendation.

Inaccurate Or Incomplete Information

If it is reasonably apparent that the information about a consumer's individual circumstances is incomplete or inaccurate, you should make further inquiries to obtain complete and accurate information.

A mortgage broker who provides incomplete or inaccurate information as part of a home loan application will not be acting in the customer's best interests. SFG expect that there will be a number of channels of communication available for an appropriate dialogue to take place.

Financial Literacy

If, during the course of your data collection, you become aware that the consumer has a low level of financial capability, you will need to make more detailed investigations and record notes about the client's situation. Unless you are able to clearly understand the requirements and objectives from the client, and ensure that there are no inconsistencies in their expectations, you will be unlikely to meet your Best Interests Duty.

Step 2 – Making An Individual Assessment

There is no prescribed process or set of factors that you must consider when conducting an assessment into the clients financial position and the appropriateness of the credit facility. However, you should consider each consumer's individual circumstances, including any matters that may affect what is in that consumer's best interests.

Factors That Should Be Considered In The Assessment

SFG expect that you conduct a broad investigation into the client's requirements and objectives as part of the assessment process. The following factors should be considered when assessing whether a credit product will be in a consumer's best interests:

Factors That Can Be Considered	Potential Example
If the client has more than one need or objective, you will need to prioritise the relative importance of each to the client; and resolve any conflicts or inconsistencies between competing needs or objectives.	Clarifying the importance of a product or lender feature vs the need to have the loan approved in the relevant timeframe.
When assessing the loan type, what would be most appropriate and in the clients best interests.	Fixed rate vs variable rate; Line of credit facilities; Interest in advance.
From the lenders or products that meet the client's needs and objectives, are there any policy issues that are inconsistent with those needs and objectives.	Client wants an investment property and wants the FHOG; Is the security property being utilised acceptable by that lender (postcode, unit size); Does the client want to save money on the interest rate or save money by avoiding paying LMI.
The client's priorities and preferences for different features.	Interest rate (cost priority); Ongoing fees (cost priority); Redraw facility (accessibility priority); Offset account (saving and access priority), packaged products etc.
The term and structure of the credit product relative to the client's objectives.	Loan term and the impact that it might have on exit strategy, any interest only terms or fixed rate terms and the risks associated with them.

Feature Conflicts in Client's Requirements

When a product feature does not meet the best interests of the client, you should make reasonable efforts to explain to the clients why these features may not be appropriate or may not offer good value to them. It is essential that you understand what is important to your customer before making a recommendation. The assessment should rank the priority of each identified feature.

Product Or Policy Conflicts

Where a potential conflict exists between the client's requirements and the lender policy of a product requested, this will need to be explained to the client and appropriate options presented. If the consumer decides to still proceed with an application for that product, you may assist the consumer with that application as they have provided assurances that it is in their best interests.

The consumer asks the broker if they should take out an interest-only home loan on a property they are looking to buy. The home loan will have a higher interest rate than a principal and interest home loan. The broker helps the consumer to understand the difference in cost of the two home loans, and other differences in the way in which they operate, including that the consumer will only build equity if the property's value increases or they make additional repayments, and the implications of moving to higher repayments at the end of the interest-only period.

Education Of Government Schemes And Grants

You are expected to educate consumers about the availability and eligibility requirements of applicable government schemes, even if they have not raised these matters with you.

Expertise

Consider if you have the expertise to make an assessment that meets the customer's needs, objectives, preferences and priorities. If you are not confident in a particular market segment, you may not understand what is in the customers best interests. You should not be attempting to offer credit assistance in areas that are outside the scope of your competence.

Assessing Foreseeable Changes

The Best Interests Duty applies to the loan assessment at a point in time and based on the information available at that time. However, you must consider any reasonably foreseeable changes to the consumer's personal circumstances and financial situation. There is an obligation to confirm with the clients about potential changes that they can reasonably foresee in the near future.

Assessment Of Existing Clients

You cannot rely on any information that you have gathered previously in making a new assessment (for a refinance or loan switch to a different product) - it does not matter whether you have provided credit assistance to the consumer before. You will need to act in the consumer's best interests when making that suggestion and re-assess their requirements and objectives in accordance with the best interests policy.

Step 3- Presenting Information And Recommendations

When you recommend a product, you should present the information to the consumer in a way that clearly articulates how taking the recommended action would achieve their objectives and be in their best interests (relative to the other options available).

Where The Client Is Not Acting In Their Own Best Interests

A client may seek products that may not be in their own best interests. In these situations, you should present your client with alternative options in their best interests and explain to them why your recommended alternatives are more appropriate to their requirements and objectives.
If the client insists on proceeding with the product they have initially requested, you should make notes of this and obtain the client's acknowledgement before proceeding to assist them to obtain the product they have chosen.

If the client has stated that they only want to deal with a particular lender and are not interested in any other lender, this should be noted in their Requirements and Objectives and also stated in the recommendations field in SFGconnect. As part of the comparison, you are still able to recommend products from a broad range of lenders including the lender specified by the client (as long as they are all in the best interests of the client).

Cost Considerations In Comparisons

A failure to consider cost and investigate the lowest cost options available to the customer may suggest non-compliance with the Best Interests Duty. Any situation where a higher cost loan is recommended will need to be supported by evidence demonstrating why that recommendation is in the customer's best interests. Note that lowest rate may not dictate lowest cost and other product features will impact on 'cost'.

However, the product with the lowest interest rate is not necessarily the lowest cost option for all consumers. For example, a product with access to an offset account or redraw facility may offer certain consumers greater flexibility and save them a considerable amount in interest. Additionally, annual or establishment fees associated with some loans or packages may mean the loan will be more expensive for the consumer despite a lower interest rate.

Comparing Features And Costs

Although cost is a key consideration in meeting Best Interests Duty, it is not the only matter relevant to in the product recommendation. Some clients circumstances will mean that the benefits provided by particular features might outweigh the importance of cost. This would be the case where a lender with a higher interest rate is selected as they will be able to approve the loan on time, while the lender with the lower rate could not meet finance approval timeframes.

Number Of Options Presented

In most instances, you should present consumers with more than one option. SFG recommend 3 options be considered in the comparison. Where there are multiple options for a consumer to consider, these should be presented so that it is easy for the client to compare the options available.

SFG recognizes that credit policy restrictions, pricing practices and risk appetite of the credit provider may limit the available choices for some clients in accessing product. In these situations, you should explain why the products are not available and the limitations involved with the available option(s).

In a situation where only one product is utilised for the recommendation, you must have adequate commentary in the notes to indicate why one product was selected and describe other products or lenders were possible options.

Documenting The Recommendations

SFG recommends that an appropriate description is entered into the recommendations field in SFGconnect to adequately describe the product selection process. A narrative summary can be an effective way of outlining why particular product/s were recommended, the decisions made by your client, and the steps you took throughout the process to act in your client's best interests.

Other Considerations

Packaged Products

The Best Interests Duty applies to any credit assistance on products that are packaged with a mortgage, as well as any standalone credit products on which you provide credit assistance.
Recommendations to consumers should identify and consider, for each product within the package:
(a) How those products will meet the consumer's needs, objectives, priorities and preferences; and
(b) Whether (and why) suggesting the consumer take out that product, as part of a package, would be in the consumer's best interests.
In making your determination, you should compare the package to other packages available to the consumer, and to standalone home loans without other packaged credit products.

STOP: You should not recommend a package to a consumer on the basis that it is merely satisfactory. There must be reasons why selecting that package would be in that consumer's best interests and preferable to both the other packages that are available and non-packaged products.

Credit Card Comparisons

SFG understands that credit cards that form part of a bundled package are captured under Best Interests Duty. The regulatory guidance suggests that comparison could be made with existing credit cards and the credit cards in the package product.

SFG recommends the provision of a credit card key fact sheet for the purposes of any comparison.
Note: The lender must give the consumer a Credit Card key fact sheet that states:

- minimum repayment (or how it will be calculated);
- interest rate that applies to purchases and cash advances;
- interest rate that applies to balance transfers (and for how long);
- promotional interest rate (if any);
- length of the interest-free period (if any);
- annual and late payment fees (if any).

Although a broker has no obligation to supply the fact sheet, you should be aware of some features if a request for information is made.

Promotional Offers

Some credit providers make promotional offers to entice consumers to take out their credit products. These can include, as examples:

(a) Cashback or reward points offers;

(b) Waived or reduced fees; or

(c) A discounted interest rate.

If the costs / savings of a promotional offer is quantifiable, this will need be considered as part of the cost analysis of the credit product. For example, a cashback offer, waived fees and a reduced interest rate are all quantifiable. When considering these offers, it is important to be aware of eligibility criteria, exclusions and time limitations.

The benefits of initiating a loan to take advantage of the promotional offer (or switching / refinancing to a loan with a promotional offer) must be assessed to ensure this will be in the client's best interests through appropriate comparisons with other loans.

Refinancing Comparisons

For consumers who are thinking about refinancing an existing loan, the expenses incurred when refinancing must be included in the costs of the new loan. If the costs of the new loan, when compared on like to like basis (with regards to the loan term) exceed the costs of the existing loan, recommending a new loan may not be in the consumer's best interests.

For any refinance, the documentation must reflect the benefits that the client will have from refinancing, with an explanation of when the cost savings would exceed the refinancing expenses. If the refinance is initiated for any other purpose (not related to costs) the rationale must be clearly explained and justified.

Conflicted Remuneration

From 1 January 2021, mortgage brokers will be subject to a number of restrictions with regards to remuneration. The following aspects will come into effect:

- Mortgage brokers can only receive upfront commissions that are linked to the amount drawn down by borrowers, instead of the loan amount;
- Campaign and volume based commissions and payments will be prohibited;
- Soft dollar benefits will be capped; and
- The period over which commissions can be clawed back from aggregators and mortgage brokers is limited to two years, and the cost of clawbacks cannot be passed on to customers.

The regulations have anti-avoidance provisions included which means that brokers cannot purport to contract out of the Best Interests Duty via any scheme or conduct under the anti-avoidance provision in Section 158T of the National Consumer Credit Protection Act 2009 (“NCCP“). Brokers found to have breached the anti-avoidance provision may be liable for a civil penalty under the NCCP.

With regards to conflicted remuneration, the anti-avoidance provision means that it is prohibited to utilise any scheme or method that would otherwise represent remuneration that has been banned. Deferred establishment fees, or fees charged to consumers which are reimbursed after 2 years, are examples of remuneration that would otherwise represent conflicted remuneration.

Periodic Reviews

The Best Interests Duty does not require you to conduct a ‘periodic review’, or to provide credit assistance to the consumer in the future. However, it is good practice to review the consumer’s circumstances from time to time. If you choose to review the consumer’s circumstances, or you are contacted by a consumer you previously assisted, then the Best Interests Duty will apply to any credit assistance you provide at that time.

NOTE: Enquires and requests to lenders on rate reductions for existing loans are exempt as a credit assistance activity as long as the product remains exactly the same (no change to features, loan term etc).

Warranties And Acceptance

As part of the Best Interests Duty all brokers that aggregate under SFG will be required to acknowledge that this policy has been received. From 1 January 2021, you will be required to conform with the guidance written in this policy when you provide credit assistance to a consumer.