Advisers who provide personal advice must comply with the Best Interests Obligations introduced as part of the Future of Financial Advice (FoFA) reforms.

The three key elements of the best interests duty are to:

- Act in the clients best interests;
- Provide advice that is appropriate; and
- Give priority to their clients’ interests over your own and those of any related product provider or associate.

While this document offers guidance and principles, each client’s circumstances are unique. The responsibility for complying with these duties in each case ultimately rests with you.

A Best Interests Checklist has also been created to assist you in identifying whether required actions have been taken and recorded on file.

**Best Interests Duty – 7 Steps**
- Step 1: Identify objectives, financial situation and needs
- Step 2: Identify the subject matter of the advice (scope)
- Step 3: Make reasonable inquiries
- Step 4: Self-assessment
- Step 5: Conduct investigation
- Step 6: Base all judgements on client’s circumstances
- Step 7: Other reasonable steps

**Appropriate Advice**
- Alternatives strategies

**Conflicts Priority Rule**

**Best Interests Checklist**
The first requirement is that when giving personal advice you must act in the best interests of the client. The law sets out a seven step process by which this can be demonstrated.

**Step One – Identify objectives financial situation and needs**

The first step is to identify the client’s objectives, financial situation and needs from information provided by the client.

Ensure that these are clearly recorded in the client file and that further enquiries are made to clarify any unclear or inconsistent goals and objectives.

**Step Two - Identify the subject matter of the advice sought and the client’s relevant circumstances**

Identify the subject matter of the advice sought by the client i.e. why is the client seeking advice and what outcome do they want to achieve? The discussion may begin with a particular goal, a request for advice on specific financial products, or be triggered by an event (e.g. redundancy, receiving an inheritance).

Explain the areas in which you can provide advice including where relevant any limitations you have regarding product selection or advice areas. After this, the scope of the advice can be agreed between the adviser and the client; however it must not be limited in such a way that it excludes critical issues relevant to the advice.

You must identify the client’s relevant circumstances in relation to the scope of advice by collecting sufficient information about the client as part of the fact finding process. However if the client is seeking advice for a specific need or objective, then only information relevant to that advice needs to be obtained. When identifying your client’s relevant circumstances, you need to consider the client’s sensitivity to product fees and discuss this with your client. The Client Profile includes a section to facilitate a discussion with your client.

Where the client does not want to provide information that is relevant to the scope of the advice, you need to consider whether any advice can be given at all and either:

- Decline to provide advice where the information missing is critical to the advice being provided; or
- Where appropriate advice can still be provided, warn the client of the risks of not providing this information.
Practical considerations for scoping

Example 1
A client is seeking advice on generating income in retirement. The client is 65, will shortly retire and has a modest amount of savings.

As the agreed scope of the advice must be consistent with the client’s relevant circumstances and the subject matter of the advice they are seeking, when considering a strategy for this client, you are not able to exclude an area that is likely to be critical to the advice provided. In this instance you need to enquire about the level of debt the client has and about Centrelink benefits, as both of these will be critical to advising on income in retirement. If this information is not considered, the advice provided may not be suitable for the client.

Example 2
A client wishes to boost retirement savings. Currently the client has a defined benefit fund to which his employer contributes. As the client has no debt and is comfortably meeting living expenses from salary, and as capital is not required until retirement, you determine that additional superannuation contributions would be appropriate but you specifically exclude from his assessment any consideration of making additional contributions to the client’s existing defined benefit fund.

The advice provided is likely not to be in the best interests of the client and is not appropriate as you have excluded the assessment of the defined benefit fund which is critical to providing the advice to this client. It is likely that the defined benefit fund will provide opportunities not available through retail funds (eg salary sacrifice amounts which do not count toward the concessional contribution cap when made to a constitutionally protected fund), or the calculation of the end benefit via a formula at retirement may leave the client better off.

Example 3
Client seeks advice on a particular ethical managed fund. You explain that you are able to provide advice on a range of managed funds (on the AIL) which are likely to be appropriate for their circumstances but are not usually authorised to advise on this particular fund.

Alternatively, you can explain that you are able to provide advice on a range of managed funds (on AIL) which are likely to be appropriate for their circumstances and can only consider the managed fund mentioned by the client via the non-approved product process. The client needs to agree to proceed on this basis.

If the client does not agree to either process, you can refer them to another professional who may be able to provide the advice.
Step Three – Where information appears incomplete or inaccurate, make enquiries to obtain additional information

After collecting the client’s relevant information you need to make further enquiries if you believe the information you have is incomplete or inaccurate. It is not a requirement to verify all information provided by the client but you do need to use your judgement to assess the information provided to you and to question further if you are not reasonably satisfied that it is accurate.

A common example is where a client has difficulty estimating expenses, or provides a figure that is unrealistically low. This may not be material to some kinds of advice, but it will be critical if you are considering a strategy such as gearing. When you discuss or clarify this information with your client, a record of this discussion is required in your file notes.

If after making enquiries it is reasonably apparent that information is inaccurate or incomplete, the adviser needs to decide if:

- the scope of the advice has changed, and/or
- the adviser is able to continue providing advice.

If you proceed in giving the advice, you must warn the client that incomplete or inaccurate information could impact on the appropriateness of the advice both verbally and in the SOA.

Step Four – Assess if you have the expertise required to provide the advice and if not decline to provide the advice

You must assess the expertise required to provide the advice on the subject matter sought by your client. If you do not have the necessary expertise, you must decline to provide the advice and/or refer the client to an adviser with the appropriate expertise.

When determining if you have the expertise required, you should consider:

- limitations on the adviser determined by the licensee
- professional qualifications and training
- knowledge and skills relating to the scope of the advice

It is important to note that while advisers may have met the educational requirements for providing advice in certain areas, this in itself does not mean that all advisers have expertise in all aspects of that area. For example, an adviser qualified to provide advice on superannuation may not specialise or have experience dealing with defined benefit funds or small APRA funds.
**Step Five – Conduct a reasonable investigation into the financial products that might meet the needs and objectives**

After identifying and analysing your client’s objectives and financial situation, this information is used to determine an advice strategy for your client. The strategy may or may not involve recommending financial products to your client.

Where it is appropriate to recommend a financial product, you are required to conduct a reasonable investigation into financial products that might meet the needs and objectives of your client. It is not expected, nor is it practical, for an adviser to investigate every possible appropriate product.

ASIC has commented that one way in which to conduct a reasonable investigation is by benchmarking products against similar products in the market. The benchmarking process for our licensees is undertaken as part of the process to create the AIL.

ThreeSixty Research provides a series of Approved Investment Lists which contain products that have been researched and reviewed on a regular basis by research professionals.

There will be occasions when you will need to investigate outside the AIL under which you operate. These include:

- where a client asks you to consider a specific product, or
- where the client’s existing product is not on the AIL.

When researching products for your client, a consideration that is likely to be important to the client is the product cost versus product value. It is up to you to discuss features and benefits that may outweigh additional fees in the recommended product, if the product you recommend is more expensive. The features and benefits must be relevant to that particular client.

**Step Six – Base all judgements regarding advice to clients on their objectives, financial situation and needs**

You must base all judgements regarding advice (either strategic or product) on the client’s objectives, financial situation and needs. This includes:

- the scope of the advice
- the extent of inquiries into the client’s relevant circumstances
- the strategic advice and financial product solutions
- the strategic advice and financial products recommended
- how the client should acquire the financial products (eg directly or via platform).

Clearly document in the file and SOA how the advice provided is justified by linking back to the client’s needs and objectives.
Step Seven – Take any other step that would reasonably be regarded as being in the best interest of the client

In addition to the previous steps you also need to take any other reasonable step(s) that would be in the client’s best interest ‘at the time the advice is provided’. This provision does not consider what may have been a better option in hindsight.

ASIC outlines a number of considerations that may be reasonable in this step:

- clearly outlining the service that is and is not being provided
- making strategic recommendations to your client in addition to or instead product recommendations
- advising clients how frequently they should review their advice
- offering to provide advice on (or a referral) for any other key areas identified that were not part of the scope of advice.

Example 1
A client is seeking advice on asset allocation in superannuation only however through the fact finding process it becomes evident that the client has significant debts and cash flow issues.

In this situation the adviser should offer to provide advice or a referral to address the debt management and cash flow even though this advice was not initially sought by the client. If the client declines the offer this needs to be evident in the client file and documented in the scope section of the SoA with an appropriate warning.

Example 2
A client seeks advice on an appropriate insurance policy outside of superannuation with which they can hold $500,000 of life insurance.

The adviser offers to complete a full needs analysis to determine the appropriate types and amounts of cover and advice on whether the policy should be held inside or outside of superannuation. The client declines the offer of advice and is adamant they only want the product advice for the $500,000 life insurance policy. The adviser meets his best interest obligations by warning the client of the risk of not obtaining advice and ensures the scope of advice recorded in the client profile and the SOA reflect these discussions.
Appropriate Advice

Advice provided must be appropriate for your client’s circumstances

Advice is considered appropriate at the time it is provided if:

- it is fit for its purpose i.e. it satisfies the client’s needs and reasons for seeking advice, and
- the client is likely to be in a better position if the advice is followed either financially or in other relevant aspects (e.g. insurance coverage).

You can evidence you have met this requirement through working papers, file notes and reflecting the benefits of the advice in the SOA by linking the advice back to the client’s goals and objectives.

It is not possible to guarantee that the client will be better off and the ‘likely to be better off’ test is applied on the basis of facts known and reasonable assumptions made at the time of the advice.

Endorsing a strategy

Some clients will seek endorsement from an adviser regarding a particular strategy they wish to pursue. You are still required to satisfy all of the obligations to demonstrate you acted in the client’s best interest where personal advice is given.

Where clients wish to undertake a course of action you do not believe is in their best interest or appropriate, you are required to communicate this to the client. If an SoA is being produced as part of the overall advice, this warning must be included in the SoA. If no SoA is produced, appropriate file notes and documents should be retained to support the discussion with the client.

Product replacement

When switching a client from an existing product to another, you are required to undertake appropriate analysis of the existing product compared to the recommended product. The replacement can only be recommended where it is in the best interests of the client to do so.

- Ensure the benefits of the replacement advice outweigh any negative consequences that would be incurred
- Articulate in the SoA how the recommendation is appropriate, meets the client’s needs and is likely to leave the client in better position.
- Advice is likely to be inappropriate if the costs of the recommended fund are higher than the existing fund unless the advice better satisfies the client’s needs
Alternative Strategies

Before making a recommendation, an adviser should formulate the strategy on which the advice is based. ASIC expects an adviser to consider alternative options before choosing the strategy that is appropriate for the client.

The number of alternative strategies required in the SoA depends on the client’s relevant circumstances. You must consider relevant and realistic alternative strategies and use your judgement when determining which alternative strategies should be considered for a client.

A discussion of alternative strategies with your client will help you support your rationale behind their recommended strategy, informs the client of other relevant options that were considered in forming the advice and helps your client make an informed decision.

Where you are proposing to recommend a more risky or complex strategy, it is likely that lower risk and less complex alternatives must be actively considered.

In many circumstances, an obvious alternative to consider is for the client to use available funds to pay down non-deductible debt, or to make additional contributions to superannuation.

The table on the next page sets out guidance to alternative strategies that you may need to consider. It is not an exhaustive list and you will need to exercise judgment based on your client’s individual circumstances and goals.

Supporting documentation for alternative strategies

Advisers need to demonstrate that analysis has been undertaken on alternative strategies. This is supported by information in a client’s file including:

- modelling/projections where appropriate
- file notes
- working papers.

The more complex and risky the recommended strategy, the greater the requirement to have documentation supporting your analysis of the alternatives considered.

The SoA must show the alternative strategies that have been considered and why the adviser determined that these are not appropriate for that client. Alternative options should be set out concisely, with a brief outline of the strategy and reasons why they are not recommended.

Existing clients

Advisers do not need to consider alternative strategies if meeting clients for a review where there has been no change in circumstances or current strategy. Advisers should use their judgment to determine whether alternative strategies need to be considered at the time of review. If a new strategy is recommended for an existing client it may be appropriate to consider possible alternatives for that strategy.
<table>
<thead>
<tr>
<th>Advice areas unlikely to require alternative strategies</th>
<th>Suggested alternatives for advisers</th>
</tr>
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<tbody>
<tr>
<td>Advice that has been limited in scope to an existing strategy or single product class. Eg: • Super switch/consolidation • Insurance recommendation • Direct equities in an existing portfolio • Asset allocation within an existing product or platform.</td>
<td>In these circumstances, it is unlikely that there would be relevant alternative strategies to consider. For these particular strategies we will leave it to the adviser’s judgement as to whether alternatives are required. For example, where a client is looking purely for insurance advice, to remain uninsured or to self-insure are unlikely to be relevant alternatives since this would not achieve the client’s goal.</td>
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<tr>
<th>Advice to consider and document alternative strategies</th>
<th>Suggested alternatives to consider</th>
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<tbody>
<tr>
<td>Relatively low risk, mainstream strategies e.g. investing a lump sum</td>
<td>• use available funds to pay down non-deductible debt • contribute to superannuation • invest outside of superannuation.</td>
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<tr>
<th>Advice areas that require alternative strategies and a higher degree of supporting documentation</th>
<th>Suggested alternatives to consider</th>
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<tbody>
<tr>
<td>Platform vs. non-platform</td>
<td>The adviser should ensure when recommending a platform or administration service that there is a clear benefit for a client. While this should be addressed in the product recommendation, the licensee would expect that an alternative approach (non-platform) is discussed in the Alternative Strategies section of the SoA including a consideration of costs.</td>
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<tr>
<td>Self-managed superannuation fund</td>
<td>• remaining in the client’s existing super fund • switching to another fund</td>
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<tr>
<td>Direct property (strategic advice only)</td>
<td>• Investing more into superannuation • Paying down non-deductible debt • Alternative ways to access property as an investment if it represents a large portion of the client’s asset allocation.</td>
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<tr>
<td>Gearing</td>
<td>• Accumulating savings without gearing • Contributing more into superannuation • Paying down non-deductible debt • The structure of the loan recommended (eg home equity vs margin vs instalment etc.)</td>
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Conflicts Priority Rule

If there is a conflict between the interests of the client and the interest of the adviser (licensee or a related party), the adviser must give priority to the client’s interests when giving the advice.

There are two particular areas where it is not unusual for an adviser to have a conflict:

- recommending a product issued by a related party
- the strategy or product the adviser recommends will have a positive effect on the adviser’s revenue.

When selecting products, advisers need to be able to separate benefits to the adviser (e.g. office efficiencies, revenue increases) and benefits to the client. Priority must then be given to the client.

Example 1

A client is approaching retirement and wants advice on his superannuation. The client has a healthy superannuation balance but very little investment knowledge. The adviser recommends establishing an SMSF and assures the client that he does not need to be too involved in the ongoing management and responsibility of the fund.

The recommendation to establish an SMSF creates a greater ongoing revenue stream for the adviser compared to alternative options which may be more suitable for a client with little investment experience. The client’s interests have not been prioritised when providing the advice.

Example 2

If an adviser places the next insurance policy with a particular insurer, he will reach platinum status which will provide him with benefits such as dedicated underwriting support, additional training and access to certain online resources. The benefits the adviser receives may influence the decision to place the business with that insurer compared to another insurer on the AIL. While may not be a direct improvement to the adviser’s revenue, it may indirectly increase revenue through efficiency gains within the adviser’s business.

The adviser would need to be able to demonstrate that the product selected was appropriate for the client and was not recommended due to the benefits the adviser may receive. For example would an independent adviser have considered it appropriate to recommend that product based on the client’s relevant circumstances?
## Best Interests Duty Checklist

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<tr>
<th>Requirement</th>
<th>How to address</th>
<th>Yes/No</th>
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<tr>
<td>Have the client’s objectives, financial situation and needs that are relevant to the advice being sought been identified?</td>
<td>Ensure the client’s objectives, financial situation, needs and risk profile have been clearly identified and recorded. Where these details are unclear or inconsistent seek further clarification. This requirement can be addressed by using a Fact Find, keeping a record of substantial discussions via file notes and incorporating all the information into the SOA.</td>
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</table>
| Has the subject matter of the advice and the client’s relevant circumstances been identified? | Ensure the scope of advice has been clearly documented and agreed with the client and that it has not excluded any areas considered critical to the advice. Obtain sufficient data from the client relevant to the scope of advice including the client’s sensitivity to product fees. Where the client does not provide sufficient information as requested  
  • Decline to provide advice (where required); or  
  • Provide the appropriate limited information warning (where relevant)  |        |
| Have you made additional/reasonable enquiries to obtain additional information where it appears to be incomplete or inaccurate? | Assess the information provided to you and question further if you are not reasonably satisfied that it is complete or accurate. Keep a record of any relevant enquiries you have made to obtain this information from the client. Provide clear warnings during the fact finding stage and within the SOA to show how the advice given may be impacted by reliance upon incomplete or inaccurate information provided by the client, and that the client should consider the appropriateness of the advice, taking into account their circumstances. |        |
| Do you have the necessary expertise and competence to provide the advice? | Assess the following:  
  • Restrictions on LOA  
  • Professional qualifications & training  
  • Product accreditations & competencies  
  • Experience  
  Where you do not have the necessary expertise to provide advice decline and/or refer to appropriate specialist and file note this |        |
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<tr>
<th>Have reasonable enquiries and investigations been undertaken prior to recommending a financial product?</th>
<th>Undertake an analysis of the client’s existing financial products to determine whether their objectives can be met without the need for recommending new or alternative financial products. Document any investigations conducted into the financial products reviewed that might achieve the objectives and needs of the client that would reasonably be considered relevant to the subject matter of the advice.</th>
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<tr>
<td>Have all judgements made been based on the client’s objectives, financial situation and needs?</td>
<td>Clearly document within the client file and/or the SOA as required, justification for all judgements made in advising the client, and link these back to the client’s objectives, financial situation and needs.</td>
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<tr>
<td>Have any other reasonable steps in the client’s best interests been completed and documented?</td>
<td>Document and highlight to the client any other steps that are considered necessary to confirm, support or justify that the approach undertaken is in the best interests of the client. For example:  - Offer to provide advice or referral on any advice needs identified that have been excluded from the scope of advice. Documented discussions during the fact finding stage and in the ‘scope of advice’ section of the SOA.  - Consider strategic recommendations in addition to product recommendations  - Advise clients how often they should obtain a review of the advice</td>
</tr>
<tr>
<td>Is the advice provided appropriate to client’s circumstances?</td>
<td>Demonstrate in the client file and SOA that the advice is likely to leave the client in a better position, either financially, or in other relevant respects. Consider alternative strategies and document these in the SOA where relevant.</td>
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<tr>
<td>Where a conflict of interest may exist between: the interests of the client, and the interests of the adviser or various related parties, is it clear that the client’s interests have been prioritised?</td>
<td>Clearly document within the client file and/or the SOA as required, the considerations given to the fact that related party interests are involved, and how based on professional judgements, the client is considered to be better off as a result of the advice by reference to the client’s objectives, financial situation and needs, despite the existence of conflict.</td>
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