# Best interest duty policy

AFG

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# 1 Glossary

| Term | Meaning |
|---|---|
| **ACL** | Australian Credit Licence. |
| **AFG** | Australian Finance Group Ltd ACN 066 385 822.<br>Australian Credit Licence 389087. |
| **ASIC** | Australian Securities & Investments Commission. |
| **Best Interest Duty obligations** | The mortgage broker best interest duty obligations set out in sections 158LA and 158LE of the NCCP Act. |
| **NCCP Act** | National Consumer Credit Protection Act 2009 (Cth). |
| **NCCP Regulations** | National Consumer Credit Protection Regulations 2010 (Cth). |

# 2 Introduction

This policy forms part of AFG's procedures about applications for credit products and will assist you to meet the Best Interests Duty obligations set out in the NCCP Act and NCCP Regulations. From 1 January 2021, you must comply with this policy when you provide credit assistance to a consumer.

Please note that this policy cannot specifically address all possible situations that you may face when providing credit assistance to consumers and you must also comply with the requirements of the law, ASIC's guidance in *Regulatory Guide 273: Mortgage Brokers: Best interests Duty*, the AFG Member Agreement (including the *AFG Code of Conduct and Applicant Identification Procedures*) which permits you to introduce credit applications through AFG and each individual lender's procedures and other requirements. If you are an AFG Credit Representative you must also comply with the terms of your AFG Credit Representative Agreement.

The Best Interests Duty requirements for mortgage brokers require you to follow a number of steps when providing credit assistance to a client. The primary steps that you must take are:

1. gathering information about the consumer and their situation;
2. using that information to assess what credit assistance would be in the consumer's best interests;
3. prioritising clients' interests; and
4. depending on the client's circumstances, potentially suggesting one or more options to the consumer and providing information on why the recommended options are in the best interests of the client.

This policy sets out minimum requirements with respect to each of these matters and provides some additional information about compliance documents.

## Overlap between Best Interests Duty & Responsible Lending obligations

The Best Interests Duty obligations will apply in addition to the Responsible Lending obligations set out in the NCCP Act. Mortgage brokers who are credit licensees, or credit representatives of credit licensees, will need to comply with both Responsible Lending and the Best Interests Duty obligations. In both situations, the obligations are separate, and compliance with one of these obligations does not necessarily mean the other has been satisfied.

There may be some overlap in the process of making inquiries for both obligations. The information gathered to meet Responsible Lending obligations may assist in complying with the Best Interests Duty obligations.

The Responsible Lending obligations involve an assessment of whether a credit product is 'not unsuitable' for a consumer. The Best Interests Duty obligations apply more broadly to the credit assistance you provide, which extends to your conduct and processes as well as the appropriateness of the credit product.

There may be situations where you might satisfy the Responsible Lending obligations but fall short of complying with the Best Interests Duty obligations. Even where a credit product is deemed 'not unsuitable' for the consumer, it is possible that suggesting that the consumer apply for that product may not be in the consumer's best interests.

## When Best Interests Duty Applies

Best Interests Duty obligations apply any time credit assistance is provided to a client for all NCCP Act regulated loans. Residential home loans, credit cards that are included in residential home loan packages, personal loans and consumer asset finance where the vehicle is used for 51% or more personal use, are NCCP Act regulated loans.

The following scenarios are considered to be providing credit assistance and therefore trigger the Best Interests Duty obligations and Responsible Lending obligations:

- suggesting a client remain in their existing home loan;
- suggesting or recommending a client vary their existing loan contract;
- suggesting or recommending a client switch home loan product; and
- suggesting or recommending a client increase their home loan borrowings.

If your client requests you as their originating broker to contact their existing lender and obtain a more competitive interest rate, it is not considered to be credit assistance and the Best Interests Duty obligations and Responsible Lending obligations are not triggered provided your assistance is limited to this administrative assistance. See discussion later in this policy in relation to 'switching' assistance provided to clients.

# 3 Best Interests Duty Steps

## 3.1 Requirements & Objectives

To determine what is in the best interests of your client, you must make reasonable inquiries about their requirements and objectives and financial situation in relation to the credit contract. You should consider all of your client's requirements and objectives and the loan features required to achieve them.

To meet the Best Interests Duty obligation threshold, you must:

1. make reasonable inquiries about your client's requirements and objectives, financial situation, loan purpose, loan type, repayment type, and various product features that may be relevant for your client;
2. take all of these reasonable inquiries into consideration when reviewing available products and ensure all suggested products meet your client's requirements and objectives;
3. document those requirements and objectives; and
4. keep adequate records to demonstrate the inquiries that you have undertaken. You should save these records electronically as file notes.

Clients may communicate their requirements and objectives in different ways. Adequate records of your inquiries are not prescribed in the regulations however the following non-exhaustive list should be considered as examples:

- client interview notes
- client interview recordings
- electronically or manually recorded fact find information
- file notes
- screen shots of loan calculators

In some cases, your clients may not know or completely understand what circumstances may be relevant or they make unclear, limited, or inconsistent requests when seeking a new home loan. In these situations, you must make further enquiries and assist the client to identify their requirements and objectives to enable you to act in their best interests.

### Matters that should be Considered in a Best Interests Duty Assessment

You should consider each client's individual circumstances to determine what factors should be considered in your information gathering that will assist you to make a recommendation in your client's best interests.

Client matters that should be considered at the point in time would be considered are:

- the client's personal and financial circumstances;
- the client's requirements and objectives including the amount and term of loan sought and the purpose of the loan;
- the outcome a client would like to achieve by obtaining the loan;
- reasonably foreseeable changes to the client's circumstances;
- time factors including unconditional approval and settlement deadlines;
- the client's priorities and preferences for different products including price, interest rate, features and product bundles; and
- the client's priorities and preferences for different lenders.

### Incomplete or Inaccurate Client Information

If it is obvious that the information you have about a client is incomplete or inaccurate you must make further inquiries to ensure you have obtained complete and accurate information.

If you rely on incomplete or inaccurate information, it will not be considered to be acting in your client's best interests and you should refrain from making a recommendation. This applies even in instances where limited or inaccurate information may give your client access to better terms or increase their likelihood of obtaining a home loan.

## 3.2 Comparing & Selecting Products

The Best Interests Duty obligations require you to consider and compare products according to a prioritised list of your client's requirements and objectives.

AFG requires you consider a minimum of 2 additional products, and where possible, these products be from a range of lenders.

In most cases, all the products considered should be similar and therefore comparable. For example, if the client is looking for a basic no frills home loan, the other products considered should also be basic products. In this case, considering other types of products, such as packaged products, may not be relevant and will not help show how you have acted in the best interests of the client.

Clients should be presented with a list of product options considered to meet their requirements and objectives in addition to the loan you are recommending that best meets their requirements and objectives.

All options compared and presented to your clients should benefit your clients interests above all other interests including yours as their broker.

If you present options that only come from a single lender you must advise your client, why this is the case (for example, no other comparable products available).

### Requests Made by Clients

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. These steps will assist your client in making an informed decision.

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.

### Reasons Why a Product was Selected

This should explain why the recommended product was selected over the other products considered in line with the client's requirements and objectives. It should address the specific factors/features important to the client, which were only applicable to the recommended product. The information entered into the AFG Technology Suite will then populate into the Credit Proposal (incorporating Preliminary Credit Assessment).

## 3.3 Other Relevant Matters

### Interest Rate and Cost

Not all consumers will make the product cost or interest rate a priority. The interest rate and cost of a loan may affect the outcome the consumer can achieve therefore you should ensure that these two factors are considered in addition to all other requirements and objectives the client has prioritised.

### Limited Loan Options

Some client's circumstances, requirements and objectives may limit the number of options available to them and their ability to access loan products. Factors such as credit policy, credit risk, loan amount, or lender risk appetite may limit their ability to access certain products.

In these cases, you are required to explain why limited options are available to the client in your credit assistance by documenting this in the Credit Proposal (incorporating Preliminary Credit Assessment).

### Promotional Offers

Some lenders make promotional offers such as cash back offers, rewards points, fee reductions, fee waivers or discounted interest rates to encourage clients to consider their products.

The value of the promotional offer and any long-term savings should be considered in the context of the client's requirements and objectives. For example, a client may be enticed by a lender reward points offer but make low fees and a lower interest rate a higher priority. You should consider what would provide the client a greater benefit and discuss these options with your client and record the outcome of these discussions in your file notes and the [Credit Proposal (incorporating the Preliminary Credit Assessment)].

### Government Schemes

Client's may be eligible for Government grants or schemes. Under the Bests Interests Duty obligations, you are expected to educate your clients about the requirements of the schemes and may also help assess their eligibility. However, unless you are authorised to provide financial product advice, you should not provide any financial product advice in relation to these schemes, for example, early access to superannuation funds.

### Risk Based Pricing

In cases where the interest rate is determined by a lender during the application process, best interests duty requires you to explain to the client how risk based pricing works and give a general description of how the client's personal and financial circumstances (past credit history, employment status and income, and security for the loan) may affect the lender's decision and interest rate that will be applied.

When providing credit assistance for risk based priced loan products you must inform clients of the range of interest rates offered by credit providers that you are comparing and recommending. Taking this approach will ensure that the consumer is advised of the maximum possible interest rate they could expect to receive from a lender.

## Packaged Products

Credit products that are bundled with mortgages are subject to the Best Interests Duty obligations. To meet Best Interests Duty obligations for packages a comparison of the package credit cards, and the total costs of the packaged products should be completed in addition to the home loan product.

Packages should also be compared with non-packaged products and the client's existing mortgage and credit cards to enable you to demonstrate the risks and benefits of the products considered to your clients.

The reasons for recommending a packaged product should always be in the best interests of the client. If a client does not prioritise the benefits a package has to offer a stand-alone mortgage product may be better suited to their requirements and objectives.

## Offset Accounts

Some lenders offer home loan products that provide access to an offset account. To meet your Best Interests Duty obligations for the products with access to an offset account, the following steps should be completed:

- compare products with an offset account to products that do not have access to an offset account and, where possible, the client's existing mortgage product to enable you to demonstrate the risks and benefits of the products considered to your clients; and
- complete calculators that demonstrate the costs savings an offset account can provide. The output of these calculators can be saved as a PDF and maintained on the client file and sent to the client as a supporting document to your Credit Proposal (incorporating the Preliminary Credit Assessment). Lender's offset calculators or the Vision Abacus calculator available online here can be used to illustrate the cost saving.

The Credit Proposal (incorporating Preliminary Credit Assessment) should provide:

a) an explanation of why those product(s) were recommended;

b) how, based on their circumstances, the client could benefit from the recommended product(s) and using an offset account; and

c) any client education material which confirms the discussions held with your client regarding the concept of offset accounts.

## Debt Consolidation and Refinancing

The Best Interests Duty obligations require brokers to consider the costs of debt consolidation and refinancing.

There may be some scenarios where consolidating several debts and extending the loan term will increase the total costs of interest paid over the life of the loan whilst reducing the client's monthly repayment amounts. If a client prioritises their requirements and objectives to reduce their monthly repayments and consolidate several debts into one facility, you can still recommend a new loan with a term extension as it will meet the client's objectives. In these scenarios you must ensure the client understands the costs of refinancing and the increased interest costs as a result of the loan term extension.

When consolidating short term debts (e.g. credit cards and car/personal loans) into a longer term credit product, the total interest costs are likely to increase significantly if the debt is paid off over a much longer term (e.g. 20-30 years). As a result, you must record the following additional information for an application that includes debt consolidation:

- reasons for the consolidation and an explanation of how the consumer will benefit; and
- a note confirming that you have advised the consumer that additional interest may be payable if the short-term debts were paid off over the entire term of the debt consolidation loan.

There must be an overall cost saving to the consumer when refinancing. If there is no overall cost saving or the savings are minimal, the new product must better meet the consumer's requirements and objectives and be in their best interests.

Flex Advanced Modelling or the Debt Consolidation and Refinancing Excel Calculator can be used to illustrate client debt consolidation or refinancing scenarios. The output of these calculators can be saved as a PDF and maintained on the client file and sent to the client as a supporting document to your Credit Proposal (incorporating the Preliminary Credit Assessment).

## Consumer Asset Finance and Personal Loans

Some Consumer Asset Finance and Personal Loan lenders offer the ability for brokers to vary an interest rate that is recommended to a client as part of the remuneration they are able to receive.

To ensure the conflict priority rule is met products should be compared using the same interest rate from different lenders, show what remuneration will be paid if the loan settles, the total cost of the loan across the life of the loan and provide any relevant information to clients on the relevant costs that to be capitalised and the impact of capitalising those costs over the life of the loan.

## Lender Accreditations

All brokers should hold accreditations with a sufficient range of lenders that will enable them to act in the best interests of their clients. The number of accreditations will vary for each broker therefore AFG or the ASIC does not prescribe a minimum requirement.  All brokers should periodically review their accreditations to ensure they are sufficient to act in the best interests of their clients.

The Best Interests Duty obligations do not require you to recommend products that are outside of AFG's lender panel or your accreditations.

If your comparisons identify products that may be in the better interests of your client and you do not hold an accreditation for that product you should obtain the accreditation for the product or refer the client to another AFG broker who holds the relevant product accreditation.

### Periodic Client Review Recommendations

The Best Interests Duty obligations do not prescribe how frequently you conduct periodic reviews however they do suggest that it is best practice to review your clients' circumstances from time to time.

## 3.4 Conflicts of Interest Obligations

The Best Interests Duty obligations require all brokers to prioritise their clients' interests ahead of all other interests in the event of a conflict of interest. This is known as the 'conflict priority rule'.

Brokers must not provide credit assistance that generates revenue to themselves, their licensee or other related party if the credit assistance that generated that revenue it is not in the client's best interests.

To manage the conflict priority rule, all brokers should identify what potential conflicts may apply to them. Potential conflicts may include:

- referral relationships;
- holding multiple roles – acting as a broker and a financial planner;
- related parties of the broker involved in the credit contract or transaction;
- benefits that parties may receive as a result of the client proceeding with your recommendations (including your licensee);
- tiered serving arrangements;
- non volume-based and all other remuneration arrangements offered by Personal Loan and Consumer Asset Finance providers;
- ownership structures that may be related to the credit assistance a client receives from you as a broker; and
- the prospect of a commission clawback from a lender.

The conflict priority rule will not prevent you from providing credit assistance to your client however all conflicts should be captured and managed appropriately. This can be done by:

- making your client's best interests the primary consideration for all credit assistance recommendations; and
- making any relevant notes and disclosures of potential conflicts or ownerships structures and how they were managed in the credit assistance process using the dedicated Opportunity field in FLEX; and
- disclosing to the client all parties involved in the credit contract and the remuneration they may receive as a result of the credit assistance that is provided in the Credit Guide and Credit Proposal (incorporating the Preliminary Credit Assessment).

**IMPORTANT:** The conflict priority rule means you cannot further the interests of any party (including your own interests or your associates interests, which extends to third parties such as referrers) over furthering the interests of a client. You cannot comply with this rule with disclosure alone and you cannot manage this by having a client consent to a conflict which furthers the interest of another party above the clients' interests.

## 3.5 Demonstrating Best Interests Duty to Your Clients

The one-page summary at the front of the Credit Proposal (incorporating the Preliminary Credit Assessment) demonstrates to a client how you as their broker have acted in their best interests.

The summary sets out the requirements and objectives that a client has discussed with you, the selected product, the reasons why the product was chosen and any remuneration to be paid by the lender to you and any associated parties (including AFG). The document also provides similar material about other products you considered before making a final selection for the client.

The 'Requirements & Objectives' field in Flex should be used as a summary of the reasons why the client has sought credit assistance and the features and preferences they have disclosed to you that they want in a home loan solution. This information populates in the Credit Proposal (incorporating Preliminary Credit Assessment) document.

The 'Payment Type', 'Product Type', 'Product Features' and accompanying notes fields in Flex are designed to be used as file notes captures of the details of the conversations you have had with a client to capture their requirements and objectives and the features they would like you consider. This information is intended to be broker file notes and does not populate in the Credit Proposal (incorporating Preliminary Credit Assessment).

The 'Reason Why You have Select a Product' field in Flex populates in the Credit Proposal (incorporating Preliminary Credit Assessment) and should inform the client why you have selected the product you have recommended over the other products considered and how this meets their requirements and objectives.

## 3.6 Fact Sheets (Client Education Material)

*ASIC Regulatory Guide 273:* Mortgage Brokers: Best Interests Duty makes regular reference to the importance of client education in the credit assistance process. ASIC expects that you educate consumers on matters related to the credit assistance you provide to them.

You may identify and explain new concepts or clarify concepts to your clients to help them prioritise their requirements and objectives. AFG's Fact Sheets have been developed to support and demonstrate the client education process about these concepts.

Fact sheets relevant to a client scenario can be selected to be included as annexures to the Credit Proposal (incorporating Preliminary Credit Assessment). A record of the client education material that was provided to a client is also noted on the Best Interests Duty Working Paper available in the AFG Technology Suite.

## 3.7 Record Keeping Obligations

ACL holders and brokers are required to maintain records that demonstrate how they complied with their Best Interests Duty obligations at the time they provided credit assistance to their clients.

If you use the AFG Technology Suite to provide credit assistance, the platform will automatically populate the relevant information and generate a Best Interests Duty Working Paper that will be electronically saved against the client record (currently in FLEX Opportunity Reports) when you generate a Credit Proposal (incorporating a Preliminary Credit Assessment).

Other records you are expected to maintain on the client file are:

- a copy of, or a record of, the credit guide that was provided to the client;
- Responsible Lending client file information including supporting documentation;
- fact find;
- other file notes you have made in relation to the credit assistance or in relation to the client;
- compliance documents;
- video and audio recordings;
- all correspondence with the client and other parties relevant to the credit assistance;
- any calculators used to provide the credit assistance;
- any other working papers; and
- lender documentation provided by the lender.