

How to satisfy BEST INTERESTS DUTY IN AN SOA?

Confirm the following appears in a summary form somewhere prominent in the advice.

1. Our advice
2. Your relevant circumstances
3. The scope of our advice
4. The subject matter of the advice you have sought from us
5. The range of products and product classes we have considered
6. How we've acted in your best interests
7. Why we think our advice is appropriate based on alternatives we've considered and what we see to be the advantages and disadvantages of you following our advice

| The following statements are directly copied from ASIC Regulatory Guide 175 | |
|---|-----------|
| SOA checklist – does your SOA: | YES or NO |
| (a) clearly and unambiguously set out the providing entity's [i.e. your] personal advice | |
| (b) set out in easy-to-understand language, in one place, the reasoning that led to the advice, including (i) to (vi) below | |
| (i) a concise summary of the client's relevant circumstances, as ascertained after making the inquiries required by s961B (refer "Safe Harbour" overleaf) | |
| (ii) the scope of the advice | |
| (iii) the subject matter of the advice that has been sought by the client | |
| (iv) a generic description of the range of financial products, classes of financial product or strategies considered and investigated for the purposes of s961B (refer overleaf) | |
| (v) if the best interests duty applies (i.e. from 1 July 2013, or earlier if the AFS licensee elects to comply with Pt 7.7A before this date), a concise statement of how the advice provider has acted in their client's best interests. We [i.e. ASIC] consider that it is good practice to set out the basis on which a reasonable advice provider would believe that the advice is likely to leave the client in a better position if the client follows the advice. For more information, see: RG 175.228–RG 175.235 | |
| (vi) a concise statement of the reasons why the advice and recommendation were considered appropriate, including in light of the alternative options considered, and the advantages and disadvantages for the client if the client follows the advice. | |

CORPORATIONS ACT 2001 - SECT 961B

Provider must act in the best interests of the client

(1) The [provider](#) must act in the best [interests](#) of the [client](#) in relation to the advice.

[SAFE HARBOUR]

(2) The [provider](#) satisfies the duty in subsection (1), if the [provider proves](#) that the [provider](#) has done each of the following:

(a) identified the objectives, financial situation and needs of the [client](#) that were disclosed to the [provider](#) by the [client](#) through instructions;

(b) identified:

(i) the subject matter of the advice that has been sought by the [client](#) (whether explicitly or implicitly); and

(ii) the objectives, financial situation and needs of the [client](#) that would reasonably be considered as relevant to advice sought on that subject matter (the [client's relevant circumstances](#));

(c) where it was [reasonably apparent](#) that [information](#) relating to the [client's](#) relevant circumstances was incomplete or inaccurate, [made](#) reasonable inquiries to obtain complete and accurate [information](#);

(d) assessed whether the [provider](#) has the [expertise](#) required to [provide](#) the [client](#) advice on the subject matter sought and, if not, declined to [provide](#) the advice;

(e) if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a [financial product](#):

(i) conducted a [reasonable investigation](#) into the [financial products](#) that might achieve those of the objectives and meet those of the needs of the [client](#) that would reasonably be considered as relevant to advice on that subject matter; and

(ii) assessed the [information](#) gathered in the investigation;

(f) based all [judgements](#) in advising the [client](#) on the [client's](#) relevant circumstances;

(g) taken any other step that, at the time the advice is [provided](#), would reasonably be regarded as being in the best [interests](#) of the [client](#), given the [client's](#) relevant circumstances .

Note: The matters that must be [proved](#) under subsection (2) relate to the subject matter of the advice sought by the [client](#) and the circumstances of the [client](#) relevant to that subject matter (the [client's](#) relevant circumstances). That subject matter and the [client's](#) relevant circumstances may be broad or narrow, and so the subsection anticipates that a [client](#) may seek scaled advice and that the inquiries [made](#) by the [provider will](#) be tailored to the advice sought.

[Basic banking products](#)--best [interests](#) duty satisfied if certain steps are taken

(3) If:

(a) the subject matter of the advice sought by the [client](#) is solely a [basic banking product](#); and

(b) the [provider](#) is an agent or employee of an [Australian ADI](#), or otherwise acting by [arrangement](#) with an [Australian ADI](#) under the name of the [Australian ADI](#);

the [provider](#) satisfies the duty in subsection (1) if the [provider](#) takes the steps mentioned in paragraphs (2)(a), (b) and (c).

[General insurance products](#)--best [interests](#) duty satisfied if certain steps are taken

(4) If the subject matter of the advice sought by the [client](#) is solely a [general insurance product](#), the [provider](#) satisfies the duty in subsection (1) if the [provider](#) takes the steps mentioned in paragraphs (2)(a), (b) and (c).

Note: A [responsible licensee](#) or an [authorised representative](#) may contravene a [civil penalty provision](#) if a [provider](#) fails to comply with this section (see sections 961K and 961Q). The [provider](#) may be subject to a banning [order](#) (see [section 920A](#)).

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Regulations

(5) [The regulations](#) may prescribe:

(a) a step, in addition to or substitution for the steps mentioned in subsection (2), that the [provider](#) must, in [prescribed](#) circumstances, [prove](#) that the [provider](#) has taken, to satisfy the duty in subsection (1); or

(b) that the [provider](#) is not required, in [prescribed](#) circumstances, to [prove](#) that the [provider](#) has taken a step mentioned in subsection (2), to satisfy the duty in subsection (1); or

(c) circumstances in which the duty in subsection (1) does not apply.