

Best Interests Duty Guide



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Preparing for the Best Interests Duty

Credit Representative Guide

The best interests duty (BID) obligations, is a law that encompasses a set of guiding principles that mortgage brokers must follow when providing credit assistance.

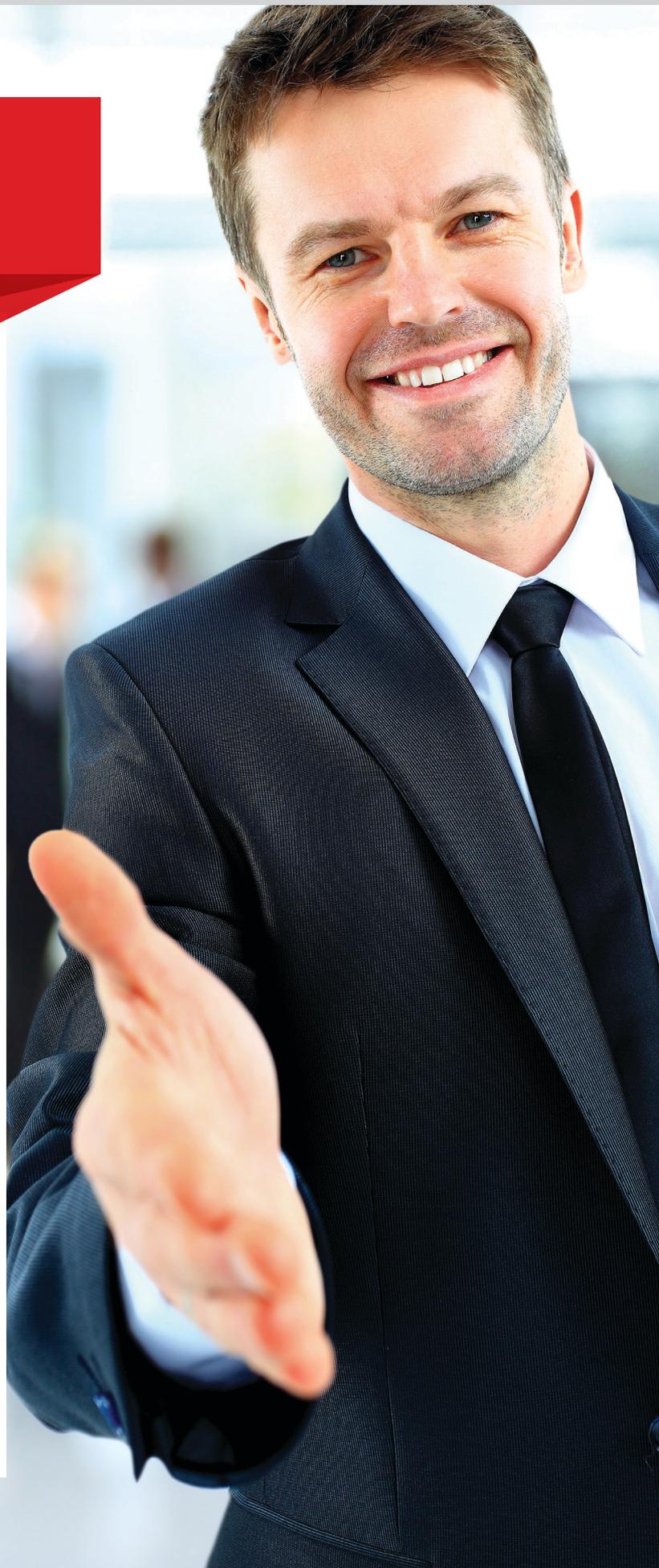
These are based around how you gather and document information about your clients individual circumstances, needs and objectives. How you assess suitable products; and how you present and make your recommendations, whilst educating them so they can make an informed decision.

The best interests duty gives the mortgage broking industry an advantage, it sets us apart from the banks and other lenders.

We believe the best interests duty, will help grow mortgage brokers market share making us all more valuable and sought after than ever before.

Whilst new regulatory and compliance measures are initially overwhelming, if you follow the steps and processes in this guide, you will be prepared to meet your compliance requirements.

Andrew Cowan
Managing Director
Redrock Group



What is Best Interests Duty?



About Best Interests Duty

Part of the royal commissions final recommendation included a new “best interest duty” to be imposed on mortgage brokers as well as recommendations relating to broker remuneration.

Collectively referred to as the ‘best interest obligations’ they give statutory recognition to consumer’s expectations. The best interests duty (BID) obligations are designed to align the interests of mortgage brokers more closely with the interests of consumers when taking out a loan.

BID applies to products that are regulated under the National Consumer Credit Protection (NCCP) act and works in conjunction with and goes above and beyond a mortgage broker’s existing responsible lending obligations when assessing a product as ‘not unsuitable’.

BID requires mortgage brokers to act in the best interests of the consumer and demonstrate evidence of this when providing credit assistance.

As an authorised credit representative you must comply with both BID obligations and responsible lending.

BID – The Basics

What you need to know.

The Best Interests Duty (BID) obligations are designed to align the interests of mortgage brokers more closely with the interests of the consumer seeking credit assistance.

What is BID?

BID aims to ensure mortgage brokers act in the best interests of consumers and to improve consumer outcomes.

Who does BID apply to?

BID applies to mortgage brokers who assist with loans regulated under NCCP (i.e. consumer home & investment loans).

When does BID apply?

BID applies each time you provide credit assistance for consumer loans and will take effect from 1 January 2021.

What are the goals of BID?

- Improve consumer outcomes.
- Ensure mortgage brokers act in the best interests of their clients.
- Reduce potential for conflicts of interests.



Principles of Best Interests Duty

Best interests duty that applies to mortgage brokers is principles based, which means it provides guidelines, or obligations, that you must apply to the specific circumstances of each client you assist.

These principles cover three essential components, each component is a separate obligation that operates in conjunction with each other and applies each time you provide credit assistance.



Best Interests Duty

You must act in the best interests of your clients.



Conflict Priority Rule

When providing credit assistance, you must prioritise your clients by putting their interests first



Conflicted Remuneration

You must not receive conflicted remuneration.

Our Obligation

As your credit licensee we must take 'reasonable steps' to ensure that our authorised representatives comply with their best interest obligations. We do this via our supervision, systems and procedures, training and support, application reviews and file audits.

If you, as our representative contravenes BID, then as the license holder, we could also be in breach if we can't demonstrate we've taken steps to ensure you as our representative have complied.

Preparing Your Business



Educating and engaging with your clients

The new BID law reinforces your current approach to your engagement with clients and a reminder about your documentation and record keeping.

You may need to tweak your business practices or the way you do things to ensure your approach meets not only the client's expectations but your BID obligations as well.

Whilst BID is a legal obligation it is also an advantage for mortgage brokers over banks and other lenders that don't have to comply with the requirements of BID.

Educating and informing your clients about BID is an ideal way to build trust and confidence with your clients. Mortgage brokers must serve and prioritise their clients' best interests,

whereas lenders only have to offer their own range of products.

Brokers are able to offer a wide range of credit products from different lenders, unlike the banks. In addition, mortgage brokers have a duty to educate their clients, so they are equipped to make informed decisions.

When your clients feel empowered and engaged and know that you have their best interests at heart they are more likely to be repeat clients and refer others who may also benefit.



Your Lender Panel

Maintaining a suitable lender panel

As our authorised representative, you should be accredited with a reasonably diversified panel of lenders. You should be content that the products you can access and recommend to your clients allow you to act in your clients' best interests.

You will need to determine as to whether you are accredited with a 'reasonably representative panel of lenders'. This will depend on the market segment you operate in and the type of borrowers you assist. It does not mean you need to be accredited with all 60+ panel lenders, but a sufficient range of lenders to be able to offer choice to your clients.

When reviewing your accreditations consider having a mix of major lenders, second tier banks as well as non conforming lenders and mortgage managers to ensure you have a diversified selection that satisfies the needs of your clients.

If you're not sure your lender panel is BID compliant, contact our support team for a review.



BIG 4 BANKS



OTHER BANKS



NON-BANK LENDERS

Make sure you're aware of:

- the products and features available in the marketplace, so you can determine if your accreditations are sufficient.
- If you are only accredited with and submitting loan applications to a small number of lenders, it may be more difficult to prove that you have acted in the customer's best interests.
- Each recommendation to a consumer needs to be justified based on that clients individual circumstances.

If you are not satisfied that the products you can access allow you to act in your clients best interests, you must not provide credit assistance.

The Conflict Priority Rule

Understanding the conflict priority rule

The best interests duty and the conflict priority rule are separate obligations that operate together and apply each time you provide credit assistance.

The conflict priority rule says that you must not recommend a product or service of a related party that would create extra income for yourself, or a related party, unless doing so would also be in the consumers best interests.

You should always clearly disclose any conflicts or potential conflicts to your client at the commencement of your engagement.

If they choose to work with you despite the conflict, you must still comply with the conflict priority rule by resolving the conflict in favour of your client.

The existence of a conflict does not necessarily mean you can't provide credit assistance. However, you do need to ensure the consumer's interests are put first and your reasons for any recommendation documented.

How to comply with the conflict priority rule

- 1 Identify any interests you or any related parties may have that could conflict with your broking activities.
- 2 Determine whether any of your referral relationships create any conflicts.
- 3 Maintain accurate records and file notes demonstrating how and why recommendations made were in the clients best interests.
- 4 Maintain your conflict of interest register worksheet contained in your compliance registers workbook to ensure any conflicts of interests are recorded and detailed notes are on file to explain how each conflict of interest is resolved.
- 5 Ensure all staff and representatives of your business are educated and informed of the conflict priority rule to ensure ongoing compliance.
- 6 if a conflict of interest does occur and you are unable to prioritise your customer's interest first, then do not provide any credit assistance.

The Conflict Priority Rule **Examples**

Common conflict situations for your consideration:

	CONFLICT	SOLUTION
<p>Related party conflicts can occur when you have complex ownership structures or related commercial interests.</p>	<p>Recommending a loan provided by a lender owned by a director or related person in your business, irrespective of whether you receive any additional fee from the lender.</p>	<p>You are required to disclose these conflicts to your client at the time of engagement.</p> <p>Where you cannot give priority to your clients interests you must not provide credit assistance.</p>
<p>Role conflicts can occur when you act in multiple roles in the same or related transaction.</p>	<p>If you're acting as the mortgage broker for the purchaser and the estate agent for the vendor.</p> <p>This will cause a conflict because you will be receiving income from two parties whilst having to serve the interests of different people.</p>	<p>You would either need to act for only one of the parties (if you cannot act in your clients best interests) or ensure that there is no possibility your credit assistance recommendation can be viewed as not in your finance clients best interests.</p>
<p>Hidden conflicts may arise due to the specific terms or conditions offered by one lender compared to another.</p>	<p>From a brokers perspective, A lender may provide terms and conditions that may be more favourable, than other lenders.</p> <p>For example these could include how a lender pays or calculates commissions, or a lender's clawback terms.</p> <p>There is potential for conflict if these terms are seen to have influenced your credit assistance recommendation.</p>	<p>You must ensure you can justify that your recommendation is in the clients's best interests and that any terms offered by the chosen lender did not influence your recommendation.</p>

BID Preparation Checklist

Preparing your business for the best interests duty

Step 1 – Understand your clients and their needs

- Identify the types of client you engage with and consider their specific needs (i.e. first homebuyers, property investors, credit impaired etc).
 - Ensure you have a reasonably representative panel of lender accreditations that generally reflects the most competitive products in the market. Obtain additional accreditations if required
 - Ensure your lender accreditations in Salestrekker reflects the accreditations you hold as this data populates your Credit Guide.
 - Stay up to date with lender products and policy updates, and update your accreditations regularly to align with changes in the marketplace.
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Step 2 – Review your document versions, systems & processes

- Review your record keeping processes to enable efficient BID compliance.
 - Educate your clients throughout the credit assistance process by sharing details of the steps you will follow to comply with BID.
 - Ensure you are using the most update to date documents and templates from the broker portal to ensure your compliance with BID.
 - Review your website and any advertising and promotional materials to ensure alignment with BID.
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Step 3 – Managing any conflicts of interest

- Implement your own systems and processes to identify any actual or perceived conflicts of interest.
 - Use your compliance register workbook to record any conflicts of interest as they arise.
 - Review your referral and commercial relationships and make necessary adjustments aligned with BID requirements.
-

BID Preparation Checklist

Step 4 – Conflicted remuneration

- Use your compliance register to record any alternate remuneration payments paid or received.
- Communicate with your team members so they don't receive conflicted payments.
- Always disclose any permitted remuneration to your clients on the credit quote and proposal document.

Step 5 – Reviewing and maintaining compliance with BID

- Undertake ongoing training with Redrock, lenders and your industry body.
- Review your lender accreditations on a periodic basis.
- Before you enter referral relationships, consider any conflicts of interest.
- Review your advertising material regularly from a consumers perspective.



Steps for BID Compliance

A guide to acting your clients best interests.

ASIC has identified key areas in the credit assistance process that you can demonstrate your obligations are being met.

There are three key steps are to ensure you can satisfy your BID obligations. At each step you must record evidence of your process and client interactions.

Steps to complying with the best interests duty.

ASIC has defined the following three steps to ensure mortgage brokers comply with the best interests duty:



STEP 1

Gather information about the client



STEP 2

Make an individual assessment



STEP 3

Present information & recommendations

Step 1 – Gather Information

Gather information about the client

Educating your client and documenting your interactions with them during credit assistance are important for BID compliance.

- 1 Use the preliminary assessment to determine and record what your client wants to achieve, their needs and objectives, the reasons for seeking credit and what loan features are important.
- 2 Document the customer's financial situation and take reasonable steps to verify it using supporting documents.
- 3 Identify any conflicts of interest and prioritise the customer's interests
- 4 Take reasonable steps to verify all client information and make further inquiries if you are not satisfied it is comprehensive.

If you can't act in your clients' best interests don't provide credit assistance.

A file without adequate notes greatly increases your risk of scrutiny from ASIC. If it isn't documented, there is no evidence to help protect you.

Recording detailed notes

Detailed notes and document records are your best protection against non compliance with BID Best practice note taking includes:

- ✓ a timeline client interactions (mortgage software will assist in the process.
- ✓ a supporting loan summary outlining records of client and or associated party conversations i.e. accountants, conveyancers etc.
- ✓ a record of the lenders products reviewed, investigated and recommended
- ✓ a record of what was discussed and agreed and why, if applicable, the reasons why a product was not recommended
- ✓ evidence that you were acting in the client's best interests, including documents that show actions to educate the client such as emails containing product information sheets
- ✓ email records or documents as evidence that includes clients exact words where possible

Step 2 – Individual Assessment

There's no one-size-fits-all approach.

- ✓ Assess each client on their individual circumstances, requirements and objectives in order to determine what's in their best interests.
- ✓ Consider a range of suitable loan products that meet the customer's requirements and objectives.
- ✓ Consider relevant factors such as the value and benefits to the client, before making recommendation.
- ✓ Consider your clients priorities and preferences for products or specific lenders, including preferences for the price, features as well as service levels of different lenders.
- ✓ Ensure you have adequate accreditations to access the products that meet the clients requirements, objectives, priorities and preferences.

To meet your BID obligations, you must adequately assess the client's unique situation and circumstances. Once assessed, you need to determine if you can provide credit assistance that serves in their best interests. If you don't think you can, protect yourself by respectfully declining or referring them on to a suitable party.

Under responsible lending laws, you must ensure:

- The loan is 'not unsuitable'
- The customer can afford to make repayments on the loan without substantial hardship
- the loan meets the customer's requirements and objectives



Step 2 – Individual Assessment

Under BID, ASIC stipulates that cost should be prioritised. However you should also consider whether the benefits of other features outweigh the cost. Consider these 3 key factors when you make these decisions.



Policy

Based on your accreditations, which lenders will be most suitable for your client?



Features

Which of the suitable lenders offer products that may meet your customer's needs and requirements the most?



Cost

Based on the available loan product options, identify the cheapest option and ensure that it is part of documented interactions with your client.

You must ensure:

- ✓ The products presented to the client includes the cheapest / most cost effective option.
- ✓ If the most cost effective option is not recommend document and explain your reasons why the recommended option is in the customer's best interests.
- ✓ Notes and records are retained and correspondence supporting your recommendation and discussions with your client.

Step 2 – Individual Assessment

Determining the most cost effective loan.

Whilst cost is a key consideration, there may be other features your client values. There isn't one correct answer. In order to determine the most cost effective or 'cheapest loan' you should consider the following factors:

- interest rate, fees and charges, i.e establishment monthly or annual fees.
- features such as offset accounts and redraw facilities can also form part of the overall cost assessment.
- Costs associated with any transfer of land (purchase /transfer of title) must also be factored.
- Consider lenders promotional offers, such as reward points, cashback offers, fee waivers etc.

Whichever method you use to calculate the most cost effective option needs to be equitable and reasonable.

You may need to vary the way you calculate cost depending on a clients circumstances.

You should educate and inform your client about your method of determination in relation to cost to ensure your are evidencing your best interest obligations.



Other loan features

Whilst cost is a key factor, there may be other features your client values such as:

Offset Accounts

Loan Packages

Redraw Access

Approval Times

It's important to clearly understand your clients priorities in relation to the credit sought. Use the features in the mortgage software to rank the importance of each loan feature.

If necessary, educate your client to ensure they understand the suitability and benefits of the credit products you're recommending and how they meet their best interests.

Step 3 – Options & Recommendations

Present information and make recommendations

- 1** Present your recommendations to your client, showing all of the options considered, including the lender, product type and pricing.
- 2** Explain and document your reasons for the recommended loan and how it meets with their circumstances and best interests.
- 3** Educate the client with all the information they need to make an informed decision.

Ask your client to confirm what you've discussed and their decision via email and save it to their record in your CRM.

What if the client doesn't want the loan you recommended?

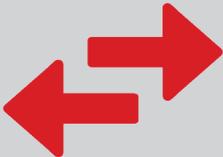
You should at least present more than one option, including the cheapest option, to your client. In some cases your client may prefer a another lender's product instead of the one you've recommended is in their best interests. If this occurs, ensure you record adequate notes reflecting the clients preference and your interactions with them.

In circumstances, where number of loan options may be limited make sure you record adequate notes as to the reasons why and inform the client.

Responsible Lending & BID

Comparing responsible lending and BID.

ASIC has stated that best interests duty is a higher obligation than responsible lending, as shown by their expectations for compliance as shown in the table below from regulatory guide 273.

AREA	RESPONSIBLE LENDING OBLIGATIONS	BEST INTERESTS DUTY
 <p>Inquiry and verification obligations</p>	<p>The purpose is to obtain reliable information to:</p> <ul style="list-style-type: none"> • assess whether a credit product or increased credit limit is unsuitable for the consumer; and • not engage in credit assistance if the credit product or increased credit limit is unsuitable. <p>As a mortgage broker, the information you gather is also likely to be relevant to the lenders responsible lending obligations when entering into a credit product with the consumer you have assisted.</p>	<p>The purpose is to obtain reliable information to:</p> <ul style="list-style-type: none"> • determine what the individual consumer's best interests are; • determine that there are certain credit products which are in the consumer's best interests, and others which are not; • determine that there are no conflicts of interest (and if there are, prioritise the consumer's interests); • weigh up features according to their benefit to the consumer; and • provide recommendations to the consumer.
 <p>Making reasonable inquiries</p>	<p>For all consumers, you must make reasonable inquiries about:</p> <ul style="list-style-type: none"> • the consumer's financial situation, requirements and objectives; and • the maximum credit limit that a consumer requires. <p>Note: Additional requirements apply to some products, such as reverse mortgages.</p>	<p>You should consider each consumer's individual circumstances, which will likely require information about:</p> <ul style="list-style-type: none"> • the consumer's priorities and preferences over different products; • the consumer's needs and objectives; and • the consumer's personal circumstances and financial situation. <p>You should use your judgment to determine whether you should make additional inquiries, beyond the reasonable inquiries undertaken to comply with the responsible lending obligations. This could require you to obtain information that is not needed to comply those obligations.</p>
 <p>Refinancing</p>	<p>Additional matters to be considered include whether the new product would result in:</p> <ul style="list-style-type: none"> • overall cost savings to the consumer; or • minimal cost savings, but better meet the consumer's requirements and objectives. 	<p>Additional matters to be considered include whether the new product would result in:</p> <ul style="list-style-type: none"> • overall cost savings to the consumer; or • minimal cost savings, but better meet the consumer's requirements and objectives.

Responsible Lending & BID

AREA	RESPONSIBLE LENDING OBLIGATIONS	BEST INTERESTS DUTY
 <p>Assessing whether a credit product is ‘not unsuitable’ or in the best interests of the consumer</p>	<p>The credit product or credit limit increase will be unsuitable if (at the time of the assessment) it is likely that:</p> <ul style="list-style-type: none"> the consumer will be unable to comply with their financial obligations, or compliance will result in substantial hardship; the contract will not meet the consumer’s requirements or objectives; or circumstances prescribed in the National Credit Regulations apply. 	<p>This assessment is relevant to acting in the consumer’s best interests.</p> <p>However, you should take into account additional considerations when providing credit assistance in relation to products which are assessed as ‘not unsuitable’ for the purposes of the responsible lending obligations before determining that they are in the consumer’s best interests.</p> <p>For example, providing credit assistance in relation to such a product may not be in the consumer’s best interests if:</p> <ul style="list-style-type: none"> the consumer’s interests would be better served by you suggesting an alternative course of action (i.e. entering into a different credit product); the recommendation is based on your own interests, rather than the interests of the consumer; you prioritise conflicting interests of others over the consumer’s interests; you have not considered the consumer’s circumstances and financial situation in sufficient detail to determine what is in the consumer’s best interests; you have not considered a sufficiently broad range of relevant product options; or you have not equipped and educated the consumer to make informed decisions.
 <p>Record-keeping obligations</p>	<p>ASIC expect you to keep a record of inquiries made, verification steps taken, and information relied on in the assessment.</p> <p>If requested by the consumer, you must provide a written copy of the assessment.</p> <p>A written assessment should include:</p> <ul style="list-style-type: none"> a statement of your understanding of the consumer’s requirements and objectives; a description of the consumer’s financial position; and if the consumer’s capacity to make repayments depends on them taking particular actions—a clear statement of what those actions are. <p>ASIC may also ask for a copy of the written assessment.</p>	<p>We expect you to keep records that include:</p> <ul style="list-style-type: none"> a copy of the responsible lending assessment, or the documents and information that would be used to prepare such an assessment; a copy of the credit guide which was provided to the consumer; information provided to the credit provider; outcomes of credit applications; relevant conversations with the consumer; information showing that you acted in the consumer’s best interests; the options and recommendation you gave; information explaining your reasons for the recommendation (e.g. why that product was in the consumer’s best interests); and any potential conflicts identified, and any steps taken to prioritise the consumers’ interests.

Conflicted Remuneration Overview

Conflicted remuneration means any benefit, whether monetary or nonmonetary, given to a representative, who provides credit assistance to a consumer that:

- could reasonably be expected to influence the choice of credit product recommended or
- could reasonably be expected to influence the advice given to the consumer by the representative.

From 1st January 2021, mortgage brokers and mortgage intermediaries will be prohibited from accepting conflicted remuneration.

Most of the following examples have already been reformed by the industry so the following examples are unlikely to have much bearing on your mortgage broking business.



Volume benefits

Payment or non-monetary benefits based on the volume of loan settlements with a lender.

Campaign benefits

Higher rates of commission from a lender during a limited period.

Soft-dollar benefits

Benefits such as travel, hospitality or substantial gifts, for meeting a certain threshold with a lender.

Rewards programs

Preferential service, including faster turnaround times, based on the amount of business written with a lender.

Benefits that are not considered 'conflicted remuneration':

- ✓ the benefit is given by the client i.e. fees for service
- ✓ upfront and trailing commission based on the drawn amount of the loan
- ✓ infrequent non-monetary benefits less than \$300
- ✓ non-monetary benefits in the form of education and training.

Technology for BID Compliance

Using technology helps your broker business become more efficient and support your compliance and best interest duty obligations.

Our mortgage broking software automates key steps in the credit assistance process, that delivers a better experience for your clients and makes your compliance, record-keeping and best interests obligations much easier.



Key Features



Digital fact-find — clients can electronically sign documents



Pipeline management — drag-and-drop digital deal tracking



Marketing integration — SMS & email / campaigns & triggers



Document creation — create new, customised templates



Communications integration — email and video conference



Data validation — Equifax / Core Logic / Bank statements



BID Compliant — Easy to follow embedded BID procedures and checklists

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