

BEST INTERESTS DUTY – FAQ's

2nd January 2021



#	Question	Answer
1	<p>Does the BID apply to Mortgage Managers?</p> <p><i>Allstate Home Loans are exempt from BID as our model is to B2B (Business to Broker Business).</i></p>	<p>Mortgage managers operate under different models, and whether they are mortgage brokers for the purposes of the best interests duty depends upon their individual circumstances and business structure.</p> <p>For example, a mortgage manager that does not securitise the loan or exercise the right to collect repayments may not be considered a mortgage broker if they exercise some other rights or perform some other obligations of a credit provider in relation to the majority of credit contracts on which they provide credit assistance.</p>
2	Why are banks exempt from BID?	The banks are still only recommending from their suite of products. They continue to be bound by responsible lending laws but not best interests as they do not have access to multiple lenders.
3	Does the BID apply to bank staff also, or just brokers?	No, it only applies to mortgage brokers. We believe this will be a positive for mortgage brokers as you are the only ones with a legislative requirement to act in the best interests of your clients, which gives you an advantage over lenders direct channels.
4	Are Responsible Lending and Best Interests Duty the same?	No - they are 2 separate pieces of legislation. Brokers are required to meet Responsible Lending and Best Interests Duty requirements which are separate to the lender's responsible lending requirements. Under responsible lending a broker is required to complete a preliminary assessment prior to comparing products.
5	Whilst it may be best practice, does this apply to non-regulated commercial lending?	No - it does not. Commercial lending is outside of scope for this piece of legislation.
6	What is the impact of BID on upfront commission?	We do not believe there will be any direct impact. The BID applies at the time of providing credit assistance. The loading of additional upfront commission for the broker will not meet Best Interest Duty.
7	What is the impact of BID on trail commission?	We do not believe there will be any direct impact. The BID applies at the time of providing credit assistance. The loading of additional trail commission for the broker will not meet Best Interest Duty.
8	Does Best Interest Duty require us to conduct annual reviews?	No - it does not require you to conduct a periodic or annual review (RG 273.118).

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9	How does a broker act in the best interest of the client when the broker will be clawed back but it is in the client's best interest to move and we cannot charge a clawback to the client?	If you are going to move a client you will receive a new upfront. If you know prior to providing credit assistance that the client will refinance during the clawback period due to a situation (such as a plan to sell the property) you can inform the client at that time that you will charge an upfront fee for your service.
10	If we establish that there will most likely be a clawback due to the client's circumstances, can we charge a fee for service?	Yes. Your initial conversations with a client should inform you as to the likelihood of a need to refinance within a short period of time, e.g. sale of property within the clawback period. If you know prior to providing credit assistance that a clawback is likely due to a situation such as a plan to sell the property, you can inform the client at that time that there will be a fee.
11	Can we charge a fee that effectively will cover a potential clawback, but refund the client if a clawback does not occur.	No. A Conditional Fee is not allowed. Only fees for services provided are allowed.
12	If under the best interest duty, we are required to review clients every 12 months however clawback is set at 2 years, shouldn't we consider charging a fee for service to protect our income stream?	You are not required to conduct an annual or periodic review. A decision to charge a fee for service is one for you to make as a business operator, as long as you ensure all fees are disclosed prior to providing any credit assistance to a client.
13	Can the clawback fee be added to client's total payout?	No. Early Termination Fees are not allowed under legislation.
14	If the product is not on my aggregator panel but I am an ACL, do I need to source another product that is not on panel?	No - you are not required to go off panel. Only products you are accredited to write should be compared and recommended. If you are comparing to a product from an off-panel lender you can create a similar document and follow the same process by inputting the detail manually.
15	How relevant is timeliness in terms of Best Interest Duty?	Service times change all the time and may not be relevant or important to every client's requirements and objectives. If timeliness is an important factor, we suggest you document it in the requirements and objectives field.

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16	When you say compare product, could that be from the same lender or different lenders?	It could be from the same lender but the reasons for only selecting from one lender should be clearly stated. i.e. customer preference for that lender.
17	How does Best Interest Duty cover when there is a better rate but the lender with the lower rate unlikely to approve based on a certain aspect of the loan.	Rate is only one factor and by clearly articulating why the product was selected you can highlight the fact that the lender/product chosen was done so because of the requirements and objectives and one with a lower rate would not have suited because it didn't meet the other aspects.
18	How many additional products should I consider in the product comparison?	A minimum of two (2) products must be considered. There is no maximum number of products, provided they are relevant to the clients' requirements and objectives.
19	Is the lowest rate available providing Best Interest Duty?	Lowest rate is a common misconception of 'best'. By detailing that rate is only one factor and clearly articulating why the product was selected you can highlight the fact that the lender/product chosen was done so because of the requirements and objectives and one with a lower rate would not have suited because it didn't meet the other aspects.
20	If we show two other products that have a lower interest rate where does that leave us under BID?	Rate is only one factor and by clearly articulating why the product was selected you can highlight the fact that the lender/product chosen was done so because of the client's requirements and objectives and one with a lower rate would not have suited because it didn't meet the other requirements and/or objectives.
21	If a client qualifies for one lender ONLY, do we simply state this and state we did not consider other lenders? Or we state considered other lenders but they would be declined if we placed business there so only really considered one lender ... Does this satisfy BID?	A comparison against 2 other lenders and a discussion about why they may or may not suit the client will evidence the fact that you had the discussion of alternatives. Clear notes stating this will mean you are meeting your duty.
22	Often, due to circumstances and policy, there is only one product that is suitable for the client. Being forced to list alternatives in this scenario is then assisting in creating confusion for client. What do you suggest in this instance?	A comparison against 2 other lenders and a discussion about why they will not suit the situation is all that is needed. Clear notes stating this will mean you are meeting your duty.

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23	When there is only one Lender & Product, what are the rules when using Comparison Products?	There is never one requirement or objective. Compare like for like based on one or more of the objectives of the client and clearly state why the product selected was the right option.
24	How do we compare "Like for Like" products when in some cases only one product is available?	There is never one requirement or objective. Compare like for like based on one or more of the objectives of the client and clearly state why the product selected was in the best interest of the client.
25	What do we do when client only has one choice of lender because of their financial position?	A comparison against 2 other lenders and a discussion about why they may better suit the client will further inform the fact that you had the discussion of alternatives.
26	Valuations are a constant problem. Is using a lender purely because their assigned valuation figure is more favourable a valid justification for best interest?	Provided you are meeting your responsible lending obligations and the lender with the higher valuation meets the clients R&Os, then it may be considered justifiable. Capturing all reasons for product selection in your notes is the key.
27	If a particular lender's servicing calculator is most generous in borrowing capacity that results in best interest of the applicants, can this be listed as one of the key reasons?	Provided you are meeting your responsible lending obligations and the lender with the higher borrowing capacity meets the clients R&Os, then it may be considered justifiable. Capturing all reasons for product selection in your notes is the key.
28	Some lenders offer a higher borrowing capacity. Is that a legitimate choice to choose a funder for that reason?	Provided you are meeting your responsible lending obligations and the lender with the higher valuation meets the clients R&Os, then it may be considered justifiable. Capturing all reasons for product selection in your notes is the key.
29	In regional areas, the broker often makes a subjective decision as to which lenders may approve a loan and which ultimately won't. This is highly subjective and unlike interest rates can't be categorically confirmed. How would this effect recording of comments for best interest duty?	The clear explanation of the fact that a product/lender was chosen due to postcode limitations is a valid R&O for comparing and selecting that product. Clearly stating that in your notes is all that is required.
30	When the application is a principal increase or equity release for existing customer, what do you suggest we compare against?	A comparison against 2 other lenders and a discussion about why they may better suit the client will further inform the fact that you had the discussion of alternatives.

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31	If a client requests a new lender outside of the majors due to their dissatisfaction or personal views on governance or past practices and they are inside the clawback period.....but this is the clients' requirements, how do we address this?	If the client wishes to refinance, simply state this as the reason why in the summary. With regard to your clawback, you will be receiving the payment of a new upfront.
32	I had a purchase deal for an existing ANZ client. There was a large break cost to leave due to the existing lending being fixed (a loan the customer had prior to my relationship with them). For this reason, I could not compare other lenders so I ticked other ANZ products as my comparison. I noted that this was the reason for not comparing elsewhere. Does this suffice for best interests duty?	An explanation in your notes about the fact that break costs associated with moving lender would not be recouped by moving to an alternative lender should be included to ensure you are meeting your best interests duty.
33	What is compliance position on loan where product / lender is 'client directed'?	Clear notes stating that particular lender was a requirement stipulated by the client will mean you are meeting your duty. A comparison against 2 other lenders and a discussion about why they may better suit the client will further inform the fact that you had the discussion of alternatives and the client still chose 'their lender'.
34	For complex applications, such as three or 4 in-line developments, how do we cover this for BID?	Clients will normally have more than one requirement and objective. In this example the type of development is one of those R&O, you can compare other lenders according to the client's other R&O such as rate or fixed/variable. In these scenarios you need to clearly state the reason the product was selected is due to the 'type of development' e.g. 4 in line and the reason the other were considered were not selected is because they do not offer a product that meets this need.
35	BID is "Point in Time" legislation. How could a review, say 5 years down the track, possibly verify that on that particular day as a broker you met the BID given pricing and policy is so fluid and changes regularly. In addition to our notes and the products considered, what else could support our product selection on that day?	Your documentation should demonstrate everything that was considered at the time the credit assistance was provided. If you clearly capture the situation at the time, you have met your legislative requirements.